

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



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DANA NESSEL
ATTORNEY GENERAL

January 6, 2022

Ms. Lisa Felice
Executive Secretary
Michigan Public Service Commission
7109 West Saginaw Highway
Lansing, MI 48917

Dear Ms. Felice:

Re: MPSC Case No. U-20629, U-20630 and U-21150

In the matter, on the Commission's own motion, to establish a workgroup to review the service quality and reliability standards for electric distribution systems and to recommend potential improvements to the standards.

In the matter, on the Commission's own motion, to establish a workgroup to review the Technical Standards for Electric Service and to recommend potential improvements to the standards.

In the matter, on the Commission's own motion, to propose revisions to the rules governing consumer standards and billing practices of electric and natural gas utilities regulated in accordance with 1919 PA 419, as amended; 1939 PA 3, as amended; and 1965 PA 380.

In its November 4, 2021, order in Case Nos. U-20629, U-20630, and U-21150, the Commission requested comments from interested parties regarding the proposed service quality and reliability standards, and also proposed revisions to rules governing consumer standards and billing practices of electric and natural gas utilities. The proposed service quality and reliability standards include customer bills credits when electric utilities fail to meet specified levels of performance and the provision for an incentive mechanism to encourage electric utilities to improve the level of performance of the electric distribution system.

The Attorney General (AG) is pleased to provide comments that will assist the Commission in finalizing the aforementioned standards and rules. The overriding objective of the Attorney General is that the reliability and service quality of the electric distribution system of Michigan utilities must improve from current levels and there should be an urgency to achieve significant performance improvement. In that regard, paramount in the Attorney General's comments below are the principles that standards and rules must be fair and reasonable to both customers

and utilities, and that the failure to achieve the stated standards and service quality levels has financial consequences for the utilities or cooperatives under the commission's jurisdiction.

The Attorney General's comments below pertain to those sections of the service quality and reliability standards filed with the November 4, 2021 Commission order in Case No. U-20629. Reference to utility or utilities also includes cooperatives under the commission's jurisdiction.

PART 1: GENERAL PROVISIONS

PART 2: UNACCEPTABLE LEVELS OF PERFORMANCE

The Attorney General does not agree with the proposed revisions to Part 1 and Part 2 of the Service Quality and Reliability Standards for Electric Distribution Systems. As expressed in her August 27, 2020 comments (attached to these comments), the creation of the gray sky conditions creates a greater restoration time for customers than the prior rules that contain just normal and catastrophic conditions. In fact, since these prior comments, it appears that the problem identified by the Attorney General has worsened in these new revised rules. In addition, no rule has been included to address the protecting customers in the event of a major disaster such as the discussed in the National Association of State Utility Consumer Advocates 2019-01 resolution. A disaster preparedness plan on how the utilities plan to respond and work with the cities, townships, police, consumer advocates, and community groups in their territories is also needed in these rules.

As to the outage credits, the Attorney General believes the amount is still not sufficient to address the cost incurred by customers following an electric outage. As expressed in her prior comments in this docket and others, the outage credits need to be automatic and the amount the credit doesn't properly take into account all the costs incurred by customers. The Attorney General provided a snapshot of costs incurred by customers as a result of the summer outages and believes that the Commission should conduct further investigation into the proper amount of the credit. The development of a disaster relief fund, as suggested by the Attorney General, would also help alleviate some of the burdens experienced by customers following a lengthy electric outage. The Commission can make an addition to Part I and create R 460.704. In R 460.704 the Commission could create the authority to create disaster preparedness plans and require utilities to file within 6 months of these rules being adopted to address such plans before the Commission.

