

(3) with respect to such portion of electric energy used in such unit, the long-run benefits to the electric consumers in such building exceed the costs of purchasing and installing separate meters in such building.

4. Subpart (5) of Commission Rule 20 CSR 4240-20.050 allows for an affected entity to apply for a variance from the rule's provisions, and contemplates a "variance committee" to consider all variance applications. The Rule provides as follows:

(5) Any person or entity affected by this rule may file an application with the commission seeking a variance from all or parts of this rule (4 CSR 240-20.050) and for good cause shown, variances may be granted as follows:

(A) The variance request shall be filed in writing and directed to the secretary of the commission;

(B) If the commission deems it in the public interest, a hearing may be held by the commission as in complaint hearings before the commission; and

(C) A variance committee consisting of two (2) members of the commission's utility division staff and a member of the commission's general counsel's office shall be established by the commission within thirty (30) days from September 28, 1981. The public counsel shall be an ex officio member of this committee.

1. The variance committee shall consider all variance applications filed by utilities and shall make a written recommendation of its findings to the commission for its approval.

2. Each applicant for a variance shall have ten (10) days from the date of the variance committee's findings to either accede or request a formal hearing before the commission.

3. If applicant accedes, the commission may adopt the variance committee's findings or set the matter for formal hearing upon the application of any interested person or upon the commission's own motion.

5. The Commission last designated members to the variance committee on January 13, 2021. At that time the variance committee members were Nicole Mers, Staff Counsel, Claire Eubanks, Staff Industry Analysis Division, and Robin Kliethermes,

Staff Industry Analysis Division, with Marc Poston, Office of the Public Counsel, an ex officio member. Both Nicole Mers and Robin Kliethermes are no longer employed by the Commission.

6. It is undersigned counsel's understanding that designation of variance committee members will be a May 15, 2024, Commission Agenda Meeting item. At that Agenda Meeting, Staff will propose that the Commission designate Commission employees Travis Pringle (Staff Counsel) and Justin Tevie (Staff Industry Analysis Division) as members of the variance committee.²

7. While Midland requests the Commission act expeditiously and grant the requested variance by no later than May 20, 2024, the fact that variance committee members must first be designated, and that the variance committee must then examine Midland's request and render a recommendation to the Commission, it is Staff's opinion that a Commission order regarding this variance request by May 20, 2024 is infeasible.³

8. In order to provide sufficient time for the variance committee to examine Midland's request, and to provide for the potential need to issue discovery (possibly multiple rounds) in its examination, Staff requests the Commission order the variance committee to submit its Recommendation no later than June 27, 2024. That being said, Staff certainly understands and respects Midland's request for the Commission to act

² Rule 20 CSR 4240-20.050(5) does not reflect the current organization of Commission Staff and Commission Attorneys.

³ Midland states in its Application that, "The Project is currently in the final phases of development, and pursuant to the Agreement and its leases with its tenants, the Applicant must complete construction and make Midland Residential units available to residents by May 31, 2024." While this statement provides justification for Midland's request for expedited treatment, the Application contains no explanation or justification as to why Midland did not, or could not, submit its Application for a Variance sooner than it did. By requesting a Commission order regarding its request no later than May 20, 2024, Midland is asking for a Commission ruling regarding a project it has undoubtedly been working on for years, in only eleven days.

expeditiously and submits that the variance committee will seek to complete its review and file its Recommendation as soon as it is able.

9. This motion is made in the interest of justice and without the intent to unreasonably delay or hinder these proceedings in any manner.

WHEREFORE, Staff prays that the Commission will accept this *Staff Response*; order the variance committee to file its Recommendation regarding Midland's variance application no later than June 27, 2024; and grant such other and further relief as is just in the circumstances.

Respectfully Submitted,

/s/ Mark Johnson

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served via e-mail on counsel for the parties of record on this 10th day of May, 2024.

/s/ Mark Johnson