

STATE OF MICHIGAN
IN THE COURT OF APPEALS

IN RE APPLICATION OF DETROIT EDISON
COMPANY TO IMPLEMENT AN OPT-OUT
TARIFF,

CYNTHIA EDWARDS and LINDA KURTZ,
and LESLIE PANZICA-GLAPA,

Appellants,

Docket No. **316728**

MPSC Case No. U-17053

v

MICHIGAN PUBLIC SERVICE COMMISSION
and THE DETROIT EDISON COMPANY,

Appellees.

_____ /

DOMINIC CUSUMANO AND LILLIAN CUSUMANO,

Appellants,

Docket No. **316781**

MPSC Case No. U-17053

v

MICHIGAN PUBLIC SERVICE COMMISSION
and THE DETROIT EDISON COMPANY,

Appellees.

_____ /

**BRIEF OF APPELLEE MICHIGAN PUBLIC SERVICE COMMISSION IN
DOCKET NOS. 316728 AND 316781**

****ORAL ARGUMENT REQUESTED****

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STATEMENT OF JURISDICTION

Appellants Cynthia Edwards, Linda Kurtz, and Leslie Panzica-Glapa, and Dominic Cusumano and Lillian Cusumano appeal the Michigan Public Service Commission's May 15, 2013 Order (attached as Attachment A) approving an opt-out rate tariff for the Appellee the Detroit Edison Company.¹ (The Company is now known as DTE Electric Company. This brief uses its previous name.) Appellee Michigan Public Service Commission agrees with appellants that MCL 462.26 vests this Court with jurisdiction over this consolidated appeal. MCL 462.26 provides, "In all appeals under this section the burden of proof shall be upon the appellant to show by clear and satisfactory evidence that the order of the commission complained of is unlawful or unreasonable."

¹ The Commission issued an Order on Rehearing on July 29, 2013 responding to a Petition for Rehearing filed by Ms. Kurtz and Ms. Edwards on June 14, 2013. That Petition addressed matters that arose subsequent to the Commission's May 15, 2013 Order, and neither appellant customer groups appealed that Order on Rehearing.

COUNTER-STATEMENT OF QUESTIONS PRESENTED

- I. In Case No. U-17053, the Michigan Public Service Commission approved the Detroit Edison Company's application for a rate tariff that permits customers to have their meter read by a meter reader rather than having the meter read remotely. The Commission approved the application on the basis that some customers had expressed a wish to have such a tariff and on evidence regarding the cost of providing such a tariff. The Commission has broad ratemaking authority to approve rates. Was the Commission's order approving the rate lawful and reasonable?

Appellee Michigan Public Service Commission answers "Yes."

Appellee the Detroit Edison Company answers "Yes."

Appellants Edwards, Kurtz, and Panzica-Glapa answer "No."

Appellants Cusumanos answer "No."

- II. In Case No. U-17000, the Commission found that health concerns associated with the utility's new meters were insignificant and ordered the Detroit Edison Company to apply for approval of a cost-based rate tariff as described above. In Case No. U-17053, the Commission affirmed the Administrative Law Judge's ruling that evidence relating to health concerns regarding the utility's selection of its meters was not relevant to setting a cost-based rate. Was the Commission's affirmance of that ruling reversible error?

Appellee Michigan Public Service Commission answers "No."

Appellee the Detroit Edison Company answers "No."

Appellants Edwards, Kurtz, and Panzica-Glapa answer "Yes."

Appellants Cusumanos answer "Yes."

- III. In Case No. U-17053, the Michigan Public Service Commission approved the Detroit Edison Company's application for a rate tariff that permits customers who want to have their meter read by a meter reader rather than having the meter read remotely. The Commission is not providing any service or program to any member of the public,

but is rather, setting a cost-based rate for utility service. Did the Commission act contrary to the requirements of federal and state law and the US Const Am IV when it approved this rate?

Appellee Michigan Public Service Commission answers “No.”

Appellee the Detroit Edison Company answers “No.”

Appellants Edwards, Kurtz, and Panzica-Glapa answer “Yes.”

Appellants Cusumanos answer “Yes.”

INTRODUCTION

This appeal attempts to challenge the lawfulness of a single Commission-approved tariff or rate, nothing more and nothing less, and as such review of this tariff is almost beyond the reach of this Court. The Commission possesses broad ratemaking authority that is legislative in nature, and those ratemaking decisions cannot be overturned unless the Commission has failed to follow a mandatory statutory requirement or has acted arbitrarily or capriciously.

In this case, the Commission approved a tariff that permits customers who do not want to have their meters read remotely to have a meter reader come to their home to read the meter. The Commission received evidence regarding the costs associated with the utility providing this special meter reading that it does not otherwise provide to its customers, and approved a cost-based rate for its provision.

The five ratepayers who have challenged the lawfulness of this tariff order are not actually challenging the lawfulness of the rate, but are challenging the fact that the utility has chosen to use a meter that they do not like. But that fact does not make the Commission's rate order unlawful. It remains true that pursuant to lawful regulations the utility is required to measure customer usage, is required to own and install a meter, and retains the management discretion to obtain the goods and services it needs to meet its legal obligations. To the extent that the Commission concludes that the utility has acted imprudently in acquiring equipment, such as the meters needed to read customer usage, the Commission may make appropriate rate adjustments in the utility's base rate cases and adjust rates to reflect the imprudence.

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This case, however, is not a base rate case, but a single-issue rate case to determine a rate for those customers who do not want their meter read remotely, and as such it is beyond the scope of the case to review the efficacy of the utility's choice of meters. The Commission submits that it acted lawfully in response to the utility's application to approve a tariff that permitted customers who did not want to have their meter transmitting function operable and after considering the evidence regarding the costs of doing individual meter reads. This Court should reject the Appellants' attempt to expand the scope of the proceeding conducted by the Commission and affirm the Commission's rate order.

COUNTER-STATEMENT OF FACTS

At the outset, the Commission notes that the Statement of Facts by both appellant groups, Cynthia Edwards, Linda Kurtz, and Leslie Panzica-Glapa and Dominic Cusumano and Lillian Cusumano (referred throughout this brief as appellant customers) are both replete with assertions of fact that are not record evidence. Their briefs also contain numerous references and descriptions of “comments” filed in both Case No. U-17000 and U-17053 (the case on appeal), but these descriptions do not provide the name of the entity that they claim made these assertions. The Commission requests that these extra-record assertions be disregarded by this Court.

I. MPSC Case No. U-17000

On January 12, 2012, the Commission issued an Order Opening Docket in MPSC Case No. U-17000 (attached as Attachment B) to investigate concerns expressed by members of the public regarding the safety and use of new meters that utilities were using to measure customer usage of electricity. The Commission noted:

In the past several months, the Commission has become aware of concern on the part of some individuals in this state and an increasing number of municipal officials regarding the deployment of smart meters by electric utilities operating in Michigan. During the Commission’s annual consumer forums conducted at various locations during the fall of 2011, individual Commissioners on several occasions encountered vocal opponents to the deployment of smart meters in their communities. More recently, through direct submissions, media reports, and by other means, the Commission has learned that the elected governing bodies of at least nine local communities across Michigan have by resolution implored the Commission to either (1) make information about smart meters available to the public, (2) investigate the safety of the physical attachment of a smart

meter to a residential dwelling house, (3) halt ongoing efforts by regulated electric utilities to deploy smart meters throughout their service territories, or (4) force these electric utilities to allow concerned customers to “opt out” of having a smart meter attached to her or his own dwelling house. [Order Opening Docket, MPSC Case No. U-17000, January 12, 2012, pages 2-4; footnote omitted.]

The Commission ordered the regulated electric utilities to file a wide range of information regarding their plans to use new meters, their costs, safety concerns, and other information. The Commission further indicated that after that information was filed, individuals could file comments, and finally, the Commission Staff should file a Report after that information was received. Order Opening Docket at pages 2-4.

On September 11, 2012, the Commission issued an Order with respect to issues about the utilities’ use of the new meters (attached as Attachment C). The Commission noted that eight electric utilities and nine electric cooperatives filed the requested information. The Commission further noted that the Commission received over 400 comments from individuals, and on June 29, 2012, the Staff submitted a detailed Report addressing the information filed by the utilities and public (attached as Attachment D). Order at page 2. And, the Commission indicated that the Staff Report contained recommendations regarding “customer data privacy, cyber security, the need for a smart grid ‘vision,’ AMI opt-out, and customer education.” Order at page 2. The Commission noted that the Staff Report concluded that the new meters were “rapidly becoming the primary replacement meter to existing electromechanical meters.” Order at page 3. The Commission stated:

The Staff concluded that AMI is rapidly becoming the primary replacement meter to existing electromechanical meters *because the new meters are more accurate, they provide enhanced outage response, and AMI offers opportunities for customer energy management.* Furthermore, *the electromechanical meter is obsolete and no longer in production.* Nevertheless, the Staff recognized that investments in AMI and other smart grid components should be subject to ongoing review in contested *rate case* proceedings. The Staff added *that some customers will continue to have concerns about AMI and therefore recommended that the utilities make available a cost-based, opt-out option for these customers.*
[Order at page 3; emphasis added.]

With respect to the question of whether the new meters pose health threats to customers, the Commission noted that the Staff Report found that any health risks to customers was insignificant:

The Staff also reported that “after careful review of the available literature and studies, the Staff has determined that the health risk from the installation and operation of metering systems using radio transmitters is *insignificant.* In addition, the appropriate federal health and safety regulations *provide assurance that smart meters represent a safe technology.*” Staff Report, p. 2.
[Order at page 3; emphasis added.]

After reviewing other aspects of the Staff Report, the Commission concluded that the Staff Report should be accepted. The Commission ordered that issues concerning the new meters should be addressed in utility rate cases:

The Commission agrees with the Staff that AMI and smart grid investments should be *reviewed in the context of general rate case proceedings.* The Commission expects the utilities, the Staff, and other interested parties to continue to refine the scope of, and quantify and assess

the costs and benefits of AMI and smart grid during the implementation of these new technologies on a case-by-case basis.
[Order at page 4; emphasis added.]

The Commission not only ordered that future inquiry regarding the costs and benefits of the new meters should be handled on a case-by-case basis in utility rate cases, the Commission also directed that the two utilities that had been installing new meters file a single-issue rate tariff to allow customers to opt out:

2. Opt-out Options

As the Staff pointed out, a small minority of customers has significant concerns about AMI, and for those customers, the Staff recommends that an opt-out option be provided by the electric utilities. The Commission agrees that the investor-owned electric utilities (i.e., Alpena, Consumers, Detroit Edison, I&M, NSP-W, UPPCo, WEPCo, and WPSC) shall make available an opt-out option, based on cost-of-service principles, for their customers if or when the provider elects to implement AMI. *The Commission observes that only Consumers and Detroit Edison are currently installing AMI thus, at this point in time, only these providers are affected by this directive. Detroit Edison has already filed a proposed opt-out tariff. See, Case No. U-17053.* In the case of Consumers, within 60 days of the date of this order, or in Consumers' next general rate case filing, whichever occurs first, the Commission directs the company to include a proposed opt-out tariff.
[Order at page 5; emphasis added.]

With respect only to the issues of customer data collection, privacy, and cyber security, the Commission found that it would create a future docket limited to these issues. Order at pages 5-6.

No one appealed this Order that found that the new meters posed an insignificant health risk, that public health and safety regulations provide assurance that the new meters represent a safe technology, that future issues regarding the costs and benefits of these meters should be litigated on a case-by-

case basis, that the Commission would consider approving an opt-out tariff, and that issues concerning customer data collection, privacy, and cyber security would be considered in separate future docket.

II. MPSC Case No. U-17053

A. Proceedings Below

Subsequent to the issuance of the Commission's Ordering Opening Docket and the Staff's Report in Case No. U-17000, On July 31, 2012, the Detroit Edison Company filed an Application requesting approval for a tariff that would provide "an opportunity for individual residential customers who voluntarily request to have a non-transmitting AMI meter installed at their residential service address instead of the Company's transmitting AMI meter." Application, Affidavit of Robert E. Sitkauskas, page 2, paragraph 5 (Application attached as Attachment E). Edison noted that the Commission Staff in Case No. U-17000 issued a Report that recommended the use of an opt-out tariff for customers who have concerns about the Company's new meters and that the tariff should be cost-based. Application, paragraph 3, page 2. Edison proposed an initial fee of \$87 to cover the costs of turning off the transmitting function on a customer's meter and a monthly \$15 fee to cover the costs associated with having a meter reader come to a customer's house instead of the utility being able to read the meter remotely.

At the prehearing conference, the Attorney General and Edison electric customers, Dominic Cusumano, Lillian Cusumano, Cynthia Edwards, Linda Kurtz,

Pauline Holeyton, Richard Meltzer, Karen Spranger, and Sharon Schmidt were admitted as parties. The MPSC Staff also participated as a party.

B. Proposal for Decision

The Administrative Law Judge's (ALJ's) Proposal for Decision (PFD) (attached as Attachment F) issued on March 22, 2013 first addressed the proper scope of the tariff proceeding and found that it was "limited to consideration of the proposed Opt-Out Program under cost-of-service principles." PFD, Case No. U-17053, March 22, 2013, page 18. He stated, to do otherwise, in essence, would inappropriately cause all customers to subsidize one segment of customers who request and receive a more expensive level of service. PFD, pages 18-19. The PFD further found that a number of other Commission cases all involving various aspects of the utility's efforts to acquire and use new meters "all serve as a limit to the issues in this case." These cases included two 2007 cases addressing the Energy Policy Act, three Edison rate cases, and one case involving privacy issues. PFD, pages 19-20. Therefore, the PFD concluded that issues regarding health, safety, and privacy concerns were outside the scope of the hearing. PFD, page 24. In addition to noting that these other dockets limit the issues in the opt-out tariff docket, the PFD also stated that other principles concerning the utility's management of its business and the Commission's ratemaking authority govern the case. The PFD concluded:

Staff clearly, concisely, and accurately sets forth these principles:

The utility company manages its operations in order to provide

electric service to its customers. When the utility company wants increased rates in order to provide its utility service because its costs have increased or it has installed new plant, it will seek a rate increase. At that time, the Commission will hold a contested case proceeding to ascertain what the reasonable costs of doing business are and to ascertain what a reasonable rate of return would be. From these determinations, the Commission will approve a rate. The costs associated with the utility's meters and associated software that are used to measure customer consumption are and have been considered in rate cases, such as Edison's last rate case, U-14672, and will be considered in future rates when filed.

Staff Reply Brief, p 2.

[PFD, pages 20-21.]

The PFD next indicated its agreement with the MPSC Staff that the Commission possesses broad discretion to determine a regulated utility's reasonable costs of doing business, but that the Commission's authority to fix rates "does not carry with it, either explicitly or by necessary implication, the power to make management decisions." PFD, page 21, quoting from *Union Carbide v Public Service Commission*, 431 Mich 135, 148 (1988). The PFD stated:

This fundamental principle of utility regulation was applied in Case No. U-16472: "The Commission agrees with the Staff's observation that while the decision to fully deploy AMI is the company's alone, the Commission's role is to assure that ratepayers are protected from unreasonable or imprudent costs that may be included in utility rates." October 22, 2011 Order, p. 23. [PFD, page 21.]

The final legal principle addressed by the PFD related to the ALJ's finding regarding the utility's legal responsibility to measure customer usage and to provide and maintain equipment necessary to measure such usage:

The final controlling legal authority is the Consumers Standards and Billing Practices administrative rules promulgated by the Commission, which have the force and effect of law. See *Clonlara Inc. v State Board of Education*, 442 Mich 230, 238 (1993). *As noted by Staff, a utility is responsible to accurately measure and bill usage, and to that end is*

responsible to provide and maintain the equipment that measures usage. R 460.116(1)-(3); R 460.122; R 460.123. To ascertain usage, a utility must undertake an actual meter reading, unless it cannot be “obtained by any reasonable or applicable method described in R 460.102.” R 460.113(1). A customer may read their meters and report the usage. R 460.102(a) & R 460.115. However, customer read does not diminish a utility’s ability to read a meter: “Notwithstanding the provisions of this rule, a utility company representative may read meters on a regular basis.” R 460.115. [PFD, pages 21-22; emphasis added.]

The PFD also addressed the claim by certain intervenors that the lack of a mandate for new meters equates to a lack of authority for the Company to install them and the lack of authority to charge fees for opting-out. The ALJ found that the fact that the new meters were not mandatory does not mean that the utility may not have an opt-out tariff. He found that the utility’s new meters had been reviewed in a number of MPSC cases culminating in the Commission’s directive that utilities shall make available an opt-out option based on cost-of-service principles. Therefore, he rejected the argument that a lack of a mandate for new meters prohibited approval of an opt-out tariff.

The PFD next addressed the argument of some intervenors that those customers who elect to take service under the opt-out tariff should be allowed to choose to use a meter other than the one that the utility gave them. The PFD commented on the absence of any evidence submitted by any party that addressed the implementation and management aspects of their proposal:

These are not insignificant considerations given that of the Company’s 2,100,000 residential meters, over 965,000 have had AMI meters installed. 3 TR 432-433. While the record is *devoid* of any evidence that would allow for an exact calculation, it is obvious costs would be incurred if

the Company were required to go back and replace meters for those opting-out and re-install analog meters. *Whether those costs, along with the attendant costs for maintaining analog meters, would exceed the costs proposed for the Program cannot be determined on this record.* [PFD, page 26; emphasis added.]

The PFD also concluded that it would be imprudent for the Commission to require the utility to keep analog meters in stock or maintain them given that they are effectively obsolete:

The viability of keeping analog meters is also questionable *given that the Company's vendors do not produce them, and the Company has not purchased them since 2006.* Id., p 294. The Staff's Report in Case No. U-17000 at p. 2 also states the *analog meters are not in production*, thereby diminishing the devices viability as a long-term alternative to an AMI Meter. Further, the Report, also at p 2, notes that maintaining and testing requirements for analog meters, along with the need for manual readings, could result in higher incremental costs for customers. 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, pages 26-27; emphasis added.]

Finally, the PFD found that allowing opt-out participants to keep analog meters would constitute an impermissible collateral attack on previous rate decisions, would be contrary to the Commission's order in Case No. U-17000 that limited this proceeding to determining the costs associated with opting out of a transmitting meter, and would be contrary to the principle that the utility retains discretion to operate and manage its system:

Finally, and most importantly, the proposal to allow opt-out participants to keep analog meters is contrary to the controlling legal authority, *supra*. Specifically, the cost of AMI meters, which the Company began purchasing in 2008, was addressed in prior rate cases, while this case is limited to determining an Opt-Out Program under cost-of-service principles. Any challenges to the AMI Program, including an argument that AMI meters should not be used in an Opt-Out Program, does not implicate

cost-of-service principles. As discussed, this case cannot serve as a collateral challenge to the Company's pilot program and implementation of the AMI Program given the Commission's approval of those steps. Finally, the Company's decision to proceed with the AMI Program, particularly the various components that make it up, is well within its operational and managerial discretion. When it seeks to recover the costs for the Program through its rates, it must establish the costs are just and reasonable in a proceeding before the Commission. This is not such a proceeding. Therefore, the argument that participants in the Opt-Out Program should be able to keep an analog meter cannot be sustained.
[PFD, page 27.]

C. Order, May 15, 2013

On May 15, 2013, the Commission issued an Order approving Edison's application for authority to implement a non-transmitting meter tariff and approved a rate for that tariff as proposed by the MPSC Staff. Order, Case No. U-17053, page 1.

The Commission further noted that it had first approved inclusion of the AMI meters (or new meters) for a pilot program in its 2008 Edison rate order in Case No. U-15244, and that it had also included \$71.6 million in capital expenditures for new meters in Edison's most recent rate case, U-16472. Order, page 2. In its Order, the Commission found that no party had appealed the evidentiary rulings of the ALJ who excluded evidence not related to the costs of providing the opt-out service to customers who volunteered to receive this service. The Commission agreed with the ALJ and found that the tariff proceeding was not a referendum on the wisdom nor the equipment requirements of the new meters, but is rather a proceeding to determine an appropriate tariff for customers who want a non-transmitting meter. Order, page 17. The Commission further reasserted its findings in prior cases that,

while the Commission may not encroach on the managerial decision to use the new meters, the Commission would continue to protect ratepayers through review of the new meters' costs for reasonableness and prudence. Order, page 18.

The Commission concluded by finding that it would adopt the findings and recommendations of the PFD:

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.
[Order, page 18.]

ARGUMENT

- I. **The Commission acted lawfully and reasonably when it granted Edison's application for approval of a rate tariff because the rate tariff allowed certain customers to receive a utility service that they had requested and because the evidence supported the rates contained in the tariff.**

- A. **Standard of Review**

The standard of review for Commission orders is narrow in scope and limited to determining whether the Commission's order is lawful and reasonable. State courts give respectful consideration to State agency interpretations of the statutes that the agency administers and enforces. The burden of proof rests on an appellant to establish by clear and satisfactory evidence that the order is unlawful or unreasonable.

The Legislature has prescribed both the manner and standard by which MPSC orders are to be reviewed. In Section 25 of the Railroad Act, the Legislature identified the manner in which MPSC orders are to be reviewed by providing that all rates, classifications, regulations, practices, and services fixed by the Commission are deemed *prima facie* lawful and reasonable:

All rates, fares, charges, classification and joint rates fixed by the commission and all regulations, practices and services prescribed by the commission shall be in force and shall be *prima facie*, lawful and reasonable until finally found otherwise in an action brought for the purpose pursuant to the provisions of section 26 of this act, or until changed or modified by the commission as provided for in section 24 of this act.

[1909 PA 300; MCL 462.25.]

Section 26(8) of the Railroad Act places a heavy burden of proof upon an appellant to show by clear and satisfactory evidence that the Commission's orders are unlawful or unreasonable:

In all appeals under this section the burden of proof shall be upon the appellant to show by clear and satisfactory evidence that the order of the commission complained of is unlawful or unreasonable.
[1909 PA 300; MCL 462.26(8).]

The Michigan Supreme Court has explained how difficult it is for an appellant to prove that an MPSC order is unlawful or unreasonable. In *In re MCI Telecommunications Complaint*, the Michigan Supreme Court, after citing Section 26 of the Railroad Act as governing its standard of review of an MPSC order, proceeded to find:

Against this background, we have held:

To declare an order of the commission unlawful there must be a showing that the commission failed to follow some mandatory provision of the statute or was guilty of an abuse of discretion in the exercise of its judgment.
[*Giaras v Public Service Comm*, 301 Mich 262, 269; 3 NW2d 268 (1942).]

The hurdle of unreasonableness is equally high. Within the confines of its jurisdiction, there is a broad range or "zone" of reasonableness within which the PSC may operate.
[*In re MCI*, 460 Mich 396, 427; 596 NW2d 164 (1999).]

While an appellant always has the burden of proving that a Commission order is unlawful or unreasonable, courts may apply different standards of review when evaluating the appellant's arguments depending on the nature of the agency decision involved. For judicial or quasi-judicial decisions where a hearing is required, the agency's decision must be supported by competent, material, and

substantial evidence on the whole record. Const 1963, art 6, § 28; *Dowerk v Twp of Oxford*, 233 Mich App 62, 72; 592 NW2d 724 (1998). Even in these “substantial evidence” cases, however, Michigan courts have held that Section 26 of the Railroad Act does not grant the court all of the powers traditionally vested in a court of equity, nor the power to make de novo findings of fact. See *In re Rovas Complaint*, 482 Mich 90, 101; 754 NW2d 259 (2008). Rather, a court should not substitute its judgment in place of the Commission’s factual findings or regulatory judgment. *Consumers Power Co v Public Service Comm*, 196 Mich App 687, 691; 493 NW2d 424 (1992). If an administrative agency’s finding of fact is supported by evidence—even if there is conflicting evidence—it is the general rule that the agency’s findings are conclusive upon the reviewing court. *Bejin Co v Public Service Comm*, 352 Mich 139, 153; 89 NW2d 607 (1958).

In contrast, the MPSC’s legislative or quasi-legislative judgments may not be overturned unless the Commission exceeded its statutory authority or abused its discretion. See *In re Rovas Complaint*, 482 Mich at 100-101; see also *Coffman v State Board of Examiners in Optometry*, 331 Mich 582, 589-590; 50 NW2d 322 (1951) (holding that the Legislature may confer authority to administrative agencies to exercise discretion and promulgate rules to carry out a statute’s purpose, and holding that courts will only interfere if the administrative body abuses its discretion). An abuse of discretion does not occur unless “an unprejudiced person considering the facts upon which the decision was made would

say that there was no justification or excuse for the decision.” *Novi v Robert Adell Children’s Funded Trust*, 473 Mich 242, 254; 701 NW2d 144 (2005).

Since ratemaking is a legislative function, Commission rate orders are reviewed using the abuse of discretion standard. As Justice Williams concluded in *Michigan Consolidated Gas Co v MPSC*, while dissenting on other grounds:

We begin with the proposition, now axiomatic, that rate making is a legislative function. The Legislature has entrusted the implementation of this legislative function to the administrative expertise of the Michigan Public Service Commission. Legislative policy determinations by the Public Service Commission, properly made, are not reviewable by the courts. Speaking to this we said in *In Re Consolidated Freight Co*, 265 Mich 340, 351 (1933):

“ . . . In such instances the determinations of fact issues pertain only to the functioning of the commission in its legislative capacity, as an adjunct to the legislature. The policy or wisdom of such action by the commission cannot be reviewed by the courts . . . In short, in so far as the functioning of a commission pertains to the administration of executive or legislative matters, it is not reviewable in this court.”

[*Michigan Consolidated Gas Co v Public Service Comm*, 389 Mich 624, 644-645; 209 NW2d 210 (1973); emphasis added.]

With respect to the standard of review applicable to an administrative agency’s statutory interpretations, the Michigan Supreme Court held in *In re Rovas Complaint* that courts may not abdicate their judicial responsibility to interpret statutes by giving “unfettered deference” to an agency’s statutory interpretation. But the Court also held that an agency’s statutory interpretation is entitled to the “most respectful consideration” and should not be overturned without “cogent reasons.” *In re Complaint of Rovas*, 482 Mich at 93. In *In re Rovas*, the Michigan Supreme Court reaffirmed the *Boyer-Campbell Co v Fry*, 271 Mich 282, 296-297;

260 NW 165 (1935) standard of review for an agency's statutory construction and quoted *Boyer-Campbell* approvingly:

[T]he construction given to a statute by those charged with the duty of executing it is always entitled to the most respectful consideration and ought not to be overruled without cogent reasons. However, these are not binding on the courts, and [w]hile not controlling, the practical construction given to doubtful or obscure laws in their administration by public officers and departments with a duty to perform under them is taken note of by the courts as an aiding element to be given weight in construing such laws and is sometimes deferred to when not in conflict with the indicated spirit and purpose of the legislature. [*In re Complaint of Rovas*, 482 Mich at 103, quoting *Boyer-Campbell Co v Fry*, 271 Mich at 296-297 (internal citations and quotation marks omitted)].

Applying these standards to the issue in question, the appellant customers have the heavy burden of proving that the Commission's rate order is unlawful or unreasonable. See MCL 462.26(8). They have not shown by clear and satisfactory evidence that the Commission failed to follow a mandatory statutory provision or that it abused its discretion in any way. See *In re MCI Telecommunications Complaint*, 460 Mich at 427; see also MCL 462.26(8).

B. Analysis

- 1. The Commission's decision to approve Edison's application for a rate tariff was not arbitrary or capricious because the tariff allowed certain customers to receive a service that they had requested.**

- a. **In order to be lawful, a rate need only be rationally based and not arbitrary or capricious.**

It is axiomatic that ratemaking is legislative in nature and that the Commission may approve rates that further rational public policies that it chooses to adopt. *Detroit Edison Co v Public Service Comm*, 127 Mich App 499, 524; 342 NW2d 273 (1983) and *Detroit Edison v PSC*, 221 Mich App 370, 375; 562 NW2d 224 (1997). Further, courts do not review such legislative action for “competent, material and substantial evidence on the whole record” but must instead defer to the legislative body absent breach of a constitutional standard or a statutory mandate or limitation. *Colony Park Apartments, et al v Public Service Comm*, 155 Mich App 134, 138; 399 NW2d 32 (1985).

- b. **The Commission’s order was neither arbitrary nor capricious because it was based on testimony of the utility’s witness that some of its customers wished to have such a tariff and because it had found in an earlier proceeding that such a tariff would meet the needs expressed by customers.**

- i. **Edison indicated that some of its customers wanted to have a tariff that would permit them to have a meter with its transmitting function turned off.**

The Commission’s Order granting Edison’s tariff application was certainly rational. Edison’s witness Robert E. Sitkauskas, Manager of the Advanced Metering Infrastructure Technology group since 2006 (3 TR 224), testified that the new meters represent:

. . . proven technology to automatically read, monitor and control meters instead of relying upon manual actions. AMI creates an intelligent grid which is more than “just a reading system” it is a structure for meter reading, outage monitoring, power quality monitoring, remote disconnect/reconnect system load management and distribution asset optimization and design.
[3 TR 226.]

Mr. Sitkauskas also noted that the Commission Staff issued its Report on June 29, 2012, that recommended a cost-based tariff for customers who had concerns about the new meters:

The Commission Staff also recommended that opt-out options are the best solution for customers who have concerns about smart meters and indicated that *ratemaking* for the opt-out provision should be based on cost of service and be accounted for as an *additional charge* to those customers choosing an opt-out or a discount for those customers with smart meters.
[3 TR 229-230; emphasis added.]

In addition to the Commission Staff’s recommendation that the Commission adopt a cost-based tariff to address the concerns of customers who do not want a meter that transmits radio frequencies, Mr. Sitkauskas explained that Edison had filed its application for the new tariff in order to address concerns expressed by some of its customers:

- Q. Why is Detroit Edison offering its customers an opportunity to opt out of having a transmitting AMI Meter at this time?
- A. During the installation of approximately 800,000 meter and modules as mentioned above (through mid-July 2012), DTE had received approximately 1,100 concerns regarding our AMI Meters. Of the customers who have indicated to the Company the cause of their concern, the majority can be summarized as being related to data privacy and health impacts. As these numbers indicate, the overwhelming majority of our customers fully support AMI. However, in response to the small group of concerned customers, and consistent with the recommendation of the Staff in its U-17000 report, Detroit Edison felt it was an

appropriate business practice to provide them with an option to opt out of having a transmitting AMI Meter.
[3 TR 230.]

- ii. The Commission had found in its Order in Case No. U-17000 that some utility customers wanted to have a tariff that would permit them to have a meter with its transmitting function turned off.**

Not only did Edison offer rational reasons for its tariff to be approved, the Commission reasonably relied upon its own findings in its September 11, 2012, Order in Case No. U-17000, a case convened to review issues bearing on the use of the new meters by regulated utilities in Michigan. The Commission noted that its Staff had found an expressed need to have meters without a transmitting function:

2. Opt-out Options

As the Staff pointed out, a small minority of customers has significant concerns about AMI, and for those customers, the Staff recommends that an opt-out option be provided by the electric utilities. The Commission agrees that the investor-owned electric utilities (i.e., Alpena, Consumers, Detroit Edison, I&M, NSP-W, UPPCo, WEPCo, and WPSC) shall make available an opt-out option, based on cost-of-service principles, for their customers if or when the provider elects to implement AMI. The Commission observes that only Consumers and Detroit Edison are currently installing AMI thus, at this point in time, only these providers are affected by this directive. Detroit Edison has already filed a proposed opt-out tariff. *See*, Case No. U-17053. In the case of Consumers, within 60 days of the date of this order, or in Consumers' next general rate case filing, whichever occurs first, the Commission directs the company to include a proposed opt-out tariff. [Order, Case No. U-17000, September 11, 2012, page 5; footnote omitted.]