Moreover, the standards define the unacceptable level if service is not restored or the response to a wire down is not achieved in a set number of hours for at least 90% of the affected customers or incidents. As written, the standards do not provide for a maximum acceptable service restoration time or response time for the remaining 10% of the power outages and wire-down situations. The remaining 10% is often the source of most customers complains when it takes several days or weeks

for customers to have electric service restored. The Commission should remove the gray sky condition as discussed above and create maximum acceptable service restoration times or response times. If the Commission adopts the proposed rules, then the Attorney General recommends that the Commission establish the following maximum service levels:

R460.722(a) All weather conditions – AG Recommendation: Maximum restoration time within 4 days (96 hours) for 100% of all customers experiencing sustained interruptions. No more than 50 exceptions above 96 hours will be acceptable within a calendar year for unusual and difficult service restoration situations.

R460.722(b) Catastrophic conditions – AG Recommendation: Maximum restoration time within 7 days (168 hours) for 100% of all customers experiencing sustained interruptions. No more than 100 exceptions above 168 hours will be acceptable within a calendar year for unusual and difficult service restoration situations.

R460.722(c) Gray Sky conditions – AG Recommendation: Maximum restoration time within 5 days (120 hours) for 100% of all customers experiencing sustained interruptions. No more than 50 exceptions above 120 hours will be acceptable within a calendar year for unusual and difficult service restoration situations.

R460.722(d) Normal conditions – AG Recommendation: Maximum restoration time within 3 days (72 hours) for 100% of all customers experiencing sustained interruptions. No more than 10 exceptions above 72 hours will be acceptable within a calendar year for unusual and difficult service restoration situations.

R460.723(1) Wire Down all conditions – AG Recommendation: Maximum response time within 240 minutes (4 hours) for 100% of all first responder wire-down notifications.

R460.723(2) Wire Down Non-Metropolitan area – AG Recommendation: Maximum response time within 360 minutes (6 hours) for 100% of all first responder wire-down notifications.

R460.724(b) New Service Installation – AG Recommendation: Maximum installation time for new service requests within 30 business days.

PART 3: RECORDS AND REPORTS

R460.732 Annual report contents. AG Recommendations:

Subpart (b) through (g), should also require that the utility identify and explain all situations where service restoration and service levels exceeded the maximum acceptable level.

Subpart (i) through (l), should be revised to include the threshold hours for reporting customer credits recommended by the Attorney General in section R460.744 below.

Subpart (m), the requirement for electric utilities with 1 million or more customers to list the 10 worst performing circuits could be very limited given the hundreds of circuits operated by the large electric utilities. This requirement should be changed to the top 20% worst performing circuits.

Subpart (n), the requirement for electric utilities and cooperatives with less than 1 million customers to list the worst performing 1% of circuits could be very limited given the number of circuits operated by the large electric utilities. This requirement should be changed to the top 10% worst performing circuits.

Subpart (q), the requirement to report the number of CELID cases for indices CELID8hours, CELID24hours, and CELID48hours excludes reporting of other cases between CELID8hours and 48hours and any cases longer than 48 hours. The requirement should be changed to report cases between CELID8hours and 48 hours in 8-hour increments and also cases above 48 hours in total.

PART 4: FINANCIAL INCENTIVES AND CUSTOMER ACCOMMODATIONS

R 460.741 Approval of incentive and penalties by the commission.

AG Recommendation: This section should be revised to add penalties to be assessed to utilities if they fail to meet a threshold level of performance or repeatedly fail to achieve the minimum performance standards established in R 460.722, R 460.723, R 460.724, and R 460.151(2)(a) and (b). It is critical to create an incentive and penalty mechanism that is symmetrical. In the approved customer rates, electric utilities recover the cost to operate and maintain distribution facilities, including repair costs, in order for the utilities to provide the level of service defined in the aforementioned standards. Furthermore, electric utilities recover the cost of capital investments, including a return on those investments. If some or all of the service and the reliability standards are not met repeatedly year after year, customers are not receiving the expected value for costs paid and included in rates.

