

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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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.	)	
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At the November 25, 2003 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. J. Peter Lark, Chair  
Hon. Robert B. Nelson, Commissioner  
Hon. Laura Chappelle, Commissioner

**ORDER APPROVING ADMINISTRATIVE RULES**

Section 10p(5) of 2000 PA 141 (Act 141), MCL 460.10p(5), requires the Commission to 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.

On December 11, 2001, the Commission submitted a request for rulemaking to the Office of Regulatory Reform (ORR), which was approved by the ORR on December 18, 2001. Thereafter, the Commission drafted a set of proposed administrative rules for informal consideration by the ORR and the Legislative Service Bureau (LSB). The ORR informally approved the draft rules on August 14, 2002. On August 23, 2002, the LSB informally approved the draft rules as to form, classification, arrangement, and numbering.

On November 7, 2002, the Commission issued an order and notice of hearing that scheduled a public hearing for January 8, 2003. The November 7 order also arranged for the publication of the proposed rules in the Michigan Register.

On January 8, 2003, Administrative Law Judge Daniel E. Nickerson, Jr., (ALJ) conducted a public hearing. Nancy Bellville of Prescott, Michigan appeared at the public hearing and read a statement into the record. Thereafter, the ALJ provided other interested persons until January 29, 2003 to submit written comments to the Commission. Such comments were received from The Detroit Edison Company (Detroit Edison), Consumers Energy Company (Consumers), the Michigan Electric Cooperative Association (MECA), and the Michigan Electric and Gas Association (MEGA). In addition, Detroit Edison, Consumers, MECA, and MEGA submitted a set of “Joint Comments”.

#### Nancy Bellville

Ms. Bellville expressed a variety of electric service quality complaints, including outdated distribution lines, stray voltage, and low voltage, which she attributed to her utility’s failure to properly maintain and upgrade the distribution system in her rural area. Many of her complaints were illustrated through anecdotal references. For example, Ms. Bellville stated that the lights at her neighbors’ homes would noticeably dim while the cows at her farm were being milked. She also stated that the distribution lines in her neighborhood were so poorly maintained that it was possible to propel a toy train around a track, illuminate a sign, and shoot off three rockets by harnessing the voltage returning through a primary downground.

Referencing remarks provided to a legislative committee in 1991, Ms. Bellville reported that storm related outages on her utility’s system averaged 94 minutes in 1974, but had climbed to 292

minutes in 1988. With regard to non-storm related outages, she reported an average system outage of 71 minutes in 1974 had increased to 281 minutes by 1991.

Her remarks were not limited to complaints associated with residential customers. She reported that farmers, milk equipment dealers, and persons at a grain elevator and a gypsum plant in her area routinely encountered problems associated with poor electric service. In so doing, she questioned how a community served by a poorly maintained system that desperately needs to be upgraded could ever hope to lure new businesses and new jobs to its area.

Finally, it should be noted that Ms. Bellville's statement was delivered while she was clutching a tree branch that bore multiple scars. She explained that the scars evidenced the branch's years of direct contact with a dangerously low power line despite repeated efforts to persuade the local utility to correct the situation.

### Detroit Edison

Detroit Edison states that it does not oppose the Commission's efforts to adopt service quality and reliability standards for electric distribution systems. However, Detroit Edison insists that such standards should be company specific, customer driven, realistic, and consistent with present rate levels. According to Detroit Edison, it is economically unrealistic to require a distribution system to function at a 100% reliability level. Moreover, Detroit Edison asserts that it should not be held accountable for situations beyond its ability to control.

Specifically, Detroit Edison maintains that the proposed distribution system performance standards should not use financial incentives to motivate a utility's management to focus on service quality issues. Detroit Edison insists that it needs no motivation to increase service quality. Further, Detroit Edison contends that requiring it to provide credits to customers experiencing poor

service is counterproductive because it simply deprives the utility of funds that could be used to improve its infrastructure.