Therefore, the Commission in its May 15, 2013, Order reasonably relied upon the need expressed by some customers to have a tariff that would permit them to have a meter that did not transmit their usage remotely.

2. The Commission's decision to approve Edison's application for a rate tariff was not arbitrary or capricious because the tariff was cost-based.

As an initial matter as noted above, the Commission's decision is not subject to the substantial evidence test because the Commission was exercising its ratemaking function when it approved Consumers' proposed rate tariff. *Detroit Edison Co v Public Service Comm*, 264 Mich App 462, 471; 691 NW2d 61 (2004). But even applying the substantial evidence test, the Commission's order easily withstands scrutiny. "Substantial evidence' has been defined as evidence which a reasoned mind would accept as sufficient to support a conclusion." *Consumers Power Co v Public Service Comm*, 189 Mich App 151, 187; 472 NW2d 77 (1991). Substantial evidence is more than a scintilla of evidence, but it may be substantially less than a preponderance of the evidence. *DaimlerChrysler Corp v State Tax Comm*, 482 Mich 220, 247; 753 NW2d 605 (2008). One witness's testimony can be substantial—even if there is conflicting evidence—if it is offered by a qualified expert who has a rational basis for his or her views. *Mayor of Lansing v Public Service Comm*, 257 Mich App 1, 20; 666 NW2d 298 (2003), superseded by statute on other grounds as described in *City of Lansing v State*, 275 Mich App 423, 426; 737 NW2d 818 (2007).

Edison's witness, Mr. Sitkauskas explained that the utility proposed to charge customers the costs for the service of having the transmitting function of their meters turned off because other customers should not have to subsidize these customers. He testified:

Q. Why is Detroit Edison charging customers to opt out of having a transmitting AMI Meter?

A. Consistent with several other states who have proposed or adopted Opt Out programs such as California, Nevada and Maine, Detroit Edison is requiring customers to pay the costs associated with their decision to opt out. Detroit Edison developed a fee structure, consistent with those states, which reflect the actual cost of maintaining a non-transmitting AMI meter without causing incremental costs and expenses on the millions of customers not electing to opt out. The Company does not think it is appropriate for all customers to subsidize one segment of customers who request and receive a more expensive level of service. Such a scenario would be unfair and would contradict basic principles of cost causation. This is a voluntary program, thus customers concerned about the additional costs are not required to opt out.

[3 TR 231-232.]

Mr. Sitkauskas further testified that the utility's proposed cost-based rate included a cost for having a meter reader make a "special read" since the utility would not have meter readers in the community going house to house in areas that have the new meters installed. 3 TR 232. Mr. Sitkauskas also testified to the level of costs involved in the tariff charges. 3 TR 232-235; Exhibit A-1.

The Commission Staff's testimony with respect to the rate and the tariff language was adopted by the Commission. Staff presented the testimony and exhibits of Steven Q. McLean, Manager of the Rates and Tariff Section at the Commission. 4 TR 573-579; Exhibits S-1 and S-2. Mr. McLean testified that the utility's application and supporting testimony was consistent with the requirements imposed by the Commission's order in Case No. U-17000 that Consumers Energy Company and Edison file applications for approval of a cost-based opt-out tariff. He testified:

The Staff reviewed the Company's proposal and determined that apart from a few alterations to the Company's tariff and charges, the proposal *is consistent with the September 11, 2012 Commission Order in Case No. U-17000 requiring MPSC-regulated investor owned utilities to propose a cost based option* for residential customers to permit them to choose a non-transmitting meter as opposed to the Company's standard transmitting AMI meter.
[4 TR 577; emphasis added.]

Mr. McLean testified that the utility's cost numbers were reasonable, but that Staff projected a different number of customers that would participate, thus lowering the rate for the service:

- Q. Please describe Staff's alterations to the Company's proposed initial fee of \$87.00 and monthly charge of \$15.00.
- A. The Staff has reviewed the Company's cost estimates and determined that they are based on the Company's experiences and past practices with meter reading and associated functions and are reasonable. Furthermore, the costs are consistent with other jurisdictions. However, Staff recommends that the resulting charges be reduced to reflect a higher projected customer participation rate. The charges that the Company has developed are based on a forecasted participation level of 4,000 customers. This participation level has a direct impact on the charges. Several of the costs associated with allowing residential customers to choose a non-transmitting meter are fixed. These fixed costs are spread to all participating customers. By increasing the forecasted participation level, the cost per customer and resulting charges decrease.
[4 TR 578.]

Mr. McLean further testified that the Commission Staff modified the tariff language as proposed by Consumers to "make clear that the customer is choosing a non-transmitting meter as opposed to a transmitting meter, which the Company's standard meter for residential customers." 4 TR 578.

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The Commission adopted the utility's tariff proposal with the modifications supported by the Commission Staff. Order, Case No. U-17053, May 15, 2013, pages 17-19 and Exhibit A attached to the Order.² Consequently, the Commission-approved rate tariff is fully supported by competent, material, and substantial evidence on the whole record, and the appellant customers have not shown otherwise. The Order should be affirmed.

II. The Commission acted lawfully and reasonably when it affirmed the ALJ's exclusion of testimony related to claims that customers should have the right to choose their own meter due to health concerns.

A. Standard of Review

See Argument I.A.

B. Analysis

Appellant customers' challenge the lawfulness of the Commission's order because the Commission affirmed the ALJ's ruling excluding their evidence because it was not relevant to the limited-issue rate tariff proceeding and was not sponsored by competent witnesses. The Commission acted lawfully and reasonably when it affirmed that ruling.

² The appellant customers claim that the Commission was legally required to approve the opt-out tariff for both residential and business customers. The Commission acted lawfully and reasonably when it declined to adopt a program that, even if it may have thought it to be better, it would have gone beyond the opt-out tariff program proposed by the utility. See *Detroit Edison v PSC*, 221 Mich App 370, 387-388; 562 NW2d 224 (1997).

First, this evidence, if admitted, would constitute an impermissible collateral attack of the Commission's earlier order in Case No. U-17000 where the Commission concluded that any health risks associated with the meters was insignificant and regulated by other federal agencies and that it would consider privacy issues in another Commission docket.³

Second, this evidence was not relevant to the determination of a cost-based rate. It was not relevant because the rate tariff proceeding's purpose was to set a cost-based rate for customers who volunteered to use this tariff to have the transmitting function of their meter turned off. It was not a proceeding for a ratepayer to challenge the managerial discretion of the utility to purchase meters designed to meet the needs of its customers, a subject that would be the province of the Commission to do in a rate case by an appropriate rate adjustment. Further, none of the offered testimony was offered by any witness who had even a colorable claim to possess the scientific expertise to offer that testimony.

Third, even if the evidence were relevant, which the Commission denies, the Commission had already received numerous comments submitted in Case No. U-17000 on these subjects, and the Commission was not required to "re-invent the wheel" by hearing all that information again.

³ It is also noteworthy that it is not the Commission, but the Federal Communications Commission that is responsible for providing licenses for radio frequency (RF) emissions. FCC regulations "cover matters relating to public health and safety and have been designed to ensure that the levels of RF emissions that consumers are exposed to are not harmful." Staff Report, Case No. U-17000, June 29, 2012, page 8. 47 CFR 1.1307(b), 1.1310, 2.1091, and 2.1093.

Finally, the appellant customers have made no showing that the Commission's approval of the cost-based tariff for those customers who volunteered to take service under it would have been different had their evidence been admitted. In essence, those customers are arguing that the Commission is legally required to permit them to have a meter of their choice.

1. The appellant customers' attack on the Commission's May 15, 2013, rate order constitutes an impermissible collateral attack on the Commission's Order in Case No. U-17000.

In essence, the appellant customers are challenging the Commission's Order in Case No. U-17000 that found the health risks associated with the new meters were insignificant, that established a separate proceeding to consider privacy issues, and that ordered that all other issues related to the prudence of the new meters should be done on a case-by-case basis in individual utility base rate cases.

Consequently, the customers' arguments in this case constitute an impermissible collateral attack on the Commission's U-17000 Order issued on September 11, 2012. That Order reviewed the Staff Report and found that it was "thoughtful and comprehensive," and the Commission ordered that the Report was accepted. Order, Case No. U-17000, September 11, 2012, pages 4 and 6. The Commission described the Report's findings which it accepted as follows:

The Staff concluded that AMI is *rapidly becoming the primary replacement meter* to existing electromechanical meters because the new meters are *more accurate*, they provide *enhanced outage response*, and AMI offers opportunities for customer energy management. Furthermore, *the electromechanical meter is obsolete and no longer in production*. Nevertheless, the Staff recognized that investments in

AMI and other smart grid components should be subject to ongoing review in contested rate case proceedings. The Staff added that some customers will continue to have concerns about AMI and *therefore recommended that the utilities make available a cost-based, opt-out option for these customers.*

[Order at page 3; emphasis added.]

The Commission accepted the Commission's Report with respect to health concerns. The Order described the Staff Report as follows:

The Staff also reported that "after careful review of the available literature and studies, the Staff has determined that the *health risk* from the installation and operation of metering systems using radio transmitters is *insignificant*. In addition, *the appropriate federal health and safety regulations provide assurance that smart meters represent a safe technology.*" Staff Report, p 2.

[Order at page 3; emphasis added.]

The Legislature and the Michigan Supreme Court have recognized the need for finality in Commission proceedings. *CMS Energy Corp v Attorney General*, 190 Mich App 220, 229; 475 NW2d 451 (1991) (citing *Building Owners & Managers Ass'n of Metropolitan Detroit v Public Service Comm*, 424 Mich 494, 507; 383 NW2d 72 (1986)). MCL 462.26 is the statute specifically applicable to review of final MPSC orders. *Attorney General v PSC*, 237 Mich App 27, 40; 602 NW2d 207 (1999). An appeal from a Commission order must be consistent with the statutory framework and be filed within 30 days of issuance of the order. MCL 462.26(1).

In addition to the Legislature's guidance in MCL 462.26, this Court has defined a collateral attack as occurring "whenever a challenge is made to a judgment in any manner other than through a direct appeal." *People v Howard*, 212 Mich App 366, 369; 538 NW2d 44 (1995) (citing *People v Ingram*, 439 Mich 288, 291; 484 NW2d 241 (1992)). Further, failure to file an appeal from the original

judgment, “pursuant to MCR 7.205(A) or (F), precludes a collateral attack on the merits of that decision.” *Kosch v Kosch*, 233 Mich App 346, 353; 592 NW2d 434 (1999). Lastly, when evaluating the impermissibility of a collateral attack, it is important to determine the finality of an order or judgment. A judgment is final “when all appeals have been exhausted or when the time available for an appeal has passed.” *Leahy v Orion Twp*, 269 Mich App 527, 530; 711 NW2d 438 (2006).

Thus, appellant customers’ arguments in this appeal should be rejected as they constitute an impermissible collateral attack on the final Commission order in Case No. U-17000, and this Court lacks jurisdiction to review the lawfulness of that order.

2. The Commission properly affirmed the ALJ’s ruling excluding evidence because those issues were not relevant to a determination of a cost-based rate, nor was it offered by a qualified expert even if it was relevant.

The appellant customers’ claim that the Commission’s Order approving the opt-out rate tariff was unlawful because the ALJ ruled that the testimony and exhibits that they sought to admit into evidence was inadmissible because it was irrelevant and not offered by a witness with the proper expertise to offer the opinions contained therein. The ALJ found that the Commission’s Order in Case No. U-17000 set the scope for the hearing and described his rulings as follows:

In ruling on the Motions, the certain controlling legal principles were noted. 2 TR. 180-182. In conjunction with those principles, *the Commission’s September 11, 2012, Order in Case No. U-17000 was determined to set the scope of this proceeding*. Specifically, the provision on page 5 that directed that the Company “shall make available an opt-out option, based on cost-of-service principles....”

Consistent with that language, it was held the scope of this case was “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., p 183. Concomitantly, “[a]ny evidence or offer of evidence that goes beyond that issue, including the purported health effects of AMI meters, is irrelevant and thus inadmissible.” Id. Finally, it was determined the challenged testimony and exhibits included hearsay and opinion by non-experts. For these reasons, the Motions to Strike were granted. During the hearing, this ruling was applied to evidentiary objections based on relevancy. [Proposal for Decision, page 5; emphasis added.]

The Commission found the PFD to be well-reasoned and thorough and adopted its findings and recommendations. Order, Case No. U-17053, May 15, 2013, page 18. The Commission held that this case was only a case to determine a plan to provide a tariff to customers who did not want a transmitting meter and that the reasonableness of the utility’s meters would continue to be addressed in base rate cases. The Commission held:

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.*

[Order at page 18; emphasis added.]

The Commission, in determining that the testimony offered was beyond the scope of the proceeding, relied upon its earlier Order in Case No. U-17000. In reviewing the Commission's affirmance of the ALJ's ruling, this Court should afford substantial deference to this interpretation because the Commission is interpreting its own order. *In re MCI Complaint*, 240 Mich App 292, 303; 612 NW2d 826 (2000); *ABATE v Public Service Comm*, 219 Mich App 653, 661-662; 557 NW2d 918 (1996); and *Michigan Gas Utilities v Public Service Comm*, 200 Mich App 576, 582; 505 NW2d 27 (1993). Therefore, the Commission acted reasonably when it concluded that health concerns about the type of meter the utility was using to measure usage and privacy issues were beyond the scope of the hearing, and thus, were irrelevant. The Commission intended that this proceeding would be limited to the narrow question of determining a cost-based rate for customers who *volunteered* to take service under this tariff.

Furthermore, the Commission's affirmance of the ALJ's rulings was reasonable because all of the testimony offered to show that the meters may cause health or privacy problems was offered by witnesses who did not possess the requisite expertise to provide testimony regarding such medical and scientific conclusions. See *Leavesly v City of Detroit*, 96 Mich App 92, 94; 292 NW2d 491 (1980). While the witnesses may testify as to their symptoms they did not possess

the appropriate credentials to offer this opinion testimony. They are lay witnesses who may not offer opinion testimony or rely upon hearsay to support their assertions. MRE 701 and 702. The Commission's decision to affirm the ALJ's ruling was reasonable.

In sum, the Commission possesses the discretion to determine the relevant evidence in a proceeding. See *In re Michigan Consolidated Gas Company's Compliance with 2008 PA 286 and 295*, 294 Mich App 119, 138; 818 NW2d 354 (2011) ("Thus the PSC retains the ability to narrow the issues in rate optimization plan proceedings, and the relevant evidence, accordingly.")

3. **Even if the evidence were relevant and did not constitute hearsay and opinion testimony that must be offered by an expert, which the Commission denies, the Commission had already considered similar information in Case No. U-17000, and the Commission was not required to "re-invent the wheel" by reviewing all that information again.**

Arguments made by the appellant customers in this appeal, that is, that the Commission is legally required to allow them to have a meter of their choice because the utility-selected meters cause them health problems, was rejected by the Commission in Case No. U-17000. Although the doctrine of *res judicata* does not strictly apply in legislative ratemaking proceedings, the Commission is not required to completely re-litigate issues that it has previously decided in earlier cases. *Pennwalt Corp v Public Service Comm*, 166 Mich App 1, 9; 420 NW2d 156 (1988). In *Pennwalt*, this Court first articulated this principle:

Since ratemaking is a legislative, rather than a judicial, function, the administrative determination made by the commission in setting rates is not “adjudicatory in nature,” as required by *Senior Accountants*. Thus, res judicata and collateral estoppel cannot apply in the pure sense. However, this does not mean that the question of the reasonableness of the costs of the wastewater treatment facility had to be completely relitigated in case number U-6949. The precise question was litigated in case number U-6488, where the commission found the costs to be reasonable. *To have the same proofs, exhibits, and testimony repeated would be a waste of the commission’s resources. Rather, we feel that placing the burden on plaintiff to establish by new evidence or by evidence of a change in circumstances that the costs were unreasonable adequately balances the competing considerations of administrative economy and allowing plaintiff the chance to challenge the rate increase.* [Pennwalt, 166 Mich App at 9; emphasis added.]

Similarly, in the case of *Colony Park Apartments v Public Service Commission*, 155 Mich App 134; 399 NW2d 32 (1985), this Court affirmed the lawfulness of a Commission order that declined to permit the reexamination of a rate structure question decided in a previous case. Relying upon an earlier decision, *Attorney General v Public Service Comm #1*, 133 Mich App 719; 349 NW2d 539 (1984), where the Commission had approved a procedure for yearly adjustments of rates to reflect changes in the CPI Index, this Court said that the Commission was not required to “re-invent the wheel” by reconsidering its prior orders. *Colony Park* at 138-140.

This Court has applied these principles since *Pennwalt*. This Court found that issues fully decided in earlier Commission proceedings need not be completely relitigated in later proceedings unless the party wishing to do so establishes by new evidence or a showing of changed circumstances that the earlier result is

unreasonable. See *In re Application of Consumers Energy Co for Rate Increase*, 291 Mich App 106, 122; 804 NW2d 574 (2010).

Hence, under *Pennwalt*, the appellant customers bear the burden of showing new evidence or evidence of a change in circumstances showing that the Commission's earlier findings were in error, and they have failed to do so. The Commission lawfully and reasonably declined to expand the scope of this case beyond the question of setting a cost-based rate for those customers who wanted to have the transmitting function of their meters turned off, and declined to hear the proffered testimony that was duplicative of the comments filed in U-17000.

4. The Commission Order declining to admit the appellant customers' proffered evidence even if error, does not constitute grounds for finding the rate order to be unlawful.

Finally, the appellant customers have made no showing that the Commission's Order approving the cost-based tariff would have been any different had their testimony been admitted. The issues involved in the case were what would be an appropriate rate to charge a customer who wanted to volunteer to take service under the tariff. The issue was not whether a customer should be able to dictate to the utility what type of meters the utility should use to measure the customer's usage. Further, the appellant customers do not discuss how the Commission would have decided this tariff case any differently had the testimony been before it on the record.

Therefore, the Commission's affirmance of the ALJ's ruling was not prejudicial, and the Commission Order may not be found to be unlawful on the ground that the evidence was excluded. See *In re Application of Indiana Michigan Power Co v Public Service Comm*, 275 Mich App 369, 376; 738 NW2d 289 (2007).

III. The Commission properly rejected the appellant customers' claims that the approval of the rate tariff violated the American Disabilities Act and the Fourth Amendment because the Commission only approved a rate tariff and did not offer any service or program or go into any home.

A. Standard of Review

See Argument I.A.

B. Analysis

1. The Americans with Disabilities Act, 42 USC 12101-12213, is inapplicable to setting rates for MPSC-regulated utilities.

In its rate order, the Commission found the PFD to be "well-reasoned and thorough" and adopted its findings and recommendations. Order, Case No. U-17053, May 15, 2013, page 18. The ALJ found that any question regarding a violation of the ADA was irrelevant because this case had a limited purpose, that is, setting a cost-based rate for customers who wanted to volunteer to have their meter transmitting function turned off. He found:

Numerous Intervenors argue AMI meters and/or the Opt-Out Program are prohibited under federal law, such as the ADA, and/or the Michigan Consumer Protection Act, MCL 445.901, *et seq.* The Company notes the arguments concerning the ADA are legally flawed. See Reply Brief, pp 15-16. Further, the Commission's jurisdiction over the Company, in particular the Opt-Out Program, seemingly

implicates the Consumer Protection Act exemption of “[a] transaction or conduct specifically authorized under laws administered by a regulatory board...acting under statutory authority of this state....” MCL 445.904(1)(a). *Irrespective of the relative merits of their arguments concerning federal and state law, 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 at page 22; emphasis added.]

And, even if the question of whether customers should be able to select their own meter were relevant to this limited-purpose proceeding, which the Commission denies to be true, the ADA is not applicable to Commission rate orders. The Commission set rates at which a customer can obtain utility service from an MPSC-regulated utility such as Edison, and that is the purpose of the Commission’s function here. Title II of the ADA applies to services provided by State and local governments to those with certain disabilities; here the service is being provided by a private company, the Detroit Edison Company (now known as DTE Electric Company). Further, Title III does not apply to a rate order as it applies to places of public accommodation, and a rate order is not a place of public accommodation. Therefore, the ADA is inapplicable to the Commission rate order.⁴

Furthermore, the appellant customers (Kurtz, Edwards, and Panzica-Glapa) have failed to cite any authority in support of the proposition that the ADA is applicable to a rate-setting body such as the Commission. This Court will not reach an issue if a party has failed to adequately brief that issue. *In re Application of*

⁴ Further, on page 48 of their brief, appellant customers, Kurtz, Edwards, and Panzica-Glapa only allege that the Title II of the ADA is applicable to the Commission so it is not possible that the Commission Order could be a violation of Title III according to the customers’ own admission.

Indiana Michigan Power Co v Public Service Comm, 275 Mich App 369, 276; 738 NW2d 289 (2007).

And, in any event, even if this Court were to find that the ADA is applicable to rate orders, the appellant customers have failed to include competent scientific evidence to demonstrate that the minimal RF emissions from a non-transmitting meter causes them physical harm.

For these reasons, the Commission urges this Court to reject the appellant customers' claims that the rate order was unlawful because it violated the ADA.⁵

2. The Fourth Amendment of the U.S. Constitution is inapplicable to setting rates for MPSC-regulated utility companies.

In addition to claiming that the Commission Order approving the opt-out tariff violates the ADA, the Cusumanos' claim that the tariff violates their right to be free from an unreasonable search and seizure by the government under the US Const Am IV. In support of that notion, they cite two U.S. Supreme Court cases, one involving police officers who affixed a GPS devise on an individual's car, and one involving the use by police of a thermal imaging device on an individual's home. They do not cite any authority for the proposition that a public utility rate governing charges for reading a meter can violate their Fourth Amendment rights.

⁵ The appellant customers also claim that the Commission's rate order violates a similar statute, the Persons With Disabilities Civil Rights Act, MCL 37.1101, *et seq*. This statute is inapplicable to the Commission's rate order for the same reason as is the ADA because by issuing the rate order the Commission is not providing any public service.

Their only argument is that the federal government provided financial incentives for utilities to buy the new meters and that:

It can scarce be doubted in today's world that law enforcement officers, without any need to obtain a warrant, will freely access the data once the utility has collected it and stored it in a database. Therefore assurances that the data will be encrypted to protect customer's privacy are meaningless in the context of the Fourth Amendment issue.

[Cusumonos' brief, page 29.]

The possibility that the government may someday seek to obtain the electric usage of a customer without a proper warrant (which, of course, the government could seek to do presently regardless of the existence of meters capable of remote readings), does not make Commission approval of a rate tariff, an action of the government violating the Fourth Amendment. The Cusumanos have merely cited to the Fourth Amendment without any other analysis showing that measuring customer usage through the use of a meter constitutes an unreasonable search and seizure by the government. Furthermore, the Cusumanos are seeking to overturn the rate order by alleging a violation that has not yet occurred. Neither of these arguments supports a finding by this Court that the Commission has violated the Fourth Amendment by approving the rate tariff. See *In re Michigan Consolidated Gas Company's Compliance with 2008 PA 286 and 295*, 294 Mich App 119, 139-140; 818 NW2d 354 (2011).

The Cusamanos further argue that the Fourth Amendment is violated by the rate order because subscribing to electric service from Edison has an element of compulsion to it. This argument ignores the fact that the Commission has the statutory obligation to set the rates that Detroit Edison may charge its customers.

It also ignores the fact that lawfully-enacted regulations impose the obligation upon the utility to measure its customers' usage and to own and maintain the equipment necessary to measure usage. As the ALJ found (and the Commission adopted in its May 15, 2013, Order at page 18):

The final controlling legal authority is the Consumers Standards and Billing Practices administrative rules promulgated by the Commission, which have the force and effect of law. See *Clonlara Inc. v State Board of Education*, 442 Mich 230, 238 (1993). As noted by Staff, a utility is responsible to accurately measure and bill usage, and to that end is responsible to provide and maintain the equipment that measures usage. R 460.116(1)-(3); R 460.122; R 460.123. To ascertain usage, a utility must undertake an actual meter reading, unless it cannot be "obtained by any reasonable or applicable method described in R 460.102." R 460.113(1). A customer may read their meters and report the usage. R 460.102(a) & R 460.115. However, customer read does not diminish a utility's ability to read a meter: "Notwithstanding the provisions of this rule, a utility company representative may read meters on a regular basis." R 460.115.
[PFD at pages 21-22.]

If, then, the Cusumanos are arguing that the utility violates the Fourth Amendment by measuring customer usage that may be improperly disseminated to the government at some point, the Cusumanos must address their argument to the Legislature and ask for enactment of a law that prohibits the utility from measuring their usage and only allows imposition of charges based on something other than usage. Current law does not permit this, but instead requires the utility to provide and maintain equipment to measure customer usage and to measure usage accurately.

CONCLUSION AND RELIEF REQUESTED

This Court should affirm the Commission's May 15, 2013 Order because it responded to the articulated wishes of some customers in Case No. U-17000, that is an opportunity to have the utility alter its meters to disable the radio transmitting function for an individual customer upon request of that customer. The Commission approved a cost-based rate for that special service to ensure that the customers at large were not being asked to subsidize the services to this small group of customers who, for whatever reason, did not want their meters to transmit their usage to the utility remotely. And these customers wanted to have the Commission reconsider the question of whether remotely read meters damage health, even though the public had been afforded the opportunity to have the Commission consider this in Case No. U-17000.

For the reasons stated in this brief and the Commission's Order, the Commission respectfully requests that this Court affirm its May 15, 2013 order.

Respectfully submitted,
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Dated: December 2, 2013
MCA 316728 Brief on Appeal

ATTACHMENT A

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STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of)	
THE DETROIT EDISON COMPANY)	
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.

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The ALJ ruled on several motions to strike testimony and exhibits on January 8, 2013. 2 Tr 183-196.¹ 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

¹ 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.²

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

² 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

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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. 3.³ 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.

³ 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.

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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, Meltzer⁴ 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

⁴ 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.

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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:

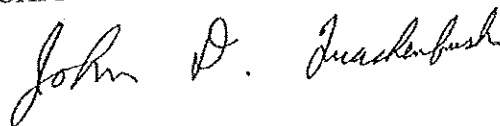
A. DTE Electric Company f/k/a The Detroit Edison Company's application for authority to implement an advanced metering infrastructure non-transmitting meter provision is approved.

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



John D. Quackenbush, Chairman

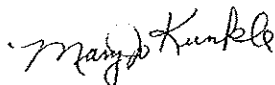


Orjiakor N. Isiogu, Commissioner



Greg R. White, Commissioner

By its action of May 15, 2013.



Mary Jo Kunkle, Executive Secretary

M.P.S.C. No. 10 - Electric
The Detroit Edison Company

(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)

Issued _____, 2013

D. G. Brudzynski
Vice President
Regulatory Affairs

Detroit, Michigan

Effective for service rendered on
and after _____, 2013

Issued under authority of the
Michigan Public Service Commission
dated _____, 2013
In Case No. U-17053

ATTACHMENT B

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STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter, on the Commission's own motion,)
to review issues bearing on the deployment of smart)
meters by regulated electric utilities in Michigan.)
_____)

Case No. U-17000

At the January 12, 2012 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 OPENING DOCKET

In the past several months, the Commission has become aware of concern on the part of some individuals in this state and an increasing number of municipal officials regarding the deployment of smart meters by electric utilities operating in Michigan. During the Commission's annual consumer forums conducted at various locations during the fall of 2011, individual Commissioners on several occasions encountered vocal opponents to the deployment of smart meters in their communities. More recently, through direct submissions, media reports, and by other means, the Commission has learned that the elected governing bodies of at least nine local communities across Michigan have by resolution implored the Commission to either (1) make information about smart meters available to the public, (2) investigate the safety of the physical attachment of a smart meter to a residential dwelling house, (3) halt ongoing efforts by regulated electric utilities to deploy smart meters throughout their service territories, or (4) force these electric utilities to

allow concerned customers to "opt out" of having a smart meter attached to her or his own dwelling house.¹

In hopes of increasing the Commission's and the public's understanding of smart meters, the Commission opens this docket for the purpose of addressing these concerns to the degree possible in light of the limits of the Commission's statutory authority and expertise.

Toward this end, the Commission directs all regulated electric utilities to submit information in this docket regarding the following topics: (1) The electric utility's existing plans for the deployment of smart meters in its service territory; (2) The estimated cost of deploying smart meters throughout its service territory and any sources of funding; (3) An estimate of the savings to be achieved by the deployment of smart meters; (4) An explanation of any other non-monetary benefits that might be realized from the deployment of smart meters; (5) Any scientific information known to the electric utility that bears on the safety of the smart meters to be deployed by that utility; (6) An explanation of the type of information that will be gathered by the electric utility through the use of smart meters; (7) An explanation of the steps that the electric utility intends to take to safeguard the privacy of the customer information so gathered; (8) Whether the electric utility intends to allow customers to opt out of having a smart meter; and 9) How the electric utility intends to recover the cost of an opt out program if one will exist.

The electric utility comments required by this order shall be submitted through the Commission's standard e-file system. Wherever possible, supplemental documentation may be referenced in the comments via the use of hyperlinks. All comments shall be submitted by 5:00 p.m. on March 16, 2012.

¹All such resolutions known to the Michigan Public Service Commission at this time are attached to this order.

After the submission of the information by the regulated electric utilities, all interested persons shall have until April 16, 2012 to examine those comments. Written and electronic comments by interested persons may be filed with the Commission, but must be received no later than 5:00 p.m. on April 16, 2012. Written comments should be sent to: Executive Secretary, Michigan Public Service Commission, P.O. Box 30221, Lansing, Michigan 48909. Electronic comments may be emailed to: mpscedockets@michigan.gov. Any person requiring assistance prior to filing comments, may contact Commission Staff at (517) 241-6180. All comments should reference Case No. U-17000. Comments and other documents received in this proceeding will become public information, posted on the Commission's website, and subject to disclosure.

Following the deadline for the submission of comments by members of the general public, the Commission Staff (Staff) shall prepare a report for the Commission's consideration. The Staff's report shall be given to the Commission and filed in this docket by 5:00 p.m. on June 29, 2012. In its report, the Staff shall summarize the filings in this docket, independently review the literature regarding smart meters, and identify any developments in other jurisdictions pertinent to this investigation. At the end of its report, the Staff shall make its recommendations, including suggestions regarding how best for the Commission to implement the Staff's recommendations.

THEREFORE, IT IS ORDERED that:

A. The Commission's Executive Secretary shall serve a copy of this order on all regulated electric utilities in this state.