Therefore, it is necessary for customers to recover the lost value in future years in the form of penalties imposed on the utilities by the commission. Similarly, if utilities achieve performance levels that exceed the stated performance levels or tied to national average reliability performance standards, they should be rewarded with incentive payments. Furthermore, it is necessary to begin a performance incentive and penalty mechanism with some urgency given the under-performance of Michigan electric utilities relative to other electric utilities in the U.S. [CUB Utility Performance Report, 2020 Edition (CUB Report), available at: https://d3n8a8pro7vhmx.cloudfront.net/cubofmichigan/pages/1152/attachments/original/1602176971/CUB_of_MI_UTILITY_Performance_Report_2020_Edition.pdf?1602176971]

The Attorney General recommends the following revisions:

Rule 41.

(1) The commission may authorize an electric utility or cooperative to receive a financial incentive if it exceeds all of the service quality and reliability standards adopted by these rules **and exceeds national average reliability performance standards. The commission may also authorize financial penalties and increase credits to customers as provided in these rules if an electric utility fails to repeatedly meet one or more of the service quality and reliability standards established in R 460.722, R 460.723, R 460.724, and R 460.151(2)(a) and (b) and national average reliability performance standards.** [Bolded text proposed by AG]

(2) A request for approval of an incentive mechanism must **include financial penalties for failing to repeatedly achieve service quality and reliability standards and national average reliability performance standards, must** be made in either of the following proceedings, and **must** be conducted as a contested case under chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.288: [Bolded text proposed by AG]

(a) A rate case proceeding.

(b) A single-issue proceeding filed specifically to address adoption of an incentive program.

(3) An electric utility or cooperative shall ~~not~~ file an application seeking approval of an incentive mechanism, including **financial penalties and credit increases to customers for failing to meet threshold performance levels and for failing to repeatedly achieve service quality and reliability standards and national average reliability performance standards,** ~~until it has exceeded all of the service quality and reliability standards adopted by these rules continuously for a period of not less than~~ **within 6 months from the effective date of implementation of the service quality and reliability standards.** [Strikethrough and addition of bolded text proposed by AG]

R 460.742 Criteria for receipt of an incentive **or assessment of financial penalties:** [Bolded text proposed by the AG]

Rule 42. (1) If an electric utility or cooperative ~~qualifies~~ **has received approval** for implementation of an ~~previously approved~~ incentive and financial penalty mechanism, it shall file an application seeking authority to implement the incentive ~~mechanism~~ payment and/or penalty amounts at the same time that it submits the annual report required by R 460.732. [Strikethrough and addition of bolded text proposed by AG]

(2) An electric utility or cooperative shall not ~~apply for~~ **qualify** to receive a financial incentive ~~approved by the commission~~ unless all of the following criteria were met during the previous ~~12 months~~ **calendar year:** [Strikethrough and addition of bolded text proposed by AG]

(a) All required reports have been filed in a timely manner.

(b) All required reports fully comply with the requirements as determined by the commission.

(c) The electric utility's or cooperative's **actual performance for the year shall have exceeded— achieved an overall performance score of more than 100% above the target level for the combined service quality and reliability standards as defined within the incentive and penalty mechanism. Consumer Billing Standard R 460.151(2)(a) and (b) shall also be included in the proposed incentive and penalty mechanism.** [Strikethrough and addition of bolded text proposed by AG]

(d) The electric utility or cooperative shall have fully responded to any inquiries about the content of the reports made by the commission or its staff in a timely manner.

(3) The commission may impose financial penalties, as defined within the financial incentive and penalties mechanism, for an electric utility or cooperative failing to achieve an overall service quality and reliability standards performance score of 100% for the year or for failing to achieve a performance standard for three or more consecutive years. [Bolded text proposed by AG]

The Attorney General also recommends that the commission issue guidelines to the electric utilities and cooperatives that will guide their filing for an incentive and penalty mechanism. The Attorney General's proposed guidelines are outlined later in this document.

R 460.744 (Rule 44) Customer accommodations (**Bill Credits**) for failure to restore service after a sustained interruption due to gray sky and catastrophic conditions.