Detroit Edison also stresses that its outage system is currently incapable of accurately identifying individual customers experiencing either an outage or a return to service. According to Detroit Edison, the only existing methodology for accurately determining such information would involve direct customer-by-customer contacts, which presents a data management nightmare.

In any event, Detroit Edison argues that individual customer credits are completely inappropriate if the utility's overall system quality is at a satisfactory level. Because the proposed rules provide for individual customer credits without regard to the company's satisfactory performance levels, Detroit Edison insists that the Commission is attempting to impose a form of strict liability that is unjustified.

Next, Detroit Edison complains that defining a "catastrophic" circumstance as occurring only when more than 10% of its customers experience service interruptions, which equates to 210,000 customers for Detroit Edison, places the utility in an untenable situation. Detroit Edison insists that the historical demarcation between normal and catastrophic events was 5%, or 105,000 customer outages for Detroit Edison. According to Detroit Edison, out-of-state utilities might decline to provide emergency assistance to Michigan if the storm is officially categorized as normal for regulatory purposes. Likewise, Detroit Edison maintains that it would be reluctant to share its repair crews with other states because of the utility's obligation to restore service to 90% of customers suffering outages under normal conditions in 8 hours or less. Any reduction in mutual assistance efforts, argues Detroit Edison, would result in higher costs. For these reasons, Detroit Edison states that the Commission should adopt a three-tiered system rather than the two-tiered system currently in the proposed rules.

## Consumers

Consumers states that the Commission should eliminate or replace the proposed customer credit and penalty provisions because the automatic imposition of such credits and penalties violates MCL 460.6a, which outlaws automatic rate adjustment mechanisms, and MCL 460.10c, which requires notice and an opportunity for comment prior to the imposition of a penalty. Consumers also insists that the imposition of credits and penalties owed to individual customers is not economical or practically feasible. Consumers estimates that the utility would need to upgrade its customers' meters at a cost of \$298,000,000 to \$340,000,000 to permit the utility to accurately identify the customers qualifying for credits under the proposed rules. According to Consumers, requiring it to invest hundreds of millions of dollars to effectuate \$25 customer credits is hardly a cost efficient form of regulation. In any event, Consumers maintains that any customer credit mechanism that fails to require independent verification is a recipe for disaster. Additionally, Consumers argues that individual customer credits are inappropriate if the utility is in full compliance with the stated compliance standards. Consumers is also concerned that the proposed rules will threaten current cooperative efforts electric utilities have for responding to storm damage.

Consumers echoes Detroit Edison's argument that utilities should not be required to pay customer credits because such funds would be better spent on distribution system upgrades. According to Consumers, its customers would prefer to have such funds spent by the utility to ensure higher quality service than to receive poor service and occasional \$25 credits. Moreover, Consumers contends that a \$25 credit for a 16-hour outage is too large given that the average customer's monthly bill is only \$52. Consumers also stresses that independent studies and actual

complaint experience verify that its customers are quite satisfied with the quality of service that they are receiving.

Consumers also believes that there should be more than two service interruption categories. According to Consumers, in addition to “normal” and “catastrophic,” the Commission should add an intermediate category for “adverse” conditions that would apply to events that result in outages affecting from 1% to 6% of the customer population. Consumers states that adoption of this revision would recognize how utilities actually operate and would lessen the threshold for “catastrophic” conditions. Additionally, Consumers maintains that consideration should be given to increasing the customer restoration time for “normal” conditions from 8 hours to 16 hours.

To illustrate its points, Consumers estimated that the January 31, 2002 ice storm, which interrupted service to 115,000 customers and resulted in \$4.5 million in restoration costs, would have resulted in 46,500 customer credits, at a total additional cost of \$1.1 million. According to Consumers, imposing a 24% cost increase on top of the January 31, 2002 ice storm restoration costs is unreasonable in the absence of additional study and consideration by the Commission. Consumers recommends adoption of the alternative position proffered in the Joint Comments, which would create a penalty structure that involves an investigation followed by a contested case hearing. Consumers also recommends that the Commission should involve the utilities in a “collaborative process” before proceeding towards implementation of individual customer credits.