B. Alpena Power Company, Consumers Energy Company, The Detroit Edison Company, Indiana Michigan Power Company, Northern States Power Company-Wisconsin, Upper Peninsula Power Company, Wisconsin Electric Power Company, Wisconsin Public Service Corporation, Alger Delta Cooperative Electric Association, Cherryland Electric Cooperative, Cloverland

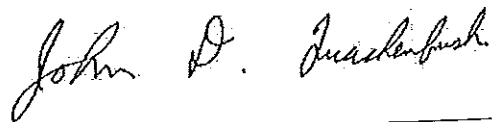
Electric Cooperative, Great Lakes Energy Cooperative, Midwest Energy Cooperative, Ontonagon County Rural Electrification Association, Presque Isle Electric & Gas Co-op, Thumb Electric Cooperative, and Tri-County Electric Cooperative shall file comments as described in this order by 5:00 p.m. on March 16, 2012.

C. Interested persons shall have until 5:00 p.m. on April 16, 2012 to file comments in this docket as described in this order.

D. The Commission Staff shall file a report and recommendations in this docket as described in this order by 5:00 p.m. on June 29, 2012.

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

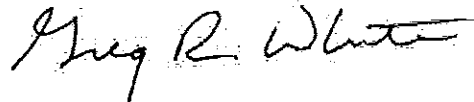
MICHIGAN PUBLIC SERVICE COMMISSION



John D. Quackenbush, Chairman

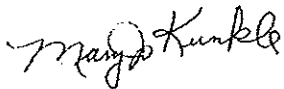


Orjiakor N. Isiogu, Commissioner



Greg R. White, Commissioner

By its action of January 12, 2012.



Mary Jo Kunkle, Executive Secretary

RESOLUTION NO. 11-018
CHARTER TOWNSHIP OF BRIGHTON

RESOLUTION DIRECTED TO THE MICHIGAN PUBLIC SERVICE COMMISSION
REGARDING SMART METERS

At the Regular Meeting of the Brighton Township Board of Trustees of the Charter Township of Brighton, Livingston County, Michigan, held in the Brighton Township Board Room, located at 4363 Buno Road, Brighton, MI 48114 at 7:00 p.m., November 21, 2011.

WHEREAS, DTE Energy and other utilities are installing electric meters, also known as "Smart Meters," which electronically transmit specific usage data via radio frequency network to the utility company identifying the amount of energy consumed and which device is consuming energy, and enables the utility company to remotely shut off/interrupt service, and

WHEREAS, Via Smart Meter technology, the utility has the power to nonconsensual interrupt utility service to all or selected devices within each consumers' home, and

WHEREAS, the Michigan Public Service Commission ("MPSC") has the authority to regulate the utility companies and Smart Meters, and

WHEREAS, the Charter Township of Brighton Board of Trustees has determined that the health and safety of Brighton Township residents must be protected and that the responsibility for any potential negative health effects and privacy concerns must be addressed by the MPSC, and

WHEREAS, There is no right for the consumer to "opt out" of the Smart Meter installation, and

WHEREAS, There is a concern about the invasion of privacy and the proliferation of data accumulated on private citizens and the security of such private data, and

WHEREAS, The Charter Township of Brighton Board of Trustees has no jurisdiction over utility companies; such jurisdiction resides with the Michigan Public Service Commission.

NOW, THEREFORE, BE IT RESOLVED that the Charter Township of Brighton Board of Trustees requests the following actions be taken by the MPSC which will help protect the health and welfare of its residents:

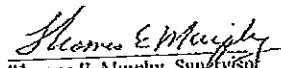
- 1) That the MPSC require public utilities to allow consumers an opt-out option for Smart Meters so they can opt out of being exposed to Smart Meters via the installation of such units onto their residency;
- 2) That the MPSC address the concerns related to the potential health hazards associated with the installation of Smart Meters; and
- 3) That the MPSC make available, and easily accessible, any and all information it has gathered or received on Smart Meters

AYES: C. Doughty, L. Thois, A. Bollin, J. Rogers, M. Slaton, J. Kovitz, T. Murphy

NAYES: None

ABSENT: None

The Resolution was declared adopted.



Thomas R. Murphy, Supervisor


Ann M. Bollin, CMC, Clerk

Certification

I, Ann M. Bollin, duly elected Clerk, hereby certify that the foregoing is a true and complete copy of the Resolution adopted by the Township Board of the Charter Township of Brighton, 4363 Buno Road, Brighton, Michigan, at a regular meeting held on November 21, 2011, and public notice of said meeting was given and minutes of said meeting were kept and will be or have been made available as required.

In witness hereof, I have hereto affixed my official seal this 28th day of November, 2011.


Ann M. Bollin, CMC, Clerk

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DEC 14 2011
Service Quality Division

Charter Township of Shelby

Terri Kowal, MMC
Clerk

52700 Van Dyke
Shelby Township, MI 48316-3572

Phone: (586) 731-5102
Fax: (586) 726-7227
TDD: (586) 726-2731
E-mail: tkowal@shelbywp.org

August 17, 2011

Michigan Public Service Commission
P.O. Box 30221
Lansing, MI 48909

Re: Resolution to Michigan Public Services Commission regarding DTE
Energy Smart Meters

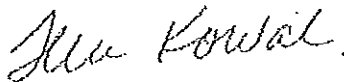
Dear Sir/Madam:

Please be advised that at the regular meeting of the Board of Trustees held on
Tuesday, August 16, 2011, the following motion was made:

MOTION by Filar, supported by Kowal, to adopt the Resolution to
Michigan Public Services Commission expressing Shelby Township Board
of Trustees' concern with the installation of DTE Energy Smart Meters and
a request to explore the health effects, as presented. Also, the Michigan
Public Services Commission is hereby requested to perform a careful
analysis of the potential privacy issues regarding available and future
"smart meter" technology.

Motion carried.

Sincerely,



Terri Kowal, MMC
Township Clerk

/ca

c: Honorable Jack Brandenburg
Honorable Peter Lund

Richard H. Stalhakis
Supervisor

Terri Kowal
Clerk

Paul Vlar
Treasurer

Paula C. Filar
Trustee

Michael Flynn
Trustee

Lisa Manzella
Trustee

Douglas C. Wozniak
Trustee

RESOLUTION

RESOLUTION TO MICHIGAN PUBLIC SERVICES COMMISSION REGARDING DTE ENERGY SMART METERS -- ADOPTED

Motion by Paula Filar, seconded by Terri Kowal: To adopt the following resolution to the Michigan Public Service Commission expressing Shelby Township Board of Trustees' concern with the installation of DTE Energy Smart Meters and a request to explore the health and safety effects:

TOWNSHIP OF SHELBY MACOMB COUNTY, MICHIGAN

At a Regular Meeting of the Charter Township of Shelby Board of Trustees, Macomb County, Michigan, held at 52700 Van Dyke, Shelby Township, Michigan, at 7:00 p.m. Eastern Daylight Time, on the 16th day of August, 2011.

The following resolution offered by Paula Filar and supported by Terri Kowal.

WHEREAS, DTE Energy has begun the installation of new meters to customers in the Metro Detroit area communities, replacing existing meters with so-called "Smart meters," that is, electric meters which will broadcast information to the utility company using radio frequencies; and

WHEREAS, DTE Energy has indicated that it will, at some point, begin installation of Smart meters in Shelby Township; and

WHEREAS, Smart meters provide a benefit to utilities by allowing remote meter reading by, among other things, eliminating the need for someone to go onto each utility customer's property to read a meter and possibly offering residents lower electric rates at non-peak times; and

WHEREAS, a significant number of people, including residents of the Charter Township of Shelby, have expressed their concerns to this Board about potential health effects of the Smart meters, as well as other concerns regarding their universal deployment in the Township; and

WHEREAS, although the Township Board is informed that it is without jurisdiction to directly regulate Smart meters, exclusive jurisdiction over them residing with the Michigan Public Service Commission ("MPSC"), the Township Board believes it is appropriate to assist its citizens in obtaining consideration of their issues by requesting careful review thereof by the MPSC.

NOW, THEREFORE, BE IT RESOLVED that:

1. The Michigan Public Service Commission is hereby requested to perform a careful analysis of the potential health and safety effects which may result from the universal installation of Smart meters for electric and gas utilities.
2. The MPSC is further requested to consider delaying the deployment of Smart meters pending a conclusion by the MPSC, following careful study and review that such meters are safe and will not have short-term or long-term negative consequences to the health of the citizens of Shelby Township and the State of Michigan generally.
3. The MPSC is asked to carefully examine other concerns regarding the deployment of Smart meters as may be submitted to them by residents of Shelby Township and the State of Michigan, so as to insure

that all aspects of the issues are considered before final determination is made, with respect to such deployment.

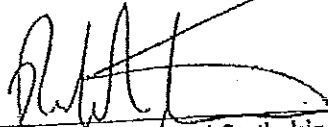
4. The MPSC is further asked to consider requiring public utilities to allow customers with appropriate medical documentation of their individualized risks to opt out of Smart meter installation at their homes.
5. The Michigan Public Service Commission is hereby requested to perform a careful analysis of the potential privacy issues regarding available and future "Smart meter" technology.
6. All resolutions inconsistent with the foregoing resolution be and the same hereby are repealed, to the extent of such inconsistency.

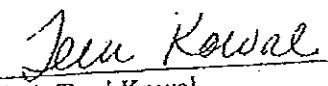
AYES: Filar, Kowal, Manzella, Stathakis, Viar, Wozniak, Flynn

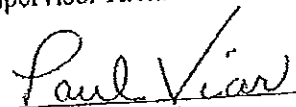
NAYS: None

ABSENT: None

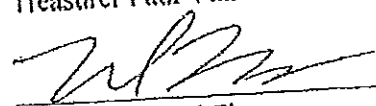
RESOLUTION DECLARED ADOPTED.

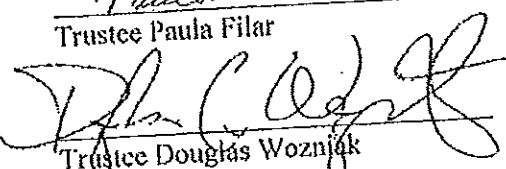

Supervisor Richard Stathakis

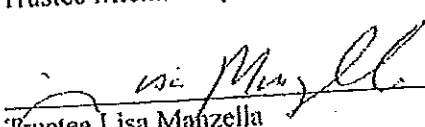

Clerk Terri Kowal


Treasurer Paul Viar



Trustee Paula Filar


Trustee Michael Flynn


Trustee Douglas Wozniak


Trustee Lisa Manzella

I hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the Charter Township of Shelby, County of Macomb, State of Michigan, at a Regular Meeting held on August 16, 2011, and that said meeting was conducted and public notice of said meeting was given, pursuant to and in full compliance with the Open Meetings Act being Act 267, Public Acts of 1976, and that the minutes of said meeting were kept and will be or have been made available, as required by said Act.


Terri Kowal MMC, Shelby Township Clerk



City of Oak Park

"The Family City"

Tonni L. Bartholomew, City Clerk

Mayor
Gerald E. Nafaly
Mayor Pro Tem
Michael M. Sellgson
Council Members
Angela Diggs Jackson
Paul H. Levine
Emile Duplessis

June 27, 2010

Michigan Public Service Commission
6545 Mercantile Way Ste. 7
Lansing, MI 48911-5984

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M.P.S.C.
JUL 01 2011
Service Quality Division

The attached resolution was adopted by Oak Park City Council at the Regular City Council Meeting of June 20, 2011.

If you have any questions regarding this matter, please feel free to call my office.

Sincerely,

Tonni L. Bartholomew, MMC
City Clerk



City of Oak Park

"The Family City"

Tonni L. Bartholomew, City Clerk

Mayor
Gerald E. Naftaly
Mayor Pro Tem
Michael M. Sellgson
Council Members
Angela Diggs Jackson
Paul H. Levine
Emile Duplessis

RESOLUTION

CM-06-178-11

RESOLUTION TO MICHIGAN PUBLIC SERVICE COMMISSION REGARDING DTE ENERGY SMART METERS - ADOPTED

Motion by Jackson, seconded by Duplessis, CARRIED UNANIMOUSLY: To adopt the following resolution to the Michigan Public Service Commission expressing Council's concern with the installation of DTE Energy Smart Meters and a request to explore the health and safety effects:

CITY OF OAK PARK OAKLAND COUNTY, MICHIGAN

At a Regular Meeting of the City Council of the City of Oak Park, Oakland County, Michigan, held in the Council Chambers located at 13600 Oak Park Boulevard, Oak Park, Michigan 48237 at 7:30 P.M. Eastern Daylight Time, on the 20th day of June, 2011

The meeting was called to order by: Mayor Gerald Naftaly

Present: Mayor Naftaly, Mayor Pro Tem Sellgson, Council Member Duplessis, Council Member Jackson, Council Member Levine, City Manager Fox, City Clerk Bartholomew, City Attorney Carlson.

Absent: None.

The following resolution offered by Jackson and seconded by Duplessis.

WHEREAS, DTE Energy has begun the installation of new meters to customers in the City of Oak Park, replacing existing meters with so-called "smart meters", that is, electric meters which will broadcast information to the utility company using radio frequencies; and

WHEREAS, Smart meters provide a benefit to utilities by allowing remote meter reading, eliminating the need for someone to go onto each utility customer's property to read a meter; and

WHEREAS, A significant number of persons, including residents of the City of Oak Park, have expressed their concerns to this Council about potential health effects of the smart meters, as well as other concerns regarding their universal deployment in the City; and

WHEREAS, Although the Council is informed that it is without jurisdiction to directly regulate smart meters, exclusive jurisdiction over them residing with the Michigan Public Service Commission ("MPSC"), the Council believes it is appropriate to assist its citizens in obtaining consideration of their issues by requesting careful review thereof by the MPSC.

NOW, THEREFORE, BE IT RESOLVED that:

1. The Michigan Public Commission is hereby requested to perform a careful analysis of the potential health and safety effects which may result from the universal installation of smart meters for electric and gas utilities.
2. The MPSC is further requested to consider delaying the deployment of smart meters pending a conclusion by the MPSC, following careful study and review, that such meters are safe and will not have short-term or long-term negative consequences to the health of the citizens of Oak Park and the State of Michigan generally.
3. The MPSC is asked to carefully examine other concerns regarding the deployment of smart meters as may be submitted to them by residents of Oak Park and the State of Michigan, so as to insure that all aspects of the issues are considered before final determination is made with respect to such deployment.
4. The MPSC is further asked to consider requiring public utilities to allow customers with appropriate medical documentation of their individualized risks to opt out of smart meter installation at their homes.
5. All resolutions inconsistent with the foregoing resolution be and the same hereby are repealed to the extent of such inconsistency.

AYES: Seligson, Duplessis, Jackson, Levine, Naftaly
NAYS: None
ABSENT: None

RESOLUTION DECLARED ADOPTED.


Tonni L. Bartholomew, City Clerk

I hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the City of Oak Park, County of Oakland, State of Michigan, at a Regular Meeting held on June 20, 2011, and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.


Tonni L. Bartholomew, City Clerk

10/26/2011 WBD 9:39 FAX 517 373 2983 Senator Gregory



City of Southfield

26000 Evergreen Rd. • P.O. Box 2055 • Southfield, MI 48037-2055 • www.cityofsouthfield.com

October 21, 2011

The Honorable Vincent Gregory
1015 Farnum Building
PO Box 30036
Lansing, MI 48909

Dear Senator Gregory:

Attached is a certified copy of a resolution adopted by the Southfield City Council on October 17, 2011 regarding the DTE Energy Smart Meters.

The City of Southfield urges the Michigan Public Service Commission to initiate a careful review and analysis of the public's concerns relative potential health effects of smart meters, privacy issues and the lack of an opt-out option on the installation of the smart meter or to have the smart meter removed after installation.

Sincerely,

Nancy L. M. Banks, MMC
City Clerk

Mayor
Brenda L. Lawrence

Council President
Myron A. Prasler

City Clerk
Nancy L. M. Banks

City Treasurer
Ivy M. Lowenberg

Donald R. Fracassi

Janna K. Garrison

Sidney Lantz

Joan Seymour

Kenson J. Siver

Linn M. Taylor

City Council

RECEIVED by Michigan Court of Appeals 12/2/2013 2:42:35 PM

10/26/2011 WED 9:39 FAX 517 373 2983 Senator Gregory

RESOLUTION TO MICHIGAN PUBLIC SERVICE COMMISSION REGARDING DTE ENERGY SMART METERS

WHEREAS: DTE Energy is in the midst of a comprehensive program for the installation of new meters to customers in the City of Southfield, replacing existing meters with DTE Energy Smart Meters (computerized electric devices allowing for remote reading by DTE via radio frequencies), the Michigan Public Service Commission (MPSC) having jurisdiction in this matter; and

WHEREAS: A significant number of persons, including residents of the City of Southfield, have expressed concerns regarding Smart Meters in the areas of health, privacy, and a lack of consumer/homeowner options relative to the installation of these meters by DTE or any other MPSC regulated public utilities that may be contemplating such installations in the future; and

WHEREAS: The Southfield City Council believes it is appropriate to assist its concerned residents in obtaining consideration of their issues by requesting careful review and analysis thereof by the MPSC;

NOW, THEREFORE, BE IT RESOLVED: That the Michigan Public Service Commission is hereby urged to initiate a careful review and analysis of the expressed public concerns relative to potential health effects of smart meters, privacy issues, and the lack of consumer/homeowner options to either opt-out of the installation in the first place or to have the smart meter removed after installation, as a result of consumer/homeowner concerns that may have arisen after said installation; and

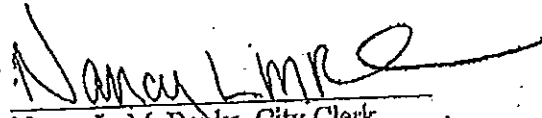
BE IT FURTHER RESOLVED: That an open, public forum for discussion of these issues is urged to be included within the MPSC review process on this matter; and

BE IT FINALLY RESOLVED: That the City Clerk is directed to deliver a copy of this Resolution to State Senator Vincent Gregory, State Representative Rudy Hobbs, DTE Energy Regulatory Affairs, Consumers Energy Regulatory Affairs, AT&T, Comcast, the Michigan Municipal League and William Zaagman, Governmental Consultant Services, Inc.

AYES: Fracassi, Frasier, Garrison, Lantz, Silver, and Taylor.
NAYS: None.
ABSENT: Seymour.

I, Nancy L. M. Banks, duly elected and qualified City Clerk of the City of Southfield, County of Oakland, State of Michigan, do hereby certify that the foregoing resolution was adopted by the Southfield City Council at the Regular Meeting held on October 17, 2011.

Date: October 21, 2011


Nancy L. M. Banks, City Clerk

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**RESOLUTION TO THE MICHIGAN PUBLIC SERVICE COMMISSION
REGARDING THE INSTALLATION OF DTE SMART METERS
IN THE CITY OF WARREN**

At a regular meeting of the City Council of the City of Warren, County of Macomb, Michigan, held on October 11, 2011, at 8 p.m. Eastern Daylight Savings Time, in the Council Chamber at the Warren Community Center Auditorium, 5460 Arden, Warren, Michigan.

PRESENT: Councilperson Kamp, Caumartin, Sadowski, Stevens,
Boccomino, Green, Liss, Vogt and Warner

ABSENT: Councilperson none

The following preamble and resolution was offered by Councilmember Caumartin and supported by Councilmember Stevens.

A DTE Energy SMART meter (SMART meter) is modern type electric meter which sends electric meter readings to the public utility automatically by using a radio frequency network rather than the traditional on-site meter reading. SMART meters use digital technology and have no moving parts unlike traditional meters that have gears and dials.

Public utilities state they are deploying SMART meters throughout the country in order to improve energy reliability and promote energy efficiency while providing improved services to customers.

DTE Energy has begun the installation of SMART meters throughout southeastern Michigan and has advised that it will begin the installation of SMART meters in the City of Warren sometime in 2013.

At several council meetings, citizens concerned with the installation of SMART meters presented information to the City Council regarding the detrimental effects that SMART meters may impose on the residents of Warren. These concerns include, but are not limited to: 1) negative health effects as a result of the radio frequency exposure; 2) invasion of privacy; 3) meter accuracy; 4) nonconsensual interruption of service; 5) inadequate installation; and 6) no right to "opt out" of the SMART meter installation.

On April 28, 2011, City Council discussed whether it was permissible to impose a moratorium on the installation of SMART meters until such time as a study of the effects can be conducted and a Committee of the Whole can be scheduled to discuss the findings.

On August 6, 2011, the City Council conducted a Committee of the Whole meeting to discuss SMART Meters. City Council wants to be assured that the installation of SMART meters will not adversely affect the health, safety and welfare of the citizens of Warren.

Although the Michigan Public Service Commission ("MPSC") has jurisdiction to regulate SMART meters, the City Council has determined that it must communicate the concerns of those opposed to the installation of SMART meter technology.

NOW, THEREFORE, IT IS RESOLVED, that the City Council is requesting the following:

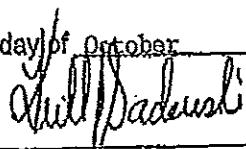
- 1) That the MPSC investigate all the concerns submitted by those opposed to SMART meters as referenced in the resolution;

- 2) That the MPSC forward to the City Council any information or evidence it has gathered that would eliminate the concerns of those individuals opposed to the installation of SMART meters.
- 3) That the MPSC consider requiring public utilities to allow those opposed to SMART meters, especially those individuals with proven health conditions, to opt out of the program.

AYES: Councilperson Caumartin, Stevens, Vogt, Warner, Sadowski
Liss, Green, Boccomino, and Kamp

NAYS: Councilperson none

RESOLUTION DECLARED ADOPTED this 11th day of October, 2011.

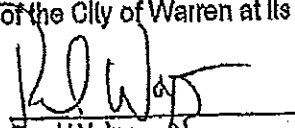


KEITH J. SADOWSKI
Secretary of the Council

CERTIFICATION

STATE OF MICHIGAN)
) SS.
COUNTY OF MACOMB)

I, PAUL WOJNO, duly elected City Clerk for the City of Warren, Macomb County, Michigan, hereby certify that the foregoing is a true and correct copy of the resolution adopted by the Council of the City of Warren at its meeting held on October 11, 2011.



Paul Wojno
City Clerk

Resolution/smart meters-public service commission (43846)



Rochester Hills

Certified Copy

Administration: RES0274-2011

1000 Rochester Hills Dr.
Rochester Hills, MI 48309
(248) 856-4600
Home Page:
www.rochesterhills.org

File Number: 2011-0574

Enactment Number: RES0274-2011

Update on Installation of Smart Meters; Mike Palchesko, DTE Regional Manager of Corporate & Government Affairs

Whereas, DTE Energy has begun the installation of new meters to customers in the Metro Detroit area, specifically the City of Rochester Hills; and

Whereas, DTE Energy is replacing the existing meters with so-called "Smart Meters", that is, electric meters which will broadcast information to the utility company using radio frequencies; and

Whereas, Smart Meters provide a benefit to utilities by allowing remote meter reading by, among other things, eliminating the need for someone to go onto each utility customer's property to read a meter and possibly offering residents lower electric rates at non-peak times; and

Whereas, a number of Rochester Hills residents have expressed their concerns about potential health effects of the Smart Meters, privacy issues, and the lack of consumer/homeowner options to either opt-out of the installation in the first place or have the Smart Meter removed after installation as a direct result of consumer/homeowner concerns that may have arisen after said installation; and

Whereas, although the City Council is informed that it is without jurisdiction to directly regulate Smart Meters, the City Council is requesting careful consideration of their resident's issues through direct communication with DTE Energy and the Michigan Public Service Commission (MPSC).

Therefore, Be It Resolved, that:

The "MPSC" is hereby requested to perform a careful review and analysis of the Smart Meter program, specifically the potential health and safety effects and privacy issues, and

That the "MPSC" authorize the delayed deployment of the Smart Meters pending resolution of this careful review and analysis of the potential health and safety effects and privacy issues, and

That the "MPSC" allow individual City of Rochester Hills customers to opt-out of the Smart Meter installation at their homes, and

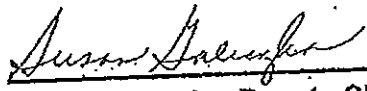
That the City of Rochester Hills asks DTE Energy to impose a moratorium on the Smart Meter Program and give residents opportunity to opt-in or opt-out, and

That the "MPSC" to the full extent of its authority impose measures to prevent DTE Energy from sharing information obtained exclusively through the Smart Meter Program with any third party, absent the express written consent of its customers.

I, Susan Galeczka, Deputy City Clerk, certify that this is a true copy of RES0274-2011 passed at the Rochester Hills City Council Regular Meeting held on 12/12/2011 by the following vote:

Moved by Michael Webber, Seconded by Ravi Yalamanchi

Aye: .Hooper, Klomp, Kochenderfer, Rosen, Tisdell, Webber and Yalamanchi


Susan Galeczka, Deputy City Clerk

December 13, 2011
Date Certified

RESOLUTION REGARDING SMART METERS

WHEREAS, the City Council became aware that "Smart Meters" were being installed by DTE on residences located in the City of Rochester; and

WHEREAS, the City Council has had a number of meetings where concerns have been raised by residents and non-residents about the installation of the Smart Meters; and

WHEREAS, DTE has come to a number of City Council meetings to discuss, *inter alia*, the concerns raised by citizens about the Smart Meters; and

WHEREAS, the City Council has been advised that it lacks authority to regulate the Smart Meters as jurisdiction over DTE operations resides with the Michigan Public Services Commission (MPSC); and

WHEREAS, the City Council desires to communicate to the MPSC and request that the MPSC look into the concerns raised and to take certain actions pertaining to DTE's installation and utilization of the Smart Meters to help protect against any perceived negative effects of the DTE Smart Meters project,

NOW THEREFORE, BE IT RESOLVED that the City Council for the City of Rochester urges the MPSC to initiate a careful review and analysis of the expressed public concerns regarding the DTE Smart Meter project.

BE IT FURTHER RESOLVED, that the Rochester City Council requests that the MPSC require DTE to provide residents the ability to "opt out" of having a Smart Meter installed at their home.

BE IT FURTHER RESOLVED, that the Rochester City Council requests that the MPSC require DTE to specifically notify residents if a "Cell Relay" meter/collector will be installed at their home, with an ability to "opt out" of having such a Cell Relay Meter installed at their home.

Made and passed this _____ day of _____, 2011.

CERTIFICATION

I, Lee Ann O'Connor, the duly authorized Clerk of the City of Rochester, do hereby certify that the foregoing is a true and correct copy of a Resolution adopted by the City of Rochester City Council on _____, 2011.

Lee Ann O'Connor, City Clerk



Business of the City Council
Sterling Heights, Michigan

DELIVERED DEC 29 2011

City Clerk's Use

Item No: 2
Meeting: 1/3/2012

AGENDA STATEMENT

OMB AS03 Rev. 11/04

Item Title: To consider a resolution urging the Michigan Public Service Commission to undertake a thorough analysis regarding the installation and operation of smart meters by DTE Energy (Presentation - DTE Energy)

Submitted By: Walt Blessed, Assistant City Manager/City Clerk

Contact Person/Telephone: Walt Blessed, 446-2421

Administration (initial as applicable)

WB City Clerk
AB Finance & Budget Director
JAL City Attorney (as to legal form)
JAL City Manager

Attachments

___	Resolution	___	Minutes
___	Ordinance	___	Plan/Map
___	Contract	___	Other

☐ Check box if this agenda item requires billing/revenue collection (fees, etc.) by Treasury Office

Special Notes

This agenda item was postponed at the November 15, 2011 regular City Council meeting in order to schedule a special meeting at which representatives from DTE Energy could appear and make a presentation to Council members, residents, and concerned citizens regarding the future installation of so-called Smart meters in the city of Sterling Heights. At the December 6, 2011 meeting, City Council decided that a special meeting is unnecessary and directed City Administration to contact Detroit Edison to schedule this agenda item for a regular meeting.

At tonight's meeting, representatives from DTE Energy will be making a presentation on the Smart meter program. At the conclusion of this presentation and after receiving citizen comments, Council can deliberate and take action on a motion which is on the floor or an alternate motion which was previously suggested for action at the November 15, 2011 regular meeting.

Executive Summary

Over the course of several City Council meetings, concerned citizens have come forth with information regarding potential risks to the health and safety of persons and property associated with the installation and operation of so-called smart meters currently being installed in residences across metropolitan Detroit by DTE Energy. In addition to safety issues, these citizens have raised a host of other concerns, including those involving privacy and consumer rights.

City Administration is recommending approval of Alternate Action No. 2. This is the resolution that was originally presented to City Council at the November 15, 2011 meeting which urges the MPSC to undertake a thorough analysis of the effects of smart meters prior to the installation of such technology in the residences

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situated in Sterling Heights. By addressing these issues, the MPSC will provide all consumers with the information necessary to make an informed judgment on the efficacy of smart meters.

This resolution is similar to those adopted by other municipalities, including Shelby Township. Ironically, this resolution was developed in response to the request of citizens who had attended City Council meetings and repeatedly urged City Council to pass a resolution similar to those passed by other municipalities. At the November 15, 2011 City Council meeting, these same citizens objected to the resolution that it did not go far enough.

If the City Council wishes to adopt the resolution recommended by City Administration (Alternate Action No. 2), it must first dispose of the motion on the floor (Alternate Action No. 1). This may be accomplished by the maker (Council member Paul Smith) withdrawing the motion on the floor or, alternatively, voting on it.

Alternate Action No. 1 (Motion on the Floor from November 15, 2011 City Council meeting):

MOVED BY: Smith

SECONDED BY: Taylor

Resolved, utility meters in Sterling Heights, the following applies to all devices that measure the usage of water or energy delivered to customers in Sterling Heights via pipe or wire: Meters shall measure only total consumption and shall collect no other data. Meters shall display their measurements by mechanical dials visible to the customer. Meters shall not transmit readings or other data off the customer's premises. There shall be no device that can shut off, turn on, throttle, or limit the flow to individual customers from a remote location. Dedicated air conditioning services installed at the customer's request may operate on an area control basis that does not target individual customers. Utilities are government licensed monopolies, and are therefore subject to a higher degree to regulation by the people.

Alternate Action No. 2:

MOVED BY:

SECONDED BY:

RESOLVED, to adopt the resolution urging the Michigan Public Service Commission to undertake a thorough analysis regarding the installation and operation of smart meters by DTE Energy.

~ RESOLUTION ~
CITY OF STERLING HEIGHTS

A resolution urging the Michigan Public Service Commission to undertake a thorough analysis regarding the installation and operation of smart meters by DTE Energy

WHEREAS, DTE Energy has commenced with the installation and operation of new meters in the residences of customers in the Metropolitan Detroit area; and,

WHEREAS, although the so-called smart meters provide a benefit to utilities by eliminating the need for meter readers and may facilitate lower rates at non-peak times, citizens have come forward with information calling into question the safety of these meters for persons and property and potential privacy concerns; and,

WHEREAS, DTE Energy has indicated that it will, at some point in the future, commence the installation of smart meters in Sterling Heights; and,

WHEREAS, it is prudent to have the appropriate agency address the concerns of all utility consumers prior to moving forward with the installation and operation of smart meters; and,

WHEREAS, although the city of Sterling Heights is without jurisdiction to directly regulate smart meters, the Michigan Public Service Commission ("MPSC") should consider addressing the merits of the concerns which these citizens have brought forward.

