

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of	)	
<b>THE DETROIT EDISON COMPANY</b>	)	
seeking approval and authority to	)	Case No. U-17053
implement its proposed advanced metering	)	
infrastructure opt-out program.	)	
_____	)	

At the May 15, 2013 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. John D. Quackenbush, Chairman  
Hon. Orjiakor N. Isiogu, Commissioner  
Hon. Greg R. White, Commissioner

**ORDER**

On July 31, 2012, DTE Electric Company f/k/a The Detroit Edison Company (DTE Electric) filed an application, with supporting testimony and exhibits, seeking authority to implement an advanced metering infrastructure (AMI) opt-out program (OP).

A prehearing conference was held before Administrative Law Judge Dennis W. Mack (ALJ) on September 10, 2012. Intervention was granted to the Michigan Department of the Attorney General (Attorney General), and to DTE Electric customers Dominic Cusumano, Lillian Cusumano, Cynthia Edwards, Linda Kurtz, Pauline Holeton, John Holeton, Richard Meltzer, Karen Spranger, and Sharon Schmidt. The Commission Staff (Staff) also participated. At the conclusion of the prehearing, a public hearing was held to take comments. See, 1 Tr 36-96.

The ALJ ruled on several motions to strike testimony and exhibits on January 8, 2013. 2 Tr 183-196.<sup>1</sup> Evidentiary hearings were held on January 15-16, 2013. Following the filing of initial and reply briefs, the ALJ issued a Proposal for Decision (PFD) on March 22, 2013. On April 12, 2013, exceptions were filed by Linda Kurtz and Cynthia Edwards (Kurtz and Edwards), Dominic and Lillian Cusumano (Cusumanos), John and Pauline HOLETON (HOLETONS), Sharon Schmidt (Schmidt), the Attorney General, and DTE Electric. On April 19, 2013, exceptions and a motion for an extension of time for filing exceptions were filed by Richard Meltzer (Meltzer). On April 26, 2013, replies to exceptions were filed by the HOLETONS, Meltzer, the Attorney General, the Staff, and DTE Electric. The record consists of 641 pages of transcript and 12 exhibits admitted into evidence.

#### Positions of the Parties

The Commission first approved rate base treatment of AMI-related costs in the December 23, 2008 order in Case No. U-15244, pp. 62-63, for DTE Electric's proposed AMI meter installation pilot program. AMI expenditures are reviewed on a case-by-case basis. In DTE Electric's most recent rate case the Commission approved \$71,564,000 in AMI-related capital expenditures. October 20, 2011 order in Case No. U-16472, p. 22.

In the September 11, 2012 order in Case No. U-17000, p. 5, the Commission directed investor-owned utilities to "make available an opt-out option, based on cost-of-service principles, for their customers if or when the provider elects to implement AMI," and noted that DTE Electric had already made such a filing in this case. Consistent with that order, the ALJ found that the

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<sup>1</sup> Some of the exceptions appear to be focused on re-arguing these motions, though no party filed for leave to appeal the ALJ's determinations.

scope of this case is for “setting the rate for opting out of the AMI at the cost Edison will incur for providing non-transmitting meters to residential customers who elect to opt out.” 2 Tr 183.

DTE Electric’s proposed OP would allow a residential customer to have his or her AMI meter rendered non-transmitting. The proposal calls for an initial charge of \$87 and a monthly fee of \$15 for opting out. *See*, Exhibit A-2. Once the OP is approved, customers who wish to participate and who already have an AMI meter will have the meter’s transmitting capability disabled; and customers who have not yet received an AMI meter will have that meter’s transmitting capability disabled upon installation.