AG Comment/Recommendation: The proposed restoration time to trigger bill credits to customers is set at 96 hours for catastrophic conditions or twice the stated time of 48 hours established in the performance standards defined in R 460.722. Similarly, for grey sky conditions, the proposed restoration time to trigger bill credits to customers is set at 48 hours or twice the stated time of 24 hours established in the performance standards defined in R 460.722. This doubling of the restoration time to trigger bill credits is unjust and unfair to customers. If the standards of performance in R 460.722 are appropriate and reasonable, then it is appropriate to use those same standards to trigger bill credits to customers when those performance levels are not met. Therefore, the Attorney General recommends that the performance levels to trigger bill credits to customers be set at the same levels as those established in R 460.722 and to eliminate the gray sky condition.

R 460.745 (Rule 45) Customer accommodations (**Bill Credits**) for failure to restore service after a sustained interruption during normal conditions.

AG Comment/Recommendation: The proposed restoration time to trigger bill credits to customers is set at 16 hours or twice the stated time of 8 hours in the performance standards defined in R 460.722. This doubling of the restoration time is unjust and unfair to customers. If the standards of performance in R 460.722 are appropriate and reasonable, then it is appropriate to use those same standards to trigger bill credits to customers when those performance levels are not met. Therefore, the Attorney General recommends that the performance levels to trigger bill credits to customers be set at the same levels as those established in R 460.722.

R 460.746 Customer accommodations (**Bill Credits**) for repetitive interruptions.

AG Comment/Recommendation: The proposed number of repetitive interruptions to trigger bill credits to customers is set at 6 instead of the stated number of 4 interruptions in the performance standards defined in R 460.722. The higher number of repetitive power interruptions is unjust and unfair to customers. If the standard of performance in R 460.722 is appropriate and reasonable, then it is appropriate to use the same number of power interruptions to trigger bill credits to customers when that performance level is not met. Therefore, the Attorney General recommends that the performance level to trigger bill credits to customers be set at the same level established in R 460.722.

The Attorney General also recommends that the commission make it clear that any bill credits paid by the utilities will not be recoverable in future rate cases.

PART 5: WAIVER AND EXCEPTIONS

R 460.751 Waivers and exceptions by electric utilities.

(3) An electric utility or cooperative need not meet the standards or grant the credits required by parts 2 and 4 of these rules under any of the following circumstances:

(a) The problem was caused by the customer.

(b) There was a work stoppage or other work action by the electric utility's or cooperative's employees, beyond the control of the electric utility or cooperative, that caused a significant reduction in employee hours worked.

(c) The problem was caused by an "act of God." The term "act of God" means an event due to extraordinary natural causes so exceptionally unanticipated **and widespread within the utility service area**, and devoid of human agency that reasonable care would not avoid the consequences and includes any of the following: [**Bolded** text proposed by AG]

(i) Flood.

(ii) Tornado.

(iii) Earthquake.

(iv) Fire **caused by other than the utility or cooperative, its employees or agents.** [**Bolded text proposed by AG**]

(d) The problem was due to a major system failure attributable to, but not limited to,

any of the following:

(i) An accident **caused by other than the utility or cooperative, its employees or agents.** [**Bolded text proposed by AG**]

(ii) A man-made disaster **caused by other than the utility or cooperative, its employees or agents.** [**Bolded text proposed by AG**]

(iii) A terrorist attack.

(iv) An act of war.

(v) A pandemic **preventing the utility, or cooperative, from performing service restorations from a power outage.** [**Bolded text proposed by AG**]

CONSUMER STANDARDS AND BILLING PRACTICES

The Attorney General's comment below pertain to those sections of the consumer standards and billing practices filed with the November 4, 2021 Commission order in Case No. U-21150

AG Comment/Recommendation: The proposed service quality and reliability standards removed subpart (a), (b) and (c) from Rule 460.724 with the intent to transfer those standards to the consumer standards and billing practices Rule 460.151. It appears that R 460.724 (c) was inadvertently not transferred. Therefore, the Attorney General recommends that this standard be added to R 460.151(2)(b) to read as follows: "An electric utility shall have a complaint response factor of 90% or more within 3 business days."