NOW, THEREFORE, BE IT RESOLVED that:

1. The MPSC is hereby requested to perform a careful analysis of the potential health and safety effects which may result from the universal installation of smart meters for electric and gas utilities.
2. The MPSC is further requested to consider delaying the deployment of smart meters pending a determination, following careful study and review, that such meters are safe and will not have short-term or long-term negative consequences to the health of the citizens of Sterling Heights and the State of Michigan generally.
3. In the course of its deliberations, the MPSC should provide a forum that allows all interested parties to have their concerns over smart meters heard, including potential privacy and consumer rights issues.
4. The MPSC should also consider the merits of allowing consumers with medical conditions that may be affected by the operation of smart meters to opt-out.

This resolution was approved at the November 15, 2011 City Council Meeting by the Sterling Heights City Council.

IN WITNESS WHEREOF, I have set my official signature, this 15th day of November, 2011:

WALTER C. BLESSED
City Clerk

PROOF OF SERVICE

STATE OF MICHIGAN)

Case No. U-17000

County of Ingham)

Lisa Felice being duly sworn, deposes and says that on January 12, 2012 A.D. she served a copy of the attached Commission Order (Commission's Own Motion) via e-mail transmission, to the persons as shown on the attached service list (Listserv Distribution List).

Lisa Felice

Lisa Felice

Subscribed and sworn to before me
this 12th day of January 2012

Gloria Pearl Jones

Gloria Pearl Jones
Notary Public, Ingham County, MI
As acting in Eaton County
My Commission Expires June 5, 2016

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david.d.donovan@XCELENERGY.COM Noble Americas
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 info@VILLAGEOFCLINTON.ORG Village of Clinton
 jepalinc@CMSENERGY.COM CMS Energy Resource Mgt Co
 Jayne@HOMEWORKS.ORG Tri-County Electric Co-Op
 mkappler@HOMEWORKS.ORG Tri-County Electric Co-Op
 psimmer@HOMEWORKS.ORG Tri-County Electric Co-Op
 aurora@FREEWAY.NET Aurora Gas Company
 frucheyb@DTEENERGY.COM Citizens Gas Fuel Company
 dwjoos@CMSENERGY.COM Consumers Energy Company
 mpfcfillings@CMSENERGY.COM Consumers Energy Company
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 kdc Curry@AEP.COM Indiana Michigan Power Company
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 sfarnquist@CLOVERLAND.COM Cloverland Electric Cooperative
 sboeckman@GLENERGY.COM Great Lakes Energy Cooperative
 rami.fawaz@POWERONECORP.COM PowerOne Corp
 cjmiszuk@FES.COM FirstEnergy Solutions Corp.
 llopez@LIBERTYPOWERCORP.COM Liberty Power Delaware (Holdings)
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 kmarklein@STEPHENSON-MI.COM Stephenson Utilities Department
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 sharonkr@PIEG.COM Presque Isle Electric & Gas Cooperative, INC
 dbraun@TECMI.COOP Thumb Electric
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 ynguyen@MIDAMERICAN.COM MidAmerican Energy
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 rarchiba@FOSTEROIL.COM My Choice Energy
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tahoffman@CMSENERGY.COM Tim Hoffman
daustin@IGSENERGY.COM Interstate Gas Supply Inc
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sbn@LBWL.COM Lansing Board of Water and Light
jreynolds@MBLP.ORG Marquette Board of Light & Power
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zach.halkola@TRAXYS.COM U.P. Power Marketing, LLC
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kunklem@MICHIGAN.GOV Mary Jo Kunkle - MPSC
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dbodine@LIBERTYPOWERCORP.COM Liberty Power
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kmollitor@WPSCI.COM Wolverine Power
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mrunk@VEENERGY.COM Volunteer Energy Services
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kmaynard@WYAN.ORG Wyandotte Municipal Services
Ldalessandris@FES.COM First Energy Solutions
Nbaharuddin@FES.COM First Energy Solutions
rboston@NOBLESOLUTIONS.COM Noble Energy Solutions
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mrzwiwers@INTEGRYSGROUP.COM Mich Gas Utilities/Upper Penn Power/Wisconsin
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donm@BPW.ZEELAND.MI.US

Zeeland Board of Public Works

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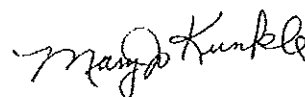
PROOF OF SERVICE

STATE OF MICHIGAN)

Case No. U-17000

County of Ingham)

Mary Jo Kunkle being duly sworn, deposes and says that on January 12, 2012 A.D. she served a copy of the attached Commission Order (Commission's Own Motion) via e-mail transmission, to the persons as shown on the attached service list (Listserv Distribution List).



Mary Jo Kunkle

Subscribed and sworn to before me
this 12th day of January 2012



Gloria Pearl Jones
Notary Public, Ingham County, MI
As acting in Eaton County
My Commission Expires June 5, 2016

U-17000

david.d.donovan@XCELENERGY.COM; mkappler@HOMEWORKS.ORG;
psimmer@HOMEWORKS.ORG; frucheyb@DTEENERGY.COM;
dwjoos@CMSENERGY.COM; mpfcfilings@CMSENERGY.COM;
kdc Curry@AEP.COM; ebrushford@UPPCO.COM; ronan.patterson@WE-
ENERGIES.COM; kerriw@TEAMMIDWEST.COM;
meghant@TEAMMIDWEST.COM; tharrell@ALGERDELTA.COM;
tonya@CECELEC.COM; sfarnquist@CLOVERLAND.COM;
sboeckman@GLENERGY.COM; sharonkr@PIEG.COM;
dbraun@TECMI.COOP; hendersond@DTEENERGY.COM;
mpscfilings@DTEENERGY.COM; Debbie@ontorea.com;
john.r.ness@XCELENERGY.COM; rlferguson@INTEGRYSGROUP.COM;
lrgustafson@CMSENERGY.COM; tahoffman@CMSENERGY.COM;
chall@CMSENERGY.COM; akb@ALPENAPOWER.COM;
AKlaviter@INTEGRYSENERGY.COM; mrzwiers@INTEGRYSGROUP.COM;

ATTACHMENT C

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STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter, on the Commission's own motion,)
to review issues bearing on the deployment of smart)
meters by regulated electric utilities in Michigan.)
_____)

Case No. U-17000

At the September 11, 2012 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 January 12, 2012, the Commission issued an order opening this docket for the purpose of addressing concerns raised by some individuals and local governments regarding the deployment of Advanced Metering Infrastructure (AMI) by electric utilities operating in Michigan.

In its January 12, 2012 order, the Commission directed all regulated electric utilities to submit information in this docket regarding AMI deployment plans, costs, and sources of funding; estimates of monetary savings and other benefits expected to be achieved by the deployment of AMI; scientific information concerning the safety of smart meters; an explanation of the type of information that will be gathered through the use of AMI; the steps that the electric utility intends to take to safeguard the privacy of the customer information; and whether the electric utility intends to allow customers to "opt out" of having a smart meter and if so, how the electric utility intends to recover the cost of an opt-out program.

After the submission of the information by the regulated electric utilities, the Commission provided interested persons with an opportunity to comment until April 16, 2012. Following the deadline for the submission of comments, the Commission Staff (Staff) was directed to prepare a report for the Commission's consideration, to be filed in this docket on or before June 29, 2012. Specifically, the Staff was requested to summarize the filings from the utilities and interested persons, independently review the literature regarding AMI, and identify any developments in other jurisdictions pertinent to this investigation. At the end of its report, the Staff was directed to make its recommendations concerning further deployment of AMI.

By March 16, 2012, Alpena Power Company (Alpena), Consumers Energy Company (Consumers), The Detroit Edison Company (Detroit Edison), Indiana Michigan Power Company (I&M), Northern States Power Company-Wisconsin (NSP-W), Upper Peninsula Power Company (UPPCo), Wisconsin Electric Power Company (WEPCo), and Wisconsin Public Service Corporation (WPS Corp) filed responses to the directives set forth in the January 12, 2012 order. A joint response was filed by Alger Delta Cooperative Electric Association, Cherryland Electric Cooperative, Cloverland Electric Cooperative, Great Lakes Energy Cooperative, Homeworks Tri-County Electric Cooperative, Midwest Energy Cooperative, Ontonagon County Rural Electrification Association, Presque Isle Electric & Gas Co-op, and Thumb Electric Cooperative.

Also in response to the Commission's request, over 400 comments were received from interested persons, filed both before and after utility information was provided. On June 29, 2012, the Staff submitted a detailed report addressing the information filed by the utilities and comments from the public. The report also contained recommendations regarding customer data privacy, cyber security, the need for a smart grid "vision," AMI opt-out, and customer education.

The Staff's Report on Advanced Metering Infrastructure and Smart Grid

As an initial matter, the Commission expresses its appreciation to the electric providers, the members of the public and various professional organizations that took the time and effort to provide comments, and to the Staff for presenting a comprehensive review of the issues surrounding the widespread deployment of AMI in Michigan.

In its report, the Staff summarized the information on AMI provided by the utilities and noted that the public comments filed could generally be classified as: (1) involving issues of possible adverse health effects of AMI; (2) customer privacy concerns; (3) data protection and cyber security issues; and (4) cost implications of AMI implementation.

The Staff concluded that AMI is rapidly becoming the primary replacement meter to existing electromechanical meters because the new meters are more accurate, they provide enhanced outage response, and AMI offers opportunities for customer energy management. Furthermore, the electromechanical meter is obsolete and no longer in production. Nevertheless, the Staff recognized that investments in AMI and other smart grid components should be subject to ongoing review in contested rate case proceedings. The Staff added that some customers will continue to have concerns about AMI and therefore recommended that the utilities make available a cost-based, opt-out option for these customers.

The Staff also reported that "after careful review of the available literature and studies, the Staff has determined that the health risk from the installation and operation of metering systems using radio transmitters is insignificant. In addition, the appropriate federal health and safety regulations provide assurance that smart meters represent a safe technology." Staff Report, p. 2.

The Staff stated that customer data privacy and cyber security are, and will continue to be, priorities for customers, providers, and the Commission. The Staff observed that data protection

practices and procedures are constantly evolving and are being updated at the national and state levels regularly. The Staff recommended that customer data privacy be addressed through utility tariffs or rulemaking and made preliminary suggestions concerning how cyber security should be addressed by the utilities.

Finally, the Staff developed a smart grid vision for Michigan that took a comprehensive view of electrical grid improvement that goes beyond the mere updating of outmoded electrical meters.

As the Staff summarized:

A Michigan smart grid vision should provide direction to implement technology that will enhance the functionality of the electric grid. . . .Therefore, it is important to identify electric grid "objectives" that outline a more reliable grid, improve power quality and incorporate cleaner power sources for electricity generation. All components of electric grid improvements, including AMI installation, distribution infrastructure replacement, and electric generation should reflect the larger objectives of a smart grid vision.

Staff Report, p. 23.

Discussion

The Commission finds the Staff's report to be thoughtful and comprehensive; and the report should be accepted as a practical point of departure for further discussion and Commission action.

The Staff's specific recommendations are discussed *seriatim*.

1. On-going Assessment of Advanced Metering Infrastructure and Smart Grid

The Commission agrees with the Staff that AMI and smart grid investments should be reviewed in the context of general rate case proceedings. The Commission expects the utilities, the Staff, and other interested parties to continue to refine the scope of, and quantify and assess the costs and benefits of AMI and smart grid during the implementation of these new technologies on a case-by-case basis.

2. Opt-out Options

As the Staff pointed out, a small minority of customers has significant concerns about AMI, and for those customers, the Staff recommends that an opt-out option be provided by the electric utilities. The Commission agrees that the investor-owned electric utilities (i.e., Alpena, Consumers, Detroit Edison, I&M, NSP-W, UPPCo, WEPCo, and WPSC) shall make available an opt-out option, based on cost-of-service principles, for their customers if or when the provider elects to implement AMI.¹ The Commission observes that only Consumers and Detroit Edison are currently installing AMI thus, at this point in time, only these providers are affected by this directive. Detroit Edison has already filed a proposed opt-out tariff. *See*, Case No. U-17053. In the case of Consumers, within 60 days of the date of this order, or in Consumers' next general rate case filing, whichever occurs first, the Commission directs the company to include a proposed opt-out tariff.

3. Customer Data Privacy and Cyber Security

The Staff summarized the concerns with cyber security, in connection with AMI, as follows:

As Michigan transitions to a more technologically advanced power grid, it is important that the proper actions are taken by utilities to address cyber security threats. Cyber security planning is defined as preventing damage to, unauthorized use of, or exploitation of electronic information and communications systems and the information contained therein to ensure confidentiality, integrity, and availability. The attention cyber security has received at the national and state levels for many years indicates that utilities, regulators and consumers all share common concerns. Improving the electrical grid involves gathering more data and utilizing more technology. With every added piece of technology, the risk of vulnerabilities inherently increases. The U.S. DOE has stated that the smart grid of the future should be secure and resilient against all forms of attacks. A smarter grid includes more devices and connections that may become avenues for intrusions, error-caused disruptions, malicious attacks, destruction, and other threats.

¹Because electrical cooperatives are member-governed, the Commission finds that any determinations regarding AMI opt-out should be at the members' discretion and not mandated by the Commission.

Staff Report, p. 14 (footnotes omitted).

Similarly, with respect to data privacy, the Staff explained:

AMI necessitates a higher volume of data collected by utilities, therefore it is imperative that customer information be properly protected through appropriate regulations. Federal legislation protecting consumer data privacy is forthcoming; however, it is important to identify ways to protect Michigan's ratepayers in the interim.

Staff Report, p. 13 (footnote omitted).

The Commission finds that these issues concerning customer data collection, privacy, and cyber security are complex, and sufficiently important to merit the creation of a future docket limited to these issues. The Commission will solicit company-specific information on cyber security planning, standards, and policies for the utilities currently implementing AMI or planning to implement these systems.

In the same future docket the Commission will request utility input on customer data collection and privacy standards, required rulemaking or rule amendments, and interim measures to be undertaken while the potential rulemaking process proceeds.

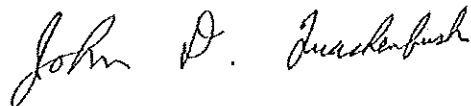
THEREFORE, IT IS ORDERED that:

- A. The Commission Staff's report on Advanced Metering Infrastructure and Smart Grid is accepted.
- B. Within 60 days of the date of this order or in the company's next general rate case proceeding, whichever occurs first, Consumers Energy Company shall propose a customer opt-out tariff based on cost-of-service.
- C. If or when Alpena Power Company, Indiana Michigan Power Company, Northern States Power Company-Wisconsin, Upper Peninsula Power Company, Wisconsin Electric Power Company, or Wisconsin Public Service Corporation, decide to implement advanced metering

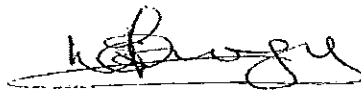
infrastructure, the company shall provide an opt-out option or an explanation for why an opt-out is unnecessary or cost-prohibitive.

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


MICHIGAN PUBLIC SERVICE COMMISSION



John D. Quackenbush, Chairman



Orjiakor N. Isiogu, Commissioner



Greg R. White, Commissioner

By its action of September 11, 2012.



Mary Jo Kunkle, Executive Secretary

PROOF OF SERVICE

STATE OF MICHIGAN)

Case No. U-17000

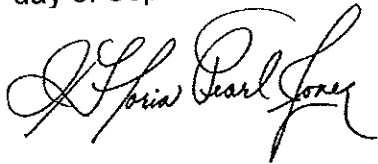
County of Ingham)

Alyssa Sherman being duly sworn, deposes and says that on September 11, 2012 A.D. she served a copy of the attached Commission order by first class mail, postage prepaid, or by inter-departmental mail, to the persons as shown on the attached service list.



Alyssa Sherman

Subscribed and sworn to before me
This 11th day of September 2012



Gloria Pearl Jones
Notary Public, Ingham County, MI
My Commission Expires June 5, 2016
Acting in Eaton County

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Service List U-17000

Charter Township of Brighton
Clerk's Office
4363 Buno Road
Brighton MI 48114

Charter Township of Shelby
Administrative Offices - Township Clerk
52700 Van Dyke Avenue
Shelby Township MI 48316-3572

City of Oak Park
Administrative Offices, City Clerk
13600 Oak Park Blvd.
Oak Park MI 48237

City of Rochester
Administrative Offices - City Clerk
400 Sixth Street
Rochester MI 48307

City of Rochester Hills
Administrative Offices - City Clerk
1000 Rochester Hills Drive
Rochester Hills MI 48309

City of Southfield
Administrative Offices, City Clerk
26000 Evergreen Road
P.O. Box 2055
Southfield MI 48037-2055

City of Sterling Heights
Office of the City Manager
40555 Utica Road
Sterling Heights MI 48313

City of Warren
City Clerk
One City Square, Suite 205
Warren MI 48093-2393

Village of Grosse Pointe Shores
Office of the City Clerk
795 Lake Shore Road
Grosse Pointe Shores MI 48236

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PROOF OF SERVICE

STATE OF MICHIGAN)

Case No. U-17000

County of Ingham)

Lisa Felice being duly sworn, deposes and says that on September 11, 2012 A.D. she served a copy of the attached **Commission Order (Commission's Own Motion)** via e-mail transmission, to the persons as shown on the attached service list (Listserv Distribution List).

Lisa Felice

Lisa Felice

Subscribed and sworn to before me
this 11th day of September 2012

Gloria Pearl Jones

Gloria Pearl Jones
Notary Public, Ingham County, MI
As acting in Eaton County
My Commission Expires June 5, 2016

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tahoffman@CMSENERGY.COM	Tim Hoffman
daustin@IGSENERGY.COM	Interstate Gas Supply Inc
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kmolitor@WPSCI.COM	Wolverine Power
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<u>donm@BPW.ZEELAND.MI.US</u>	Zeeland Board of Public Works

ATTACHMENT D

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U-17000 Report to the Commission

Prepared by the Staff of the Michigan Public Service Commission

June 29, 2012

EXECUTIVE SUMMARY

The smart grid encompasses technological improvements to the electric grid designed to increase reliability, reduce outage time, accommodate the integration of distributed generation sources, and improve electric vehicle charging capacity. Advanced Metering Infrastructure (AMI) systems “combine meters with two-way communication capabilities. These systems typically are capable of recording near-real-time data on power consumption and reporting that consumption to the utility at frequencies of an hour or less”.¹ AMI meters are also known as smart meters, and they represent one component of an improved or smart grid.

On January 12, 2012, the Michigan Public Service Commission (Commission) issued an order in Case No. U-17000. This order directed the utilities to provide information by March 16, 2012, regarding their plans for smart meter deployment including proposed costs and benefits, scientific information addressing the safety of smart meter deployment, assurance of customer data privacy and other information. The order also allowed for public comments in response to the utilities’ filings to be submitted by April 16, 2012.

Approximately 400 residential customer comments were received. The vast majority of these comments voice concerns about the installation of smart meters. The concerns can generally be categorized into the following topics: health and safety, privacy/data security, cyber security and bill impacts.

The Staff has engaged in a thorough review of resources in response to public concerns about smart meters. The resources fall into one or more of the following categories: technical in nature, relevant to smart meter technology, research focused, science based, peer reviewed, commentary and/or opinion.

The Staff’s review supports the following conclusions:

- Smart meters are quickly becoming the primary replacement meter to the existing electromechanical meters because they are more accurate, enhance outage response and offer opportunities for customer energy management. The traditional electromechanical meter is obsolete and currently not in production.
- Smart meters are an important component to the success of a much larger picture, an emerging smart grid. As the United States Department of Energy (U.S. DOE) states “[a] smart grid uses digital technology to improve the reliability, security, and efficiency of the electricity system . . .”²
- After careful review of the available literature and studies, the Staff has determined that the health risk from the installation and operation of metering systems using radio transmitters is insignificant. In addition, the appropriate federal health and safety regulations provide assurance that smart meters represent a safe technology.

¹ Massachusetts Institute of Technology, *The Future of the Electric Grid*; An Interdisciplinary MIT Study, 2011, p.133. http://web.mit.edu/mitei/research/studies/documents/electric-grid-2011/Electric_Grid_Full_Report.pdf

² U.S. Department of Energy, *2010 Smart Grid System Report*, February 2012, Message from the Assistant Secretary. <http://energy.gov/sites/prod/files/2010%20Smart%20Grid%20System%20Report.pdf>

- Data privacy and cyber security continue to be priorities for customers, utilities and the Commission. Data protection procedures are continually being updated at the national and state levels. Michigan utilities currently have large amounts of critical customer information that they have safeguarded for years and will continue to adequately safeguard. Several national organizations are focused on monitoring and improving cyber security efforts that will continue to guide electric service providers' efforts.

The Staff's Recommendations

Smart Meter Implementation: Smart meters are part of the larger smart grid initiative that is being pursued by investor-owned and other utilities throughout the world. The smart grid initiative has been endorsed by federal laws and the technologies have been declared to be safe by accredited national agencies and industry councils. The Staff recommends that the Commission regulated utilities in Michigan continue to assess smart grid technologies as part of their efforts to improve the reliability and efficiency of the grid. AMI investments should continue to be reviewed by the Commission in contested rate cases.

Opt-out: A minority of customers have expressed concerns about smart meters. The Staff understands that some people remain opposed to the installation of smart meters for a number of reasons and should be allowed to opt-out. The Staff believes that ratemaking for the opt-out provision should be based on cost of service principles. If AMI meters result in a reduced cost of service, this could be accounted for by either an additional charge for those customers choosing to opt-out or a discount for those customers with an AMI meter.

Revised Rules and/or Tariffs: Several comments reflect concerns about customer privacy and data security. The Staff recommends there be additional consideration to ensure consistent protection of customer privacy and data.

Smart Grid Vision: The Staff has created a comprehensive smart grid vision which provides an all-inclusive perspective of the emerging smart grid. The vision will provide a framework for future grid modernization.

Details of these recommendations are contained in the body of this report.

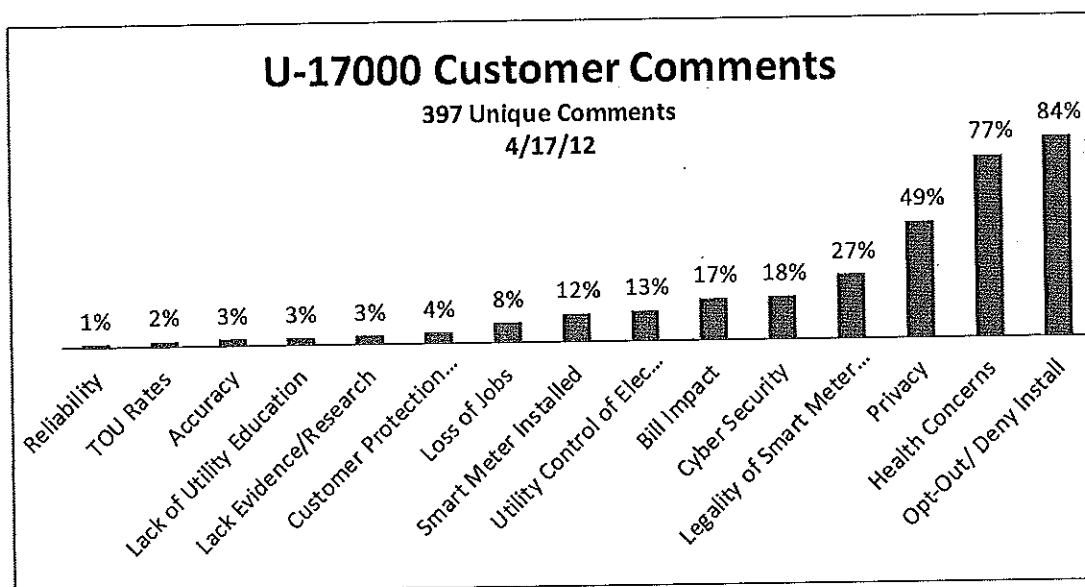
SUMMARY OF DOCKET FILINGS

The Staff logged 397 entries received from *unique parties* during the comment period. (Several people submitted multiple entries; however, these were counted as one comment for purposes of this report.) Three comments were received from non-Michigan residents.

Residential Customers

A number of topics were addressed in the comments. The dominant ones are shown in the chart below. Some customers addressed more than one topic in their submission. Of the customer commenters whose electric provider could be determined, the breakdown was: Detroit Edison (250), Consumers Energy (39), Cherryland Electric Cooperative (1), Clinton Board of Public Works (2), Indiana/Michigan Power Company (I&M) (4), Lansing Board of Water & Light (2), Upper Peninsula Power (4).

Chart 1: Residential Customer Comments



Reliability	TOU Rate	Accuracy	Lack of Education	Lack of Research	Customer Protection	Loss of Jobs	SM Installed	Utility Control of Power	Bill Impact	Cyber Security	Legality of SM Install	Privacy	Health	Opt-out/ Deny Install
4	9	10	11	13	17	32	46	50	69	71	106	193	304	334

Governmental Units

Seven resolutions were submitted by local governmental units:

- Townships of Harrison and Royal Oak,
- Villages of Almont and Grosse Pointe Shores,
- Cities of Farmington Hills and Madison Heights, and
- Macomb County Board of Commissioners.

Report to the Commission
Case No. U-17000
June 29, 2012

Requested actions included: 1) further exploration into the health and safety of AMI meters, 2) delay/moratorium on further AMI installations until the Commission's review is completed, and 3) creation of an opt-out program for customers.

Although not formally submitted to the Case No. U-17000 docket, the Staff is aware of additional resolutions from other municipalities containing similar language to the resolutions filed in this docket.

Professional Organizations

Three professional organizations weighed in with submissions to the docket:

- American Academy of Environmental Medicine (AAEM) expresses concern with the levels of radio frequency (RF) radiation emitted by meters.
- Environmental Defense Fund (EDF) supports AMI deployment as a necessary element of grid modernization resulting in positive environmental impacts.
- TechNet also supports AMI deployment focusing on customer control of energy usage, data privacy and encouraging market innovation.

State of Michigan

A state agency and a state house representative filed comments:

- The Department of Attorney General asserts that smart meter benefits are not greater than the deployment costs for ratepayers.
- Representative Paul E. Opsommer states that filings for utilities with AMI meters were incomplete in the areas of meter function, cost and data privacy/protections.

Utilities

The order issued in Case No. U-17000 required utilities to provide specific information regarding smart meter deployment plans, investments, benefits, health and safety, data privacy, and opt-out options. The Commission received responses from investor-owned utilities (IOU) and Michigan electric cooperatives. Consumers Energy and Detroit Edison are the only Michigan utilities currently installing smart meters, so their responses are more thoroughly summarized.

Alpena Power plans to change to digital meters but does not intend to install smart meters. I&M has installed 10,000 AMI meters in South Bend, Indiana as a pilot. I&M has Automated Meter Reading (AMR)³ at nearly all of its Michigan accounts and does not intend to replace those with smart meters. All of Northern States Power's Michigan customers have AMR, which send daily reads. Northern States

³ Automated Meter Reading (AMR) "AMR technology allows utilities to read customer meters via short-range radio-frequency signals. These systems typically capture meter readings from the street using specially equipped vehicles." Massachusetts Institute of Technology, *The Future of the Electric Grid: An Interdisciplinary MIT Study*, 2011, p. 133. http://web.mit.edu/mitei/research/studies/documents/electric-grid-2011/Electric_Grid_Full_Report.pdf

Power does not intend to allow opt-out, but believes customers should pay for that option if an opt-out plan is required. Upper Peninsula Power uses electromechanical meters and is planning to continue this method. Wisconsin Electric Power Company (WEPCO) has installed AMR throughout its Michigan territory. WEPCO does not anticipate offering opt-out of AMR. Wisconsin Public Service Corporation has meters with both one and two-way communication. Its systems have been in place for over 10 years.

Alger Delta Cooperative, Cherryland Electric Cooperative, Cloverland Electric Cooperative, Great Lakes Energy Cooperative, HomeWorks Tri-county Cooperative, Midwest Energy Cooperative, Ontonagon County Rural Electrification Association, Presque Isle Electric & Gas Cooperative and Thumb Electric Cooperative filed a joint response and individual information. Most of the cooperatives have installed AMR that sends energy use data over power lines. Some of these meters have two-way communication. The cooperatives indicated they have experienced significant benefits from these meters. Presque Isle has a 10 meter AMI pilot. Cooperatives who have AMR do not intend to allow for opt-out.

Below are the responses from Consumers Energy and Detroit Edison regarding smart meter deployment plans as specified in the order in Case No. U-17000.

(1) *The electric utility's existing plans for the deployment of smart meters in its service territory:*

Consumers Energy Consumers Energy has completed Phase I of a four-phase pilot program, with the intention of full deployment by 2019 with 1.9 million total smart meters.

Detroit Edison Detroit Edison intends to install 2.6 million smart meters in a deployment plan that was initiated by a pilot in 2009. Detroit Edison currently has 650,000 meters installed and plans to have 1,000,000 installed by year end 2013.

(2) *The estimated cost of deploying smart meters throughout its service territory and any sources of funding:*

Consumers Energy The estimated cost is \$750 million with no external funding (e.g., U.S. DOE ARRA grant); \$398 million for smart meters and installation; \$352 million for systems modifications, program management and other expenses.

Detroit Edison The estimated cost of smart meter deployment is \$447 million for 2.6 million new electric meters, and the company received a U.S. DOE grant that reimbursed 50 percent of costs up to a pre-determined grant cap.

(3) *An estimate of the savings to be achieved by the deployment of smart meters:*

Consumers Energy Estimated savings over the anticipated 20-year life of the smart meters is \$2 billion. Although benefits were described, no quantified breakdown of the savings total was provided.

Detroit Edison Detroit Edison estimates smart meter savings of \$65 million per year, although this figure includes both electric and gas meters. Case No. U-16472, Exhibit A-18 was referenced for details.

- (4) *An explanation of any other non-monetary benefits that might be realized from the deployment of smart meters:*

Consumers Energy Consumers Energy cited a U.S. DOE study (DOE/NETL-2010/1413) which summarizes the benefits tied to smart meter deployment. The study discusses societal benefits that include reduced outage times, as well as improvements in national security, environmental conditions, and economic growth.

Detroit Edison Proposed non-monetary benefits include an increase in customer satisfaction, the ability to identify voltage problems, new rate offerings, and the ability to expedite emergency disconnect response.

- (5) *Any scientific information known to the electric utility that bears on the safety of the smart meters to be deployed by that utility:*

Consumers Energy Consumers Energy described its proposed system. No scientific information was provided.

Detroit Edison Detroit Edison provided a link to the report, *No Health Threat from Smart Meters*, Utilities Telecom Council, Q4 2010. The following studies were also included in an appendix:

Analysis of Radio Frequency Exposure Associated with Itron OpenWay® Communications Equipment, March 2011

Wireless Transmissions: An Examination of OpenWay® Smart Meter Transmissions in 24-Hour Duty Cycle, March 2011

Smart Meters and Smart Systems: A Metering Industry Perspective, Edison Electric Institute (EEI), Association of Edison Illuminating Companies (AEIC) and Utilities Telecom Council (UTC), March 2011

A Discussion of Smart Meters And RF Exposure Issues, Edison Electric Institute (EEI), Association of Edison Illuminating Companies (AEIC) and Utilities Telecom Council (UTC), March 2011

- (6) *An explanation of the type of information that will be gathered by the electric utility through the use of smart meters:*

Consumers Energy The amount of kilowatt-hours (kWh) consumed each hour, kilovolts-ampere-reactive hours (kVARh) delivered, and actual voltage delivered will be collected every four-six hours. Some of this data is also added together and then sent once per day. Alarms and notification of field events will be sent out in real time.