DTE Electric indicated that the proposed \$87 initial fee to disable the transmitting capability of the meter has three components: (1) \$61 for the time and expense of disabling the meter, including wage and transportation costs; (2) \$2 for one hour of training for the employees who will carry out the disabling of the meter; and (3) \$24 for billing system modifications. The proposed \$15 monthly fee includes the operational costs of the OP, including costs to manually read the meters. Participants in the OP will receive credits of \$0.45 and \$0.15 per meter for the AMI and meter reading costs included in current rates set in Case No. U-16472. *See*, Exhibit A-1. The amount of each fee is also based upon the company’s estimate that 4,000 customers will elect to participate in the OP. 3 Tr 253. To arrive at this number, DTE Electric took the 1,100 expressions of customer concern that the company has received since the pilot program began and divided that number by the 722,000 installations completed as of the date of the application, and multiplied the result by the total number of customers (2,100,000), to arrive at 3,200, which was rounded up to 4,000. This equates to 0.2% participation in the OP. 3 Tr 239. DTE Electric indicated that this falls within the 0.002% to 0.4% range of opt-out participation experienced by utilities in other

states that are further along in the process. 3 Tr 240. The company's proposed tariff is Exhibit A-2.

The Staff, noting the actual use of the proposed tariff, referred to the opt-out program as the non-transmitting meter provision (NMP). The Staff agreed with DTE Electric's method for calculating the proposed fees based on cost of service principles, but disagreed with the number of estimated participants. The Staff advocated fees based on an estimate of 15,500 participants, which yields an initial fee of \$67.20, and a monthly fee of \$9.80. *See*, Exhibit S-1. This equates to a 0.6% NMP participation factor. The Staff also cited the experience of other utilities, as well as the 1.5% participation rate that Consumers Energy Company (Consumers) forecasts in its pending rate case, Case No. U-17087. The Staff's proposed tariff is Exhibit S-2.

The Attorney General proposed leaving analog meters in place for customers who wish to opt out of the use of the transmitting capability of an AMI meter, thus eliminating the need for the initial opt-out fee. The Attorney General contended that the company had not adequately supported its estimated costs, and initially supported the Staff's proposed monthly fee, but later supported a monthly fee of \$0.738.

Turning to the intervenor customers, Spranger argued that AMI meters are not mandatory and thus there should be no fees at all; that the participation level is understated; and that AMI meters pose a health threat and their use violates the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq.* Schmidt argued that the monthly fee is excessive, and that use of the meters threatens health and violates the ADA. Kurtz and Edwards argued that all aspects of AMI meters should be examined in this proceeding, including the type of meter, and health, safety, privacy, and disability-related cost issues. They also argued that the exclusion of business customers from the OP is inequitable, and that the OP violates the ADA and other federal and state laws governing

disability. Meltzer argued in favor of keeping analog meters with self-reported meter readings, and that the company has understated participation in the OP. The Cusumanos argued that privacy and health issues should be examined in this proceeding as well as the potential violation of the ADA; that the participation level is understated; that non-residential customers should be included; and that AMI meters should be made voluntary. The HOLETONS argued that participation is understated by the company, and that there should be an option to retain the analog meter with no fees.

### The PFD

The ALJ begins the PFD by addressing motions filed after the close of the evidentiary hearings. The ALJ denied Kurtz's February 22, 2013 motion to correct the transcript, on grounds that none of her requested changes are material or relevant to the legal arguments raised regarding the motions to strike. PFD, p. 6. The ALJ also denied the Staff's March 1, 2013 motion for removal of improperly filed items from the Commission's website.<sup>2</sup>

The ALJ began his analysis by revisiting the scope of the case, which, pursuant to Case No. U-17000, he found is limited to the consideration of the proposed OP under cost of service principles. "In essence, these principles assess the costs of the Program to the participants of the Program," in order to ensure that all customers are not called upon to subsidize a small segment of customers. PFD, pp. 18-19. The ALJ noted the open dockets in Case Nos. U-17000 and U-17102 which, respectively, involve issues concerning the general deployment of smart meters, and customer information and data privacy related to AMI deployment, as well as the dockets for individual utilities in which the Commission has approved rate base treatment of AMI-related

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<sup>2</sup> The ALJ also found the March 20, 2013 motion filed by Edwards to be moot.

costs, such as Case Nos. U-15244, U-15768, and U-16472. The ALJ found that the orders in each of these cases serve to limit the issues in this proceeding. The ALJ also noted that while the decision to deploy AMI technology is the company's decision, the Commission must "assure that ratepayers are protected from unreasonable or imprudent costs that may be included in utility rates." PFD, p. 21, quoting the October 20, 2011 order in Case No. U-16472, p. 23; *see, also, Union Carbide v Public Service Comm*, 431 Mich 135, 148-152; 428 NW2d 322 (1988).