Finally, Consumers contends that the definition of a repetitive outage should be modified. According to Consumers, at a minimum, a repetitive outage should be redefined as “multiple primary interruptions of the same protective device,” which would provide some clarification and be a more consistent measure for this performance standard.

## MECA

Citing data from a September 13, 2002 report prepared by the Commission Staff (Staff), MECA maintains that there is no support for a conclusion that the member-consumers of the electric cooperatives in this state have suffered due to a decline in the quality of their electric distribution systems. Indeed, MECA contends that the data shows that service quality has actually improved for five of the cooperatives on a year-to-year basis. In light of this evidence, MECA suggests that there is no justification for service performance standards that require the cooperatives to meet any higher level of service than they are currently providing. According to MECA, scarce resources should not be focused on meeting new standards when there has been no showing that service quality is really deteriorating. For these reasons, MECA supports the positions taken in the Joint Comments.

MECA also expresses opposition to the automatic penalties or customer credits for a failure to meet a performance standard. According to MECA, MCL 460.10p(5)-(8) does not contemplate the imposition of automatic penalties by the Commission. Rather, MECA maintains that MCL 460.10p(5)-(8) requires the Commission to annually review each utility's performance and, in the exercise of its discretion, to mete out a financial incentive or penalty in accordance with MCL 460.10c(1), if necessary, to ensure satisfactory compliance with the service quality standards. Under this interpretation of MCL 460.10p(5)-(8), MECA insists that a financial incentive or penalty could only be imposed as the result of a contested case proceeding, as plainly required by MCL 460.10c(1).

Next, MECA argues that the additional cost and administrative burden necessary to administer a system of automatic payments as contemplated by the proposed standards would be excessive for the benefit conferred and unjustified by any cost-benefit analysis. MECA suggests that its

members would have to invest millions of dollars to upgrade metering technology, billing software, and accounting software to ensure compliance with the proposed standards. At a cost of \$295 per meter, MECA estimates that upgrading all 275,000 meters currently used by the cooperatives would require an \$81,000,000 investment. Absent such expenditure, MECA contends that it will be impossible for the cooperatives to validate outages or identify individuals entitled to receive billing credits.

MECA also stresses that the use of customer credits makes little sense for the member-consumers of cooperatives, which operate on a not-for-profit basis. It maintains that member-consumers have the ability to address service quality issues to the elected members of each cooperative's Board of Directors. Further, because all costs of a cooperative's operations are borne by its member-consumers, MECA insists that a billing credit paid to one member-consumer simply comes out of the pockets of the cooperative's other member-consumers.

MECA also concurs that any system that provides for billing credits tied to service restoration times will chill joint service restoration efforts by individual utilities.

Finally, MECA contends that the proposed wire down relief factor for areas outside of metropolitan statistical areas (MSAs), which is set forth in proposed R 460.723(2), should be the subject of further study because the proposed standards issued July 11, 2001 did not incorporate such a standard. According to MECA, because the Commission is currently collecting data regarding a proposed wire down relief factor only for areas within an MSA, it would be prudent to gather data for non-MSA areas before enacting a standard for such areas. However, if the Commission deems it appropriate to act without first accumulating any data regarding non-MSA areas, MECA states that the Commission should adopt the position set forth in the Joint Comments.

## MEGA

In its comments, MEGA adopted the Joint Comments, but wrote separately to emphasize its position on several key issues. First, MEGA points out that the electric utilities that are members of its organization have not experienced any significant deterioration in the quality of service for their distribution systems. According to MEGA, the dearth of complaints and inquiries by customers indicates general satisfaction with the quality of the service provided by MEGA's electric utilities.