Detroit Edison The data collected is accumulated Watt hour (Whr) consumption readings, load profile hourly interval watt-hour (Whr) and Volt Ampere hour (VAhr) energy data, load profile energy data, instantaneous voltage, meter messages, events, alarms, and network parameters. No customer-specific data such as addresses, phone numbers, account status or social security numbers will be gathered.

- (7) *An explanation of the steps that the electric utility intends to take to safeguard the privacy of the customer information so gathered:*

Consumers Energy Safeguards for customer privacy include using data encryption and code division multiple access (CDMA). There is no personal customer information in the transmittal of data.

Detroit Edison Customer information is safeguarded through data encryption and internal confidentiality policies.

- (8) *Whether the electric utility intends to allow customers to opt out of having a smart meter:*

Consumers Energy Consumers Energy proposes a future opt-out, but no details were provided.
Detroit Edison Detroit Edison is developing an opt-out for customers, but has yet to develop any details.

- (9) *How the electric utility intends to recover the cost of an opt-out program if one will exist:*

Consumers Energy In accordance with utility cost of service principles, Consumers Energy suggests a future opt-out will be subject to a monthly maintenance fee. Fixed costs for opt-out would be recovered through a tariff-based, one-time charge and a monthly maintenance charge.

Detroit Edison Detroit Edison projects that customers choosing to opt-out will be responsible for all costs associated with an opt-out tariff provision.

Detroit Edison and Consumers Energy provided responses to the Commission's request in Case No. U-17000 regarding AMI deployment. The utilities could have provided additional details that would have been helpful for the Staff's analyses, including more specific information on savings calculations and privacy protections.

THE STAFF'S REVIEW OF AMI

The Staff reviewed the submitted comments, and the cited resources and literature provided by the electric utilities and the public. The Staff examined resources considered "technical" in nature. Many of these resources were published in reputable scientific or professional peer-reviewed journals or were based on reproducible, sound scientific methods and procedures. The Staff also examined many other resources and literature from a variety of sources. The Lawrence Berkeley National Laboratory (LBNL) document identifying resources was beneficial to the Staff in its review.⁴ This report addresses some of the more frequently cited resources.

Safety and Health Concerns

The Federal Communications Commission (FCC) is charged with regulating international communications by radio, television, wire, satellite and cable within the United States and its territories. The FCC is responsible for providing licenses for RF emissions. The FCC regulations cover matters relating to public health and safety and have been designed to ensure that the levels of RF emissions that consumers are exposed to are not harmful.

⁴ LBNL Website. <http://smartresponse.lbl.gov/reports/sm-resourcelist041912.xlsx>

In January 2011, the California Council on Science and Technology (CCST) completed a report titled *Health Impacts of Radio Frequency from Smart Meters*.⁵ The CCST compiled a comprehensive overview of known information on human exposure to wireless signals, including the effectiveness of the FCC RF safety regulations. After evaluating numerous RF related publications and soliciting the opinions of technical experts in this and related fields, the CCST concluded that no additional standards are needed at this time and that FCC standards are adequate to ensure the health and safety of people from the known thermal effects of smart meters. The report also indicates that smart meters, when installed correctly and with FCC certification, emit only a fraction of the level that the FCC has determined to be safe.

In a recent report, *Radio-Frequency Exposure Levels from Smart Meters: A Case Study of One Model*,⁶ the Electric Power Research Institute (EPRI) researched smart meter emission data that provides valuable insight into RF exposure scenarios for a widely used type of smart meter. There were three key findings: (1) exposure levels from individual meters declined rapidly as distance from the meter increased, (2) meters transmitted for only a small fraction of time, and (3) RF exposure levels remained well below the FCC exposure limits.

The Utilities Telecom Council (UTC), in an article titled *No Health Threat from Smart Meters*,⁷ provided a review of the safety standards associated with RF emissions and stated that smart meters did not pose a health or safety threat. The UTC's research established that laptop computers using Wi-Fi transmit at levels similar to smart meters, although laptop transmitters are always "on" or transmitting and smart meters transmit for short intervals periodically throughout the day. After reviewing this and other common RF devices (cell phones, microwave ovens, etc.), the UTC concluded that the RF emissions from smart meters would not pose a threat to human health and safety.

The January 13, 2012, County of Santa Cruz Health Services Agency memorandum titled *Health Risks Associated with SmartMeters*⁸ was drafted in response to the Santa Cruz County Board of Supervisors' request that the agency identify potential smart meter health effects and possible mitigation measures. The memorandum concluded that research addressing the health effects of electromagnetic fields (EMF) does not specifically address smart meters; there is no scientific data regarding non-thermal effects of smart meters; and government agencies should take precautionary avoidance measures. LBNL reviewed the agency's memorandum as part of the Smart Grid Technical Advisory Project.⁹ LBNL's review focused on the objective of the memorandum, consistency of cited sources with agency established peer review criteria, and clarification of technical assumptions and claims. LBNL noted:

⁵ *Health Impacts of Radio Frequency from Smart Meters*, January 2011.

<http://www.ccst.us/publications/2011/2011smartA.pdf>

⁶ *Radio-Frequency Exposure Levels from Smart Meters: A Case Study of One Model*, February 2011.

https://www.nvernergy.com/NVEnergize/documents/EPRI_1022270_caseStudy.pdf

⁷ *No Health Threat From Smart Meters*, Fourth Quarter 2010 Issue of the UTC JOURNAL.

<http://www.utc.org/utc/no-health-threat-smart-meters-says-latest-utc-study>

⁸ County of Santa Cruz, *Health Risks Associated with SmartMeters*, <http://emfsafetynetwork.org/wp-content/uploads/2009/11/Health-Risks-Associated-With-SmartMeters.pdf>

⁹ The Smart Grid Technical Advisory Project provides technical assistance and training to state regulatory commissions on topics related to smart grid. The Smart Grid Technical Advisory Project does not participate in litigated or contested regulatory or other proceedings.

[T]he Agency memorandum does not appear to provide a balanced representation of research, the risks, or mitigation options. Instead the Agency memorandum is largely focused on scientifically unsupported claims related to “electromagnetic hypersensitivity” (EHS).

Individuals with EHS report real symptoms; however, health research has been unable to consistently attribute those symptoms to EMF exposure.¹⁰ LBNL’s review of the Santa Cruz memorandum highlighted concerns with the methodology of the agency memorandum cited sources.¹¹

On April 12, 2012, the AAEM submitted their position paper, *Electromagnetic and Radiofrequency Fields Effect on Human Health*, to Case No. U-17000.¹² The paper supports AAEM’s position that emissions from smart meters are potentially harmful. LBNL also provided a response to the AAEM position paper. LBNL’s primary concerns with the paper’s findings are a) the research used to establish a cause and effect relationship does not address smart meters, b) the research citations and references are unrelated to smart meters, c) conclusions are about EHS, and d) the minimal amount of RF smart meters actually contribute to total environmental RF. LBNL explains that RF is distinguished by a number of characteristics including frequency, intensity and proximity.¹³ There are multiple sources of RF exposure in our everyday environment such as cellular phones, wireless devices such as laptops and routers, microwave ovens, baby monitors, garage door openers, “walkie talkies,” computer monitors, fluorescent lighting, and electrical wires within the home.¹⁴ Smart meters are a small contributor to the total environmental RF emissions to which the general public is exposed. Eliminating smart meters would result in a minimal reduction of total emissions.¹⁶

Several comments submitted in Case No. U-17000 cited the World Health Organization’s (WHO) classification of RF EMF as a class 2B carcinogen in support of their smart meter health concerns. This classification means that RF EMF has been deemed as *possibly* carcinogenic to humans.¹⁷ RF EMF was designated as a class 2B carcinogen due to limited evidence associating glioma and acoustic neuroma, two types of brain cancer, with wireless telephone users. The Staff was unable to identify research that associates AMI meters with any type of cancer.

¹⁰ LBNL, *Review of the January 13, 2012 County of Santa Cruz Health Services Agency memorandum: Health Risks Associated with Smart Meters* <http://smartresponse.lbl.gov/reports/schd041312.pdf>

¹¹ LBNL, *et al.* <http://smartresponse.lbl.gov/reports/schd041312.pdf>

¹² American Academy of Environmental Medicine, *Electromagnetic and Radiofrequency Fields Effect on Human Health*. <http://efile.mpsc.state.mi.us/efile/docs/17000/0391.pdf>

¹³ LBNL, *Review of the April 12, 2012 American Academy of Environmental Medicine (AAEM) submittal to the Michigan Public Service Commission*, <http://smartresponse.lbl.gov/reports/aaem041812.pdf>

¹⁴ Federal Communications Commission: *Radio Frequency Safety* <http://transition.fcc.gov/oet/rfsafety/rf-faqs.html>.

¹⁵ Federal Communication Commission: *Interference – Defining the Source* <http://www.fcc.gov/guides/interference-defining-source>.

¹⁶ City of Naperville, Naperville Smart Grid Initiative (NSGI), Pilot 2 RF Emissions Testing – Summary Report-V2.0, *Smart Meters, Household Equipment, and the General Environment*, November 10, 2011. http://www.naperville.il.us/emplibrary/Smart_Grid/Pilot2-RFEmissionsTesting-SummaryReport.pdf

¹⁷ International Agency for Research on Cancer, *IARC Monographs on the Evaluation of Carcinogenic Risks to Humans*, January 2006. <http://monographs.iarc.fr/ENG/Preamble/currentb6evalrationale0706.php>

In May 2011, members of the WHO's International Agency for Research on Cancer's (IARC) Monographs Working Group reviewed roughly 900 studies that involved RF EMF and cancer.¹⁸ The group categorized the studies by the following RF EMF sources: occupational exposure (i.e., radar installations), personal exposure associated with the use of wireless telephones, and environmental exposure (i.e., radio/television signals). For occupational exposure to RF EMF, the group determined that there are "some positive but inconsistent signals." With respect to environmental sources of RF EMF, the group determined that there was no "solid data" to conclude a link between cancer and RF EMF exposure. Lastly, regarding personal exposure, the group found there to be limited evidence linking glioma and acoustic neuroma to wireless phone use, with inadequate evidence for other cancer types.

Experts in the field of RF EMF have testified in front of public utility commissions outside of Michigan as to how the IARC classification correlates with smart meter technology. For example, Baltimore Gas & Electric provided the expert opinion of Dr. Peter Valberg to the Public Service Commission of Maryland, who testified on how the category 2B classification of RF EMF should be interpreted. Dr. Valberg stated that the IARC has not found any "... adverse health consequences established from exposure to RF fields at levels below the international guidelines on exposure limits published by the International Commission on Non-Ionizing Radiation Protection."¹⁹ He goes on to state that the 2B classification of RF EMF was "... made with reference to the quantity of exposure, e.g., no quantitative estimate as to how various uses of RF contribute to human exposure. . . ."²⁰ and that "... smart meters constitute one of the weakest sources of our RF exposure."

Dr. Yakov Shkolnikov and Dr. William H. Bailey, engineers from the consulting firm Exponent, provided expert testimony to the Public Utility Commission of Nevada concerning NV Energy's smart meter deployment, and addressed smart meter RF EMF emission concerns. These witnesses pointed out that although RF EMF was classified in group 2B "... the evidence is limited that cancer develops from exposures from RF fields."²¹ They also make it clear that "... the indications of potential risk derive almost entirely from statistical associations in some studies between the use of mobile phones and certain types of cancer."²²

The WHO's decision to classify RF EMF in the group 2B category was based on studies involving wireless phones, not smart meters. While both wireless phones and smart meters emit RF EMF, the

¹⁸ International Agency for Research on Cancer, *Radiofrequency Electromagnetic Fields: evaluation of cancer hazards*. http://monographs.iarc.fr/ENG/Publications/REF_Poster2012.ppt

¹⁹ *In the Matter of Baltimore Gas and Electric Company for Authorization to Deploy a Smart Meter Initiative and to Establish a Surcharge Mechanism for the Recovery of Cost*, Case No. 9208, Comments on an "Opt-Out" Option for Smart Meters, Testimony of Dr. Peter A. Valberg, April 6, 2012. http://webapp.psc.state.md.us/Intranet/Casenum/CaseAction_new1.cfm?CaseNumber=9208

²⁰ *In the Matter of Baltimore Gas and Electric Company for Authorization to Deploy a Smart Meter Initiative and to Establish a Surcharge Mechanism for the Recovery of Cost*, et al.

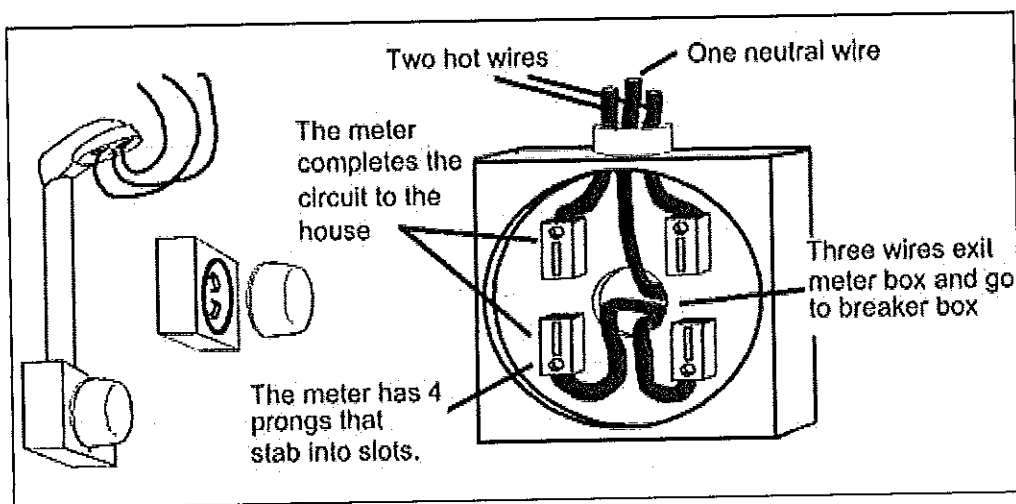
²¹ *Investigation regarding NV Energy's Advanced Service Delivery Meter Program a/k/a Smart Meter and its implementation*, Docket No. 11-10007, Comment of S. Stirling, December 22, 2011.

²² *Investigation regarding NV Energy's Advanced Service Delivery Meter Program a/k/a Smart Meter and its implementation*, et al

major difference between the two is the lower level of exposure to frequencies from smart meters. Low exposure levels from smart meters coupled with the fact that the IARC's classification is based on weak mechanistic evidence and limited evidence derived from different RF EMF emitting devices is important to consider when evaluating the substance of the group 2B classification. After careful review of the available literature and studies, the Staff believes that the health risk from the installation and operation of metering systems using radio transmitters is insignificant. In addition, the appropriate federal health and safety regulations provide assurance that smart meters represent a safe technology.

Some public comments stated a link between smart meters and house fires. Meter fires for any type of meter are a rare occurrence, according to the National Fire Protection Agency's 2012 annual report²³ on home electrical fires. This type of fire makes up only 1% of the average reported cause of home electrical fires. Factors associated with meter fires are not exclusive to smart meters but apply to all meters. Installation details for smart meters and electromechanical meters are the same. Both meter types have four prongs on the back. The four prongs attach to four slots known as stabs. These stabs, along with the wires from the power lines and meter itself, are housed inside a protective case known as a meter box. Once the meter is connected, the electrical circuit is complete. This is shown in the diagram below. Component failure (i.e. loose stab connection) can cause arcing, potentially resulting in a meter fire. It is the component failure, not the meter unit that is the cause of an arcing-induced fire.

Figure 1: Meter Connection



²³ Home Electrical Fires, National Fire Protection Association, January 2012.
<http://www.nfpa.org/assets/files/PDF/OS.electrical.pdf>

Data Privacy

As smart meter deployments have become more prevalent throughout the United States, customer data privacy has become a priority issue. In order to address the concerns of the public regarding smart meter data privacy, multiple entities have engaged in efforts to identify and address the fundamental privacy issues. The Staff reviewed data privacy literature that specifically addressed or were clearly applicable to concerns arising from smart meters collection of customer electric usage information. Documents reviewed originated from the following entities: municipal utilities, state utility commissions, state legislation, standard development organizations, federal government and academia. The following table lists the literature reviewed in preparation of this section.²⁴

Table 1: Data Privacy Policies

Entity:	Document Name:
Municipal Utilities	
City of Naperville	Naperville Smart Grid Initiative Customer Bill of Rights
State Utility Commissions	
State of California	Privacy Protections For Energy Consumption Data
State of Colorado	Rules Regulating Electric Utilities
State of New York	Smart Grid Policy Statement
State of Texas	Customer Protection Rules For Retail Electric Service
State Legislation	
State of Arizona	Consumer Protections; Rules; Confidentiality; Unlawful Practice
State of Oklahoma	Electric Usage Data Protection Act
State of Washington	WAC 480-100-153 Disclosure of Private Information
Standards Development Organizations	
NAESB	Third Party Access To Smart Meter-Based Information
NISTIR 7628	Guidelines for Smart Grid Cyber Security
Federal Government	
US Dept. of Energy	Smart Grid Privacy Workshop Summary Report
US Dept. of Homeland	Fair Information Practice Principles
Academia	
Vermont Law School	A Model Privacy Policy for Smart Meter Data

AMI necessitates a higher volume of data collected by utilities, therefore it is imperative that customer information be properly protected through appropriate regulations. Federal legislation protecting consumer data privacy is forthcoming;²⁵ however, it is important to identify ways to protect Michigan's ratepayers in the interim. States that feature more advanced AMI deployment such as California,

²⁴ Links to the table documents can be found in Appendix A.

²⁵ U.S. Department of Energy Smart Grid Privacy Workshop Summary Report.

http://www.smartgrid.gov/sites/default/files/doc/files/Privacy%20report%202012_03_19%20Final.pdf

Colorado, Texas, Arizona, Oklahoma, and Washington have addressed customer data protection through state legislation or administrative rules adopted by the public utilities commissions. The Staff acknowledges that interim protections could be achieved through the development of utility tariffs that address customer data privacy. The Staff recommends including the following fundamental concepts when addressing privacy policy:

- Definitions of various types of data collected (*usage/billing, aggregate, customer identifiable*),
- Permitted usage of data types by utility (*sales, contractor work, emergency*),
- Customer consent and third-party disclosure rules (*notice, timeframe, records*),
- Availability of usage information to customer (*web portal, direct mail, email*), and
- Privacy breach requirements (*notification to customer/commission*).

The Staff recommends that there be further investigation into the most appropriate manner (administrative rules, legislation, tariffs, etc.) to ensure customer privacy. This process should include all relevant stakeholders. In the interim, the Staff recommends that utility tariffs include provisions to enhance customer privacy.

Cyber Security

As Michigan transitions to a more technologically advanced power grid, it is important that the proper actions are taken by utilities to address cyber security threats. Cyber security planning is defined as preventing damage to, unauthorized use of, or exploitation of electronic information and communications systems and the information contained therein to ensure confidentiality, integrity, and availability.²⁶ The attention cyber security has received at the national and state levels for many years indicates that utilities, regulators and consumers all share common concerns. Improving the electrical grid involves gathering more data and utilizing more technology. With every added piece of technology, the risk of vulnerabilities inherently increases. The U.S. DOE has stated that the smart grid of the future should be secure and resilient against all forms of attacks. A smarter grid includes more devices and connections that may become avenues for intrusions, error-caused disruptions, malicious attacks, destruction, and other threats.²⁷

It is important to balance the need for a more digitally connected grid and the inherent risks of these new technologies and their interconnection. At the national level, several organizations are currently addressing this issue: North American Electric Reliability Corporation (NERC), National Institute of Standards and Technologies (NIST), Smart Grid Interoperability Panel Cyber Security Working Group (CSWG), National Electric Sector Cybersecurity Organization (NESCO), and the U.S. DOE. These

²⁶ National Association of State Energy Officials (NASEO), *Smart Grid and Cyber Security for Energy Assurance*. http://www.naseo.org/energyassurance/NASEO_Smart_Grid_and_Cyber_Security_for_Energy_Assurance_rev_November_2011.pdf

²⁷ Executive Office of the President, National Science and Technology Council, *A Policy Framework For The 21st Century Grid: Enabling Our Secure Energy Future*, June 2011. <http://www.whitehouse.gov/sites/default/files/microsites/ostp/nstc-smart-grid-june2011.pdf>

groups have published reports and compliance programs to provide utilities guidance on cyber security in the electric industry.

The overall goal is to develop a framework that ensures effective cyber security is appropriately implemented and that all stakeholders contribute to the security and reliability of the electrical grid.²⁸ The goal is not a compliance-based culture in which companies are expected to stand alone in this effort. Instead it should be a proactive, responsible and collaborative culture in the state of Michigan. The Staff reviewed multiple cyber security related documents published by the leading cyber security associations and found the following commonalities:

- Cyber security efforts should concentrate on rigorous open standards and guidelines through public-private partnerships for security,
- Effective cyber security will rely on data sharing and cooperation between regulatory, private and electric industry entities,
- A risk-based approach to cyber security planning should be implemented,
- A cyber security performance accountability system should be created to fulfill risk-based planning, and
- Regulatory bodies should be in constant contact with asset owners regarding cyber security.

Several states have taken positions on cyber security including California and Texas. The Public Utility Commission of Texas enacted a cyber security rule requiring electric utilities to have an independent security audit of the mechanism for customer and Retail Electric Provider (REP) access to meter data conducted within one year of initiating such access and promptly report the results to the commission.²⁹

The Federal Trade Commission (FTC) has studied how entities collect and use personal information. They have compiled their findings in the Fair Information Practices (FIP), which has been used successfully across many industries. The California Public Utilities Commission (CPUC) cited the FIP as a proven model for data security that the electric industry should utilize. In regards to cyber security, the CPUC stated upon any breach³⁰ affecting 1000 or more customers, an electric provider has two weeks to notify a commission appointed cyber security representative.³¹ They also required IOU's to file a year-end cyber security breach report with the cyber security representative at the commission.³²

²⁸ Executive Office of the President, *et al.*

<http://www.whitehouse.gov/sites/default/files/microsites/ostp/nstc-smart-grid-june2011.pdf>

²⁹ Public Utility Commission of Texas, Electric Substantive Rules.

<http://www.puc.state.tx.us/agency/rulesnlaws/subrules/electric/Electric.aspx>

³⁰ A breach is any unauthorized use or exploitation of customer information.

³¹ Order Instituting Rulemaking to Consider Smart Grid Technologies Pursuant to Federal Legislation and on the Commission's own Motion to Actively Guide Policy in California's Development of Smart Grid, *et al.*

³² Order Instituting Rulemaking to Consider Smart Grid Technologies Pursuant to Federal Legislation and on the Commission's own Motion to Actively Guide Policy in California's Development of Smart Grid, *et al.*

The Staff proposes that the following cyber security measures be implemented in Michigan:

- Each utility should adopt an annual independent security audit of the mechanisms of customer access, third party access and internal cyber risk-management practices. The independent auditor should be approved by the Staff.
- As outlined in the National Association of Regulatory Utility Commissioners' (NARUC) resolution regarding cyber security, the Staff should maintain a dialogue with regulated utilities to ensure that they are in compliance with standards, and that preparedness measures are employed to deter, detect and respond to cyber attacks and to mitigate and recover from them.³³
- Utilities should adopt the same breach notification policies as other states have adopted, namely the notification of any breach affecting 1000 or more customers within two weeks of the breach.
- Each utility should be required to file a yearly breach notification summary with the Staff, detailing all breaches of customer information, including any third party breach information.

Customer Education

Customer education and participation is an important component of the successful implementation of the smart grid. A portion of the smart meter benefits rely upon customer engagement. To facilitate customer engagement, utilities must provide customers with clear and accurate information about programs and services available both prior to and *throughout* the deployment of smart meters.³⁴ Within the 397 unique comments submitted to Case No. U-17000, 360 comments reference a lack of communication with customers about the functionality and benefits of smart meters.³⁵ As the Maryland Public Service Commission³⁶ stated:

The negative experiences in other states . . . illustrate vividly that poor customer education will magnify small-scale problems and create disproportionate customer skepticism and unhappiness.

For this reason, the Staff reviewed customer education efforts in various states. Several states have supported the importance of customer education through both legislation and orders.

³³ NARUC, *Resolution Regarding Cybersecurity*, February 17, 2010.

<http://www.naruc.org/Resolutions/Resolution%20on%20Cybersecurity1.pdf>

³⁴ Massachusetts Institute of Technology, *The Future of the Electric Grid*; An Interdisciplinary MIT Study, 2011, p. 164. http://web.mit.edu/mitei/research/studies/documents/electric-grid-2011/Electric_Grid_Full_Report.pdf

³⁵ Pg. 4, Chart 1 of this report (combined categories of lack of education, utility control of power, legality of smart meter install and privacy).

³⁶ *In the Matter of Baltimore Gas and Electric Company for Authorization to Deploy Smart Meter Initiative and to Establish a Surcharge Mechanism for the Recover of Cost*, Case No. 9208, Order No. 83531, pp. 42-43.

http://webapp.psc.state.md.us/Intranet/Casenum/CaseAction_new1.cfm?CaseNumber=9208

- Colorado Public Utilities Commission concluded that utilities should submit a smart meter plan with a detailed customer education and outreach plan.³⁷
- Nevada Public Utilities Commission concluded that NV Energy should enhance its consumer outreach efforts. The outreach efforts were to include a “media plan leading up to the deployment of smart meters that will frequently reach out into the community and use multiple channels to reach customers more effectively.”³⁸
- California Public Utility Commission (CPUC) was directed by California Public Utilities Code § 8360 (2009), to identify criteria to ensure that the utility smart grid deployment plans conform to best practices. Commission Rulemaking R 08-12-009 identifies the need for a smart grid strategy recognizing that customer participation is necessary for the demand-side benefits.³⁹ In addition, CPUC Decision 12-04-025 identifies metrics to use to track customer participation.⁴⁰
- The Maryland Public Service Commission directly addressed customer education in Case No. 9208, Order No. 83531. The commission order states “[t]hat Baltimore Gas and Electric Company shall submit, for the Commission’s approval, the Company’s updated customer education plan and associated proposed messaging that it will provide customers prior to and during installation of the meters, before Peak Time Rebates begin, and before any other programmatic changes take effect. Baltimore Gas and Electric and other parties in the matter shall develop, and submit for Commission approval, a comprehensive set of metrics by which the Commission may measure the effectiveness of the customer education plan, . . .”⁴¹
- The Public Utility Commission of Texas met regularly with utilities to help develop radio ads, door hangers, billboards, etc. which were used to educate the public about smart meters. The education effort specifically targeted smart meter cost recovery, deployment, and implementation. The Texas Public Utility Commission also approved each utility’s budget associated with smart meter customer education.⁴²
- Maine Public Utility Commission ordered Central Maine Power to “. . . develop and implement a customer communication plan that will explain the various opt-out options, describe the benefits of the AMI program, describe the functionality of the available meter options, describe the

³⁷ *In the Matter of the Investigation of the Issues Related to Smart Grid and Advanced Metering Technologies*, Docket No. 10I-099EG, Decision No. C11-0406, Order State Conclusions and Next Step, March 30, 2011, p. 5.

³⁸ *Investigation regarding NV Energy’s Advanced Service Delivery Program a/k/a Smart Meters and its implementation*, Docket No. 11-10007, Interim Order, January 11, 2012, p. 8.

³⁹ California Public Utility Commission, R 08-12-009.
http://docs.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/119902-02.htm#P201_29007

⁴⁰ California Public Utility Commission, Decision 12-04-025, April 24, 2012.
http://docs.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/164808.htm

⁴¹ *In the Matter of the Application of Baltimore Gas and Electric Company for Authorization to Deploy a Smart Grid Initiative and to Establish a Surcharge for the Recovery of Cost*, Case No. 9208, Order No. 83531, p. 50.
<http://webapp.psc.state.md.us/Intranet/sitesearch/CN9208.pdf>

⁴² Relevant Dockets include: Oncor Docket No. 35718, CenterPoint Docket No. 35639, AEP TX Docket No. 36928, TNMP Docket No. 38306.
<http://interchange.puc.state.tx.us/WebApp/Interchange/application/dbapps/filings/pgSearch.asp>.

charges associated with the opt-out, and describe the process by which a customer may opt-out.”⁴³

- In 2008, the Ohio legislature enacted changes to the Ohio Revised Code – Title XLIX Public Utilities which required utilities file a customer education plan; the purpose of which is to “... educated [*sic*] Ohio’s consumers about their new choices for electric service.”⁴⁴

The transition to smart meters and related infrastructure will provide customers access to current data about their energy usage, creating an opportunity to better control energy consumption. Smart meters also provide the basic infrastructure for aggregate benefits related to reliability, outage identification, and reduced peak demand. These benefits have a positive effect on all customers including those who choose to opt-out.⁴⁵ A smooth transition to smart meters can be accomplished only through customer education. A well thought out education strategy allows customers to develop a sense of trust with the utility and an understanding of the available benefits.

The Staff recommends utilities develop and implement a new education strategy similar to those used in other jurisdictions. Education program results should reflect high levels of customer engagement, acceptance and enthusiasm with their smart meter program. The strategy should include metrics to measure the overall effectiveness of the education program.

National Policy

The United States Congress has passed several laws that support the upgrade of the electric grid, including deployment of smart meters for residential and other types of customers. These laws have provided a framework for smart grid, including smart meter deployment in the United States. Basically, these laws encourage states to proceed with modernizing the electric grid in order to be ready for the electric demands of the 21st Century.

The Energy Policy Act of 2005 (EPAc 2005) was the first piece of federal legislation that discussed smart grid. The statute strongly encourages demand response. It calls upon utilities to offer time-based rates with a time-of-use meter to all customer classes. It also requests that state public utility commissions investigate the installation in their state of time-of-use meters and communication devices to enable time-based pricing rate schedules and other demand response programs. The statute also mandates that, by October 2012, all federal buildings be individually metered for electricity consumption and, to the extent feasible, use advanced meters that measure energy use on an hourly basis.⁴⁶

⁴³ Maine Public Utilities Commission, Docket No. 2010-345, Order (Part I), May 19, 2011, p. 2.

⁴⁴ *In the Matter of the Commission’s Promulgation of Rules for Electric Transition Plans and of a Consumer Education Plan, Pursuant to Chapter 4928, Revised Code*, Case No. 99-1141-EL-ORD, Entry, June 8, 2000. <http://www.puco.ohio.gov/emplibrary/files/docketing/ORDERS/2000/0604/99-1141.pdf>

⁴⁵ Electric Power Research Institute *Advanced Metering Infrastructure*, February, 2007, p. 1. <http://www.ferc.gov/eventcalendar/Files/20070423091846-EPRI%20-%20Advanced%20Metering.pdf>

⁴⁶ Energy Policy Act of 2005, Pub. L. No. 109-58, 100 Stat. 567 (codified at 1 U.S.C. §§ 900-999).