Turning to the intervenor customers' arguments regarding the ADA, and health, safety, and privacy concerns, the ALJ found that "none of the Intervenors provide any basis to invoke these enactments in a proceeding whose sole purpose is to establish an Opt-Out Program under cost-of-service principles." PFD, p. 22. The ALJ found the customers' arguments to be irrelevant to the purpose of this proceeding. Noting that the decision to carry out AMI deployment as well as the determination regarding which customer classes to include in AMI deployment are operational decisions in the hands of the company, the ALJ found that the Commission's role is to examine the request for rate recovery associated with these decisions. The ALJ found that the question of which type of meter to employ is not at issue in this matter, nor is the question of whether AMI should be pursued at all. The ALJ further notes that R 460.115 authorizes the utility to perform actual meter reads on a regular basis, whether or not the customer has the opportunity to self-read, and does not provide a basis for reducing the proposed monthly fee.

The ALJ further found that none of the intervenors, including the Attorney General, provided any evidence addressing the implementation and management aspects of retaining analog meters. The ALJ referenced the fact that the company has not purchased analog meters since 2006, and that the Staff stated in its report filed in Case No. U-17000 that analog meters are no longer in production. "Given that analog meters are effectively obsolete, it would be imprudent to require

the Company to keep them in stock, or to service and/or maintain them for a relatively small number of their customers.” PFD, p. 27. Finally, the ALJ noted that this proceeding cannot be used as a collateral challenge to the orders approving the AMI pilot program or approving rate base treatment of certain costs, as this is not a proceeding to establish just and reasonable costs, but rather a proceeding to establish an opt-out option consistent with cost of service principles.

Turning to the proposed fees, the ALJ found the Staff’s proposed method for determination of the participation level to be more persuasive than DTE Electric’s. The ALJ found that the Staff’s estimate is closer to the upper end of participation percentages seen in California and Texas, and closer to Consumers’ estimate. The ALJ also noted that, as of January 2013, the company has received 3,269 expressions of concern from customers, which indicates an increase over the 1,100 used to set the estimate in mid-2012. The ALJ did not want the estimate of the number of customers seeking to opt out to be set too low, since that could affect participation rates by imposing an artificially high fee.

The ALJ recommended adoption of the Staff’s estimated participation level, which yields fees of \$67.20 as an initial fee, and \$9.80 as the monthly fee. Based on DTE Electric’s agreement to the Staff’s proposed tariff language and certain language proposed by the Attorney General, the ALJ adopted the tariff language of Exhibit S-2, with the exception that, in the final paragraph, the phrase “not have access” is changed to “be physically unable to access.” PFD, pp. 35-36.

#### Exceptions and Replies to Exceptions

In their exceptions, Kurtz and Edwards note that in the September 11, 2012 order in Case No. U-17000 (September 11 order), the Commission required all utilities deploying AMI to provide an opt-out option, and state that the ALJ failed to make note of this in the History of Proceedings section of the PFD. Kurtz and Edwards argue that the ALJ misconstrued their positions regarding

the scope of the case and several other issues. They state that they provided testimony regarding the health effects of non-transmitting meters that was ignored by the ALJ, and that their arguments regarding the potential violation of the ADA and Section 504 of the Rehabilitation Act of 1973 actually bear on the cost of service of the opt-out program. They urge the Commission to look at the health effects of transmitting and non-transmitting meters, stating “No epidemiological studies have been made of the effects of smart meters on human health, and the Commission did not use any epidemiological studies or surveys in making its determination.” Kurtz and Edwards’ exceptions, p. 3.<sup>3</sup> They point out that for those who experience negative health effects from AMI, opting out is not voluntary. They assert that the Commission has only looked at the effects of radiofrequency, but has not looked into the effects of “other electromagnetic waves emitted by these meters.” *Id.*, p. 4. They maintain that the ALJ erred in finding that the type of meter chosen is outside of the scope of this proceeding, because it bears directly on the cost of service and is not a management decision.

