

February 2, 2024

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

Re: In the matter, on the Commission's own motion, to establish a workgroup to investigate appropriate financial incentives and penalties to address outages and distribution performance moving forward.
Case No. U-21400

Dear Ms. Felice:

Enclosed for filing in the above-referenced matter, please find the Comments of the Citizens Utility Board of Michigan, Ecology Center, Environmental Law & Policy Center, Michigan Municipal Association for Utility Issues, Union of Concerned Scientists and Vote Solar on the Revised Straw Proposal for Reliability Metrics. Please let us know if you have any questions.

Sincerely,

/s/ Amy Bandyk
Amy Bandyk
Executive Director
Citizens Utility Board of Michigan

/s/ Alexis Blizman
Alexis S. Blizman, J.D.
Legislative and Policy Director
Ecology Center

/s/ Daniel Abrams
Daniel Abrams
Associate Attorney
Environmental Law & Policy Center

/s/ Rick Bunch
Rick Bunch
Executive Director
Michigan Municipal Association for Utility
Issues

/s/ James Gignac
James Gignac
Midwest Senior Policy Manager
Union of Concerned Scientists

/s/ William D. Kenworthy
William D. Kenworthy
Senior Regulatory Director, Midwest
Vote Solar

Enclosure

Comments of Citizens Utility Board of Michigan, Ecology Center, Environmental Law & Policy Center, Michigan Municipal Association for Utility Issues, Union of Concerned Scientists and Vote Solar on MPSC Staff Revised Straw Proposal for Reliability Metrics

1. Mechanisms should be penalty-only

There has been no response from the Staff or utilities to the arguments that incentives are inappropriate and so the mechanisms should be penalty-only, not symmetric. These arguments came from multiple stakeholders, including CUB, the Clean Energy Organizations (CEOs), the Detroit Area Advocacy Organizations (DAAOs), the Natural Resources Defense Council (NRDC), Michigan Environmental Council (MEC), Sierra Club and Strategen.

As was well said by NRDC/MEC/SierraClub/Strategen in their [initial comments](#), “providing a new incentive to utilities that is above and beyond their Returns on Equity (ROE)—which are already some of the highest for Midwest utilities—simply for providing the core service that they already offer is misaligned with customer interests.”¹ In the many comments filed in this docket, we have not seen a response to this argument that would explain why the utilities should be rewarded for fulfilling a basic part of their service.

Next, even if one were to accept that utilities should be rewarded beyond their ROE for fulfilling basic service, the utilities are not even close to achieving that low-bar goal. What’s more, as a result of the utilities’ poor performance, to offer incentives would violate the rules the MPSC itself has adopted by administrative law in the Service Quality and Reliability Standards (SQRS). The SQRS state that the MPSC may authorize a utility to receive a financial incentive only “if it exceeds all of the service quality and reliability standards” [Rule 41].

The utilities are not close to exceeding the standards. For example, the SQRS require that not more than 6% of a utility’s customers may experience four or more sustained electric service interruptions annually. As recounted in the straw proposal,² DTE has reported 163,417 customers with four or more interruptions in 2022 (or about 7% of its 2.3 million customer base) and Consumers Energy reported 173,273 customers with four or more interruptions in 2022 (or about 9.5% of its 1.8 million customer base).

DTE suggests in its reply comments that the MPSC could simply waive Rule 41. But the MPSC adopted the rules in the SQRS for a reason. While as a matter of legality, the MPSC could waive the rule, the fact that it would have to is a sign that rewarding the utility for improvements on their poor performance necessarily involves the MPSC lowering its own standards and reversing

¹ Joint Comments of the Natural Resources Defense Council, Michigan Environmental Council, Sierra Club, and Strategen. Sept. 25, 2023, page 3.

<https://mi-psc.my.site.com/sfc/servlet.shepherd/version/download/0688y00000A1922AAB>

² Exhibit A, MPSC Order in U-21400, Aug. 23, 2023, page 8.

<https://mi-psc.my.site.com/sfc/servlet.shepherd/version/download/0688y000009hGtzAAE>

the commitments it has made to Michigan ratepayers. It would be a mistake and an injustice to ratepayers who bear the costs of this poor performance to lower our standards in return for an uncertain result.