COMMISSION GUIDELINES FOR DISTRIBUTION SYSTEM INCENTIVE AND PENALTY MECHANISM

AG Comment/Recommendation: To guide the development of an effective incentive and penalty mechanism that will improve the performance of the electric distribution systems of Michigan utilities, the Attorney General proposes that the commission direct electric utilities to file an application as soon as possible to implement a mechanism that includes the following metrics and meets the following guidelines.

1. Include the service quality and reliability standards in R 460.722, R 460.723, and R 460.724.

2. Include consumer standards and billing practices R 460.151(2)(a) and (b).
3. Include the utility's annual goal to improve the SAIDI (Excl. MED).
4. Include service restoration O&M cost per incident (three-year rolling average, including MED).
5. Include an annual goal to reduce the number of customers who experienced one or more power outages during the year of 1 hour or longer.
6. Include a metric to reduce the number of power outages from trees, wind & weather.
7. Include a metric to reduce the number of power outages from equipment failures.
8. Include a metric for the number of miles of line cleared annually for vegetation for LVD and HVD circuits.
9. Include a metric to measure performance against national average reliability performance standards.
10. Each standard, goal, or metric should have an appropriate weight as a percentage of 100%.
11. Annually the utility or cooperative would file the actual results showing how it performed against each individual standard, goal or metric, and a scorecard showing how it performed on an overall basis.
12. If the overall scorecard results exceed 100% of target, the utility or cooperative would be eligible for an incentive payment for the year.
13. If the overall scorecard results are below 100% of target and/or the utility fails to achieve a performance standard level for three or more consecutive years the utility or cooperative would be assessed a penalty amount for the year.
14. The incentive or penalty amount should be based on a percent of the revenue requirement included in the Company's current rates for distribution capital investments and O&M expense in the most recent rolling five-year period.
15. Incentive payments and penalties should have reasonable maximum amounts to minimize the impact of an unusual or unexpected outcome. These maximums should be set as a percentage of the target amount.
16. If properly designed no deadband range for incentive or penalty payments should be necessary. The deadband creates a cliff problem where as soon as the deadband is exceeded a large payout or large penalty would need to be assessed.

These guidelines include the essential standards, goals and metrics to spur the desired improvements to the electric distribution systems of the Michigan electric utilities and cooperatives. The number of metrics should not be so few as to prevent achievement of the desired outcomes, or so many as to water down the essential metrics or make the performance measurement process unwieldy. The Attorney General's proposed guideline strike the appropriate balance.

The Attorney General reiterates its recommendation to the commission about the necessity to define the key outlines of an effective performance incentive and penalty mechanism with some specificity in order to have similar mechanisms

among the utilities. The commission should direct the utilities to present a mechanism that follows the above-proposed guidelines within 6 months from the implementation effective date of the service quality and reliability standards. The performance incentive mechanisms filed by the utilities and cooperatives should be refined through a collaborative process with Staff, the utilities, and other interested parties before final commission approval.

In summary, the Attorney General looks forward to assist the Commission and other parties participating in this difficult undertaking to reduce power outages and improve the reliability of electric service provided by Michigan utilities.

Sincerely,

Michael E. Moody (P51985)
Assistant Attorney General
Michigan Department of Attorney General
Special Litigation Division

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion, to)
propose a revision to the rules governing consumer)
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1919 PA 419, as amended; 1939 PA 3, as amended)
And 1965 PA 380.)
_____)

Case No. U-21150

COMMENTS OF THE UTILITY JOINT COMMENTERS

Investor-owned utilities subject to the Consumer Standards and Billing Practices, herein referred to as the Utility Joint Commenters¹(UJC), appreciate the opportunity to provide public comments on the proposed ruleset in Case U-21150.