Kurtz and Edwards object to the ALJ’s failure to discuss their analysis of the words “proposed” and “program.” They maintain that the ALJ misunderstood them in thinking that they were trying to seek a re-evaluation of the smart grid program. Kurtz and Edwards emphasize the cost-based nature of their arguments. They object to the ALJ’s decision to ignore their cost analysis of retaining analog meters. They point to their arguments demonstrating that installing an analog meter at the homes of OP customers will save millions of dollars, even where re-installation is required. Drawing on statements in Meltzer’s brief, they argue that this option would save up to \$4.6 million for the OP.

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<sup>3</sup> All page citations refer to the pages of Kurtz and Edwards’ brief in support of their exceptions, for which the correct numbering begins on p. 2 of that document.



Kurtz and Edwards argue that the ALJ erred in determining that all customers should not subsidize a minority who opt for a more expensive level of service, claiming that there is no evidence to show that opting out is more expensive. “AMI meters cause the intervenors significant physical harm as would have been established by their lay opinion testimony.” *Id.*, p. 10. They analogize the issue to the safety of vaccines and nuclear power.

Kurtz and Edwards argue that, while the decision to deploy AMI may have been a management decision, the decision as to what meter is to be forced upon those who opt out is not a management decision. They point to the September 11 order to show that the Commission has decided that whether to offer an opt-out program is not a management decision (since the Commission mandated the requirement to offer one), and thus argue that whether an analog meter may be retained should be decided by the Commission as well. Kurtz and Edwards point out that no regulation allows the utility to pass on the costs of excessive meter reading, and argue that the proposed fee is many times greater than it has been previously.

They also point out that in the September 11 order the Commission did not limit its OP mandate to residential customers, and argue that other customers should be included. They argue that leaving analog meters in place will save money, and re-installing analog meters will save money over the option of having AMI meters rendered non-transmitting. They contend that it takes five minutes to change out a meter, at a cost of \$20, and that analog meters seldom require service. *Id.*, pp. 17, 19. Kurtz and Edwards urge the Commission to reopen the record to take additional evidence on the administration and management of analog meters. They refer to Consumers’ plan to allow customers to retain analog meters, pointing out that analog meters have a much longer life than smart meters. They suggest that DTE Electric stockpile analog meters. Kurtz and Edwards further argue that the ALJ erred in calling the objections to analog meters a

collateral challenge, because none of the prior Commission decisions actually involved the question of whether an analog meter could be retained. They conclude “The actual impact of AMI meters is not yet certain. Hence their recovery as costs is not just nor is it reasonable without a showing of evidence sufficient to indicate that they are.” *Id.*, p. 21. They also request oral argument.

The Staff replies that the type of meter in use by the utility, and its associated costs, are outside the scope of this tariff case. The Staff points out that the tariff is designed to recover costs associated with operations and maintenance expenses. The Staff further replies that none of the parties who have asserted that the AMI meters present a health threat have provided evidence to show a cause and effect relationship between the meters and associated illness. The Staff asserts that the ALJ correctly ruled that an opt-out option for business customers is not at issue in this case because DTE Electric only applied for approval of a residential tariff, and because Kurtz and Edwards lack standing to raise this issue. The Staff describes the record as replete with evidence that supports the charges contained in the Staff’s proposed tariff.

