Michigan Public Service Commission

Comments on U-14851

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Introduction

Thank you for the opportunity to comment on the proposed residential billing rules. We are legal and human services organizations that work with low-income persons and community organizations serving those individuals. We work regularly with people who are struggling to turn on and keep on gas and electric service for their homes. We see how difficult it can be for individuals with fixed incomes or low-wage jobs to keep up with utility payments. We see how human services agencies in our communities run out of funds to prevent shut-offs almost every year. We appreciate that the Commission is considering some new ways to address these problems.

A. Definitions – Rule 2

1. "Eligible Low Income Customers" Should Be Expanded – Rule 460.102(n)

a. Use 200% of the federal poverty level, not 150%

The proposed rules would limit the "eligible low income customers" who are eligible for the Winter Protection Plan to those with 150% of federal poverty guidelines or recipients of certain types of government benefits, including Food Stamps and Medicaid. Currently at least some utilities make the Winter Protection Plan available to customers up to 200% of the federal poverty guideline (See Energy Answers Booklet published by Consumers Energy 11-06). A rule based on 200% of the poverty guidelines would include many struggling working families. It is also in line with eligibility guidelines in Michigan for certain categories of Medicaid, as well as the gross income limits for Food Stamps. Using 200% of poverty would make the PSC rules more consistent for all low-income households, regardless of what types of other government benefits they choose to apply for or receive.

b. Include "MIChild" recipients as well as Medicaid recipients.

We also suggest you add "MI-Child", a health insurance program for low-income children to the list of government programs which would qualify a family as low-income. Some low-income children receive MI-Child rather than Medicaid.

2. "**Satisfactory Payment History" Should Be Clarified– Rule 460.102(mm)**

The proposed rule says that a customer has a satisfactory payment history if the customer has no more than one payment that is "delinquent" within 12 months. Delinquent means an account remains unpaid more than 5 days after the due date. In several places, the rules give favorable treatment to customers with "satisfactory payment history." For example, such customers may be eligible to pay their bills in equal monthly payments. Rule 460.118. Because this definition is important, and some customers have different arrangements on how their payments are made, we recommend that this definition be changed to ensure that persons who are in compliance with the Winter Protection Plan are considered to have a satisfactory payment history. This would be consistent with Rule 460.122 which provides that persons in the Winter Protection Plan are exempt from late fees.

We also recommend that customers who are participating in a utility vendoring program through the Department of Human Services (DHS) be included in the definition of "satisfactory payment history." DLEG has indicated in its regulatory impact statement that equal payment programs are especially important for low and fixed-income households. If

so, then the definition of satisfactory payment history should take into account the fact that many of these households have made their payments according to terms set by DHS or the WPP.

We also note that the reference to satisfactory payment history in Rule 460.110(2)(d), which says when senior citizens age 65 or older may not be charged a deposit, is inconsistent. It says that the senior must have a "satisfactory payment" history for 3 years, when the general definition requires is based on a 12 month history.

Proposed definition of "satisfactory payment history":
"Satisfactory Payment history" means that a customer's account was not delinquent more than 1 time in the past 12 months. A customer shall not be deemed delinquent in any months where the customer is complying with a winter protection plan or a settlement agreement or if the department of human services or its successor agency has been responsible for making payments to a utility on the customer's behalf.

B. Application for Service Rule 6(2)(b)

1. Lack of clear appeal process regarding delinquent accounts
The proposed rule allows utilities to refuse to open accounts to customers who have "undisputed" delinquent accounts in the customer's name within the past 3 years. 400.106(2)(b) We recommend that utilities be required to inform customers if they are denied service on this ground, and how to dispute this determination, if necessary.

2. Standardize conditions for opening accounts after termination of service
We also recommend that that customers not be denied service based on a delinquent account "unless the utility offered the customer, prior to the shutoff for non-payment, the opportunity to enter into a settlement agreement." This is the standard for imposing a security deposit after the termination of service under proposed Rule 460.111(5). It makes sense to standardize the rules for both circumstances.

C. Deposits - Rule 11

1. **Positive Improvements**

There are a number of improvements in the billing rules that we are pleased to see and support fully.

- **a. Lower deposit in space heating months** - 460.111(3)(a) – We are pleased that customers are required only to pay 1 month of average monthly bill during space heating months if they lost service due to disconnect in the prior 12 months.

- **b. Extended payment Plan** - 460.111(1) (c) - We are pleased that low income customers are given the option of paying a deposit in 2 monthly installments.

- **c. Requirement that Settlement Agreement Be Offered** – 460.111(5) - We are pleased that utilities could not require a deposit to restore terminated service

unless the utility offered the customer the opportunity for a settlement agreement prior to termination of service.

d. Notice that household member's arrearage is cause for deposit - 460.111(2) Although we generally object to using a household member's arrearage as a basis for imposing a deposit (see section "D" below), we are pleased that utilities will be required to tell customers the reason that a deposit is required based on a household member's prior arrearage. This procedure is important because it will tell customers how to resolve factual errors.

