

# RIVENOAK LAW GROUP PC

Valerie J. M. Brader  
Admitted in Michigan  
valerie@rivenoaklaw.com

February 2, 2024

*VIA ELECTRONIC CASE FILING*

Ms. Lisa Felice, Executive Secretary  
Michigan Public Service Commission  
7109 W. Saginaw Highway  
Lansing, MI 48917

Re: **MPSC Case No. U-21400**: In the matter, on the Commission's own motion, to open a docket to establish a workgroup to review and consider issues related to the creation of financial incentives and penalties involving outages and distribution performance.

Dear Ms. Felice:

Enclosed for filing please find the ***Comments of the City of Ann Arbor on Staff's Revised Straw Proposal for Reliability Metrics*** for the above referenced case.

Should you have any questions or comments regarding this matter, please do not hesitate to contact my office.

Sincerely,



Valerie Jackson

Counsel to the City of Ann Arbor

cc: w/enclosure: Parties of Record

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own motion, to open a docket to establish a workgroup to review and consider issues related to the creation of financial incentives and penalties involving outages and distribution performance.

U-21400

---

**COMMENTS OF THE CITY OF ANN ARBOR ON STAFF'S REVISED  
STRAW PROPOSAL FOR RELIABILITY METRICS**

**I. INTRODUCTION**

The City of Ann Arbor ("Ann Arbor" or "the City") appreciates the opportunity to provide comments on the Revised Straw Proposal for Reliability Metrics ("Revised Straw Proposal") submitted by the Michigan Public Service Commission Staff ("Staff") on December 19, 2023. These comments are provided in response to the Michigan Public Service Commission's ("the Commission") December 21, 2023 order in Case No. U-21400, which invited interested persons to file comments on the Revised Straw Proposal by February 2, 2024. Specifically, the Commission requested comments on the following subjects: (1) feedback on revised metrics, (2) incentive/disincentive potential (including allocation by metric and symmetric incentives for SAIDI and storm response metrics), and (3) focus area for worst performing circuit metric (system- vs. circuit-level). The Commission also invited comments on "equity considerations and any other issues related to the revised straw proposal interested persons would like to provide."

**Ann Arbor strongly opposes the Revised Straw Proposal.** DTE Electric Company ("DTE") bragged to shareholders that it was significantly underspending on maintenance compared to its peers, while its reliability plunged to levels far worse than its peers. Under the

Revised Straw Proposal, DTE would get extra money for continuing to deliver reliability so bad it violates the Commission's own written standards. Ann Arbor believes it is inappropriate to further reward DTE for delivering literally sub-standard performance at premium prices. Incentives should be provided *only* after a utility exceeds the MPSC minimum reliability requirements.

## **II. COMMENTS**

### **A. Accountability for Poor Performance**

As indicated in Ann Arbor's testimony and briefing in recent DTE rate cases, DTE has lost the trust of the City and its residents. In the last two years, residents and businesses experienced repeated multi-day outages. During those outages, the utility's systems were repeatedly unable to communicate with first responders. More than fifty residences experienced a voltage surge strong enough to destroy their home appliances. Approximately one in five of Ann Arbor's DTE-managed streetlights experience an outage each year – and the length of streetlight outages far exceeds that of the streetlights managed by the City. All this has occurred while the Company earned above-average returns and trumpeted to investors about their unusually low spending on operation and maintenance.

It is time for DTE to be held accountable for failing its customers. The Revised Straw Proposal would instead reward utilities for continued mismanagement and further erode the trust of rate payers.

Ann Arbor maintains the position it has expressed in recent DTE rate cases that the Commission should hold DTE accountable for its poor performance by taking its unacceptable electric service into consideration when determining DTE's return on equity ("ROE"). As the Commission has previously noted, "one major purpose of regulation ... is to insure so far as

practical that [the utility] is in a similar position to enterprises in the competitive sector.” *Detroit Edison Co v Pub Serv Comm'n*, 127 Mich App 499, 523; 342 NW2d 273, 284 (1983). One of the key aspects of duplicating competitive pressure is creating financial consequences for subpar performance and poor management choices. Statutorily, one of the ways the Commission must do this is to consider a number of factors when setting rates, including the “value of service to the customer.” MCL 460.557(2). DTE’s inadequate reliability and poor quality of service is reducing the value of its service to its customers, and as such, may be considered as a factor in determining if a rate is just and reasonable, including in the determination of an appropriate ROE.

In addition to taking performance into consideration when determining a utility’s ROE, Ann Arbor also generally supports the establishment of financial penalties that will hold utilities, like DTE, accountable when the quality of service they provide to their customers violates reliability standards. However, Ann Arbor opposes any mechanism that would give an “extra” financial reward (bonus, incentive payment, etc.) for a utility that improves its reliability to a minimally-compliant level. This is especially true given it was DTE’s own behavior and choices that caused it to deliver some of the worst reliability in the country – despite being granted the opportunity (which it exploited) to secure above-average earnings. No other industry is rewarded for not meeting basic standards – and Michigan’s utilities should not be the exception.