The Staff further contends that there is no dispute that costs are involved when a customer requests to disable the transmitting capability of the meter. The Staff notes that the Commission’s billing rules reinforce the importance of the utility acquiring an actual meter read at least once a year. The Staff argues that it is reasonable to cover the cost of meter reads, and notes that, for those utilities that are not changing to AMI, they have changed instead to digital meters which allow a walk-by meter read, unavailable with analog meters.

The Attorney General replies that he neither supports nor opposes the exceptions filed by the customer intervenors, noting that those exceptions contain no specific objection to allowing customers to opt out.

In its replies to Kurtz and Edwards, DTE Electric contends that R 460.17341(3) and MCL 24.276 preclude the Commission from making decisions based on non-record materials, and require that exceptions be supported by evidence and law and include references to the portions of the record that are relied upon. DTE Electric argues that the customer intervenors' exceptions do not meet these standards and cannot be the basis for decisions, as they are unsupported and lack attribution to any witness or other evidence. DTE Electric contends that Kurtz and Edwards mistakenly treat their arguments as evidence, and that the ALJ correctly found that the record reflected support for the elements of the proposed fees. DTE Electric argues that the Commission's decision must comport with Const 1963, art 6, § 28, and be supported by competent, material, and substantial evidence on the whole record. The utility asserts that factual statements made in a brief are not supported by the record and must be ignored as evidence. The utility notes that the record supports no alternative opt-out proposals.

The Cusumanos contend that the ALJ limited the scope of this hearing in a way that was not required by the September 11 order. They object to limiting this proceeding to consideration of the cost of service. They state "Unlawful 'takeover' commencing from a pilot program suggests the 'takings clause & unjust enrichment', 'unclean hands doctrine', civil and/or criminal liability, significant revelation of known facts exhibiting incompatibility to human health, violation to building codes and existing structures, insurability & limitations to underwriting insurance, and a significant showing for disregard to the moral issues facing the state and nation." Cusumanos' exceptions, p. 2. They further argue that "This case cannot proceed under a presumption that there is no demonstrable harm and that an 'opt-out' proposal is intended, wherefore, merely suggesting to abate customers who have no basis in fact or law for refusing the AMI meters." *Id.*, p. 3. They

urge the Commission to consider possible adverse health effects and harm to privacy interests, and to allow evidence to be introduced regarding these potential harms.

The Cusumanos argue that the Commission should order a rehearing of this case with a newly defined scope. They maintain that the OP is ineffectual since it provides no relief from “electromagnetic frequency (EMF) or ‘dirty electricity’ imposed on their home wiring.” *Id.*, p. 6. They further argue that since the Commission is charged with regulating the terms of utility service, the AMI program cannot be purely a management decision.

The Cusumanos object to the ALJ’s failure to consider their Fourth and Fifth Amendment arguments. They contend that the OP does not actually address the complaints that have been heard from the public and 24 units of local government. They also argue in favor of including business customers, particularly those who have “electro-sensitive” employees and patrons, because, to not do so would violate the ADA. They ask the Commission “to determine (a) whether the AMI meters are even legal in this state for forced installation on unwilling customers, and (b) whether there is demonstrable harm, either to customer privacy or to customer health.” *Id.*, p. 11.

In reply, the Staff indicates its disagreement with the Cusumanos and other customer intervenors regarding the alleged health threats, stating,

Staff suggests that those who oppose the use of these meters consider the issue of preservation of human life. Are those who are opposed to the use of these meters concerned about timely restoration of electric service when service goes out to customers? These meters can much more quickly and accurately find the location of each customer who is out and hence, help determine the cause of the outage. These meters can detect when power comes back on to individuals, and therefore, help the utility determine whether it has fixed the cause of the outage or if other problems still exist. Customers depend on electricity in their homes for a variety of functions from air conditioning in heat waves, to running ventilators, to refrigerating their food, to running air cleaners, to lighting their homes, to running the blower motor on their gas furnaces, and to running their electric furnaces, among other things. Staff suggests that moral considerations weigh heavily in

favor of this new modern technology, and those who oppose it are opposing the lifesaving functions that it can provide.

