

MINUTES OF THE REGULAR COMMISSION MEETING OF THE MICHIGAN PUBLIC SERVICE COMMISSION HELD IN ITS OFFICES AND AVAILABLE VIA MICROSOFT TEAMS VIDEO CONFERENCING ON DECEMBER 1, 2023.

Commission Chair Daniel C. Scripps called the meeting to order at 1:02 p.m.
Executive Secretary Lisa Felice called the roll and declared there was a quorum.

PRESENT

Commission: Daniel C. Scripps, Chair
Katherine Peretick, Commissioner
Alessandra Carreon, Commissioner

Staff: Shannon Wambaugh
Matt Helms
Lisa Felice
Alex Morese
Ryan Wilson
Al Freeman
Teresa McKay
Lucy Clay
Sarah Mullkoff
Travis Warner
Heather Durian
Julie Baldwin
Kyle Daymon
Andy Hannum
Ben Johnson
Mike Byrne
Jill Rusnak
Cathy Cole

Public: Mary Lee
Lissa Spitz
Kelly Hall, Consumers Energy
Adella Crozier, DTE
Marco Bruzzano, DTE
Trevor Lauer, DTE
Coreen Strzalka
Julie Stachecki
104 Additional Public Attendees

Additional Staff & Public Attending Telephonically/Video Conferencing: 777 Participants

I. Commissioner Peretick moved to approve today’s agenda, Commissioner Carreon seconded.

Vote: Yeas – Scripps, Peretick, Carreon
Nays – None

The agenda was approved.

II. Commissioner Peretick moved to approve the minutes of the Regular Commission Meeting of November 9, 2023, Commissioner Carreon seconded.

Vote: Yeas – Scripps, Peretick, Carreon
Nays – None

The minutes were approved.

III. CONSENTED ORDERS

A. COMMUNICATIONS

1. U-14396 IN THE MATTER OF THE JOINT REQUEST FOR COMMISSION APPROVAL OF AN INTERCONNECTION AGREEMENT BETWEEN COMCAST PHONE OF MICHIGAN, LLC DBA COMCAST DIGITAL PHONE AND FRONTIER NORTH INC. AND FRONTIER MIDSTATES INC.
(sixth amendment)
- U-15227 IN THE MATTER OF THE JOINT REQUEST FOR COMMISSION APPROVAL OF AN INTERCONNECTION AGREEMENT BETWEEN COMCAST PHONE OF MICHIGAN, LLC DBA COMCAST DIGITAL PHONE, AND FRONTIER COMMUNICATIONS OF MICHIGAN, INC.
(fifth amendment)
2. MINUTE ACTION PENINSULA FIBER NETWORK NEXT GENERATION SERVICES (9-1-1 wireless, U-14000, invoice no. INV-1230, dated November 10, 2023)

B. ELECTRIC

1. U-21320 IN THE MATTER, ON THE COMMISSION’S OWN MOTION, REGARDING THE REGULATORY REVIEWS, REVISIONS, DETERMINATIONS, AND/OR APPROVALS NECESSARY FOR

ALPENA POWER COMPANY TO FULLY COMPLY WITH PUBLIC ACT 295 OF 2008, AS AMENDED BY PUBLIC ACT 342 OF 2016
(energy waste reduction plan/proposed settlement agreement)

2. U-21326 IN THE MATTER, ON THE COMMISSION’S OWN MOTION, REGARDING THE REGULATORY REVIEWS, REVISIONS, DETERMINATIONS, AND/OR APPROVALS NECESSARY FOR UPPER MICHIGAN ENERGY RESOURCES CORPORATION TO FULLY COMPLY WITH PUBLIC ACT 295 OF 2008, AS AMENDED BY PUBLIC ACT 342 OF 2016
(energy waste reduction plan/proposed settlement agreement)
3. U-21405 IN THE MATTER OF THE APPLICATION OF UPPER MICHIGAN ENERGY RESOURCES CORPORATION FOR AUTHORITY TO AMEND ITS RATE BOOK FOR ELECTRIC SERVICE (TARIFF) TO PROVIDE CUSTOMERS A NON-STANDARD METERING OPTION AND APPROVAL OF RELATED CHARGES
(proposed settlement agreement)
4. MINUTE ACTION MIDCONTINENT INDEPENDENT SYSTEM OPERATOR, INC.
(FERC Docket No. ER23-2977-000)
5. MINUTE ACTION PJM INTERCONNECTION, L.L.C.
(FERC Docket No. ER24-98-000)
6. MINUTE ACTION PJM INTERCONNECTION, L.L.C.
(FERC Docket No. ER24-99-000)