#### **B. Feedback on Revised Metrics**

The Revised Straw Proposal recommends using the following four reliability performance metrics to determine incentives/penalties: (1) SAIDI (Excluding MEDs), (2) SAIDI (All Weather), (3) Storm Restoration, and (4) Worst performing circuits. Ann Arbor supports the use of these categories of metrics and further recommends the addition of a tree-trimming metric,

which would penalize utilities for falling behind on vegetation clearing because utilities should not only be reacting to storms through prompt restoration, but should also be performing maintenance to prepare for storms and minimize damages when inevitable storms occur. The bar to clear to earn those “incentives” however, is set far too low. In the most egregious example, the proposed storm restoration target performance level would reward a utility for delivering performance that is so bad it violates the Commission’s Service Quality and Reliability Standards for Electric Distribution.

### **C. Incentive/Disincentive Potential**

- i. A utility should not be eligible for an incentive unless it comfortably exceeds the service quality and reliability standards set by the Commission.**

Pursuant to the Service Quality and Reliability Standards for Electric Distribution Systems (“SQRS”), the Commission may only authorize an electric utility to receive a financial incentive “if it exceeds all of the service quality and reliability standards adopted by [the SQRS].” R 460.741(1). Thus, any mechanism that provides a financial incentive to a utility that has not exceeded all the requirements of the SQRS is in direct violation of the rules set by the Commission.

The Revised Straw Proposal does not take this very clear rule into account. There is nothing in the Revised Straw Proposal that indicates a utility’s performance will be reviewed for compliance with the SQRS before a financial incentive may be awarded. In fact, it recommends the award of an incentive in the first year for a utility if greater than 85% of customers are restored to service within 48 hours of a catastrophic event, even though, pursuant to the SQRS, it is categorically “an unacceptable level of performance” when an electric utility fails to restore service within 48 hours to at least 90% of customers under catastrophic conditions. R

460.722(b). Rewarding a utility for a level of service that the Commission has deemed “unacceptable” – even if it is an improvement on that utility’s current level of service – is not only confusing and inappropriate, but also directly contradicts the SQRS.

Pursuant to the SQRS, an electric utility has a duty to “operate and maintain its distribution system in a manner that will permit it to provide service to its customers without experiencing an unacceptable level of performance.” R 460.722. The SQRS defines “unacceptable performance” through a series of specific criteria addressing service interruption standards, wire down relief requests, and service quality. R 460.722-460.724. Ann Arbor recommends a mechanism that includes the review of a utility’s compliance with these specific performance criteria, and only permits the award of a financial incentive if a utility exceeds these standards as well as achieves the performance metrics set by the incentive mechanism. Ann Arbor would not support a mechanism that permits a utility to receive a financial incentive if these criteria are not met. Such a financial boon would be especially inappropriate for DTE, which would be paid *even more* to not-quite-fix the situation it deliberately created by choosing to pay premium shareholder returns while shorting operations and maintenance.

**ii. The proposed incentive/disincentive pools are too large.**

The Revised Straw Proposal recommends total incentive/disincentive pools of \$23 million for DTE and \$19 million for Consumers based on limiting customer impact of incentives to \$10 per customer annually. The Revised Straw Proposal suggests this amount “reflects a judgment on willingness-to-pay for improved utility performance on reliability.”

Ann Arborites are completely unwilling to pay DTE one penny more to continue to deliver reliability that doesn’t even meet the Commission’s minimum standards. As evidenced in

local polling the City has done, Ann Arborites are exhausted by the failure of DTE to provide a basic level of reliability, despite charging some of the highest utility rates in the Midwest.

Until the distribution system sees vast improvements and is functioning at an acceptable level, it is difficult to assume that customers would be willing to pay any additional amount for improved reliability, considering they are already paying recent rate increases for O&M spending and capital investments that are supposed to result in improved reliability. Electric rates must be “just and reasonable.” MCL 460.557(4). It does not seem just or reasonable to expect customers to pay an additional incentive on top of absorbing rate hikes – which are already likely higher than they ought to be if underspending on O&M has increased storm damage and forced capital replacements – in order for utilities to reach a level of adequate performance. As such, Ann Arbor strongly objects to DTE receiving even a single extra dollar until reliability meets (ideally exceeds) the basic level of service the Commission has required and that rate payers deserve.

#### **D. Focus Area for Worst Performing Circuits**

Ann Arbor supports focusing on the worst-performing circuits, and in the interests of equity, prioritizing within those categories by circuits with the highest scores on the environmental justice screening tool. Ann Arbor notes that in addition to environmental justice criteria to prioritize within the list of worst-performing circuits, special consideration should be given to circuits that provide services to key public safety installations (e.g. police stations, fire stations) to allow better response during power-outage emergencies. In addition, Ann Arbor encourages the Commission to explore analysis of environmental justice criterion that are concentrated in geographic areas smaller than census tracts. The reason for this is that poverty often concentrates in smaller geographic areas than a full census tract and the City wants to

ensure that environmental justice communities are not inadvertently missed when exploring key circuits for investment.

Dated: February 2, 2024

**RIVENOAK LAW GROUP P.C.**



By: \_\_\_\_\_

Valerie Jackson

Valerie J.M. Brader

Attorneys for the City of Ann Arbor

3331 W. Big Beaver Rd.

Suite 109

Troy, MI 48084

Telephone: (248) 677-1045

Email: [valeriejackson@rivenoaklaw.com](mailto:valeriejackson@rivenoaklaw.com)

[valerie@rivenoaklaw.com](mailto:valerie@rivenoaklaw.com)

[ecf@rivenoaklaw.com](mailto:ecf@rivenoaklaw.com)