Staff's replies to exceptions, pp. 6-7. The Staff also notes that "The legality of AMI is not an appropriate question in any Commission proceeding." *Id.*, p. 7. The Staff asserts that there is no dispute that it is legal to measure customer usage and to use AMI to take such a measure.

DTE Electric also disagrees with the exceptions, noting that the Cusumanos argue that only an analog meter can fulfill the opt-out plan but fail to reference any record evidence in support of that argument. The utility notes that no other witness (besides its own) submitted testimony supporting an alternative proposal, or identifying the costs associated with the maintenance, inventory issues, and testing of analog meters. DTE Electric argues that, in any case, the Commission lacks the authority to order the utility to use a specific piece of equipment such as a specific meter.

DTE Electric maintains that the customer intervenors' health related arguments lack support in the record evidence, and that the Staff's report filed in Case No. U-17000 indicates that, after careful review, the Staff concludes that any health risk is insignificant. DTE Electric further avers that the arguments in favor of a business customer opt-out are made without reference to any record evidence, and that no evidence showed that any business wished to participate. DTE Electric notes that the law requires the utility to take responsibility for accurately measuring and billing usage, and the customer's ability to read the meter does not mitigate this responsibility.

In their exceptions, the HOLETONS contend that the AMI program should be voluntary, and the analog meters should not be eliminated by force. They argue that removal of the old meters does not comport with cost of service principles, stating "This reverses the cost of service principle of analog meters possibly having to support AMI meters as a voluntary segment to Federal subsidies and rate increases supporting a Corporate mandate." HOLETONS' exceptions, p. 3. They contend that customers and the utility can work together to make meter readings. They disagree with the

level of participation selected in the PFD. “It is with the voices of the Resolutions and Moratoriums which brought MPSC Case U-17000 and MPSC Case U-17053 that the number of consumers requesting an Opt-Out would change the dynamics of Case U-17053.” *Id.*, pp. 4-5.

Schmidt charges that the ALJ fails to consider that DTE Electric will realize savings from implementation of the AMI program. She objects to the monthly fees and to the loss of the analog meters. Alternatively, she asserts that the tariff fees should be markedly reduced. She contends that the utility’s savings are not being passed on to customers, and there is no reason to increase the cost of meter reading. She suggests an initial fee of \$6.50 and a monthly fee of \$4.90 based on subtracting the \$61 initial cost, and cutting the monthly fee in half due to duplicative staffing.

The Staff refutes Schmidt’s assertion regarding cost savings, arguing that cost savings are currently reflected in base rates, and will be reflected in the calculation of future rates in the next rate case, and are, in any case, not relevant to the calculation of costs associated with the NMP. The Staff points out that, with respect to meter reads, there are economies of scale that are ignored by the customer intervenors.

Also in reply, DTE Electric again notes that the customer intervenors failed to rely on record evidence in their exceptions.

In his exceptions, Meltzer<sup>4</sup> begins by stating that the ALJ affirmed that “the cost of service fees [DTE Electric] seeks to levy on customers who opt-out from installing an AMI meter are excessive, though only moderately so.” Meltzer’s exceptions, p. 2. He argues that none of the positions of the customer intervenors were represented in the PFD, and that nothing in the

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<sup>4</sup> Meltzer explains that some weeks ago his e-mail carrier converted to a new system, and the new system identified e-mail from the Commission as spam, thus he was not aware that the PFD had issued. In their replies, DTE Electric and the Attorney General do not oppose consideration of the exceptions. In light of the fact that no party opposed the motion and the other parties still had a week to respond to his filing, the Commission accepts his late-filed exceptions for consideration.

September 11 order limited the factors that could be taken into account when considering the OP. Meltzer charges that the ALJ ignored the people's voice.