Second, MEGA urges the Commission to reconsider adoption of any system that involves a statewide automatic customer credit mechanism. MEGA insists that the cost of implementing systems to monitor and track the performance of an electric distribution system would likely overshadow any actual benefit to customers. Rather than obligate electric utilities to incur such costs at this time, MEGA asserts that the Commission should continue the information gathering process started by the December 20, 2001 order in this proceeding.

## Electric Industry Joint Comments

In their Joint Comments, the electric industry urges the Commission to abandon the proposed system of customer credits and rate incentives. The electric industry stresses that such incentives should not be mandated by administrative rules. Moreover, the electric industry suggests that any decision regarding a system of customer credits and rate incentives is premature, given that the companies have only recently begun submitting such data to the Commission. According to the electric industry, there is no evidence to support a finding that there has been a general deterioration of electric distribution system performance levels or any public outcry urging the Commission or the Legislature to take drastic action at this time. Additionally, the electric

industry is concerned that a system of customer credits and rate incentives might lead to perverse incentives due to a utility's desire to avoid customer credit obligations.

The electric industry also argues that the proposed customer credit mechanism raises concerns regarding fairness and equity. According to the electric industry, although knowledgeable customers could benefit from the proposal, less knowledgeable customers might not be aware of the availability of the credit and could miss out on the intended benefit.

In any event, the electric industry contends that a better approach would be for the Commission to convene a collaborative effort to address other possible remedial measures, which would allow the Commission to place the proposed rules into effect while gathering additional data and allowing interested parties to work out the details of remedial measures that would be based on experience and consistent with applicable laws.

In addition to deletion of the system of customer credits and rate incentives, the electric industry believes that there should be three categories of conditions to which the performance measures should be applied rather than just "normal conditions" and "catastrophic conditions," and that the threshold for catastrophic conditions should be reduced. The electric industry proposes to insert an intermediate category identified as "adverse conditions" that would be defined as events where from 1% to 6% of a utility's customers experience service interruption. Additionally, the threshold for catastrophic conditions would be switched from service interruptions involving 10% of the utility's customers to service interruptions involving more than 6% of the utility's customers. According to the electric industry, these revisions are reasonable in light of the available benchmarking data.

Next, the electric industry maintains that the definition of a repetitive interruption should be changed. Under the Commission's proposal, the focus of proposed Rule 2(s) was on repetitive

interruptions that affect a grouping of more than 10 customers on the same circuit. The electric industry believes that the proposed rules should measure multiple primary interruptions of the same “protective devices,” which it argues is a single common denominator position that can be met by all utilities.

Finally, the electric industry offers a number of changes to proposed Rules 1, 2, 3, 21, 22, 23, 24, 31, 32, 33, 34, 51, and 52, which it maintains are reasonable and relatively non-controversial.

## Discussion

### 1. Company specific rules

Detroit Edison argues that the Commission should adopt company specific distribution reliability standards. The Commission disagrees. The Commission finds that it will be easier and fairer to administer one set of rules applicable to all electric utilities rather than having a different set of rules that are applicable to each of the electric utilities in this state. Moreover, the Commission notes that the Legislature directed the adoption of “generally applicable” standards, not company specific ones.

### 2. Unrealistic expectations

Detroit Edison insists that the proposed rules are based on the premise that a utility’s electric distribution system should be reliable 100% of the time, which is unrealistic and inconsistent with present rate recovery. According to Detroit Edison, its customers are not paying for 100% reliability in their current rates, and rates would need to be set at prohibitively high levels to attain such a goal.

The Commission finds that these concerns should be rejected. On their face, the proposed rules do not require Detroit Edison or any other utility to ensure 100% reliability of its distribution

system. Rather, the proposed rules incorporate service levels based on reasonable expectations garnered from past performance.

