

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own motion,)	
of the investigation into methods to improve the)	Case No. U-12270
reliability of electric service in Michigan.)	
_____)	

At the December 20, 2001 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Laura Chappelle, Chairman
Hon. David A. Svanda, Commissioner
Hon. Robert B. Nelson, Commissioner

OPINION AND ORDER

On July 11, 2001, the Commission issued an order proposing adoption of ten specific performance standards for electric distribution systems subject to its jurisdiction (July 11 order). In so doing, the Commission allowed interested parties to submit comments and reply comments regarding the merits of the proposed performance standards and glossary.

Comments or reply comments were received from Consumers Energy Company (Consumers), The Detroit Edison Company (Detroit Edison), Michigan Electric and Gas Association (MEGA), Michigan Electric Cooperative Association (MECA), Attorney General Jennifer M. Granholm (Attorney General), and the Association of Businesses Advocating Tariff Equity (ABATE).

Discussion

Section 10p of 2000 PA 141 (Act 141) provides in part:

(5) The commission shall adopt generally applicable service quality and reliability standards for the transmission and distribution systems of electric utilities

and other entities subject to its jurisdiction, including, but not limited to, standards for service outages, distribution facility upgrades, repairs and maintenance, telephone service, billing service, operational reliability, and public and worker safety. In setting service quality and reliability standards, the commission shall consider safety, costs, local geography and weather, applicable codes, national electric industry practices, sound engineering judgment, and experience. The commission shall also include provisions to upgrade the service quality of distribution circuits that historically have experienced significantly below-average performance in relationship to similar distribution circuits.

(6) Annually, each jurisdictional utility or entity shall file its report with the commission detailing actions to be taken to comply with the service quality and reliability standards during the next calendar year and its performance in relation to the service quality and reliability standards during the prior calendar year. The annual reports shall contain that data as required by the commission.

(7) The commission shall analyze the data to determine whether the jurisdictional entities are properly operating and maintaining their systems, assess the impact of deregulation on reliability, and take corrective action if needed.

(8) The commission shall be authorized to levy financial incentives and penalties upon any jurisdictional entity which exceeds or fails to meet the service quality and reliability standards.

MCL 460.10p(5)-(8).

In their comment, Consumers, MEGA, MECA, and ABATE contend that the Commission should follow the procedures set forth in Chapter 3 of the Administrative Procedures Act of 1969 (APA), MCL 24.231 to 24.264, to adopt service quality and reliability standards for distribution systems subject to its jurisdiction. Citing MCL 24.207, which defines a rule as meaning “an agency regulation, statement, standard, policy, ruling, or instruction of general applicability that implements or applies law enforced or administered by the agency,” they argue that failure to comply with the requirements of the APA could render the Commission’s efforts to implement Section 10p open to question.

After considering the arguments about the rulemaking process and in light of the complexity of the other issues raised by the comments, the Commission finds that it should use the rulemaking process to implement Section 10p.

Toward that end, on December 11, 2001, the Commission submitted a request for rulemaking to the Office of Regulatory Reform (ORR), which was approved by ORR on December 18, 2001.

The next step in the rulemaking process requires the Commission to draft a set of proposed administrative rules for consideration by ORR. If approved by ORR, the proposed rules will be published in the Michigan Register and subject to a public hearing.

The Commission intends to use the standards attached to its July 11 order in this proceeding as the starting point for the drafting of proposed administrative rules. It will also review the comments submitted in response to the July 11 order and incorporate any changes that it finds appropriate. The Commission anticipates that the rulemaking proceeding will take at least 9 months to complete.

In the interim, the Commission finds that the public interest and the rulemaking process will be significantly furthered by the collection and submission of data in conformity with the standards that were attached to the July 11 order as Exhibit A. The Commission has authority pursuant to MCL 460.556 to “require from all electric utilities in the state such information as the Commission may need at any time in connection with the performance of the duties imposed upon it.” Indeed, Public Act 106 of 1909, as amended, MCL 460.551 et seq., grants the Commission broad authority to regulate the conditions of service under which electricity is distributed. Accordingly, the Commission directs all electric utilities under its jurisdiction to begin collecting data as of January 1, 2002. The electric utilities shall measure, record, and report information necessary to demonstrate their performance in relation to the proposed performance standards. Each utility shall make its best effort to obtain all of the required data without implementing any costly revisions to its systems. Data are to be recorded on a monthly basis, including the 12-month rolling average, and submitted to the Staff quarterly. A quarter-ending 12-month rolling average

of data shall be used to determine compliance with the standards. Each filing is to be made within 30 days of the close of a reporting quarter. The first report shall be filed by April 30, 2002 for the January 1 to March 31, 2002 reporting period. Reports shall include a summary table similar to Exhibit A that indicates compliance or noncompliance for each standard.

Filings that disclose unacceptable performance will not require a discussion of the root cause of the unacceptable performance or an explanation of corrective actions. Further, utilities will have no obligation to issue credits to their customers under the interim standards.

Data submissions shall be made in hard copy and in electronic format. The specific electronic format shall be determined after consultation with the Staff.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACCS, R 460.17101 et seq.

b. A rulemaking proceeding should be commenced in this docket to promulgate administrative rules regarding service quality and reliability standards for electric distribution systems subject to the Commission's jurisdiction, as required by MCL 460.10p.

c. All electric utilities subject to the Commission's jurisdiction should be required to collect and submit data regarding the proposed standards that were attached to the July 11 order as Exhibit A, a copy of which is attached to this order.

THEREFORE, IT IS ORDERED that:

A. A rulemaking proceeding shall be commenced in this docket to promulgate administrative rules regarding service quality and reliability standards for electric distribution systems subject to the Commission's jurisdiction, as required by MCL 460.10p.

B. Commencing January 1, 2002, all electric utilities subject to the Commission's jurisdiction shall begin the collection and submission of data regarding the proposed standards that were attached to the July 11 order as Exhibit A, a copy of which is attached to this order.

The Commission reserves jurisdiction and may issue further orders as necessary.

MICHIGAN PUBLIC SERVICE COMMISSION

(S E A L)

/s/ Laura Chappelle
Chairman

By its action of December 20, 2001

/s/ David A. Svanda
Commissioner

/s/ Dorothy Wideman
Its Executive Secretary

/s/ Robert B. Nelson
Commissioner

THEREFORE, IT IS ORDERED that:

A. A rulemaking proceeding shall be commenced in this docket to promulgate administrative rules regarding service quality and reliability standards for electric distribution systems subject to the Commission's jurisdiction, as required by MCL 460.10p.

B. Commencing January 1, 2002, all electric utilities subject to the Commission's jurisdiction shall begin the collection and submission of data regarding the proposed standards that were attached to the July 11 order as Exhibit A, a copy of which is attached to this order.

The Commission reserves jurisdiction and may issue further orders as necessary.

MICHIGAN PUBLIC SERVICE COMMISSION

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Its Executive Secretary

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Suggested Minute:

“Adopt and issue order dated December 20, 2001 commencing a rulemaking proceeding to adopt service quality and reliability standards for electric distribution systems subject to the Commission’s jurisdiction and requiring the collection of certain data by electric utilities, as set forth in the order.”