C. GAS

1. U-21277 IN THE MATTER OF THE APPLICATION OF SEMCO ENERGY GAS COMPANY FOR APPROVAL OF A GAS COST RECOVERY PLAN AND AUTHORIZATION OF GAS COST RECOVERY FACTORS FOR THE 12 MONTHS ENDING MARCH 31, 2024
(proposed settlement agreement)
2. U-21327 IN THE MATTER, ON THE COMMISSION’S OWN MOTION, REGARDING THE REGULATORY REVIEWS, REVISIONS, DETERMINATIONS, AND/OR APPROVALS NECESSARY FOR MICHIGAN GAS UTILITIES CORPORATION TO FULLY COMPLY WITH PUBLIC ACT 295 OF 2008, AS AMENDED BY PUBLIC ACT 342 OF 2016
(energy waste reduction plan/proposed settlement agreement)

Commissioner Peretick moved that the Commission approve all the orders and minute actions on the consent agenda.
Commissioner Carreon seconded that motion.

Vote: Yeas – Scripps, Peretick, Carreon
Nays – None

The 6 orders and 4 minute actions were adopted.

IV. OTHER ORDERS

A. ELECTRIC

1. U-21297 IN THE MATTER OF THE APPLICATION OF DTE ELECTRIC COMPANY FOR AUTHORITY TO INCREASE ITS RATES, AMEND ITS RATE SCHEDULES AND RULES GOVERNING THE DISTRIBUTION AND SUPPLY OF ELECTRIC ENERGY, AND FOR MISCELLANEOUS ACCOUNTING AUTHORITY

Commission Staff Sarah Mullkoff, Commissioner Advisor, presented a brief synopsis of the case listed above. Commissioner Peretick moved that the Commission approve the order at its December 1, 2023 meeting. Commissioner Carreon seconded that motion.

Commissioner Carreon commented:

“First, I’d like to thank all the advisors, attorneys, and staff members at the MPSC for their exceptional and hard work on this case since the company filed its application in February. I would also like to thank all the intervenors who helped build a robust case record consisting of testimony from 96 witnesses resulting in thousands of pages of transcript and hundreds of exhibits. And I thank Judge Feldman for preparing a thoughtful, thorough, and – despite its 876-page length – succinct proposal for decision considering the numerous, complex questions and interacting matters intrinsic to the decisions at hand.

To carry out our charge at the Commission to serve the public by approving reasonable and prudent utility expenditures, it is imperative that record evidence sufficiently supports every investment that stands to increase rates. It is critically important that the company provide comprehensive information upfront and upon request in a timely way, justify its methodologies, and transparently explain its decision-making processes to ensure the Commission can fairly, and without impediment, evaluate reasonableness and prudence.

Unsupported conclusions or incomplete analyses to back investments are unacceptable. Quantified data is crucial for evaluation. We request the company adhere to our forthcoming mandatory rate case filing requirements and to note carefully where within the order the Commission suggests the need for more quantitative support of projects and where data was marked as altogether absent to help prepare a clearer and more transparent application filing in the future.

Now, I'd like to turn to a couple of select highlights from this order that reflect the Commission's commitment to ensuring equitable outcomes for all, including our most vulnerable communities – and I have the privilege of serving alongside two fellow commissioners who work tirelessly in upholding values of safety and equity for our state.

- First, to embed equitable resource allocation in decision-making for grid investments, we have requested the company work with MPSC Staff and other organizations to develop a detailed regression analysis of customer demographics and reliability for vulnerable communities to be used in the company's distribution grid plan. Results from ongoing equity analyses from the company can demonstrate how the company balances its spending such that it does not disproportionately skew benefits away from more vulnerable or disadvantaged communities.
- These analyses to support equitable approaches to resourcing projects are important for key areas of electrification as well, such as in transitioning certain transportation electrification pilots to permanence. Two pilots that are now approved for permanence include an education and outreach program that provides comprehensive information on transportation electrification, including ensuring this information reaches underserved communities, and a battery financing program which allows the company to purchase batteries for public transit, school buses, and delivery vans to alleviate the initial cost impacts of electric buses and enable repayment of the battery over time. The Commission notes that it is appropriate to focus on areas experiencing the worst forms of air pollution from public transportation, delivery vans, and school buses for electric bus deployments. The advent of transportation electrification at scale cannot be confined to personal or private vehicle use or ownership alone. To ensure equitable access to clean transportation, electrifying multiple mobility modes will be required.