2. **Lack of Clear Notice and Appeal Process on Deposit and Guarantee Requirements**

The proposed rules do not establish a clear appeals process in which customers are informed why a deposit or guarantor is required, and how to appeal if they think the utility has erroneously imposed the deposit or required a guarantor. Part 10 of the rules sets out an appeals process for disputed bills, but this does not clearly apply to deposits except for Rule 460.111(2). Customers should be given notice and instructions on how to dispute deposit and guarantee requirements in all cases.

D. Consequences of Unpaid Bills of Household Members Rules 9(f), 10(i) and 37(h)

We are very concerned that the proposed rules still permits shut offs for unpaid services provided in the name of a person who was (and is) a member of the household, unless the customer was a minor at the time the bill was accrued. Although the rule has been improved by allowing the amount of the bill to be pro-rated based on the number of months when shared, it still is contrary to basic notions of contractual liability.

1. **Termination of service due to failure of third party to pay a separate account**

We are very concerned that proposed Rule 460.137(h) would retain a provision that purports to allow a utility to shut off utilities to a current customer based on arrearages accrued in the name of a former customer, for any periods of service when the current customer lived with prior customer. We oppose this rule in principle because it runs afoul of the basic laws concerning contracts and guarantors in Michigan. We also oppose this rule because of significant practical problems we have seen for customers under the current rule.

a. The proposed rule violates basic contract laws by holding one customer liable for another services without an agreement between the utility and that customer

There is no contract between the current customer and the utility to pay a third party's bills – Under basic contract law, an individual may not be held responsible for the debt of a third party unless he or she contracted to pay for them. A "meeting of the minds", *i.e.* an explicit agreement between the provider of services and the customer, as well as consideration between the parties, is necessary for there to be a contract. This

basic concept of a contract is already reflected elsewhere in the rules in Rules. For example, Rule 460.107 states that a utility "shall not require anyone other than the applicant to assume responsibility for service." Rule 460.120(2) states that a utility "shall not attempt to recover from any customer any outstanding bills or other charges due upon the account of any other person, unless that other person has entered into a lawful guarantee under R 460.112, or another lawful agreement to pay those bills or charges. "

No contract for payment of the third party's debt can be "implied in law" - Although it may be said that the current customer should be liable because he or she benefited from the utilities provided under the former customer's name, there cannot be a valid "implied in law" contract because there was in fact an express contract between the utility and the prior customer which prevents the utility from lawfully claiming a contract that is implied in law.

A current customer cannot be made an involuntary guarantor - By holding the current customer responsible for a prior customer's bills, the rules effectively make the current customer an involuntary guarantor for the prior customer. The law of guarantees, like contracts, requires a mutual agreement and consideration (something of value) exchanged between the parties. The current and proposed rules prevent a utility from deeming a third party to be a guarantor unless that person agrees in writing to be the guarantor and setting the terms of the guarantee. MCL 140.112, 117(b). The same rule should be applied in the case of those who have shared a dwelling, especially because the current customer became responsible for another's bill, without the current customer's knowledge and consent at the time the arrearage accrued.

The rules set up a procedure where a member of the household can agree to share responsibility for a bill accrued in another household member's name. (See Rule 460.107(1)). It violates basic notions of contract law, and is inconsistent with other portions of the proposed rules, to hold household members responsible for each other's bills in the absence of such an agreement.

b. The Third Party Rule is Problematic in Practice

The third party liability rules are a particularly confusing and error prone area, which has significant impact on low-income customers. Many of these customers have to "double-up" for periods of time due to economic hardships. In light of the unstable job market, it is not unusual for one or the other household member to have no money with which to pay utilities. In addition, one household member may not have control over how utilities are used during hours when he or she is not at home or is physically unable to exercise such control.

Community agencies report that some regulated utilities routinely add bills of former customers onto the bills of anyone else with whom they currently live. There is little if any effort to confirm whether the two customers lived together at the time the bill was accrued. In addition, the customers are not informed about the limited circumstances in which (at least under Rule 460.137(h)) a previous customer's delinquent bill can be

added to a current customer's bill, and how to object if those circumstances do not apply. As a result, customers find themselves with hundreds or thousands of dollars added to their bills under circumstances that violate the Commission's rules. In practice, if the customer finds their way to a legal aid office, the problem may be corrected, but only a very small portion of the total customers seek legal help. The customer should not have the burden of proving that he or she was not liable for a prior customer's bill; the utility should have the burden of proving actual liability.

Because Rule 460. 137(h) is applied in an over broad manner in practice and because it violates basic notions of contract law within the state (and as reflected elsewhere throughout the rules) it should be eliminated from the final rules.

2. **Deposits -** 460.109(1)(f) and 110 (1)(i)

The proposed rules allow utilities to use another household member's unpaid bills as reason to impose a deposit for either new or prior customers, if the household member lived with the customer at time bill accrued. The utility's right to demand a deposit should be related to the current customer's history of paying or not paying bills for which he or she is contractually liable as the customer or guarantor. The fact that another household member has a poor payment history does not necessarily mean that the current customer does not pay his or her bills.