Meltzer argues for the inclusion of business customers, due to the exposure to radio frequency throughout the workday. He also argues that turning off a single AMI meter will not help those who live in apartments and condominiums with clusters of meters, and that charging such customers for opting out is deceptive and fraudulent. Meltzer charges that neither the utility nor the Commission has done a scientific survey regarding opt-out participation, and have not educated the public on the full pros and cons of the AMI program, stating "DTE did engage in a systematic effort to promote misinformation regarding the AMI program as a benign technology without controversy, while smearing concerned citizens attempting to challenge their propaganda campaign." Meltzer's exceptions, p. 6. Meltzer asserts that the fees are not defensible, and that a currently installed analog meter has no marginal cost, no health effects, and has twice the lifespan of a digital meter, and that if analog meters are retained then their production will increase again. Meltzer argues in favor of self-reported metering using postcards, stating the utility "does not have authority or license to operate a remote controlled radio transmitter nor to collect data that reflects the personal behavior of customers within their homes." *Id.*, p. 10.

In his exceptions, the Attorney General argues that this order must authorize DTE Electric to offer the opt-out program to residential customers, because that function could not be performed by the September 11 order under MCL 460.57 and 460.552. The Attorney General supports the OP, but contends that there should be no initial fee because analog meters need not be removed. The Attorney General asserts that the company failed to support its proposed fees, for example, by not explaining why 126 employees need one hour of training. The Attorney General argues that

there is no evidence that adding together calculated averages results in a just and reasonable average incremental cost. The Attorney General supports a monthly fee of \$3.385.

In reply, the Staff asserts that there is no dispute that the utility applied to have its proposed tariff approved. The Staff further contends that the Attorney General's argument presupposes that the utility acted imprudently in replacing analog meters with smart meters, and that the question of what type of meter should be used is not at issue here.

Also in reply, the Holetons contend that the Attorney General and the Commission have failed to offer any solution to customers who do not want the AMI meter and whose health is threatened by the meter.

DTE Electric replies that the Attorney General's proposed fees are unsupported and based on significant mathematical errors. DTE Electric notes that the Attorney General seems to agree with five out of the six components of the proposed monthly fee, and argues that he makes a mathematical error with respect to the meter reading cost component. DTE Electric argues that the Attorney General errs in assuming that the \$76,082 figure is the total cost for all employees involved in the meter reading function.

In its exceptions, DTE Electric disagrees with the ALJ's conclusion regarding participation in the OP. The company asserts that it already used a very conservative calculation by assuming that every complaint call would have resulted in an opt-out. DTE Electric asserts that 15,500 is greatly overstated, and "no benchmarked utility has reached that level of participation." DTE Electric's exceptions, p. 3. The utility points out that its number is based upon actual experience corroborated by the benchmarking of other utilities, and that Consumers has less experience because its program is not as advanced.



Meltzer replies that the larger participation number should be adopted because it is less punitive for customers. He argues that simply because 798,000 customers did not complain does not mean that they are all happy with their meters. He asserts that the public is generally unaware of the dangers associated with the meters and that there is little scientific evidence to support use of the meters. Ultimately, he does not support adoption of the Staff's number or of any fees, because the public is uninformed.

The Attorney General replies that a non-transmitting AMI meter and an analog meter provide the same information to the utility. The Attorney General also supports the Staff's participation number, and argues that, at a minimum, the Commission should adopt the charges proposed by the Staff. The Attorney General supports adoption of Exhibit S-2, while still arguing for no initial fee and a \$3.385 monthly fee, and urges the Commission to amend the "last paragraph in Exhibit S-2 to clarify the fact that electing to take service under the tariff will make it physically impossible to access potential benefits from having a transmitting meter." Attorney General's replies to exceptions, p. 6.

### Discussion

The vast majority of the customer intervenors' exceptions address the scope of this proceeding; however, no party filed an application for leave to appeal the ALJ's evidentiary rulings addressing the scope of the proceeding. *See*, 1999 AC, R 460.17337. In any case, the Commission finds the exceptions to be unpersuasive. The ALJ correctly ruled that this proceeding is not a referendum on the AMI program, and neither the wisdom nor the equipment requirements of the AMI program are at issue here. This is a proceeding to determine whether DTE Electric has proposed an appropriate plan and tariff for customers who want a non-transmitting meter.

