

**MMA Comments
Draft Proposed Michigan Mercury Rule
2/16/07**

I have participated in the Mercury group and share the concerns of the utility industry. They have legitimate concerns about technical feasibility, ability to comply with the federal CAMR, impact on system reliability, and on the cost of the regulations. I share their concerns and endorse the comments delivered to you by them. However, I want to be clear that our concerns about cost and reliability are magnified compared to the utility sector, because ultimately, manufacturers pay directly for the cost and lack of reliability on the electrical grid. Our friends in the utility sector will work very hard to ensure that they can pass these costs into their rates. We certainly noticed that their comments called for a non-by-passable charge to recover their costs. I understand their interest in recovering their costs, but manufacturers do not have that same regulatory mechanism to pass costs along. Instead, those costs reduce our ability operate profitability from a Michigan location.

The agency's draft proposal must be analyzed from an economic perspective to assess the impact on electric rates and the impact on the relative competitiveness of Michigan's manufacturing sector. Assessing the impact on manufacturers is particularly important in Michigan; it is a large manufacturing state making 23% of the automobiles made in America and hosting 50% of the nation's auto supplier base. Even without the automotive industry, Michigan would be the 13th largest manufacturing state. Manufacturing is the largest single sector of the economy, creating 18% of the gross state product and directly employing about 670,000 people with high wages and full benefits. In addition, manufacturing, and particularly the auto industry carries the highest economic multiplier effect compared to other sectors. Every dollar of a manufacturing product sold generates an additional \$1.43 of intermediate economic output. For comparison, the information sector generates only 80 cents, and the financial services sector only 50 cents, of intermediate activity for every dollar of final sales.

Electric rates are a critical factor in evaluating the cost of manufacturing products. Manufacturers are large consumers of electric power, accounting for about a third of total electric demand. It is instructive to know that US Steel is DTE's largest customer and alone represents 2% of DTE's total electrical output. Moreover, the auto industry is highly reliant on steel. So, increasing the cost of steel has a multiplier effect on the increased price of the automobile and ultimately limits our ability to compete globally on the basis of price. As the largest sector of Michigan's economy, Michigan's economic future is dependent upon protecting the existing manufacturing base.

We must recognize that many factors influence electric rates and often factors are aggregated to push rates beyond affordable levels. The recent trend of shifting the burden of regulatory programs wholly to the regulated community pushes rates up. The insidious nature of emission based fees must be recognized. As emissions drop, the rate of fees must go up. As increased fees are pushing up rates the cost of electricity goes up. As the cost of electricity goes up, manufacturer's ability to compete on the basis of cost goes down, which increases the likelihood that operations will move to lower cost locations around the globe.

In addition to fees, multiple regulatory requirements are compounding to increase the cost of electric generation. The list of regulatory requirements includes the NOx Rule, Particulate Matter 10, Particulate Matter 2.5, Clean Air Interstate Rule, BART, CAMR, and now going substantially beyond the federal rule with state only mercury regulations. The utilities have estimated the incremental cost of CAIR/CAMR to increase a large manufacturer's electric bill by 7% for DTE and 4.5% CMS and going beyond CAMR will impose an additional 3% for DTE and 2.4% for CMS.

As indicated in the 21st Energy Plan, the cost of electrical generation is going up as the cost of fuel goes up, whether it is natural gas or coal.

In addition, the 21st Energy Plan tells us that new base load generation must be built soon to meet the future demand for electricity in Michigan. The plan proposes a non-by-passable charge to pay for this plant, holding Michigan customers hostage to high cost power and blocking potential access to lower cost power on the open market. The greatest environmental gains will likely come from increased transmission capacity, and the construction of generation capacity. The draft proposal forces utilities to place expensive band aids on small, older plants. That money would be better spent building new base load units to implement the 21st Century Plan, creating greater environmental benefits for the dollars spent.

Recently, the US Department of Energy, Energy Information Administration, reported that Michigan's electric costs for industrial customers are the highest in the East North Central Region, recognizing that Michigan has the second highest unemployment rate in the nation sandwiched on the list between Louisiana and Mississippi, two states that were hit by hurricane Katrina. We must ensure that electric rates do not continue to push manufacturing investment out of Michigan.

Recommendations

- 1) To ensure that Michigan's economy is not negatively impacted by electric rates as the result of environmental regulations, we recommend that the Public Service Commission review both proposed regulations and individual permits prior to issuance of both. This would ensure that the cost of implementing the regulation would not negatively affect electric rates for the industrial sector or negatively impact reliability of the electric system. The margin between electric supply and demand is too narrow in Michigan to not fully consider the impact of this regulation on both price and electrical reliability. The cost of the regulation could render some plants economically viable, and eliminating those generating sources could have dire consequences for the electric grid. Moreover, the cost increases could make our rates uncompetitive compared to other states and other locations across the globe.
- 2) The technical and economic off-ramps must be permanent. As currently drafted the considerations for technical and economic feasibility are time limited and effectively represent a barrier to progress. If the regulatory structure precludes a reasonable expectation of compliance, the federal Clean Air Act would prohibit an applicant from getting approval and prohibit a clear thinking "responsible official" from signing a Title V permit. Temporary solutions for economic and technical challenges represent constant threats to compliance achievability and ultimately reliability of the electric grid.
- 3) Just like 49 other states, we must not continue to create a regulatory bureaucracy around hypothetical newly created "mercury impacted areas." The federal CAMR regulation will reduce mercury emissions by 70% and the draft proposed rule would reduce emissions even more. The conclusion that new impacted areas could be created is illogical. Continued discussion of such circular regulation alone damages Michigan's business climate. We must remember that 49 other states have lower unemployment rates.
- 4) The draft rules propose to permanently retire 158 pounds of allowances. In the absence of interstate trading, which is allowed by all states under the federal CAMR, the allowances represent the only safety net this state has for compliance with CAMR. These allowances should be used in anticipation of the future economic growth anticipated in the 21st Century Energy Plan. The Public Service Commission's plan calls for the construction of a new coal fired power plant, but this proposal constrains construction of that plant. Either the state wants economic growth or it doesn't. Retiring allowances in this proposal is a direct barrier to economic growth.
- 5) The draft proposal prohibits the banking of allowances, which eliminates incentives for early reductions. A mercury reduction plan should encourage early reductions, instead of discourage them. The Administrative Procedures Act requires "A discussion of the feasibility of establishing a regulatory program similar to that proposed in the rule that would operate through market-based mechanisms." This is a market based mechanism that will yield environmental benefits, but is prohibited by the draft proposed rule.

6) A cost benefit analysis has not been provided. The Administrative Procedures Act requires justification and explanation of the costs and benefits of the proposal. This cost will be borne by all electric rate-payer classes and those who will pay the cost of this expensive program deserve some sense of the benefits to be gained, if any. In fact, here are a few of the requirements listed in Public Act 306 of 1969, MCL 24.245:

- An identification of the harm resulting from the behavior that the rule is designed to alter and the likelihood that the harm will occur in the absence of the rule.
- An identification of any reasonable alternatives to regulation pursuant to the proposed rule that would achieve the same or similar goals.
- An estimate of the actual statewide compliance costs of the proposed rule on individuals.
- An estimate of the actual statewide compliance costs of the proposed rule on businesses and other groups.
- An estimate of the primary and direct benefits of the rule.

We appreciate the opportunity to share comments on the draft proposed rule. We remain open to continued discussion in hopes of improving the proposal, so Michigan can meet environmental goals in a cost effective manner, while maintaining our ability to compete in the increasingly competitive global economy.

Sincerely,

Michael Johnston
Director of Regulatory Affairs