The Energy Independence and Security Act of 2007 (EISA) is a major piece of federal legislation addressing smart grid and smart meters. Title XIII, Sections 1301 through 1309 supports modernizing the nation's electric grid and contains provisions giving the U.S. DOE a leadership role in all but two areas of smart grid advancement. Interoperability was assigned to the NIST and the Federal Energy Regulatory Commission (FERC), and recovery of smart grid investment was relegated to the state public service commissions. The statute contains a policy statement on United States' grid modernization that defines "smart grid;" establishes the Smart Grid Advisory Committee, the Smart Grid Task Force, and the Smart Grid Interoperability Framework; and institutes the Smart Grid Investment Matching Grant Program, which provides a 20% match for qualifying smart grid investments.⁴⁷

The American Recovery and Reinvestment Act of 2009 (ARRA) amends EISA allowing U.S. DOE to provide financial support for smart grid demonstration projects and advanced grid technology investments, such as AMI. In total, the legislation provides \$3.4 billion in funding for numerous smart grid projects across the nation, including smart meters, in-home energy management displays, smart thermostats, advanced transformers and load management equipment. The act establishes a smart grid information clearinghouse and requires that demonstration projects use open protocols and standards.⁴⁸

In addition to federal laws, numerous prestigious agencies and institutions have considered the national outlook for the smart grid and indicate that installing smart grid technologies, including smart meters, will have a positive benefit on the United States' electric grid. These reports urge the United States to follow the directives of the federal law and update the electric grid.

In 2012, the U.S. DOE issued the 2010 Smart Grid System Report. The report, required by the EISA, outlines the current status of smart grid development, projects its future, and identifies obstacles to its progress. It describes the scope of smart grid, recognizes its stakeholders, and makes recommendations for future reports. The report states that recent progress has been significant due to funding from ARRA of 2009, including the provision of \$812.6 million in federal grant awards for AMI deployments throughout the United States, the implementation or expansion of distributed resource interconnection policies in 14 states since 2008, and funding the deployment of 877 phasor measurement units. The report determines that correctly assessing the value proposition and obtaining capital for new technologies that communicate information between electricity sector participants are challenges that need to be overcome in order to continue development of the smart grid.⁴⁹

Several NARUC initiatives support smart grid activities. NARUC and FERC have established the Smart Response Collaborative which provides a forum for federal and state regulators to share information about the smart grid to support the development of better and more effective policies. NARUC has also passed resolutions that address smart grid. A resolution passed on July 20, 2011, endorsed a foundational

⁴⁷ Energy Independence and Security Act of 2007 (EISA), Pub. L. No. 110-140, 121 Stat. 1492, 1783-84 (codified at 42 U.S.C. § 17381).

⁴⁸ American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5, 123 Stat. 115, 516).

⁴⁹ U.S. DOE 2010 Smart Grid System Report, Report to Congress, Washington DC, February 2012.

<http://energy.gov/oc/downloads/2010-smart-grid-system-report-february-2012>

set of principles related to advance metering and smart grid deployments. The principles encourage the continued installation of smart grid technologies including AMI, while also advising utility commissions to continue to assess the best strategies for their states.⁵⁰

The Future of the Electric Grid was published by the Massachusetts Institute of Technology (MIT), the sixth in a series of reports that examine the “future of” energy and environmental issues. The report provides a snapshot of the current status of the United States’ electric grid and a vision for the evolution of the grid over the next two decades. The study group, consisting of MIT professors and research assistants, with input from industry and government experts, reviewed and evaluated existing research and made recommendations that will help to ensure the future of the electric grid. One of the main findings is that regulatory policies and the technologies used to support the grid must change or it is likely to be difficult to maintain acceptable reliability and reasonable electric rates. An updated distribution system with the use of AMI is instrumental to a smarter grid. The study identifies the benefits of AMI including a reduced cost of meter reading, more accurate and timely billing, improved customer support, enhanced distribution monitoring and management, support for demand response and energy conservation, quicker response to outages and reduced outage times. With the decreasing availability of electromechanical meters, AMI will soon be the most viable metering option available to utilities. The study acknowledges that there have been health concerns raised by customers, but concludes that the scientific research does not suggest that radio waves from smart meters have adverse health effects. They acknowledge that utilities may have to consider these concerns when designing their programs by inclusion of opt-out or other provisions.

The study also reviewed the status of cyber security readiness on the United States’ grid. The report recommends a heightened focus on detection, response, and recovery strategies, especially for the distribution system. Since there is currently more than one agency working on this issue, a single agency should be given responsibility to develop and enforce standards across the entire electric power system.⁵¹

A Policy Framework for the 21st Century was issued by the federal government to build on the policy directives set forth in the EISA and the ARRA by creating a pathway to a modernized grid. A smarter, modernized and expanded grid is pivotal to the United States, playing a lead role in a clean energy future. The electric grid in the United States is at an advanced age. This makes it imperative to upgrade the grid in three categories: advanced information and communication technologies that improve transmission and distribution; advanced metering; and equipment that accesses and leverages energy usage information. The study concludes that AMI can empower consumers to better manage their energy usage and reduce their energy bills.

⁵⁰ National Association of Regulatory Utility Commissioners, Smart Grid Resources.
www.naruc.org/smartgrid/

⁵¹ Massachusetts Institute of Technology, *The Future of the Electric Grid*, An Interdisciplinary MIT Study, 2011.
http://web.mit.edu/mitel/research/studies/documents/electric-grid-2011/Electric_Grid_Full_Report.pdf

Ensuring the privacy of energy use data is also of primary concern to the study participants. Existing agencies, such as state public service commissions, may be able to set privacy rules for regulated utilities. The FTC's FIP principles can provide a framework for developing codes of conduct to protect this data.⁵²

Policies and Practices

AMI has the potential to provide increased electric reliability while providing customers with the information and choices necessary to reduce or shift their electric consumption. Customers can only realize these benefits if utilities begin to collect more detailed usage data. While AMI does not transmit personal customer information, it does gather usage data more frequently than a traditional meter. Although utilities have been protecting customer data for many years, the collection, storage, use, access, and disclosure of customer consumption data have generated concerns about privacy, utility transparency, customer choice, and security. Attention to system reliability standards, electric technical standards and utility billing practices are warranted when addressing customer protection, data collection, customer privacy, cyber security, and system reliability benefits.

Several areas of current rules and tariffs will be affected by AMI deployment in Michigan. In some cases, the topic of concern is not a direct result of AMI. One example is privacy. Customers are more sensitive to privacy with the deployment of AMI, but the requirement for documented and clearly communicated utility privacy policies existed prior to AMI deployment. Consistently documenting privacy policies creates transparency and accountability as new technologies continue to evolve.

Electric utilities regulated by the Commission follow rules and standards for electric service set forth in administrative rules, tariffs, and Commission orders. All of these regulatory mechanisms should be considered and the most effective chosen to ensure customers have adequate protections.

The Staff conducted a preliminary investigation into national recommendations, rules from other states, and utility best practices. This investigation revealed Michigan's current policies are in need of review in order to address on-going customer issues.⁵³ Michigan should consider the following areas as the utility systems and utility/customer relationships change due to AMI.

- Customer Consent – Customers should have the option to authorize data collection and services not related to core billing and operational services.
- Individual Access and Participation – Customers should have easy, timely access to their detailed usage data in a standard downloadable format.
- Customer Choice – Utilities should clearly, fully, and accurately describe all choices available to customers.
- Notice and Purpose – Utilities should provide a detailed description of all purposes for which customer data will be used.

⁵² *A Policy Framework for the 21st Century: Enabling Our Secure Energy Future, et al*
<http://www.whitehouse.gov/sites/default/files/microsites/ostp/nstc-smart-grid-june2011.pdf>

⁵³ A complete list of research sources is available in Appendix A

- Collection and Scope – Only information that is required to fulfill the stated purpose specified under Notice and Purpose should be collected.
- Security – Personal information in all forms should be protected from loss, theft, unauthorized access, inappropriate disclosure, copying, use, or modification. Utilities should implement breach notification policies and independent third party privacy and security audits.
- Management and Accountability – Utilities should develop and appoint personnel to ensure that information security, privacy policies, and privacy practices exist and are followed, including ongoing training and audits.
- Utility Processes – Utilities should provide a process for individuals to see and easily correct inaccuracies in their information. Utilities should estimate customer bills only if they are able to demonstrate that there was an unavoidable circumstance. Prepayment is an option that may be preferred by some customers.
- Meter Accuracy – Standards that ensure the accuracy of AMI meters should be developed.
- Service Reliability – Performance measures should reflect system reliability and outage support provided through AMI implementation.

The Staff examined current Commission rules and technical standards and found that some AMI related areas are not covered. For example, there is no definition for AMI. There are, however, current rules that address AMI capabilities such as remote shutoff (2007 AACCS R 460.142). In a larger review of methodologies, rules and standards should be evaluated further.

It is recommended that all stakeholders work to analyze and identify the most appropriate implementation methods for addressing the policy considerations listed above. Stakeholders should routinely review all policies related to smart grid as smart grid technologies continue to develop.

Smart Grid Vision

When considering the deployment of AMI in Michigan, it is important to recognize that smart meters and their supporting communications infrastructure represent a single component of a fully modernized grid. AMI introduces a communications platform that can support a multitude of smart grid applications resulting in improved efficiency and reliability, as well as increased longevity of Michigan's aging electric infrastructure. When properly designed and implemented, AMI presents a unique opportunity for Michigan ratepayers to take control of their energy consumption and their energy bills.

The smart grid will enhance electric service in Michigan. Real time outage identification, through AMI, will result in a quicker response to outage situations. Areas without service can be identified almost immediately and individual customers who are still out after their neighborhood has been restored will be easily located. The smart grid technologies will reduce operations and maintenance costs, primarily through reduced meter reading costs, more accurate billing, reduced outage time and monitoring tools that help the utility anticipate equipment failure. AMI meters, with the use of dynamic and time-of-use rates, can reduce peak demand and increase energy conservation. The result could curtail the need for future

capital investment in electrical system capacity and lead to other grid efficiencies. This would result in lower capital costs for all ratepayers.

A Michigan smart grid vision should provide direction to implement technology that will enhance the functionality of the electric grid. It is difficult to have all utilities, vendors, regulators and customers share a succinct vision of what the future electric grid will look like. Therefore, it is important to identify electric grid "objectives" that outline a more reliable grid, improve power quality and incorporate cleaner power sources for electricity generation. All components of electric grid improvements, including AMI installation, distribution infrastructure replacement, and electric generation should reflect the larger objectives of a smart grid vision.

The Staff proposes that future smart grid investments from utilities must correlate with the following objectives aimed at delivering transparent and identifiable benefits to ratepayers:

- Accommodate advanced generation and storage options
- Enable informed participation by all customers
- Support new products, services, and markets
- Optimize existing assets, increase efficiency and improve reliability
- Operate resiliently against physical and cyber attacks

Michigan's current electric grid is characterized by centralized fossil fuel generation plants delivering electricity over long distances to meet customer needs. This model has been dominant for over a century and has provided an economical and reliable means of providing energy to Michigan citizens. However, increased investment and technological advances in decentralized generation and storage options such as gas turbines, diesel engines, solar photovoltaic, wind turbines, biomass generators and plug-in electric vehicles present potential generation options in the future. The Staff supports future grid investments that promote a more flexible grid that is capable of integrating any and all generation, two-way power flows and storage options. These investments will help ensure that Michigan ratepayers have access to the most cost effective generation in the future.

The traditional relationship that has existed between the utility and its ratepayers was limited to customers consuming energy and then receiving a monthly bill for the service. As the smart grid takes form in Michigan, the Staff envisions a much more interactive relationship developing between utility and customer. Utilities need to develop communications avenues and program incentives capable of informing, engaging, empowering, and motivating customers to change their behavior. The Staff believes that an extensive customer education campaign that coincides with technology deployment is pivotal to a successful implementation strategy. The Staff also believes that in the future, piloting a variety of customer programs (dynamic rates, prepay, demand response) to measure their effectiveness will be key to realizing the full spectrum of utility and customer benefits.

Consistent standards are necessary for new products, services and markets to be successful. Effective implementation of a smart grid in Michigan will bring an abundance of new products, services, and

markets that accommodate a variety of customer needs. Michigan customers should have access to the full potential of these innovations. For this reason, smart grid deployment in Michigan should be standards based. Nationally and globally recognized standards play a critical role in the ongoing development of these products, services and markets. The development and adoption of smart grid standards can help investments made today remain valuable into the future, remove barriers to innovation, maximize customer choice, create economies of scale, emphasize best practices, and open global markets. A standard based framework will promote interoperability and accommodate advances in technology.

The two-way flow of system information made possible by the implementation of AMI has multiple applications outside of metering. In the future, the Staff expects to see numerous efficiency applications made possible by the availability of real-time information. Using this system information to recognize and avoid issues such as power line congestion, transformer overheating, and other detrimental grid conditions, will lower the cost of transporting energy from the power plant to the customer meter and improve reliability. Optimizing the efficiency of existing assets already in rate base will help meet increasing electric demand while minimizing investment in new generation facilities and distribution assets.

The transition to a modern grid utilizing digital technology will require a large emphasis on security. The modernized grid must be capable of providing a greater level of reliability to prevent cyber-attacks and sabotage of utility equipment. Grid modernization plans should be developed concurrently with cyber security and outage mitigation strategies. Providing adequate focus on these threats prior to their occurrence will help mitigate the overall effect on Michigan customers. The longevity of a digitalized grid will rely on a utility's ability to plan for and react to both physical and cyber-attacks. Developing robust risk based management strategies can mitigate, if not eliminate, the potential of these threats coming to fruition.

The above objectives provide a glimpse of the potential benefits of moving to a modernized electric grid. Many of the benefits outlined above are being achieved in other jurisdictions throughout the country and the world. These benefits could be realized in Michigan with proper utility implementation strategies. The Staff sees prudent utility investments in AMI as a first step toward realizing a modern grid. The Staff will continuously evaluate requests from utilities for recovery of advanced digital technology for consistency with prudence principles.

Opt-Out Policies in Other Jurisdictions

A few state commissions have adopted opt-out policies for their regulated utilities. California and Maine have the two most prominent examples of commission approved opt-out policies. Costs vary across jurisdictions and service providers. Generally, an initial fee is charged to cover the fixed costs of retaining or replacing an electromechanical meter along with a monthly fee associated with the ongoing meter reading costs. For example: there is a \$75 up-front charge and a \$10 monthly meter reading charge associated with the opt-out tariff of Pacific Gas and Electric in California. NV Energy of Nevada charges a monthly opt-out fee, which is higher for customers in the northern part of the state and lower to south Nevada customers.

States and municipalities feature a variety of opt-out meter choices. Some states allow customers to retain their electromechanical meter, while others provide a smart meter with the radio transmitter turned off. When more than one opt-out method is offered (such as in Maine), the charge for retaining an electromechanical meter is greater than the radio disabled smart meter to reflect the actual increased cost of maintenance incurred by the utility. Also, NV Energy offers AMR meters to those who choose to opt-out. Using AMR infrastructure, while not optimal, does reduce the cost of an opt-out policy for both the customer and utility.

Not all utilities or states with AMI have an opt-out policy. The Public Service Commission of Washington D.C. denied a request for an investigation into opt-out, and earlier in 2012, an order from the Idaho Public Utilities Commission dismissed a pair of complaints from customers who demanded that an opt-out policy be created. Opt-out plans are not offered in the Canadian provinces of British Columbia and Ontario, while Hydro-Québec proposed a radio-off option with an up-front and monthly charge.

Some state regulators are in the process of discussing whether or not to offer AMI opt-out, while others are working through the process of reviewing proposals for utility opt-out policies and evaluating costs. Commissions in Texas and Arizona are currently investigating smart meter opt-out options. Lawmakers in Georgia and Pennsylvania have introduced legislation that requires opt-out. A senate bill in New Hampshire aims to make smart meter deployment strictly opt-in. Vermont's opt-out legislation was signed into law in May, and requires opt-out and smart meter removal free of charge. Table 2 shows the status of opt-out policies across the United States and Canada as of June 2012. It is important to note that the opt-out debate is constantly changing in light of commission findings, legislative actions, and utility planning across the country. There is no universal opt-out program.

Table 2: Smart Meter Opt-Out Policies

Jurisdiction	Opt-Out Activity	Opt-Out Cost to consumers
Arizona E-00000C-11-0328	Opened a generic docket for the investigation of smart meters. (8/29/11)	
Colorado Docket 10R-799E	The commission intends to address opt-out in future proceeding. (10/17/11)	
California Decision #D1202014	California PUC approved opt-out. (2/9/12)	Analog meter: \$75 initial fee, \$10 monthly fee, low income customers pay reduced fees.
District of Columbia Order-16708	DC PSC denied Office of the People's Counsel's request for opt-out investigation. (4/13/12)	
Georgia Senate Bill 459	Opt-out bill passed Georgia senate. (3/13/12)	Proposes no fee.
Idaho Order-32500	Consumer request for opt-out is dismissed. (3/27/12)	
Illinois, City of Naperville	Municipal utility approved opt-out.	Radio-off smart meter: \$68.35 + \$24.75/mo.
Maryland Cases 9207, 9208	Interim order allows customers to defer smart meter installation pending the commission's final decision. (5/24/12)	
Maine Docket 7307	Maine PUC approved opt-out. (5/19/11)	Radio-off smart meter: \$20+\$10.50/mo. Electromechanical meter: \$40+ \$12/mo.
Nevada Docket 11-10007	NV Energy proposed opt-out tariff: AMR w/ monthly reporting. (5/1/12)	South Nevada: \$98.75 + \$7.61/mo. North Nevada: \$107.66+\$11.01/mo.
New Hampshire Senate Bill 266	Bill prohibiting electric utilities from installing smart meters without the property owner's consent. Passed by house and senate. (5/16/12)	
Oregon Advice # 11-15 Tariff Sheet # 300	Allows PGE customers to opt-out of a digital meter. Idaho Power has digital meters in Oregon with no opt-out option. (8/10/11)	Portland GE: \$254 + \$51/mo.
Pennsylvania House Bill 2188	A bill allowing opt-out is in committee. (2/8/12)	
Quebec	Régie de l'énergie considering Hydro-Québec's proposed opt-out rates. (3/14/12)	Hydro-Quebec: \$98 + \$17/mo.
Texas Filing 40190	Petition requesting an opt-out being considered by the PUC. (2/16/12)	
Vermont Act 170	Law does not allow opt-out fees or smart meter removal fees. (5/18/12)	No cost for opt-out.

Opt-out Options

The Staff concludes that providing an opt-out option is the best solution for customers who have concerns about smart meters. The Staff recommends that utilities investigate a variety of opt-out options. Electromechanical meters may be a viable opt-out option for some customers; however, maintaining electromechanical test facilities, inventory, and manual meter reading could result in higher incremental costs.⁵⁴ The traditional electromechanical meter is obsolete and currently not in production. Offering customers an electromechanical meter as an alternative to a smart meter is not a long-term solution.

Other options are the installation of a smart meter that does not have a communicating radio, relocating a smart meter on the customer's premise, or hard-wiring a smart meter into the network. A smart meter without a communicating radio allows the utility to maintain one type of meter. However, manual meter reading would still be required. Customers with a non-communicating meter will not receive some benefits of AMI, and would not, for example, be able to fully participate in new rate structures.

Smart meter relocation would allow customers to still receive all the benefits of AMI. Meter relocation may result in a higher initial cost and may not be feasible at some locations. Currently, administrative rules governing meter relocation allow the customer to request meter relocation at the customer's expense.⁵⁵

A wired smart meter also permits opt-out customers to receive all AMI benefits by allowing two-way communication with the utility without using radio frequency (i.e. power line carrier, fiber optic cable, etc.). This option may be costly and may not be feasible within the confines of the utility infrastructure or of the customer's premises.

As discussed above, there are costs associated with allowing a customer to opt-out. Most states have acknowledged these costs by assessing charges that reflect the actual cost of maintaining a non-AMI meter.

No opt-out tariffs have been submitted to the Commission by any Michigan utilities as of June 2012. The Staff believes that ratemaking for the opt-out provision should be based on cost-of-service principles. If AMI meters result in a reduced cost of service, this could be accounted for by either an additional charge for those customers choosing to opt-out or a discount for those customers with an AMI meter.

⁵⁴ Commission billing rules allow for customers to read their own meters. However, the utility must verify the meter reading once a year. (Consumer Standards and Billing Practices for Electric and Gas Residential Services, R 460.115)

⁵⁵ Consumer Standards and Billing Practices For Electric and Gas Residential Services, 1999 AC, R 460.116

RECOMMENDATIONS AND CONCLUSIONS

Health and Safety

- After careful review of the available literature and studies, the Staff has determined that the health risk from the installation and operation of metering systems using radio transmitters is insignificant.
- The appropriate federal health and safety regulations provide assurance that smart meters represent a safe technology.

Data Privacy

- The Staff recommends that all stakeholders identify and implement privacy policy considerations through administrative rules, tariffs, orders and/or other means.
- Customer data privacy policies should include provisions addressing customer consent, individual access, customer choice, notice and purpose, collection and scope, data retention and management and accountability.

Cyber Security

- Each utility should adopt an annual independent security audit of the mechanisms of customer access, third party access and internal cyber risk-management practices.
- As outlined in the NARUC resolution regarding cyber security, the Staff intends to maintain a dialogue with regulated utilities to ensure that they are in compliance with standards, and that preparedness measures are employed to deter, detect and respond to cyber-attacks and to mitigate and recover from them.⁵⁶
- Utilities should adopt the same breach notification policies as other states have adopted, namely the notification of any breach affecting 1000 or more customers within two weeks of the breach.
- Each utility should be required to file a yearly breach notification summary with the Staff, detailing all breaches of customer information, including any third party breach information.

Customer Education

- The Staff recommends utilities develop and implement a new education strategy similar to those used in other jurisdictions. Education program results should reflect high levels of customer engagement, acceptance and enthusiasm with their smart meter program.

⁵⁶ NARUC, *Resolution Regarding Cybersecurity, et al.*

- The strategy should include metrics to measure the overall effectiveness of the education program.

National Policy

- The United States Congress has passed several laws that support the upgrade of the electric grid, including deployment of smart meters for residential and other types of customers. These laws have provided a framework for smart grid, including smart meter deployment in the United States.
- Numerous prestigious agencies and institutions have considered the national outlook for the smart grid and indicate that installing smart grid technologies, including smart meters, will have a positive benefit on the United States' electric grid. These reports urge the United States to follow the directives of the federal law and update the electric grid.

Policies and Practices

- Several areas of current rules and tariffs will be affected by AMI deployment in Michigan. Administrative rules, tariffs, and Commission orders should be considered, and the most effective methodology should be employed to ensure customers have adequate protections.
- It is recommended that all stakeholders work to analyze and identify the most appropriate implementation methods for addressing the policy considerations. Stakeholders should routinely review all policies related to smart grid as smart grid technologies continue to develop.

Smart Grid Vision

- A Michigan smart grid vision should provide direction to implement technology that will enhance the functionality of the electric grid. All components of electric grid improvements, including AMI installation, distribution infrastructure replacement, and electric generation should reflect the larger objectives of a smart grid vision.
- The Staff proposes that future smart grid investments from utilities must correlate with the following objectives aimed at delivering transparent and identifiable benefits to ratepayers: accommodate advanced generation and storage options; enable informed participation by all customers; support new products, services, and markets; optimize existing assets, increase efficiency and improve reliability; and operate resiliently against physical and cyber-attacks.

Opt-Out

- The Staff concludes that an opt-out option or options is the best solution for customers who have concerns about smart meters.
- The Staff believes that ratemaking for the opt-out provision should be based on cost of service principles. If AMI meters result in a reduced cost of service, this could be accounted for by either an additional charge for those customers choosing to opt-out or a discount for those customers with an AMI meter.

Appendix A

Additional Resources:

- *National Institute of Standards and Technology Interagency Report 7628, Guidelines for Smart Grid Cyber Security: Vol. 1, Privacy and the Smart Grid*, August 2010.
http://csrc.nist.gov/publications/nistir/ir7628/nistir-7628_vol1.pdf
- *National Institute of Standards and Technology Interagency Report 7628, Guidelines for Smart Grid Cyber Security: Vol. 2, Privacy and the Smart Grid*, August 2010.
http://csrc.nist.gov/publications/nistir/ir7628/nistir-7628_vol2.pdf
- North American Energy Standards Board, *Third Party Access to Smart Meter-based Information*, April 20, 2012.
- Oklahoma Electric Usage Data Protection Act, H.B. 1079, May 20, 2011.
- C. Hagan & K. Thomas, *A Model Privacy Policy for Smart Grid Data Institute for Energy and the Environment*, Vermont Law School, November 4, 2011.
- Public Utility Commission of Texas, Electric Substantive Rules, Chapter 25 Rules.
<http://www.puc.state.tx.us/agency/rulesnlaws/subrules/electric/Electric.aspx>
- Federal Trade Commission, Fair Information Practice Principles.
<http://www.ftc.gov/reports/privacy3/fairinfo.shtm>
- Colorado Department of Regulatory Agencies Public Utilities Commission, 4 Code of Colorado Regulations 723-3 Part 3, Rules Regulating Electric Utilities, February 14, 2012.
- United States Code 47 §222, Privacy of Customer Information, January 7, 2011.
- Naperville Smart Grid Initiative, Naperville Smart Grid Customer Bill of Rights, Ordinance No. 11-029, February 16, 2011.
- Washington Administrative Code, Chapter 480-100, Electric Companies, February 15, 2012.
<http://apps.leg.wa.gov/wac/default.aspx?cite=480-100>
- California Public Utility Commission, Public Utility Code Chapter 4-5.
<http://www.leginfo.ca.gov/cgi-bin/calawquery?codesection=puc>
- NAESB Data Privacy Task Force, Team Five-State and Province Law.
www.naesb.org/pdf4/data_privacy_042111w3.doc
- Arizona State Legislature, Consumer Protections; rules; confidentiality; unlawful practice
<http://www.azleg.gov/FormatDocument.asp?inDoc=/ars/30/00806.htm&Title=30&DocType=ARS>
- California Public Utilities Commission, Decision Adopting Rules To Protect The Privacy And Security Of The Electricity Usage Data Of The Customers Of Pacific Gas And Electric Company, Southern California Edison Company, And San Diego Gas & Electric Company
<http://www.azleg.gov/FormatDocument.asp?inDoc=/ars/30/00806.htm&Title=30&DocType=ARS>

- Colorado Department Of Regulatory Agencies, Public Utilities Commission, 4 Code of Colorado Regulations (CCR) 723-3, Part 3, Rules Regulating Electric Utilities.
<http://www.dora.state.co.us/puc/rules/723-3.pdf>
- New York Department of Public Services, Smart Grid Privacy Statement.
<http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=10-E-0285>
- Oklahoma State Legislature, Electric Usage Data Protection Act.
<http://www.oklegislature.gov/BillInfo.aspx?Bill=HB1079&Tab=0>
- United States Department of Energy, Smart Grid Privacy Workshop Summary Report.
http://www.smartgrid.gov/sites/default/files/doc/files/Privacy%20report%202012_03_19%20Final.pdf
- United States Department of Homeland Security, Privacy Policy Guidance Memorandum, December 29, 2008.
http://www.dhs.gov/xlibrary/assets/privacy/privacy_policyguide_2008-01.pdf
- United States Department of Energy, Electricity Subsector cyber security risk management process, March 2012: Public Comment Draft.
<http://energy.gov/sites/prod/files/RMP%20Guideline%20Second%20Draft%20for%20Public%20Comment%20-%20March%202012.pdf>
- Executive Office of the President, A Policy Framework For the 21st Century Grid, June 2011.
<http://www.whitehouse.gov/sites/default/files/microsites/ostp/nstc-smart-grid-june2011.pdf>
- National Institute of Science and Technology, NIST Framework and Roadmap for Smart Grid Interoperability Standards Release 2.0.
http://www.nist.gov/smartgrid/upload/NIST_Framework_Release_2-0_corr.pdf
- ASIS International, Utility and Smart Grid Security: The impact of NERC CIP Standards and NISTIR 7628 to the Utility Industry.
<http://www.asisonline.org/councils/documents/UtilitySmartGridSecurity.pdf>

ATTACHMENT E

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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application and request of)
THE DETROIT EDISON COMPANY seeking)
approval and authority to implement its)
proposed Advanced Metering Infrastructure)
Opt Out Program)

MPSC Case No. U-17053

APPLICATION

THE DETROIT EDISON COMPANY (hereinafter "Applicant", "Company" or "Edison") files this Application requesting authority from the Michigan Public Service Commission (hereinafter "Commission" or "MPSC") to implement an Advanced Metering Infrastructure ("AMI") Opt-Out Program for residential customers. Edison's program consists of an opportunity for its residential customers to voluntarily make an affirmative choice to participate in the program resulting in a non-transmitting AMI meter being installed at the Customer's service location instead of a transmitting AMI meter and further subject the requesting customer to applicable charges as described herein. In support thereof, Applicant states as follows:

1. Edison is a subsidiary of DTE Energy Company, a Michigan corporation with its principal offices located at One Energy Plaza, Detroit, Michigan 48226. Edison is a public utility subject to the jurisdiction of the Commission and is engaged in the generation and distribution of electrical energy and other related services to approximately two million residential, commercial and industrial customers within the State of Michigan.

2. On January 12, 2012 the Commission issued an Order in Case No. U-17000 requesting the utilities and interested parties to comment on electric utility's existing plans for the deployment of smart meters, including the potential for providing an opportunity for

customers to opt out of having a smart meter. The Commission further directed the Commission Staff to issue a report that summarizes the filings in Case No. U-17000 and independently review the literature regarding smart meters, and identify any developments in other jurisdictions pertinent to its investigation.

3. On June 29, 2012, the Commission Staff issued its report finding that smart meters are an important component to the success of a much larger picture, an emerging smart grid. They recommended that the Commission continue to assess smart grid technologies as part of efforts to improve the efficiency and reliability of the grid. The Commission Staff also recommended that opt-out options are the best solution for customers who have concerns about smart meters. They also believe that ratemaking for the opt-out provision should be based on cost of service and be accounted for as an additional charge to those customers choosing an opt-out or a discount for those customers with smart meters.

4. Edison hereby submits for Commission approval, its AMI Opt-Out Program. Edison's AMI Opt-Out Program will provide an opportunity for individual residential customers who voluntarily request to participate in the program to have a non-transmitting AMI meter installed at their residential service address instead of the Company's transmitting AMI meter. Customers will be required to supply positive identification and information to an Opt Out Customer Representative to initiate the opt out procedure. Customers may opt out for any reason and will not be required to communicate the reason to the Company. Customer's electing to opt-out will be subjected to an initial charge of \$87 for costs of special infrastructure charges and the metering changes required at the site and a monthly fee of \$15 to cover the incremental costs of manual meter reading infrastructure and other services necessitated by maintenance of a manual meter system that would otherwise be avoided by an AMI meter system. Customers requesting to "opt-out" will have their meter reads obtained manually and at least monthly according to the Public

Service Commission, Consumer Standards and Billing Practices for Electric And Gas Residential Service (R 460.101).

5. Customers who elect to participate in the AMI Opt-Out Program should be advised that they are giving up certain benefits attributed to the use of AMI at their service location including increased restoration capability, access to timely metering data and other benefits that promote the efficient operation of the electrical distribution system.

6. In support of this application, the Company is submitting the signed affidavit and exhibit of Mr. Robert E. Sitkauskas (Exhibit A), the Company's AMI Manager who attests to the accuracy of the facts set forth in this application, the identification of costs that were utilized in developing the applicable charges contained in this filing and the ultimate charges as reflected in the attached proposed tariff sheet.