Finally, for any type of proceeding in which the company participates, the Commission continues to emphasize the need for external party input and ongoing collaboration in developing plans and filings, including distribution grid plans or transportation electrification plans. This is doubly important when these plans are then filed to the record for contested cases like today's, as ongoing engagement and collaboration in developing plans that contain quantitative benefit/cost analyses can both strengthen the case record as well as integrate procedural equity in future planning.”

Commissioner Peretick commented:

“Similar to Commissioner Carreon, I would first like to thank all the parties to this case who participated and provided testimony on the record for our review. This was a robust record, and I know the 10-month deadline for a decision in rate cases is not easy. I would especially like to thank Judge Feldman for her excellent and thorough Proposal for Decision, our fantastic staff for their thorough analysis and positions, and our advisors and attorneys for their diligent work and countless hours spent to get us to the point of this final order today.

I'd first like to address the rate increase proposed for approval today. The Commission is required by law to set rates that are just and reasonable and only allow increases when the utility has met its burden of proof that the amounts it is seeking to recover in rates are needed, reasonable, and prudent. As described by Ms. Mullkoff, in this proposed order, we find that DTE met its burden of proof on a portion of the amounts it sought to recover that will increase an average residential electricity customer's bill by 6.38%.

It is worth noting that approximately one year ago, the Commission approved only a very small increase in DTE's rates, a zero-point 0.78% increase for an average residential electricity customer for a total increase over a 2-year period of 7.16%. Over this same two-year period, the US annual inflation rate ranged from a low of 3% this past June to a high of 9.1% in June of 2022, averaging 6.4% per year over the two-year period.

While this is an increased burden for all DTE Electric customers, additional investment in the distribution system is necessary to see meaningful improvement in reliability. As I have stated before, the reliability of our electric distribution system in the face of increasing severe storms is unacceptable, and the only way to improve is to fix the system. We will be watching closely to ensure that these investments have the intended effect of reducing the frequency and duration of outages in our state.

I'd like to start with the positives. In this proposed order, there are projects for increasing reliability on the distribution system, increasing accessibility and affordability of electric vehicle charging stations, funding for a permanent program for the company to purchase batteries for transit agencies and be paid back over time, a school bus charger pilot, and funding for two large charging hubs.

There is a \$9m approval for a 220 MW li-ion battery to replace a retired coal plant, an innovative commercial and industrial battery storage pilot project, and creative uses of storage and other technology for non-wires alternatives.

There is approval of an Infrastructure Recovery Mechanism, or a way of tracking investments in the distribution system to ensure investment is made in the areas that will have a biggest impact on improving reliability, and refund money to customers that is not spent.

But the proposed approvals are judicious. There are many disallowances – almost \$60m – in avoidable expenses for continued use of coal-fired power plants, hundreds of millions of disallowances for projects that were poorly justified on the record, and a high level of scrutiny for each and every approved cost contained in the order.

It is crucial that we have the information on the record necessary to make informed decisions:

- Sufficient details of the of the proposed investments are needed to fully and accurately review and make the proper decisions on behalf of customers.
- Full project costs must be stated on the record, even if the project extends beyond the test year.
- Expected benefits of the project must be clearly outlined.
- Discovery requests must be responded to timely and answered fully. The failure of the company to adequately and timely respond to discovery requests interferes with the parties' ability to review requests, and in turn, hinders our ability to determine whether a cost recovery is reasonable and prudent.
- Methodology for rankings in the company's Global Prioritization Model, or any underlying model supporting investments, must be explained, transparent, and consistent.
- Detail on IT investments must be clearly defined and identified by category, including descriptions of each category and actual and projected expenses.

There must be sufficient data, detail, and support on the record, as I just described, if DTE expects to spend customer money on their projects in the future.”