### 3. Current acceptable service levels

Several of the comments insist that the Commission should not adopt performance standards with customer credits because there is no showing that customers are dissatisfied with the quality of service they are receiving.

The Commission finds that such arguments ignore the Legislature's directive in Section 10p(5) of Act 141, which requires the adoption of these service quality and reliability standards. Given the language of Section 10p(5), the Commission has no discretion to forego the adoption of service quality and reliability standards of some type.

### 4. Three-tiered system

Detroit Edison, Consumers, and the Joint Comments contend that dividing the universe of outages into only "normal" and "catastrophic" situations is too limiting. According to them, there should be a third category that covers the middle ground between these extremes.

The Commission finds that the argument for a third outage category should be rejected. Much of the concern in this regard is ameliorated by a company's ability under Part 5 of the proposed rules to seek a waiver or an exception under certain circumstances.

### 5. Mutual assistance efforts

Detroit Edison, Consumers, and MECA argue that the Commission should abandon customer credits because the possibility of being required to respond to a disaster in Michigan might render the utility reluctant to send repair crews to other jurisdictions.

The Commission is not persuaded that requiring a Michigan utility to abide by the proposed performance standards lessens its incentive to participate in mutual assistance efforts.

## 6. Exempt electric cooperatives

MECA argues that its members should be exempted because they are not-for-profit organizations.

The Commission finds that MECA's request should be denied. Member-consumers of electric cooperatives should not be deprived of benefits accorded the customers of investor-owned utilities. They are just as frustrated by outages as are customers of investor-owned utilities. Accordingly, the Commission finds that MECA's members should not be exempt from the proposed service quality and reliability standards.

## 7. Wire down relief factor in rural areas

MECA maintains that the Commission should postpone adoption of proposed Rule 23(2), which establishes a wire down relief factor for areas outside of MSAs. According to MECA, the Commission is not yet collecting data on that topic, and action should await further study.

The Commission notes that it has not proposed a customer credit associated with the performance standard set forth in proposed Rule 23(2). Accordingly, the Commission sees no harm to MECA's members in enacting this proposal at this time.

## 8. Collaborative

Consumers and the Joint Comments maintain that the Commission should require interested parties to collaborate with the Staff to reach a consensus on many of the disputed areas. The Commission disagrees. These rules have been under consideration since January 3, 2000. The Staff's March 31, 2000 interim status report indicates that industry members provided informal comments in February 2000. In addition, the file in this case demonstrates that industry members had opportunities to file written comment on these rules in July 2000, August 2000, August 2001,

September 2001, and January 2003. The Commission is not persuaded that additional discussions are necessary or will lead to productive changes.

#### 9. Automatic adjustment mechanism

Consumers argues that the customer credit system is illegal because it constitutes an automatic adjustment mechanism. The Commission disagrees. The notice and hearing requirements in Section 6a(2) of 1939 PA 3, as amended, MCL 460.6a(2), which is relied on by Consumers, apply to rate alterations due to “automatic adjustment clauses.” Part 4 of the rules does not automatically adjust any customer’s rate. Rather, the customer may be entitled to a credit on his or her monthly bill due to the occurrence of a violation of the performance standards. The utility may request a waiver under certain circumstances, and it may also contest the legitimacy of a customer’s request for the credit. Further, the Commission has added language to proposed rules 44, 45, 46, and 52 to clarify that an electric utility may request a contested case hearing before being required to place a credit on a customer’s bill.

#### 10. MCL 460.10c(1) penalty

Consumers and MECA argue that the Commission may only impose a penalty for violation of the proposed rules governing service quality and reliability standards for electric distribution systems through operation of MCL 460.10c(1), which requires a contested case proceeding. The Commission disagrees.