E. Billing and Payment Standards - Rules 20, 22, 26

1. Billing Period – 460.120 (1)
We are pleased that these rules retain the 22 day billing period, as opposed to the proposed 17 days. This is much more reasonable for most customers.

2. Application of Payments – 460.120(5)
We are pleased that low income persons will have option of applying payments to either their gas or electric bills and that customers will be offered the option of an extended payment plan for either or both.

3. Late Fees – 460.122
We are pleased that late fees are still capped (continuing at 2%) and that there are no late fees for those participating in the winter protection plan. We also recommend that no late fees be permitted whenever "the department of human services or its successor agency is responsible for making payments to a utility on behalf of [the customer]."

4. Payment Arrangements for Undercharges – 460.126
We are pleased that if a customer is undercharged, then the utility shall offer reasonable payment arrangements for paying the back bill for a period at least as long as the undercharge and take into account the customer's financial circumstances.

5. Customers with underestimated bills need protection from late fees -460.122(3)
We recommend that Rule 460.122(3) be cross-referenced with Rule 460.126. This will ensure that customers who were undercharged because their bills were estimated will not

be charged a late fee if the customer makes payment arrangements to pay off the arrearage under 460.122(3) (unless the customer was undercharged because the utility company could not access the meter).

F. Termination of Service - Rules 39 -50

Form of Notices 460.139 and 460.146
We appreciate that both shut-off notices and past due notices will inform customer about various energy services and programs, who to contact at the utility about these programs, and inform customers that they should tell the utility when they are trying to get assistance from one or more of these programs.

Medical Emergency 460.147
This proposed rule would now cap the number of days that a customer with a medical emergency could receive shutoff protection to 63 days within a 12 month period. We oppose this mandatory cap for individuals who might otherwise lose utilities completely because of the risk to their lives. We are, however, pleased that the proposed rule would specifically protects customers who must use the utility to power medical or life-supporting equipment.

Shutoff Protection for seniors 460.100.149
We are pleased that the proposed rules provide full shutoff protections for senior citizens during the winter heating months, and permit reconnection without other payments or deposits. We are also pleased that active military personnel and their spouses receive shut-off protection for up to 180 days and an additional 12 months to pay any arrearages accrued at the end of the shut-off protection.

G. Winter Protection Plans (WPP) – Rule 48

Amount of Plan
We would have preferred that the plan be based on 6% of the annualized usage rather than 7% which is consistent with current practice. We are also concerned that in some years, it will be very difficult for individuals to reconcile their winter bills during the 6 month period between April and October. The payment plan for these arrears should be extended to 12 months with forgiveness of arrears available to those who make payments as required.

Level Payment Plans as an Alternative
We hear from clients and community agencies about their struggles paying off arrears accumulated under the WPP during the heating months at the end of the winter heating season. We strongly recommend that utilities be required to offer an alternative payment plan that sets a flat payment amount that is affordable in light of the customer's income. This should be combined with a program that assures shut-off protection permits forgiveness the unpaid arrears if the customer makes required payments for 12-18 months. Customers could also be offered incentives for utility conservation by shortening the number of required payments or offering a credit toward future bills.

Offer of Settlement Agreement after WPP Default – 460.148
We were disappointed that utilities are still not required to offer settlement agreements to customers that default in their winter protection plan. We would recommend, however, that the rules be changed to make it clear that utilities are required review and consider a settlement plan if the customer shows a change in income. This would make the rule more consistent with the approach in 460.155(5), where the utility is required to renegotiate a settlement agreement if the customer shows a change in circumstances.

H. Time for Requesting a Hearing - Rule 52

We are concerned that the rules give customers only 3 business days to request a hearing after a hearing is offered, especially when the rules do not clearly require the utility to inform customers of this deadline. We recommend that the utility be required to inform the customer of any deadline and that the customer be given at least 5 business days to request a hearing with a hearing officer.

I. Settlement Agreements – Rules 55-56

Disagreeing with a Settlement Agreement – 460.155
We are disappointed that the proposed rules still do not include a method for customers to appeal the terms of a settlement agreement. We are glad that the customers will at least receive a clearer notice of what they give up if they choose to enter an agreement.

Modification of Settlement Agreements - 460.155(5)
We are very pleased that customers are told they can request review and modification of settlement agreements based on change of income. We note, however, that although this right is referenced in the rules related to notice, it is not included in the general rules that apply to the utility. For example, under 460.156 - the utility is not required to enter into new agreement unless the customer complied fully with the previous one This section should be modified to say that the utility is not required to do this, "unless the customer requests a modification due to an unexpected loss or reduction of income under Rule 460.155." The notice in 460.156 at the time of the default should include this information as well.

Cap During Heating Season – 460.155(6)
We are pleased that settlement agreement payments during space heating season cannot exceed $50 plus the current bill, even if a higher amount was agreed to.

Default in Plan During First 60 days – 460.156(4)
We are concerned that customers who fail to follow the settlement agreement during the first 60 days do not receive the default notice under 460.155(5). We are especially concerned for individuals who have an unexpected loss or reduction of income during that time. Such individuals should be permitted to request a modification of their payment plan.