Chair Scripps commented:

“Thank you to both Commissioner Carreon and Commissioner Peretick for your comments. I’ll try to avoid repeating what the two of you said but did want to share a couple remarks before we vote on the order before us.

First, there are a number of proposed investments included in the order that follow through on the approvals given as part of DTE’s most recent integrated resource plan. These are important investments, and I am pleased to see them included in this order.

In addition, much of the investment proposed for approval in this order is squarely focused on improving reliability and decreasing the number and duration of outages. That’s as it should be.

The Commission remains committed to supporting reasonable and prudent investments in basic grid infrastructure, so long as there is adequate support for these investments on the record. And there are significant investments included in key strategic capital programs included in the order before us, as well as additional funding for tree trimming.

At the same time, there are already significant rate pressures on Michigan customers, making it all the more important for DTE to prioritize how it spends the revenues it collects from customers in ways that deliverable meaningful improvements in reliability. So, while the order supports key reliability investments, it also disallows funds for programs that were inadequately supported and other proposed investments that could be avoided.

One additional approach that is included in the order before us is approval of DTE’s proposed investment recovery mechanism tied to core distribution investments. This approach is similar to what we’ve used for many years now associated with the replacement of DTE Gas’s old main line system and provides greater certainty of recovery for DTE to enable moving forward with these ‘no-regrets’ investments while also protecting customers by ring-fencing ratepayer dollars to be used only for the specific categories and requires a refund to customers for any funds not spent on these programs. This is an important balance to ensure that customer funds are used in the way they are intended as we take the necessary steps to reduce outages.

I also want to highlight language in the order around the opportunities connected with the U.S. Department of Energy’s Loan Programs Office, and particularly the \$250 billion in lending authority associated with the Energy Infrastructure Reinvestment Program established under Section 1706 of the Inflation Reduction Act, and to encourage DTE to pursue every available opportunity to reduce the cost impact to customers as they undertake the significant investments needed to rebuild their system.

Finally, in addition to thanking our Staff and the many intervening parties for their work in this case, I want to echo my colleagues’ appreciation to Judge Sharon Feldman, the Administrative Law Judge in this proceeding. As Commissioner Carreon noted, she broke her own record in this case with an 876-page proposal for decision, which was – like all her PFDs over the years – thoughtful, well supported, and (amazingly, given its length!) easy to read. This is also Judge Feldman’s final rate case, which probably saddens us more than it does her, as she prepares to retire later this month after more than 35

years of service to the state and nearly 20 years as an Administrative Law Judge. I know my colleagues join me in thanking Judge Feldman for her service, both in this case and over the course of her career.”

Vote: Yeas – Scripps, Peretick, Carreon
Nays – None

The order was adopted.

B. GAS

1. U-20763 IN THE MATTER OF THE APPLICATION FOR THE AUTHORITY TO REPLACE AND RELOCATE THE SEGMENT OF LINE 5 CROSSING THE STRAITS OF MACKINAC INTO A TUNNEL BENEATH THE STRAITS OF MACKINAC, IF APPROVAL IS REQUIRED PURSUANT TO 1929 PA 16; MCL 483.1 *ET SEQ.* AND RULE 447 OF THE MICHIGAN PUBLIC SERVICE COMMISSION’S RULES OF PRACTICE AND PROCEDURE, R 792.10447, OR THE GRANT OF OTHER APPROPRIATE RELIEF

Commission Staff Travis Warner, Energy Operations Division, presented a brief synopsis of the case listed above. Commissioner Peretick moved that the Commission approve the order at its December 1, 2023 meeting. Commissioner Carreon seconded that motion.

Chair Scripps commented:

“It is axiomatic that the Commission speaks through its orders.

The order in this case, at more than 350 pages, includes a comprehensive overview of the evidentiary record and a detailed explanation of the Commission’s findings on how that evidence was applied to the legal framework for evaluating Act 16 pipeline cases.

As such, I won’t review the entire substance of the order, or the six other Commission orders in this proceeding since it was initially filed in April 2020. I did want to take a moment, however, to review a bit of the context around this case.