The UJC appreciate the time and effort that have gone into updating these rules to provide clarity and consistency with the other pending rulesets being considered in Cases U-20629 and U-20630. The companies also appreciate the Staff's willingness to seek feedback and have a constructive dialogue on the impacts the rule changes would have on customers and the utilities.

The UJC request one revision to the proposed ruleset in Rule 43. The goal of the proposed rule change appears to be to ensure all customers have information on getting reconnected to utility service, in cases where confusion may arise. The utilities support this goal and would like to ensure that the communication is provided in a timely manner for affected

¹ The Utility Joint Commenter include Alpena Power, Citizens Gas Company Consumers Energy, DTE Electric, DTE Gas, Indiana Michigan Power, Michigan Gas Utilities, Northern States Power-Wisconsin, Semco, Upper Michigan Energy Resources Company, and Upper Peninsula Power Company.

customers. In cases where email and phone numbers are available, for example, these methods are more timely and effective than a mailed notice through the post office. The new language proposed in the rule under (5) for notifying customers that service has been remotely shut off and the means to restore service should be refined to provide more clarity for the utilities of the acceptable methods of contact and the appropriate timelines for that contact. The UJC each have different systems and methods of contact that works best to avoid customer shut offs. Further, some utilities have limited staff and systems and often utilize direct contact like phone calls to communicate that service has been shut off.

The proposed revision to new (5) recognizes the inherent differences in each of the utilities processes, but also provides a clear roadmap for the utilities to communicate the shut off to the customer and the methods the customer can restore service. Further, the language requires the utilities to provide contact information as opposed to a physical address as some utilities do not have a physical address for payment, and others have multiple locations that make such a requirement impractical. Finally, speaking directly with the utility will allow for quicker restoration of service.

Proposed revisions to Rule 460.143(5):

5) After the utility shuts off service, no later than the fifth business day after service was disconnected the utility will send notice to the customers that remain shut off. The utility must notify the customer via automated or manual telephone call, electronic mail, text message, or U.S. Mail. The notice must state that service has been shut off, the utility's contact information where the customer may arrange to have service restored, and that any efforts by the customer to restore his or her own service are unlawful and dangerous.

The UJC remains committed to reducing customer service disruptions and looks forward to working with the Commission and Staff to that end. In support of the change, the UJC would offer that, for Consumers Energy, of approximately an average of 138,000

disconnections annually 74% are restored within three days. DTE Electric restored 85% of AMI customers within 2 days of interruption. Indiana Michigan Power, upon starting remote disconnections in September 2021, achieved a 77% same-day reconnection rate in November 2021. Upper Peninsula Power Company (UPPCO) had 74% of customers restored on the same day or next day. This demonstrates that a large number of customers are aware of the process to become reconnected to natural gas or electric utility service, and the proposed change would target only those that may need the information.

The UJC notes for the record that, while the added cost to customers is not extremely large, it is not \$0. Based on size and current processes, the utilities have varying estimates of cost for process changes. For example, for Consumers Energy to use the method proposed by the UJC would increase O&M expenses annually by approximately \$130k and there would be one-time costs to implement of approximately \$25,000. Similarly, DTE estimates a one-time cost of \$78,000 and ongoing O&M expenses of \$28,000. UPPCO estimates a one-time expense of \$40,000 to implement with minimal ongoing O&M expenses. If the changes proposed by the UJC are not adopted and the expectation is mailed notices to every customer disconnected, these costs would increase and information would likely be less timely.

The utilities appreciate the Commission's consideration of the requested rule change above to provide important flexibility for utilities to notify their customers once remote shut off has occurred.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Dundas" with a stylized flourish at the end.

Dated: January 6, 2022

Daniel Dundas
President
Michigan Electric and Gas Association
On behalf of the Utility Joint Commenters