In adopting Section 10p(8), which clearly envisions a balanced approach of rewards and penalties for exceeding and for failing to meet the service quality and reliability standards, the Legislature did not indicate that the only penalty that could be handed out by the Commission had to be pursuant to MCL 460.10c(1). In addition, a careful reading of Section 10c(1) indicates that a person harmed by a utility would be entitled to be made whole, including, but not limited to, the

payment of “reasonable attorney fees.” MCL 460.10c(1)(c). The Commission doubts that the Legislature contemplated that the balanced system of rewards and penalties authorized pursuant to MCL 460.10p(8) should encourage or involve the litigation of individual customer complaints.

#### 11. Necessity of costly upgrades

According to Detroit Edison, the approach to identifying customers entitled to a customer credit is flawed. Consumers argues that it could cost up to \$340,000,000 for the utility to install new meters that would provide information necessary to verify customer requests for credits. MECA places the cost in excess of \$81,000,000 for its members to upgrade 275,000 meters. These parties insist that it will be prohibitively expensive to retrofit all residential customers with meters capable of detecting outages. They also assert that entrusting customers to report an outage will only benefit those aware of the customer credit program and those predisposed to profit through the filing of a false report.

These rules do not require any utility to undertake such measures. Proposed Rules 44, 45, and 46 place a responsibility on the customer to report the occurrence of an outage to his or her utility. The utility is not required to discover the identity of the customers to whom it owes a credit. Rather, each customer has the burden of submitting such a report to the utility.

#### 12. Proposed Rule 460.746(3)

This rule would require the customer credit associated with each successive outage to be doubled. Upon reconsideration, the Commission finds that this provision of the proposed rules is not appropriate at this time. Accordingly, the Commission finds that Proposed Rule 460.746(3) should be deleted.

### 13. Definition of repetitive interruption

Consumers and the Joint Comments maintain that the Commission should redefine repetitive interruption as “multiple primary interruptions of the same protective device.” The Commission disagrees. This revision would limit such interruptions to those involving the interruption of a protective device. The Commission does not wish to exclude other forms of repetitive interruptions that do not involve a protective device.

### 14. Minor revisions

The Commission finds that several of the minor, non-substantive changes proposed in the joint comments should be adopted.

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, 1999 AC, R 460.17101 et seq.

b. Adequate notice and opportunity for participation by interested persons have been provided as required by the Administrative Procedures Act of 1969, as amended, MCL 24.201 et seq.

c. The proposed rules governing service quality and reliability standards for electric distribution systems are reasonable and in the public interest, and should be adopted.

d. The rules should be submitted to the Legislative Service Bureau and the Office of Regulatory Reform for their approval.

e. If the Legislative Service Bureau and the Office of Regulatory Reform formally approve these rules, they should be submitted to the Joint Committee on Administrative Rules.

THEREFORE, IT IS ORDERED that:

A. The administrative rules governing service quality and reliability standards for electric distribution systems, attached to this order as Exhibit A, are approved and shall be submitted to the Legislative Service Bureau and the Office of Regulatory Reform for their approval.

B. Upon approval of the administrative rules by the Legislative Service Bureau and the Office of Regulatory Reform, the rules shall be transmitted to the Joint Committee on Administrative Rules.

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

Any party desiring to appeal this order must do so in the appropriate court within 30 days issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ J. Peter Lark

Chair

( S E A L )

/s/ Robert B. Nelson

Commissioner

/s/ Laura Chappelle

Commissioner

By its action of November 25, 2003.

/s/ Robert W. Kehres

Its Acting Executive Secretary

THEREFORE, IT IS ORDERED that:

A. The administrative rules governing service quality and reliability standards for electric distribution systems, attached to this order as Exhibit A, are approved and shall be submitted to the Legislative Service Bureau and the Office of Regulatory Reform for their approval.

B. Upon approval of the administrative rules by the Legislative Service Bureau and the Office of Regulatory Reform, the rules shall be transmitted to the Joint Committee on Administrative Rules.

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

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

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Chair

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Commissioner

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Commissioner

By its action of November 25, 2003.

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Its Acting Executive Secretary