As we meet here today, Line 5 continues to move crude oil and natural gas liquids through the dual pipelines lying on the bottomlands of the Straits of Mackinac. Over the course of today, approximately 540,000 barrels – or 22.8 million gallons – of crude oil and NGLs will flow through those lines. A leak from those lines would be even worse than Enbridge’s 2010 oil spill into Talmadge Creek and the Kalamazoo River – the worst inland oil spill in US history. An oil spill in the Straits would be, in a word, catastrophic.

The evidence in this case suggests the most likely cause of such a spill – or specifically “the dominant threat, representing more than 75% of the annualized total (all-threat) failure probability” – comes from an anchor strike.

Nor is such a threat purely theoretical. It happened, just 5 years ago, when an anchor struck and dented the dual pipelines lying on the bottomlands of the Great Lakes. Fortunately, the pipeline didn't rupture in that case. But there's no guarantee we'll be so lucky the next time.

It's clear: we need to get those pipelines off the bottomlands and out of the Great Lakes.

In reviewing the comprehensive list of alternatives presented in this case on how best to do so, we find that Enbridge's proposal to relocate the Straits segment within a concrete-lined tunnel housed in the bedrock deep below the lakebed represents the best option to mitigate the dangers the current pipelines represent.

This is not to say that this pipeline – or any pipeline – represents the only way to transport these products. Indeed, over the last several years we've seen propane wholesale and retail suppliers and others take significant steps to develop alternate sourcing options for propane and petroleum products, including expanding rail capacity and rail delivery points; new propane terminals; increases in storage capacity at existing terminals and the deployment of new storage infrastructure; and the return to service of previously mothballed pipelines, to name just a few. These actions demonstrate the continuing need for propane and other products.

Yet a determination of public need for the replacement segment at issue in this case is not limited to whether other sourcing options may exist, and at a minimum relocating the pipeline into a tunnel provides additional options and maintains an additional layer of resilience for how we meet our energy needs in Michigan. And even as these other sourcing options develop, the evidence on the record suggests that, among the broad range of options and alternatives considered, relocating the Straits segment of Line 5 to a tunnel beneath the lakebed was the preferred option.

At the same time, there is an energy transition taking place, including the shift from fossil fuels to cleaner energy resources. The suite of legislation signed into law earlier this week will only help to accelerate this shift and reduce our reliance on crude oil and NGLs.

Specifically, the legislation removes the prohibition on fuel switching in energy waste reduction plans; authorized the development of efficiency electrification plans; includes additional incentives for whole-home building envelope improvements; and requires the Commission to conduct regular assessments of the potential for electrification of transportation, buildings and industries consisted with economy-wide elimination of greenhouse gas emissions in this state.

At the same time, in the order we just adopted in DTE Electric's rate case, we made permanent some of their transportation electrification programs and approved needed investments to address grid reliability and boost distribution capacity, which should also help as we electrify transportation and other end uses, reducing our reliance on fossil fuels and the infrastructure currently used to transport them.

But the energy transition won't happen overnight. And in the meantime, we have a responsibility to approve the infrastructure needed to meet our energy needs, and to take the steps necessary to get the current pipelines off the bottomlands.

Before closing, I want to thank Mr. Warner and our Staff for their active engagement in this proceeding from the very beginning; the two Administrative Law Judges who presided over this case – Judge Christopher Saunders and the late Judge Dennis Mack – for running an admirable process that resulted in a robust evidentiary record and their typically high standards of procedural justice; the other intervening parties – and particularly the sovereign Tribal nations – for the expertise they shared in developing the record in this case; and to the thousands of individuals who submitted comments and spoke at public hearings and Commission meetings.

I know some of you are disappointed with our decision. I acknowledge that. But I want to assure you that your participation improved both the process and the result. The perspectives shared helped to crystalize our focus as we continued to dig into the evidentiary record. The evidence presented by experts from intervening parties ultimately led to a reopening of the record, ensuring we had all the information necessary to answer the many questions raised by Enbridge’s application. At the end of the day, the evidence supported approval of the Relocation Project, but with important conditions imposed to further reduce any risks.

I’ll close with this. By approving the application to relocate the current dual pipelines from the bottomlands of the Straits of Mackinac to a concrete-lined tunnel housed deep in the bedrock below the lakebed, we are an important step closer to finally, for once and for all, removing the threat the current pipeline poses to our Great Lakes.

On that basis, I am pleased to support this order.”