7. The specific terms and conditions regarding the proposed AMI Opt-Out Program are reflected in the proposed tariff sheet (Attachment to Exhibit A) and are incorporated herein by reference. In addition, the initial and monthly charges have been developed utilizing cost based ratemaking principles consistent with the methodology utilized in Edison's most recent rate case. (Attachment to Exhibit A) Edison further reserves the right to propose modifications to the charges for the AMI Opt-Out Program in its next general rate case based on changes in volume, costs and participation levels.

8. Edison is requesting that the Commission approve the voluntary AMI Opt-Out Program for its residential customers and approve the application of the charges identified herein as reflected in the attached tariff sheet adding Section C5.7 to Detroit Edison's Rate Book Original Sheet C-29.01.

9. Edison believes that granting the requested waiver is in the public interest and will be beneficial to their ratepayers and customers. This Application is being submitted to the Commission for approval. In the event that the Applicant's Application is not approved in its entirety by the Commission, or is modified in any way, this Application shall be withdrawn.

10. At this time, Edison is not requesting any change in the rates or cost of service to any customers other than those that voluntarily choose to participate in the AMI Opt-Out Program. For these reasons, the requests made herein may be granted without the expense and time consuming process of notice and hearing as provided by MCL 460.6a; MSA 22.13(6a).

11. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; 1909 PA 300, as amended, MCL 462.2 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.

WHEREFORE, Applicant requests that the Commission:

- A. Accept this Application for filing.
- B. Enter an order approving Edison's Application and its attached tariff sheet.
- C. Grant Edison such further additional relief as the Commission deems appropriate.

THE DETROIT EDISON COMPANY

Michael J. Solo, Jr.

By: _____

Attorney for the Applicant
Michael J. Solo (P57092)
One Energy Plaza, 688 WCB
Detroit, Michigan 48226
(313) 235-9512

Digitally signed by Michael J. Solo, Jr.
DN: cn=Michael J. Solo, Jr., o=DTE Energy,
ou=General Counsel-Regulatory Affairs,
email=solom@dteenergy.com, c=US
Date: 2012.07.31 15:27:42 -04'00'

Dated: July 31, 2012

STATE OF MICHIGAN

Case No. U-17053
(Paperless e-file)

[illegible]

1. I am the Manager of the Advanced Metering Infrastructure (AMI) group in the Major Enterprise Projects Organization. I have a Bachelor of Business Administration from the University of Michigan Dearborn and a Master of Business Administration degree from the University of Detroit.
2. As Manager of the AMI group, I am responsible for the development, administration and reporting of the AMI project for both Detroit Edison and Michigan Consolidated Gas (MichCon).
3. Detroit Edison is in the process of deploying an AMI system to lower its costs to serve and improve service to its customers. AMI uses proven technology to automatically read, monitor and control meters via wireless technology that transmits a signal from the meter, instead of relying upon manual actions. AMI creates an intelligent grid which is a structure for meter reading, outage monitoring, power quality monitoring, remote disconnect, system load management and distribution asset optimization and design.

4. With the application submitted along with this affidavit, Detroit Edison is seeking approval to implement an Advanced Metering Infrastructure ("AMI") Opt-Out Program for residential customers. This filing includes a proposed tariff sheet along with a summary of Initial and Monthly Charges attached to this affidavit and incorporated herein.
5. Edison's AMI Opt-Out Program will provide an opportunity for individual residential customers who voluntarily request to have a non-transmitting AMI meter installed at their residential service address instead of the Company's transmitting AMI meter. Customers will be required to supply positive identification and information to an Opt Out Customer Representative to initiate the opt out procedure. Customers may opt out for any reason and will not be required to communicate the reason to the Company. Customer's electing to opt-out will be subjected to an initial charge of \$87 for the costs of special infrastructure changes and the metering changes required at the site. This charge is applied each time a customer at a premise opts out. In addition, a monthly fee of \$15 will be charged to cover the incremental costs of manual meter reading infrastructure and other services necessitated by maintenance of a manual meter system that would otherwise be avoided by an AMI meter system. The monthly charge has been adjusted to eliminate costs already included in residential customers current rates associated with AMI infrastructure and meter reading.
6. The initial and monthly charges (see attached) have been developed utilizing cost based ratemaking principles consistent with the methodology utilized in Edison's most recent rate case. Edison further reserves the right to propose modifications to the charges for the AMI Opt-Out Program in its next general rate case based on changes in volume, costs and participation levels.
7. Customers requesting to opt-out will have their meter reads obtained manually and at least monthly according to the Public Service Commission, Consumer Standards and Billing Practices for Electric And Gas Residential Service (R 460.101).

8. Customers electing to opt-out and who already have a transmitting AMI meter installed at their premise will have their meter changed to a non-transmitting AMI meter. Opt-out customers, who have not had their current meter replaced by a transmitting AMI meter at the time they request to opt out, will temporarily retain their current meter until such a time as AMI meters in their area are installed and subsequently will receive a non-transmitting AMI meter.
9. The above charges will appear on the next bill cycle after receiving their non-transmitting AMI meter. All charges and provisions of the customers' otherwise applicable tariff shall apply.
10. Customers who elect to participate in the AMI Opt-Out Program should be advised that they are giving up certain benefits attributed to the use of AMI at their service location including increased restoration capability, access to timely metering data and other benefits that promote the efficient operation of the electrical distribution system.

The above representations are true and accurate to the best of my knowledge and belief.

Further Affiant sayeth not.

Robert E.
Sitkauskas

Digitally signed by Robert E.
Sitkauskas
DN: cn=Robert E. Sitkauskas,
o=Major Enterprise Projects,
ou=MEP AMI Technology Group,
email=sitkauskasr@edteenergy.co
m, c=US
Date: 2012.07.31 15:07:49 -04'00'

Robert E. Sitkauskas

Subscribed and sworn to before me

this 31st day of July 2012.

Marilyn Y.
Oliver

Digitally signed by Marilyn Y. Oliver
DN: cn=Marilyn Y. Oliver, o=Regulatory
Affairs, ou=DTE-Regulatory Affairs,
email=oliverm@dteenergy.com, c=US
Date: 2012.07.31 15:08:20 -04'00'

Marilyn Y. Oliver, Notary Public
Wayne County, Michigan
My Commission Expires: 3-26-2015
Acting in Wayne County

(Continued from Sheet No. C-29.00)

C5 CUSTOMER RESPONSIBILITY (CONTD)

C5.7 Advanced Metering Infrastructure (AMI) Opt-Out Provision (Residential Only)

Detroit Edison is in the process of deploying an Advanced Metering Infrastructure (AMI) system to lower its costs to serve and improve service to its customers. AMI uses proven technology to automatically read, monitor and control meters via wireless technology that transmits a signal from the meter, instead of relying upon manual actions. AMI creates an intelligent grid which is a structure for meter reading, outage monitoring, power quality monitoring, remote disconnect, system load management and distribution asset optimization and design.

On January 12, 2012 the Commission issued an Order in Case No. U-17000 requesting utilities and interested parties to comment on electric utility's existing plans for the deployment of smart meters, including the potential for providing an opportunity for customers to opt out from having an AMI meter. On _____, the MPSC approved the following AMI terms and opt-out charges for Detroit Edison residential customers that elect to not have a transmitting AMI meter:

APPLICABILITY: Available to individual residential electric customers at a specific site location who elect to not have a transmitting AMI meter(s) installed at their premises. Customers electing this Opt-Out Provision will have a non-transmitting AMI meter(s) installed at the customer's service location, have the meter read manually and be subjected to the following charges.

Rates: Initial fee: \$87.00 per opt out request

Monthly Charge: \$15.00 per month

Customers electing to opt-out and who already have a transmitting AMI meter installed at their premise will have their meter changed to a non-transmitting AMI meter. Opt-out customers, who have not had their current meter replaced by a transmitting AMI meter at the time they request to opt out, will temporarily retain their current meter until such a time as AMI meters in their area are installed and subsequently will receive a non-transmitting AMI meter.

Customers electing this provision will not have access to the benefits of having a transmitting AMI meter. All charges and provisions of the customer's otherwise applicable tariff shall apply.

(Continued on Sheet No. C-30.00)

Issued _____, 2012

D. G. Brudzynski
Vice President
Regulatory Affairs

Detroit, Michigan

Effective for service rendered on
and after _____, 2012

Issued under authority of the
Michigan Public Service Commission
dated _____, 2012
In Case No. U-17053

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The Detroit Edison Company
 AMI Opt Out Program
 U-17053
 Summary of Initial and Monthly Charges

Line No.	(a) Particulars	(b) Cost	(c) Notes
<i>Initial Fee:</i>			
1	Time and Expenses to disable and enable AMI Meter Transmitter	\$61.00	Hourly cost of field technician (labor, benefits and fleet) to turn on and off transmitter
2	Training for Field Personnel to disable and enable AMI Meter Transmitter	2.00	One time training cost of field technicians
3	Billing System Modifications	<u>24.00</u>	Create opt out identifiers in billing programs
4	Total Initial Fee	<u>\$87.00</u>	
<i>Monthly Fee:</i>			
5	Operational costs of Opt Out Program - Meter Reading Costs	\$8.00	Cost per special meter read
6	One Supervisor - Meter Reading	2.00	Cost for Opt out team member
7	Two Billing Consultants	3.60	Cost for Opt out team members
8	One Route Coordinator	2.00	Cost for Opt out team member
9	Meter Reading Costs Included in Current Rates	(0.45)	Eliminate meter reading costs in current rates
10	AMI Costs Included in Current Rates	<u>(0.15)</u>	Eliminate AMI costs included in current rates
11	Total Monthly Fee	<u>\$15.00</u>	

Notes: Above costs are based on the assumption that 4,000 Detroit Edison customers request the Company's opt out program

The Detroit Edison Company
One Energy Plaza, Detroit, MI 48226-1279

Detroit Edison



A DTE Energy Company

Michael J. Solo, Jr.
(313) 235-9512
solom@dteenergy.com

July 31, 2012

Ms. Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
Lansing, Michigan 48909

Re: In the matter of the application and request of
THE DETROIT EDISON COMPANY seeking approval and
authority to implement its proposed Advanced Metering
Infrastructure Opt Out Program
Case: U-17053

Dear Ms. Kunkle:

Attached for electronic filing in the above-captioned matter is The Detroit Edison Company's Application Requesting Approval of it's Advanced Metering Infrastructure Opt-Out Program for Residential Customers.

Very truly yours,

Michael

J. Solo, Jr.

Michael J. Solo, Jr.

Digitally signed by Michael J. Solo,
Jr.
DN: cn=Michael J. Solo, Jr., o=DTE
Energy, c=General Counsel-
Regulatory Affairs,
email=solom@dteenergy.com, c=US
Date: 2012.07.31 15:27:58 -0400

MJS/lah
Attachment
cc: Paul Proudfoot

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ATTACHMENT F

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STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of)
The Detroit Edison Company seeking)
approval and authority to implement its)
proposed Advanced Metering)
Infrastructure Opt-Out Program)

Case No. U-17053

NOTICE OF PROPOSAL FOR DECISION

The attached Proposal for Decision is being issued and served on all parties of record in the above matter on March 22, 2013.

Exceptions, if any, must be filed with the Michigan Public Service Commission, 4300 West Saginaw, Lansing, Michigan 48917, and served on all other parties of record on or before April 12, 2013, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before April 26, 2013. **The Commission has selected this case for participation in its Paperless Electronic Filings Program. No paper documents will be required to be filed in this case.**

At the expiration of the period for filing exceptions, an Order of the Commission will be issued in conformity with the attached Proposal for Decision and will become effective unless exceptions are filed seasonably or unless the Proposal for Decision is reviewed by action of the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due.

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MICHIGAN ADMINISTRATIVE HEARING
SYSTEM
For the Michigan Public Service Commission

Dennis W. Mack

Digitally signed by Dennis W. Mack
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email=mackd2@michigan.gov
Date: 2013.03.22 10:28:09 -04'00'

Dennis W. Mack
Administrative Law Judge

March 22, 2013
Lansing, Michigan

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STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of)	
The Detroit Edison Company seeking)	Case No. U-17053
approval and authority to implement its)	
proposed Advanced Metering Infrastructure)	
<u>Opt-Out Program</u>)	

PROPOSAL FOR DECISION

I.

HISTORY OF PROCEEDINGS

The Detroit Edison (Company) is in the process of implementing a "smart grid" system that "encompasses technological improvements to the electric grid designed to increase reliability, reduce outage time, accommodate the integration of distributed generation sources, and improve electric vehicle charging capacity." Case No. U-17000, Staff Report to Commission, June 29, 2012, p. 22. A component of the "smart grid" is an Advanced Metering Infrastructure (AMI) that creates a platform for meter reading, outage monitoring, power quality monitoring, remote disconnect, system load management, and distribution asset optimization and design. In its essence, an AMI meter allows for two-way communication through wireless technology.

On July 31, 2012, the Company filed an Application seeking approval of an AMI Opt-Out Program that provides the opportunity for a residential customer

to have a non-transmitting AMI meter installed. A customer that elects to participate in the Program does not have to state a reason for opting-out. To recover the costs it contends it will incur in providing the Program, the Company proposes a participant pay an initial charge of \$87 for special infrastructure charges and on-site metering changes, and a monthly fee of \$15 for incremental costs of manual meter reading infrastructure and other services necessitated by maintenance of a manual meter system.

Consistent with due notice, a pre-hearing conference on the Application was conducted on September 10, 2012.¹ During that proceeding, the Company, Commission Staff and Attorney General appeared, and intervention was granted to Dominic Cusumano, Lillian Cusumano, Cynthia Edwards, Pauline Holeton, John Holeton, Linda Kurtz, Richard Meltzer, Karen Spranger, and Sharon Schmidt.²

During the hearing on January 16 & 17, 2013, the Company offered the direct and rebuttal testimony of its employee Robert E. Sitkauskas, Manager of the AMI Group in the Major Enterprise Projects Organization, along with Exhibits A-1 and A-2. Of the Intervenor, John Holeton testified and entered Exhibits I-JH-2, 3, 5A, 5B, 6, 7, 8 and 9, while Richard Meltzer's surrebuttal testimony was entered.³ Staff entered the testimony of Steven Q. McLean, Manager of the

¹ At the conclusion of the pre-hearing a public hearing was held to take comments on the proposed Opt-Out Program. 1 TR 36-96.

² These individuals, who filed petitions to intervene and appeared *in pro persona* at the pre-hearing conference, were granted intervention based on their status as customers of Detroit Edison that are seeking to challenge the cost of the proposed Opt-Out Program. 1 TR, p 14. On the first day of the hearing, Richard J. Carolan filed an Appearance on behalf of Ms. Schmidt and cross-examined the Company's witness. Mr. Carolan also filed Ms. Schmidt's Initial Brief, while Davis S. Belanger, who did not file an Appearance, filed an Initial Brief on behalf of Ms. Spranger.

³ Mr. Meltzer was unable to attend the hearing dates, but the parties stipulated to the entry of his surrebuttal testimony provided it complied with the holding on the Motions to Strike, *infra*. 4 TR 531-534. On January

Rates and Tariff Section in the Regulated Energy Division, and Exhibits S-1 & S-2. Under the schedule established during the pre-hearing conference, all of the parties filed Initial Briefs, while the Company, Attorney General, Mr. & Mrs. Holeton, Mr. & Mrs. Cusumano, Ms. Kurtz, Ms. Edwards, Mr. Meltzer, and Staff filed Reply Briefs.

II.

SCOPE OF THE HEARING

A general discussion occurred during the pre-hearing conference over what issues were relevant in this proceeding. At that time, the parties were advised that at some point a determination may be necessary on the scope of this case. 1 TR 15. Subsequent to the filing of direct testimony, both the Company and Staff filed Motions to Strike:

1. Entire direct testimony of Matthew Ben-Bassat offered by Intervenors Ms. Kurtz and Ms. Edwards.
2. Entire direct testimony of Curtis Bennett and Exhibits 1-10 offered Intervenors Dominic & Lillian Cusumano.
3. Entire direct testimony of Intervenor Cynthia Edwards and Exhibit 2.
4. Entire direct testimony of Karen Strode offered by Intervenors Ms. Kurtz and Ms. Edwards.
5. Entire direct testimony of Leslie Panzica-Glapa offered by Intervenors Ms. Kurtz and Ms. Edwards.
6. Entire direct testimony of Intervenor Linda Kurtz.
7. Entire direct testimony of Loretta Yoskovich offered by Intervenors Ms. Kurtz and Ms. Edwards.

18, 2013, Mr. Meltzer filed and served his surrebuttal testimony consistent with that stipulation. Id., pp 535-542.

8. Entire direct testimony of Rebecca Morr offered by Intervenor Ms. Kurtz and Mr. Edwards.
9. Entire direct testimony and portions of rebuttal testimony of Intervenor Richard Meltzer.
10. Rebuttal testimony of Intervenor Sharon Schmidt.
11. Entire direct testimony of Tom Wilson offered by Intervenor Ms. Kurtz and Ms. Edwards.
12. Portions of direct testimony of Intervenor John Holey and Exhibits A-3, A-5A, A-5b, A-6 and A-10.

In their respective Motions, the Company and Staff argued the subject-matter of this case are the specifics of the Opt-Out Program proposed in the Application. Conversely, any issues beyond that scope contained in the challenged testimony and exhibits, particularly the purported health, safety, and privacy implications of AMI meters, were irrelevant under MRE 401, and thus inadmissible under MRE 402. In addition, the Motions argued the challenged testimony and exhibits contains hearsay under MRE 810 that is inadmissible under MRE 802, and opinion testimony for which a basis for expertise was not established under MRE 702.

In both their briefs and argument, the Intervenor asserted the challenged testimony and exhibits are directly relevant to the Opt-Out Program because it would establish the health costs they contend would result from AMI meters. Further, the Intervenor contend that the health effects of AMI meters have not been determined, particularly in Case No. U-17000, and this case is the proper avenue to make such a determination. The Intervenor also argued the challenged testimony and exhibits are admissible under the MRE 803 hearsay

exceptions, and any opinions expressed therein are either admissible under MRE 701 provision that allows lay witnesses to offer opinions, or, in the case of Mr. Bennett, that of an expert.

In ruling on the Motions, the certain controlling legal principles were noted. 2 TR. 180-182. In conjunction with those principles, the Commission's September 11, 2012, Order in Case No. U-17000 was determined to set the scope of this proceeding. Specifically, the provision on page 5 that directed that the Company "shall make available an opt-out option, based on cost-of-service principles...." Consistent with that language, it was held the scope of this case was "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., p 183. Concomitantly, "[a]ny evidence or offer of evidence that goes beyond that issue, including the purported health effects of AMI meters, is irrelevant and thus inadmissible." Id. Finally, it was determined the challenged testimony and exhibits included hearsay and opinion by non-experts. For these reasons, the Motions to Strike were granted. During the hearing, this ruling was applied to evidentiary objections based on relevancy.

III.

POST-HEARING MOTIONS

Subsequent to the close of the record on January 16, Ms. Kurtz sent a communication concerning purported errors in the transcript of the oral argument on the Motions to Strike conducted on January 8, 2013. After being advised of

the process for requesting such corrections under the administrative rules, Ms. Kurtz submitted a communication on February 22, 2013, that was accepted as a Motion to Correct the Transcript. In that filing, Ms. Kurtz contends that in a number of instances on 9 separate pages the transcript contains errors that must be rectified.⁴

The Commission's rules provide for corrections to a transcript, provided they are material and relevant. R 460.17301(4). In this regard, it is important to note the proceeding on January 8, 2013, was oral argument on a number of Motions to Strike. Therefore, the Motion does not implicate the factual record in this matter, but rather the legal argument of a party. Ms. Kurtz filed a 21 page written response to the Motions to Strike filed by the Company and Staff, in addition to her argument on January 8. As a result, Ms. Kurtz's position on the Motions is well documented. In considering the specific corrections Ms. Kurtz seeks, none of them can be considered material or relevant to the legal arguments raised in either the Motions or Ms. Kurtz's response. Therefore, the Motion to Correct the Transcript is, for the purposes of this Proposal for Decision, denied.

On March 4, 2013, Staff filed a Motion for Removal of Improperly Filed Items from the Commission's Website. The items referenced in the Motion are the Testimony of Matthew Ben-Bassat, Karen Strode, Leslie Panzica-Glapa, and

⁴ On February 14, 2013 Ms. Kurtz sent this ALJ an e-mail that inquired about the process for correcting errors in a transcript. On that same day, this ALJ replied by sending Ms. Kurtz's e-mail to all of the parties, which she had not done, identifying the administrative rule concerning corrections to a transcript, and setting a schedule for a Motion and Replies should Ms. Kurtz seek a ruling on her request. Docket #281. Subsequently, Ms. Kurtz sent an e-mail that was treated as a Motion. Docket #282. The proposed corrections are filed under Docket #277. On March 18, 2013, Ms. Kurtz sent an e-mail indicating her request to correct the transcript was not a Motion, but maintained the challenge to what she terms "nonsensical material" in the transcript. So that the matter is clearly resolved, this PFD decides the Motion.

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Cynthia Edwards that Ms. Edwards filed on February 25, 2013.⁵ The Motion is premised on the fact the testimony was stricken on January 8, 2013, *supra*. 2 TR 183-188. Staff's concern is the submissions could be construed as part of the official record of this case under the Administrative Procedures Act. See MCL 24.286(1)(c). However, the material is already on the E Docket based on Ms. Edwards filing of direct testimony on November 8, 2012. See Docket # 173. Along the same lines, the E Docket is replete with submissions that is not evidence under MCL 24.286(1)(c). See Motion, footnote 1. To be clear, the evidentiary record in this case consists of the sworn testimony on January 15 & 16, 2013, and the exhibits admitted through that testimony. Only that testimony and those exhibits were considered in formulating this Proposal for Decision, and it is reasonable to assume neither the Commission nor a Court reviewing its Final Order will consider extra-record material. Therefore, Staff's Motion for Removal is, for the purposes of this Proposal for Decision, denied.⁶

IV.

THE POSITIONS OF THE PARTIES

A. The Company's Proposed AMI Opt-Out Program

The Company's AMI Program was first proposed as a pilot in Case U-15244, which resulted in the installation of 6,000 Itron Open Way meters in

⁵ On March 3, 2013, Ms. Edwards sent an e-mail that indicated the material was submitted as comment and requested it be withdrawn as testimony. Since the submission is not evidence, the label it is given on the E Docket is immaterial in deciding this contested case. However, so the record is clear, the e-mail transmitting the material, along with the material itself, identifies it as "testimony", and the Executive Secretary posted it accordingly.

⁶ On March 20, 2013, Ms. Edwards filed a Motion Requesting Correction of E Docket in regards to her February 25, 2013 submissions. That Motion is moot in light of the ruling on Staff's Motion.

Grosse Ile.⁷ Based on the results of the pilot program, the Company began deployment in Oakland and Washtenaw counties. As of the date the Application was filed, approximately 800,000 AMI meters had been installed, and the Company expects to install 1,000,000 by the end of 2013. The expenses for the pilot program and subsequent efforts were reviewed and approved in various rate cases. The most recent case, U-16472, approved "\$71,564,000 in capital expenditures for AMI...." October 20, 2011, Order, p 22. Further expenditures for AMI will be reviewed in future rate cases. The Company views the AMI as the foundation of "an intelligent grid which is more than 'just a reading system'; it is a structure for meter reading, outage monitoring, power quality monitoring, remote disconnect/reconnect system load management and distribution asset optimization and design." 3 TR 226.

As discussed in § III, *supra*, the issue in this case is the appropriate fee under cost-of-service principles for customers who elect to have a non-transmitting meter on their residence. Mr. Sitkauskas testified the Company's approach was to develop and implement a fee structure that:

[R]eflect the actual cost of maintaining a non-transmitting AMI meter without causing incremental costs and expenses on the millions of customers not electing to opt out. The Company does not think it is appropriate for all customers to subsidize one segment of customers who request and receive a more expensive level of service. Such a scenario would be unfair and would contradict basic principles of cost causation. This is a voluntary program, thus customers concerned about the additional costs are not required to opt out.

3 TR 231-232.

⁷ The Company installs modules on the meters for its gas customers. These devices communicate with the AMI meter, which then transmits usage of both electricity and gas.

To that end, the Application proposes a tariff that authorizes two separate fees for Opt-Out customers. Exhibit A-2. Once the Opt-Out Program is operational, customers who currently have an AMI meter that elect to participate will have the device's transmitting capability disabled. Those who have not had their meters switched will keep their existing device until AMI meters are installed in the area, at which time the new meter will be installed and switched to non-transmitting status.

The first proposed fee is a one-time charge of \$87.00 per site (Initial Fee), which Mr. Sitkauskas testified is intended to "reflect infrastructure expenses to train employees to modify the transmitter located inside the AMI meter, the modification of the transmitter inside the meter and information technology expenses associated with billing customers that choose to opt out of having an AMI meter installed at their premises." 3 TR 233. The initial fee consists of three (3) components. The first is \$61.00 for the time and expense of disabling the AMI meter transmitter. Included in that amount is the cost of labor (wages, benefits and taxes) and indirect support (transportation) for the employees involved in the operation of the Opt-Out Program. Exhibit A-1, Schedule 2. The second is \$2.00 for 1 hour of training for those employees. Id. The third component is \$24.00 for billing system modifications. Exhibit A-1, Schedule 3.

The second proposed fee is a \$15.00 monthly charge (Monthly Fee) for what the Company contends will be the operational costs of the Opt-Out Program. Specifically, the costs the Company asserts it will incur to manually read the non-transmitting meters under the Commission's administrative rules.

See R 460.101. The proposed monthly fee includes \$8.00 in labor costs and indirect expenses for each manual meter read. Exhibit A-1, Schedule 4. Additional labor costs of \$2.00 for one supervisor, \$3.60 for two billing analysts and \$2.00 for a route coordinator are included in the monthly fee. Exhibit A-1, Schedule 5. However, participants in the Opt-Out Program will receive credits of \$0.45 and \$0.15 for the AMI and meter reading costs included in the current rates set in Case No. U-16472. Exhibit A-1, Schedules 6 & 7.

The Company's proposed fees are premised on its estimate that 4,000 customers will elect to participate in the Opt-Out Program. 3 TR 253. For example, the annual labor expense for the Supervisor – Meter Reading of \$115,114 is divided by 4,000 and then divided again by 12 to arrive at the \$2.40 average rate per month each Opt-Out participant will pay for that service. See Exhibit A-1, Schedule 5, Lines 1-7. To arrive at the estimated number of participants the Company divided the 1,100 customer concerns it received about AMI meters by the 722,000 installations completed as of the date of the Application. 3 TR 253. That figure was then multiplied by the total number of the Company's customers, 2,100,000, to arrive at 3,200, which was rounded up to the 4,000 estimate. Id. The estimate equates to a non-participation factor of approximately 0.20%. Id., p 239. In addition to being derived from actual customer concerns and total number of AMI meters that will be installed, Mr. Sitkauskas testified the factor 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. Id., p 240. Such experiences are termed by Mr. Sitkauskas as “a fair barometer of activity expected”, albeit not a determinative factor. Id.

The Company also seeks approval of a Tariff that sets forth the proposed fees, the operational aspects of the Opt-Out Program, along with the benefits of AMI from the Company’s perspective. Id., pp 235-236; Exhibit A-2.

B. Staff’s Proposed AMI Opt-Out-Program

Staff agrees with the labor, indirect support, and billing system modifications the Company deems necessary to implement and operate the Opt-Out Program under the Commission’s Order in Case No. U-17000. 4 TR 577. Staff also agrees with the base costs the Company proposes for these systems. Id., p 578. However, Staff proposes two modifications. The first, and most significant, is the estimated number of customers that will elect to participate. Staff proposes an estimate of 15,500, which would equate to an initial fee of \$67.20, and a monthly fee of \$9.80. Exhibit S-1. The basis for the higher estimate, which is a 0.60% non-participation factor, is the experience of other utilities, particularly the estimated 1.5% non-participation rate Consumers Energy forecasted in its pending rate case. See Case No. U-17087.

Staff also proposes a Tariff that contains the fee schedule it seeks. Exhibit S-2. In addition, Staff’s proposed Tariff eliminates the introductory paragraph of the Company’s proposed Tariff, along with the reference to the Commission’s Order in Case No. U-17000. See Exhibit A-2.

C. The Attorney General's Position on the Proposed AMI Opt-Out-Program

The Attorney General contends that rather than install a non-transmitting AMI meter for customers who elect to opt-out, the Company should leave the existing electromechanical (analog) meter in place. Under this scenario, the Company would still have to manually read the meter, but the initial fee would be eliminated. In addition, the Attorney General posits that keeping analog meters will also result in the Company having to purchase fewer AMI meters, which will, in turn, reduce its rate base revenue requirements.

Turning to the proposed fees, in his Initial Brief the Attorney General argues the Company has failed in its burden to establish the \$87 initial fee it proposes in the Application is just and reasonable. Specifically, the Attorney General asserts the \$61.46 per hour labor and overhead cost component of that fee was not proven to be a cost the Company will incur in servicing opt-out customers. The Attorney General also questions the training and billing system cost components of the initial fee, noting the former was not justified, and the latter could be duplicative because it is assessed each time a customer opt-outs. While the Attorney General does not provide a proposed initial fee, he does suggest the \$67.20 proposal advanced by Staff is the "minimal correction." Attorney General Initial Brief, p 17. The Attorney General, also in his Initial Brief, takes issue with the monthly meter reading and labor cost components of the proposed \$15.00 monthly fee, arguing the record is devoid of evidence that establishes the costs are accurate. Accordingly, the Attorney General supports Staff's proposed monthly fee of \$9.80. *Id.*, p 19.

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In his Reply Brief, the Attorney General expands both his objection to the proposed fees, along with the relief sought in that regard. The Attorney General contends the record provides no basis to find the components that make-up the \$87.00 Initial Fee are justified. In support, he argues \$61.00 for the time and expense to disable/enable the AMI meter is contrary to the evidence that it takes 45 minutes to disable the transmitter, but the meter is changed out in only 5 minutes. 3 TR 349, 444. Similarly, the Attorney General takes issue with components of the proposed monthly fee. For example, he contends the Company failed to justify having 4 employees to read the 4,000 meters it projects will participate in the program. Further, the \$2.40, \$3.59, and \$2.01 monthly costs attributed to those positions on Exhibit A-1, Schedule 5 “seems to indicate that those costs represent annual amounts....” Reply Brief, p 5. When treated as annual amounts, i.e. divided by 12, the monthly costs for each is \$0.167, \$0.30 and \$0.167. Id., p 6. Similarly, the Attorney General argues the proposed monthly \$8.00 cost per special meter reading on Exhibit A-1, Line 5, is actually an \$8.45 annual charge. When adjusted to a monthly charge, i.e. divided by 12, the amount equates to \$0.704 per customer. Removing the labor costs the Attorney General argues are not supported on this record, and subtracting \$0.45 credit for meter reading and \$0.15 credit for AMI costs contained in the current rates, the Monthly Fee is \$0.738.

Based on the foregoing, the Attorney General argues the components of both fees are unclear, inaccurate, or unverified on this record, i.e. the Company failed to meet its burden to justify the costs by a preponderance of the evidence.

As a result, the Attorney General requests the Commission reject the proposed Initial Fee, and set the Monthly Fee at \$0.738. *Id.*, p 4, 6.