The ALJ accurately describes the history of the AMI program. The Commission approved the pilot program in Case No. U-15244, and approved rate base treatment of the reasonable and prudent costs in that case; and has continued to review expenditures according to that standard in each subsequent rate case. In the September 11 order, the Commission adopted the Staff's report as "thoughtful and comprehensive" and as a point of departure for further discussion, singling out the continuing review of expenditures in rate cases, opt-out options, and privacy concerns for further action. September 11 order, p. 4. As has been noted repeatedly in the various AMI-related proceedings, while the Commission may not encroach on the managerial decision to commence the AMI program and to select the equipment attendant thereto, it will continue to protect the interests of ratepayers through review of the expenditures associated with the program for reasonableness and prudence.

The Commission finds that the PFD is well-reasoned and thorough and adopts the findings and recommendations of the ALJ. While DTE Electric's method of calculation is conservative (in that it considers every expression of concern to result in a decision to opt out), such expressions appear to be on the rise as the program expands, and the Staff's proposed participation rate is more credible. Real world experience will help with refining this calculation in the future; for the present the Commission rejects the utility's exceptions and adopts the Staff's number as well as the tariff language in Exhibit S-2 (Non-Transmitting Meter Provision), with the minor change to the final paragraph as outlined in the PFD. Although the opt-out mandate set in the September 11 order was not limited to residential customers, the Commission is unaware of any evidence showing that commercial and industrial customers seek an opt-out option, and finds that DTE Electric's residential non-transmitting meter option satisfies the requirement of the September 11 order.

THEREFORE, IT IS ORDERED that:

A. DTE Electric Company f/k/a The Detroit Edison Company's application for authority to implement an advanced metering infrastructure non-transmitting meter provision is approved.

B. Within 30 days of the date of this order, DTE Electric Company f/k/a The Detroit Edison Company shall file with the Commission tariff sheets in conformity with Exhibit A attached to this order.

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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John D. Quackenbush, Chairman

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Orjiakor N. Isiogu, Commissioner

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Greg R. White, Commissioner

By its action of May 15, 2013.

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Mary Jo Kunkle, Executive Secretary

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(Continued from [Sheet No. C-29.00](#))

**C5 CUSTOMER RESPONSIBILITY (CONTD)**

**C5.7 Non-Transmitting Meter Provision (Residential Only)**

*On \_\_\_\_\_, the MPSC approved the following charges for Detroit Edison residential customers that elect to have a non-transmitting meter:*

*APPLICABILITY: Available to individual residential electric customers at a specific site location who elect to have a non-transmitting meter(s) installed at their premises. A Customer electing this Non-Transmitting Meter Provision will have a non-transmitting meter(s) installed at the customer's service location, have the meter read manually and be subjected to the following charges.*

*Rates: Initial fee: \$67.20 per request*

*Monthly Charge: \$9.80 per month*

*A Customer electing to have a non-transmitting meter and who already has a transmitting meter installed at their premise will have their meter changed to a non-transmitting meter. A Customer, who has not had their current meter replaced by a transmitting meter at the time they request to have a non-transmitting meter, will temporarily retain their current meter until such a time as transmitting meters in their area are installed and subsequently will receive a non-transmitting meter. A Customer who has not had their current meter replaced by a transmitting meter and requests a non-transmitting meter will pay the initial fee at the time they request this option but will not pay the monthly charge until transmitting meters are installed in their area.*

*Customers electing this provision will be physically unable to access all of the benefits of having a transmitting meter. All charges and provisions of the customer's otherwise applicable tariff shall apply.*

(Continued on [Sheet No. C-30.00](#))

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Issued \_\_\_\_\_, 2013

D. G. Brudzynski  
Vice President  
Regulatory Affairs

Detroit, Michigan

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