Commissioner Peretick commented:

“Thank you, Chair Scripps. Your comments were excellent. I would first like to note that as always, the Commission speaks only through its orders. These remarks are mine alone.

I would like to start by thanking the many parties that have participated in this case since its filing in 2020. It has been a long road to get to this point. I would especially like to thank the ALJs who expertly presided over this case: Judge Chris Saunders and the late Judge Dennis Mack. And I would also like to give a special thanks to the Tribes who engaged in this case. Your testimony and input are valued and is crucial to our State.

And also, a sincere thanks to all the public who took the time to comment, email, and show up at our meetings to provide your perspectives. I know many of you will be disappointed by the decision, but I can genuinely say that your comments, whether in writing, verbally here in person, or over the phone or Teams, made this process better. As Mr. Warner noted, we have a robust record of over 2,500 pages and an additional 23,000 comments from members of the public. Thanks to many of you.

As a result of this robust record, we found the need to reopen the record last year. Because of the importance of this decision, we found that we needed more testimony and evidence on the safety of the proposed replacement project. As a regulator, ensuring safety is among my highest priorities. Even though this added complexity and time to the proceeding, I am thankful that we were able to establish more data and build a better understanding of the engineering and design of the replacement project and its route through the tunnel. This additional evidence was necessary to make a fully informed decision.

All of our decisions must be made according to the statutes that govern us and based on the record of the case in front of us. In this case, Act 16 and the Michigan Environmental Protection Act are the governing statutes. Applying these laws, the order proposed before us finds that there is a public need for the replacement project, that it meets or exceeds safety and engineering standards, and that it is designed and routed in a reasonable manner.

However, given the importance of the Straits of Mackinac to the health of the environment and people of Michigan, the proposed order has additional constraints and requirements, including more robust construction and testing practices, submission of a detailed risk management plan, and no presence of any third-party utilities without further application to and approval by the commission.

Protecting the Straits of Mackinac is crucial and was at the forefront of my mind throughout this case. The current dual pipelines laying exposed on the lakebed are not the best option for our State. Six alternative configurations were assessed on the record, and the proposed order finds that the most reasonable and prudent of these alternatives is the proposed tunnel. The concrete tunnel provides increased protection from external damage, such as boat anchors, and provides secondary containment. This will ultimately maintain the greatest protection of Michigan's natural resources.

This decision was not taken lightly, and I am grateful for the sincere, thorough thought and consideration that my colleague Chair Scripps has spent on this decision as well.”

Vote: Yeas – Scripps, Peretick,
Nays – None
Abstains – Carreon

Commissioner Carreon commented:

“I began my service on the Commission on July 23, 2023. The application in this was filed on April 17, 2023, approximately 3 ½ years ago. In addition, this is a read the record matter with over 1,500 filings in the docket. The Commission received comments from more than 23,000 individuals and groups throughout the case, including written comments, comments from public hearings, and comments made at Commission Meetings. Having been appointed to the Commission approximately four months ago, I have determined to abstain from voting on this matter. Thank you.”

The order was adopted.

V. PUBLIC COMMENTS

Karol Sanborn, Lynn Colby, Steve Colby, and Tony Wohlscheid addressed their concerns regarding Case No. U-21471, ITC's proposed transmission line route through their properties.

Julie Wash, Nichole Biber, Moses Biber, Pearl Biber, Lissa Spitz, Andrea Pierce, Robert Hamilton, Dr. Lauren Sargent, Nova, Jade Prange, and Terri Wilkerson commented on the Commission's decision in Case No. U-20763, Enbridge's application for Line 5.

Julie Stachecki commented on the Commission’s decision in Case No. U-20763, Enbridge’s application for Line 5 and Case No. U-21297, DTE Electric Company’s rate case.

A recording of the proceedings of the December 1, 2023 meeting is archived at: https://www.youtube.com/watch?v=TBo_bMv2JXM .

Chair Scripps announced that the next regularly scheduled Commission Meeting will be held on Thursday, December 21, 2023 at 1:00 p.m.

Commissioner Peretick moved that the Commission adjourn, Commissioner Carreon seconded.

Vote: Yeas – Scripps, Peretick, Carreon
Nays – None

The motion was approved.

The meeting adjourned at 2:32 p.m.

Lisa Felice
Executive Secretary