Finally, the Attorney General takes issue with the Company's proposed AMI Opt-Out Tariff. As a preface, he contends it should indicate a participant in the Program may keep their existing analog meter, which is one form of the relief sought in this case. The Attorney General also proposes the exclusion of the introductory paragraph because it does not comport with the "traditional form used for similar MPSC-approved tariffs." *Id.*, p 19. The Attorney General notes a Tariff is intended to describe terms and conditions of the service for which it covers, and not the reasons that service is offered, which the paragraph at issue addresses. To adopt that paragraph would, according to the Attorney General, imply the Commission has approved those reasons, i.e. the need and wisdom of AMI meters, which is beyond the scope of this proceeding. Therefore, the Attorney General supports the Tariff proposed by Staff, albeit with slight modifications of the last paragraph. Exhibit S-2; Reply Brief, p 9.

D. The Intervenors' Position on the Proposed AMI Opt-Out-Program

Ms. Spranger argues AMI meters are not mandatory, and thus no fees for opting-out of the Program are authorized. In the event the Program is approved, Ms. Spranger contends the participation level forecast of the Company is understated, and the \$8.00 meter read component of the proposed monthly fee is excessive in light of the current meter read fee of \$0.45. Finally, Ms. Spranger argues the AMI meters pose a health threat, and violate the Americans with Disabilities Act (ADA). 42 USC § 12101, *et seq.* Based on these arguments, Ms.

Spranger seeks the disallowance of the tariff, or approval of a lower, albeit unspecified, tariff. Ms. Schmidt also argues the current meter read fee of \$0.45 is evidence the proposed \$8.00 fee is excessive, and the purported effect on health and violation of the ADA.

Ms. Kurtz and Ms. Edwards, who jointly filed an Initial Brief and Reply Brief, assert that under the Commission's Order in Case U-17000, the scope of this case is quite broad. Concomitantly, Ms. Kurtz and Ms. Edwards construe the words "program", which is the term the Company used in its Application, and "proposed", which Mr. Sitkauskas used to characterize the Opt-Out Program (3 TR 225), in support of this contention. Taken together, they contend all aspects of AMI meters, including the type of meter that should be utilized, and the purported effects to "health, power quality, privacy, cyber-security, and safety", are at issue. Kurtz/Edwards Initial Brief, pp 4-8. In addition, they contend the Commission must consider health care and disability costs, litigation costs, and damages they posit the Company will be liable for if transmitting and/or non-transmitting AMI meters are installed.

Ms. Kurtz and Ms. Edwards also argue that a non-transmitting AMI meter will not result in cost-saving to the customer or Company, and thus the opt-out fee is both unjust and unreasonable. In fact, they contend that if the Company used its "supply of non-AMI meters..." the Company and its customers would save approximately \$2,000,0000. Id., p 10. Ms. Kurtz and Ms. Edwards also assert that additional savings will result from keeping analog meters for residential customers opting-out because they could self-report meter reads

under R 460.115, thereby precluding any cost to the Company for this service. They also challenge limiting the Opt-Out Program to only residential customers by arguing the exclusion of business customers is inequitable. Ms. Kurtz and Ms. Edwards propose a Tariff that will remedy the Company's proposed language, which they term as inaccurate and misleading. Similar to other Intervenor, Ms. Kurtz and Ms. Edwards argue the Opt-Out Program violates the ADA, along with other federal laws, and the Persons with Disabilities Civil Rights Act, MCL 37.1101, *et seq.*

The relief sought by Ms. Kurtz and Ms. Edwards under the foregoing arguments is quite broad. First, they request the Proposed Opt-Out be rejected, and the Company resubmit their Application so it can address the challenges they have raised. They also request the Company be directed to halt the installation of AMI meters pending the ultimate approval of the Opt-Out Program. In the alternative, Ms. Kurtz and Ms. Edwards propose an Opt-Out Program that allows a customer to keep their analog meter, along with a fee that reflects the costs they contend will result from that step. They also seek the expansion of the Program to include businesses.

Mr. Meltzer argues allowing customers the option to keep their existing analog meter, and self-report readings, with periodic audits and other measures to protect the Company's interests, would reduce costs. In addition, Mr. Meltzer takes issue with the Company's projection of customers that will participate in the Program, and argues that if the issues surrounding AMI meters were adequately communicated, the number of participants would be much greater. Mr. Meltzer

also contends the costs the Company attributes for technology updates are excessive. Mr. Meltzer requests the Commission allow customers the option to keep their analog meters, and adjust the fees so they align with the measures he suggests. He also proposes further study on the issue of whether opting-out is ineffective because the customer's meter is part of a cluster, such as in apartment complexes.

Mr. & Mrs. Cusumano contend the Commission's Order in Case No. U-17000 was not issued through the contested case process, and thus this case, which they contend was predicated on that Order, "has no proper legal basis...." Initial Brief, p 6. Mr. & Mrs. Cusumano also assert that the privacy and health issues they attribute to AMI meters, along with claims arising under the ADA, should be litigated in this case. As for the specifics of the Program, they contend the process of converting an AMI meter to non-transmitting provides no cost-savings to customers of the Company, and question why non-residential customers are not included. Mr. & Mrs. Cusumano also argue the Company's estimated opt-out participation level is too low, and thus the proposed fees are too high. They contend the cost of meter reading could be substantially reduced with continued self-reading and periodic audits. Mr. & Mrs. Cusumano also argue, under constitutional principles, the purpose of an Opt-Out Program is frustrated based on their contention that a non-transmitting AMI meter still gathers information, and sends "dirty electricity" into a home that cause health problems.

Based on these arguments, Mr. & Mrs. Cusumano request the Commission reject the Proposal and declare AMI meters are voluntary unless and until health, safety, and privacy issues are resolved through an evidentiary hearing. In the alternative, they propose a remand so that the issues they raise can be determined.

Mr. & Mrs. Holeton challenge the proposed fees based on their claim that that participation in the Program is under-estimated. In this regard, they point to the number of jurisdictions that have passed resolutions against, or moratoriums on, AMI meters. Mr. & Mrs. Holeton also take issue of the lack of a comparative study on the ramifications of a relatively greater opt-out participation level. They also propose allowing customers the option to retain their analog meters, which they contend are reliable and accurate devices. Based on these arguments, they request the elimination of all fees for customers who elect to keep their analog meters and provide customers with information necessary to decide on whether they will opt-out.

V.

DICUSSION AND FINDINGS

A. Controlling Legal Authority

The analysis of the issues raised in this case must be made under a number of controlling legal principles. The first is the scope of this case: which under the Commission's Order in Case No U-17000 is limited to consideration of the proposed Opt-Out Program under cost-of-service principles. In essence,

these principles assess the costs of the Program to the participants of the Program. To do otherwise would, as noted by the Company, inappropriately cause "all customers to subsidize one segment of customers who request and receive a more expensive level of service." Reply Brief, p 9.

In conjunction with the Order in Case No. U-17000, other pending cases and Commission Orders pertaining to AML are also controlling. In this regard, the Appendix to the Attorney General's Reply Brief is instructive:

The Commission has issued various orders related to the subject of Advanced Metering Infrastructure (AMI) and smart grid equipment and operations. On January 30, 2007, the Commission issued an order in Case Nos. U-15183. This order concluded that six of eight Michigan utilities were in compliance with Section 1252 of the Energy Policy Act of 2005. On April 24, 2007, the Commission issued an order in U-15278 and initiated a smart grid collaborative.

In three Detroit Edison rate cases, the Commission has addressed AMI meters. Pages 61-63 in the Commission's December 23, 2008 Opinion and Order in Case U-15244 authorized Detroit Edison to recover only deferred costs associated with its AMI pilot program. Pages 53-55 in a January 11, 2010, Opinion and Order in Case U-15768 authorized Detroit Edison to continue its AMI pilot program. Pages 12-24 in the Commission's October 20, 2011 Order in Case U-16472 approved \$71,564,000 in capital expenditures for AMI and \$8.1 million of the company's total projected expenses for its Smart Circuits and Smart Home pilot program. And the order included those expenses in rate base, as CWIP with an AFUDC offset but excluded contingency costs included by Detroit Edison as part of its capital expenditures for AMI.

On October 12, 2012, the Commission issued an order in Case U-17102, which is entitled: *"In the matter, on the Commission's own motion, to review issues concerning customer information and data privacy related to advanced metering infrastructure deployment."* On December 17, 2012, Detroit Edison, Consumers Energy, and the Michigan Electric and Gas Association filed responses to the Commission's order. Based upon the October 12 order, it appears

that the Commission will be initiating a rulemaking proceeding based in part upon the responses it has received in this case. Reply Brief, pp 4-5, [footnotes omitted].

The Attorney General notes that the Court of Appeals reversed and remanded the Commission's Order in Case No. U-15768.⁸ Under the remand, which is pending, the Commission is to:

[C]onduct a full hearing on the AMI program, during which it shall consider, among other relevant matters, evidence related to the benefits, usefulness, and potential burdens of the AMI, specific information gleaned from pilot phases of the program regarding costs, operations, and customer response and impact, an assessment of similar programs initiated here or in other states, risks associated with AMI, and projected effects on rates. *In re Applications of Detroit Edison Company to Increase Rates*, 296 Mich App 101, 116 (April 10, 2012).

The Orders in these cases all serve as a limit to the issues in this case. For example, privacy issues will be examined Case No. U-17102. Similarly, the efficacy of the AMI Program as it relates to the \$37,000,000 rate increase approved by the Commission will be decided in Case No. U-15768.

Other principles of the law governing utility regulation also control the determination of the issues raised by the parties. Staff clearly, concisely, and accurately sets forth these principles:

The utility company manages its operations in order to provide electric service to its customers. When the utility company wants increased rates in order to provide its utility service because its costs have increased or it has installed new plant, it will seek a rate increase. At that time, the Commission will hold a contested case proceeding to ascertain what the reasonable costs of doing business are and to ascertain what a reasonable rate of return would be. From these determinations, the Commission will approve a rate. The costs associated with the utility's meters and associated software that are used to measure customer

⁸ The Attorney General also notes an appeal in Case No. U-16472 is pending before the Court of Appeals.

consumption are and have been considered in rate cases, such as Edison's last rate case, U-14672, and will be considered in future rates when filed.
Staff Reply Brief, p 2.

After setting forth the legal framework under which the Commission operates, Staff accurately states the Commission possesses broad discretion in determining a regulated utility's reasonable cost of doing business, and may reject proposed rates that are unreasonable and imprudent in order to ultimately arrive at rates that are just and reasonable. Id., p 6. However, the Commission's authority "to fix and regulate rates...does not carry with it, either explicitly or by necessary implication, the power to make management decisions." *Union Carbide v Public Service Commission*, 431 Mich 135, 148 (1988). This fundamental principle of utility regulation was applied in Case No. U-16472: "The Commission agrees with the Staff's observation that while the decision to fully deploy AMI is the company's alone, the Commission's role is to assure that ratepayers are protected from unreasonable or imprudent costs that may be included in utility rates." October 22, 2011 Order, p. 23.

The final controlling legal authority is the Consumers Standards and Billing Practices administrative rules promulgated by the Commission, which have the force and effect of law. See *Clonlara Inc. v State Board of Education*, 442 Mich 230, 238 (1993). As noted by Staff, a utility is responsible to accurately measure and bill usage, and to that end is responsible to provide and maintain the equipment that measures usage. R 460.116(1)-(3); R 460.122; R 460.123. To ascertain usage, a utility must undertake an actual meter reading, unless it

cannot be "obtained by any reasonable or applicable method described in R 460.102." R 460.113(1). A customer may read their meters and report the usage. R 460.102(a) & R 460.115. However, customer read does not diminish a utility's ability to read a meter: "Notwithstanding the provisions of this rule, a utility company representative may read meters on a regular basis." R 460.115.

B. Application of the Controlling Legal Authority to Certain Arguments

Numerous Intervenors argue AMI meters and/or the Opt-Out Program are prohibited under federal law, such as the ADA, and/or the Michigan Consumer Protection Act, MCL 445.901, *et seq.* The Company notes the arguments concerning the ADA are legally flawed. See Reply Brief, pp 15-16. Further, the Commission's jurisdiction over the Company, in particular the Opt-Out Program, seemingly implicates the Consumer Protection Act exemption of "[a] transaction or conduct specifically authorized under laws administered by a regulatory board...acting under statutory authority of this state...." MCL 445.904(1)(a). Irrespective of the relative merits of their arguments concerning federal and state law, 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.

Another argument that multiple Intervenors raise concerns the lack of a "mandate" for AMI meters, which is somehow equated to a lack of authority for the Company to install them. For example, Ms. Spranger and Mr. & Mrs. Holton argue the installation of AMI meters are not mandatory, so no fees for opting-out are authorized. See Holton Reply Brief, pp 4, 8; Exhibits I-JH-5A & 5B;

See also 2 TR 137-142. Mr. Sitkauskas testified that AMI meters "are not mandatory in Michigan as they are in other states, like California...." 3 TR 242. However, that fact does not, standing alone, preclude an Opt-Out Program. The AMI Program has been reviewed in a number of other cases, culminating in the Commission's directive that "investor-owned utilities...shall make available an opt-out option, based on cost-of-service principles, for their customers...when the provider elects to implement AMI." Case No. U-17000, September 11, 2012 Order, p 5. Therefore, the argument concerning the lack of a "mandate" serving to somehow prohibit an Opt-Out Program cannot be accepted.

In addition to the lack of a "mandate" for AMI meters, other arguments are raised concerning the operational decisions of the Company. For example, Ms. Kurtz and Ms. Edwards, along with Mr. & Mrs. Cusumano, take issue with the fact the Company is only proposing an Opt-Out Program for its residential customers, and seek a Final Order that requires the Program be extended to "businesses".⁹ Except for the contention that it was never explained or is somehow inequitable, no legal basis for this relief is provided. Obviously, the customer classes that will, or will not, be included in AMI is an operational and management issue for the Company to determine. When the point is reached that the Company seeks a rate recovery for such a program, or proposes an Opt-Out Program for other rate classes, the Commission will examine the matter. Mr. & Mrs. Holeyton argue the existing analog meters are fully functional and accurate, and thus should not be replaced by AMI meters. The relative merits of

⁹ None of the parties identify what constitutes a "business." Assumedly, they seek to have the Commission order the Company to install AMI meters, and extend the opportunity to opt-out, to its commercial and industrial rates classes.

AMI meters and analog meters are not at issue in this case.¹⁰ Beginning over 6 years ago, the Company has initiated, and the Commission has approved, a pilot program and subsequent capital expenditures for the AMI Program. See Case No. U-16472, October 22, 2011 Order, p. 23, *supra*. It would be improper to allow a collateral challenge to those decisions in a case where the issue is determining the fees to opt-out of having an AMI meter under cost-of-service principles.

Numerous Intervenors maintain their argument that health, safety, and privacy concerns should be considered in reviewing the Opt-Out Program. Ms. Kurtz and Ms. Edwards extend that argument to the costs for health care, disability, litigation, and damages they contend will arise from AMI meters. Consistent with the holding on the Motions to Strike, § III, *supra*, none of those issues are relevant in this proceeding. Along the same lines, the argument Mr. & Mrs. Cusumano advance concerning the purported deficiency in the process culminating in the Commission's September 11, 2012, Order in Case No. U-17000 is irrelevant in this proceeding.

One issue that is inter-twined with some of the Intervenors arguments concerning the proposed fees is that customer self-reporting under R 460.115, which states:

A utility shall provide each customer with the opportunity to read and report energy usage provided the customer accurately reports energy usage on a regular basis. A utility shall provide postage-paid, pre-addressed postcards for this purpose upon request, or

¹⁰ Mr. & Mrs. Holeyton also note that Exhibit I-JH-2, a page from the Commission's web site, states an AMI meter won't save a customer any money. However, the passage continues by noting "it provides the features that can." Whether an AMI meter will, or will not, result in customer savings was addressed and decided in earlier cases, and thus not a relevant issue in this case.

the utility may permit customers to report meter readings on a secure company website, by telephone, or other reasonable means. At least once every 12 months, a utility shall obtain an actual meter reading of energy usage to verify the accuracy of readings reported in this manner. Notwithstanding the provisions of this rule, a utility company representative may read meters on a regular basis.

This rule is used to argue that customer self-reporting meter reads can somehow lead to lower meter reading costs, or eliminate those costs all together. For example, Mr. & Mrs. Cusumano and Mr. Meltzer contend that opt-out participants could read their meters and report usage, with the Company auditing the results periodically. Ms. Kurtz and Ms. Edwards focus on the language of the rule: a utility "shall" provide customers the opportunity for self-reads and perform an actual meter read to verify at least once a year to verify, while it "may" read meters on a regular basis. Accordingly, they construe R 460.115 to require a self-read customer pay only for an annual reading, with the Company responsible for the costs of additional reads during a year.

Under R 460.115, a utility may perform actual meter reads "on a regular basis." The fact that a customer has the opportunity to self-read and report a meter read under the rule does not diminish a utility's ability in this regard. Therefore, the construction of R 460.115 advanced by Ms. Kurtz and Ms. Edwards cannot be accepted. As for the argument customer self-reads is a basis for reducing the proposed costs in this case, Mr. Sitkauskas testified the Company reads its meters on a regular monthly basis because customer self-reading "is not a replacement of the actual read by a meter reader." 3 TR 283. The Company intends to continue to attempt to read non-AMI meters every

month. Id., p 251. Accordingly, R 460.115 does not provide a legal or factual basis to reduce any component of the proposed Initial Fee or Monthly Fee. Because R 460.115 does not contemplate the periodic audits proposed by Mr. & Mrs. Cusumano and Mr. Meltzer, or the proposed self-read program Ms. Kurtz and Ms. Edwards seek in the Tariff (Brief, p 21), those arguments are rejected.

C. The Type of Meter Available to Participants in the Opt-Out Program

The Attorney General, along with all of the Intervenors except Ms. Spranger and Ms. Schmidt, argue that customers who elect to participate in the Opt-Out Program should be allowed to keep an analog meter. The Company notes that none of these parties provided any evidence addressing the implementation and management aspects of their proposal, or a means for the Company to satisfy safety and maintenance requirements for analog meters. Reply Brief, p 3. These are not insignificant considerations given that of the Company's 2,100,000 residential meters, over 965,000 have had AMI meters installed. 3 TR 432-433. While the record is devoid of any evidence that would allow for an exact calculation, it is obvious costs would be incurred if the Company were required to go back and replace meters for those opting-out and re-install analog meters. Whether those costs, along with the attendant costs for maintaining analog meters, would exceed the costs proposed for the Program cannot be determined on this record.

The viability of keeping analog meters is also questionable given that the Company's vendors do not produce them, and the Company has not purchased them since 2006. Id., p 294. The Staff's Report in Case No. U-17000 at

p. 2 also states the analog meters are not in production, thereby diminishing the devices viability as a long-term alternative to an AMI Meter. Further, the Report, also at p 2, notes that maintaining and testing requirements for analog meters, along with the need for manual readings, could result in higher incremental costs for customers. 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.

Finally, and most importantly, the proposal to allow opt-out participants to keep analog meters is contrary to the controlling legal authority, *supra*. Specifically, the cost of AMI meters, which the Company began purchasing in 2008, was addressed in prior rate cases, while this case is limited to determining an Opt-Out Program under cost-of-service principles. Any challenges to the AMI Program, including an argument that AMI meters should not be used in an Opt-Out Program, does not implicate cost-of-service principles. As discussed, this case cannot serve as a collateral challenge to the Company's pilot program and implementation of the AMI Program given the Commission's approval of those steps. Finally, the Company's decision to proceed with the AMI Program, particularly the various components that make it up, is well within its operational and managerial discretion. When it seeks to recover the costs for the Program through its rates, it must establish the costs are just and reasonable in a proceeding before the Commission. This is not such a proceeding. Therefore, the argument that participants in the Opt-Out Program should be able to keep an analog meter cannot be sustained.

D. Forecasted Opt-Out Customers

Prior to addressing the appropriate fee structure for the Program, it is necessary to determine the number of customers that can reasonably be expected to participate. That forecast is then a component of both the Initial Fee and Monthly Fee. In its Application, the Company estimated that 4,000 customers will opt-out of having a transmitting AMI meter, and set its proposed fee structure accordingly. 3 TR 232; Exhibit A-1, Schedule 2, Line 15; Schedule 3, Line 13; Schedule 5, Line 22. Mr. Sitkauskas testified to the basis for the estimate:

Detroit Edison took the number of customer concerns expressed to the Company during AMI installations at the time of filing in this docket (1,100); divided by the number of then current AMI installs (722,000), and multiplied this by the number of Edison customers (2.1 million) to arrive at approximately 3,200. This number was rounded up to 4,000. Based on my knowledge of Opt Out activity in other states, this percentage seemed reasonable.
3 TR 252.

The reference to other states is a comparison Mr. Sitkauskas made between 4 other utilities that have between 620,000 and 4,400,000 total meters and an opt-out percentage between 0.002% and 0.19%. *Id.*, p 240. The Company's estimated opt-out of 4,000, which is 0.19% of its 2,100,000 residential meters, is within that range. *Id.*, p 239. The 1,100 customers who called to express concerns during the AMI meter installation did not all expressly request an opt-out, but in developing the estimate the Company assumed all of them would. *Id.*, p 241. Finally, Mr. Sitkauskas noted that whatever the actual opt-out customer

participation percentage turns out to be will be reconciled in the Company's next rate case. *Id.*, pp 234, 253, 256.

Mr. Meltzer, Mr. & Mrs. Cusumano, and Mr. & Mrs. Holeton all argue the Company's participation level of 4,000 customers is under-estimated. In support of their respective contentions, Mr. Meltzer and Mr. & Mrs. Cusumano rely on Staff's testimony regarding the participation level, which is addressed below.

Mr. & Mrs. Holeton argue that the Company actively sought to discourage customers from learning about AMI meters, thereby artificially depressing the number of participants. In this regard, Mr. Holeton testified to his opinion regarding the Company's "concentrated effort to limit the voice of consumers...deny consumers of the opportunity to express their concerns, be educated themselves on the AMI program..." by sending out communication to 300 local units of government in its service territory. Exhibit I-JH-8; 3 TR 407; 4 TR 553-554. Despite these efforts, Mr. Holeton testified to the local communities that have passed resolutions concerning AMI meters, or moratoriums on their installation. 4 TR 552.

The communication cited by Mr. & Mrs. Holeton consists of the Company contacting local officials in order to provide information concerning AMI meters and the benefits the Company ascribes to them. Exhibit I-JH-9. Additionally, the Company indicates a "small-but very vocal-minority of our customers expressed concerns about the meters...[attend] council meetings...raising questions...[and are] generally disruptive to the normal course of business." *Id.* While the

Company does not agree with the substance of the concerns expressed by these individuals, it believes the Opt-Out Program should alleviate the situation. Id.

Exhibit I-JH-9 is fairly characterized as a communication to local officials from the Company providing information regarding one of its programs, and a responding to criticism to the program. The Company, or any other person or business, has a right to undertake such communications with government officials.¹¹ For the purposes of this case, it is not possible to ascribe the result of such communication as somehow depressing the number of customers that will participate in the Opt-Out Program. More importantly, this evidence does not support the finding that Mr. & Mrs. Holeton seek: the 4,000 customer participation estimate is unwarranted, or some other estimate is more accurate. The same is true with the argument that resolutions or moratoriums by local units of government can somehow quantify the Program's level of participation. Those actions are positions taken on a particular issue, and not substantive evidence of how many customers will elect to participate in the AMI Opt-Out Program. See 4 TR 607-609. Further, Mr. Sitkauskas testified that "almost all of the resolutions" requested the Commission require an Opt-Out Program, which the Company complied with by filing the Application at issue in this case. 3 TR 243-244. Therefore, Mr. & Mrs. Holeton's arguments concerning the Program participation estimate cannot be accepted.

This leaves Staff's proposed participation level of 15,500 customers, which equates to 0.60% of the Company's total AMI meters. Mr. McLean

¹¹ Mr. Holeton testified that he attended a Macomb County Commission meeting and "discussed the so-called opt-out benefits. And we discussed how there were none." 4 TR 566.

testified the Company's estimate is, when compared to projected participation rates by other utilities, "potentially low." 4 TR 579. In support, Mr. McLean notes that Consumers Energy has projected a participation rate of 1.5% in its most recent rate case (Case No. U-17087). Id. Accordingly, Mr. McLean opined Staff's proposed participation rate constitutes to a compromise between the estimates of the Company and Consumers Energy. Id.

The Company takes issue with Staff's estimate by noting that Consumers is in the front-end of their AMI installation, while the Company is much further along in the process. 3 TR 239. It is for this reason the Company undertook the analysis of other utilities in California and Texas that had "more developed [AMI] programs..." and actual data on opt-out participation. Id., p 240. As noted, the participation ratios of those utilities ranged from 0.002% to 0.4%. Id. Staff argues that while its proposed ratio is higher than 0.4%, it is closer to that figure than the Company's estimate of 0.19%, and the wide-range between the 4 utilities demonstrates the uncertainty in setting a participation level. Further, Staff argues Consumers Energy estimate suggests the Company's estimate is potentially too low. Staff also notes that setting the participation rate too low will have a chilling effect on the number of participants because of the corresponding increase in fees. This, in turn, would be contrary to the Commission's holding that the Opt-Out Program be based on cost-of-service.

In considering the arguments of the Company and Staff, it appears that Staff is advocating a more prudent ratio. This is based on the fact the upper-end of the actual participation percentage for other utilities, Southern California

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Edison's 0.4%, is closer to Staff's estimate. Other considerations also indicate Staff's estimate is more accurate than one proposed in the Application. First, the difference between the Company's ratio and Consumers Energy's 1.5% participation estimate must be given some effect, irrespective of at what point it is in the AMI process. Second, as of January of 2013, the Company has received 3,269 concerns from its customers, which is a significant increase from the 1,000 concerns it had received, and used in setting its estimate in mid-2012. 4 TR 473. Finally, Staff's argument concerning the affect of setting the ratio too low is well-taken. Every effort should be made to offer an Opt-Out Program that provides the Company's customer with an effective opt-out option, while at the same time ensuring the cost of the Program is borne by its participants. Staff's estimate of 15,500 participants in the Program better ensures both objectives are met. Therefore, Staff's participation estimate should be utilized in establishing the Program's fees.

E. The Initial Fee and Monthly Fee for the Opt-Out Program

Having established the appropriate estimated participation level in the Program at 15,500, an analysis of the components of the fee structure can be undertaken. As discussed, the Company includes three cost items in its Initial Fee proposal: labor and indirect support for disabling an AMI meter; 1 hour of training for employees; and billing system modifications. Exhibit A-1, Schedules 2 & 3. For the Monthly Fee proposal, the Company includes the operational costs for the manual reading of non-transmitting AMI meters. Exhibit A-1, Schedules 4-7. This fee structure is intended to "reflect the actual cost of

maintaining a non-transmitting AMI meter without causing incremental costs and expenses on the millions of customers not electing to opt out.” 3 TR 231. In addition to a cost-of-service basis, the Company asserts the fee structure is consistent with the Opt-Out Programs of utilities in other jurisdictions, and was “developed utilizing cost based ratemaking principles consistent with the methodology utilized in Edison’s most recent rate case.” Id., pp 234-235.

Based on its review of the components of both fees, Staff determined “[t]hey are based on the Company’s experiences and past practices with meter reading and associated functions and are reasonable. Furthermore, the costs are consistent with other jurisdictions.” 4 TR 578. Staff recommends adoption of the fee structure, albeit with its calculation based on 15,500 participants.

Most of the challenges to the fee structure raised by the Intervenor are addressed above. The only remaining challenge was raised by both Ms. Spranger and Ms. Schmidt, who contend that the current meter read expense of \$0.45 means any Monthly Fee above that amount is excessive. However, the current expense covers a system-wide program, which Mr. Sitkauskas termed “mass meter reading”, with routes that have up to 500 meters. 3 TR 279-280. Under the AMI, meter readings for Opt-Out participants will be a “special read” for routes with only 40 meters spread out over a wide geographic area. Therefore, the \$0.45 every customer currently is charged for meter reading has no correlation to the expense that will result for the same service provided to participants in the Opt-Out Program.

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The Attorney General raises two challenges to the fee structure. The first is that the Company failed to meet its burden to prove the fees are just and reasonable. As discussed, the Attorney General contends in his Reply Brief that the various components of the fees, particularly those that make up the Initial Fee, were not adequately proven on this record. However, a review of this record indicates that Mr. Sitkauskas testified to each of the components of the Initial Fee, both in his direct testimony and on cross-examination. Further, the components and their respective basis are clearly delineated on Exhibit A-1, Schedules 1-7. Mr. Sitkauskas also testified the fees are within the range charges by other utilities throughout the country. 3 TR 235. In conjunction with this evidence is Mr. McLean's testimony that Staff determined the components that make up those fees are reasonable. In considering this record, the Attorney General's argument concerning the sufficiency of the evidence concerning the Initial Fee and Monthly Fee cannot be accepted.

The Attorney General's other challenge to the fees is based on the argument that certain costs depicted on Exhibit A-1 are incurred monthly, as opposed to annually. Again, the record indicates the Monthly Fee is made up of costs the Company "will incur on a monthly basis to support those customers who choose..." to participate in the Opt-Out Program. 3 TR 232-233. Since the Company attempts to read its meters every month, it only follows that the continuation of that process for opt-out participants would also be monthly manual meter reads. Id., p 251, 441. Based on this record, the only substantive evidence on this record establishes the components of the proposed Monthly

Fee constitute the costs the Company will incur to perform monthly meter reads of non-transmitting AMI meters. Therefore, the Attorney General's argument that those figures represent annual costs, and thus must be divided by 12 to determine the Monthly Fee, is rejected.

Based on the foregoing, the only substantive evidence on this record establishes that the components of the Initial Fee and Monthly Fee represents the cost of operating and maintaining the Opt-Out Program. Therefore, an Initial Fee of \$67.20 and Monthly Fee of \$9.80 is just and reasonable.

F. The Tariff for the Opt-Out Program

The Company submitted a Tariff with its Application, Exhibit A-2, while Staff proposed its own Tariff, Exhibit S-2. The Attorney General proposed editorial changes to Exhibit S-2.¹² The Company agreed to Staff's proposal, and the Attorney General's proposed language. Reply Brief, p 15. Based on this evidence, the AMI Opt-Out Tariff should state:

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

¹² The Attorney General also seeks inclusion of language in the Tariff that sets forth the substantive challenges to the Opt-Out Program he proposes. Similarly, some of the Intervenor's propose a Tariff that adopts their substantive arguments. Since none of those arguments were sustained, the proposed language is rejected.

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.

VI.

CONCLUSION

Based on the record, the AMI Opt-Out Program proposed in the Application the Company filed on July 31, 2012, is consistent with cost-of-service principles, except the estimated number of participants should be set at 15,500 customers. Utilizing that estimate, an Initial Fee of \$67.20 per opt-out request, and Monthly Fee for a customer that elects to participate of \$9.80, is just and reasonable. Exhibit S-1.

**MICHIGAN ADMINISTRATIVE HEARING
SYSTEM**

For the Michigan Public Service Commission

**Dennis W.
Mack**

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March 22, 2013
Lansing, Michigan
drr

Dennis W. Mack
Administrative Law Judge