2. Penalties paid to customers as outage credits should not be conflated with outage credits paid as a result of the SQRS

Paying penalties to customers as outage credits is not “duplicative” of the outage credits set out by the SQRS because the SQRS credits are explicitly not penalties in the same sense as the penalties being contemplated in this docket.

Multiple stakeholders, including CUB, the DAAOs, the CEOs and NRDC/MEC/SierraClub/Strategen, all supported the need to pay penalties to affected customers as outage credits. DTE and Consumers Energy claim these credits would be “duplicative” of credits from the SQRS. They overlook, however, a fundamental difference between penalties as a result of a financial incentive/disincentive mechanism, as being contemplated here, and the credits they must pay as a result of the SQRS: the former is not eligible for potential cost recovery, while the latter is. Although recently both DTE and Consumers Energy have voluntarily elected not to pursue cost recovery of those outage credits, as recently as its 2022 electric rate case (U-20836), DTE sought cost recovery for a substantial portion of its issued outage credits that the utility claimed were tied to outages not the fault of DTE. Whether the utilities choose not to pursue cost recovery or not, the SQRS outage credits are not penalties in the same sense as financial disincentives because there is the opportunity to pursue cost recovery.

The point is that the MPSC should view the proposal for penalties paid out as outage credits as a complement to other credits, not a duplicate. They are different categories of outage credits. The credits the utilities pay now are not meant to disincentivize poor performance, which is why they are potentially eligible for cost recovery. They are meant to compensate customers for violations of the SQRS. The proposal endorsed by many groups in this docket, however, would ensure that penalties meant to disincentive poor performance also benefit the customers who actually bear the costs associated with poor performance and do not merely punish the utilities.

Multiple stakeholders in this docket have endorsed the view that the existing outage credit system itself is inadequate and have repeatedly made the case for hourly, automatic outage credits. [DAAO's comments](#) in this docket reference this history and point to the inadequacy of the SQRS violation credits in properly creating equality between different ratepayers and fairness between ratepayers and utility shareholders.³ In considering the record of this docket, a distinction between outage credits for which recovery can be requested and outage credits which are tied to utility performance penalties is essential to achieve a system that properly addresses both forms of equality

3. The Staff's estimate for the cost of outages is too low

³ Comments from Soulardarity and We Want Green Too, Sept. 22, 2023.
<https://mi-psc.my.site.com/sfc/servlet.shepherd/version/download/0688y00000A184EAAR>

The Staff has used an unrealistically low valuation for customer impact of outages, leading to the pool of available funds for incentives/disincentives to be too small to likely have a material impact on utility behavior.

The Staff calculated the total pool using an estimate of \$10 per customer annually for impact from outages. This estimate does not seem to have a basis in any empirical research on the economic cost of outages. Research from the Lawrence Berkeley National Laboratory has pegged the cost of outages to a residential customer at around \$2 an hour.⁴ But this estimate is likely on the low end. For one, it does not account for the observed phenomenon of how outages get more expensive for customers the longer they go on (forcing customers to incur exponentially more expenses, such as lodging and food replacements).

But while \$2 per hour is already a very conservative starting point for an estimate, the Staff's estimate is very low by comparison.

In 2021, using the most recent data from the U.S. Energy Information Administration, the System Average Interruption Duration Index (SAIDI) was 927.4 minutes for each DTE electric customer and 911 minutes for each Consumers Energy electric customer.⁵ Therefore the estimate of \$10 per customer corresponds to about 64 to 65 cents per hour based on 2021 data.

4. Affordability should be considered among the performance mechanisms

The DAOs and other groups have supported our proposal from our [reply comments](#) to include an affordability metric among the performance mechanisms. Several commenters have suggested that affordability or similar environmental justice concerns should be treated separately and not be included in any performance mechanism.⁶

Excluding affordability, however, would be a mistake when affordability is such an important metric to consider in the context of this proposal. J.D. Power, for example, noted this tension between infrastructure spending to improve reliability, on one hand, and affordability, on the

⁴ Baik, Hanus, Sanstad, Eto and Larsen. *A Hybrid Approach to Estimating the Economic Value of Enhanced Power System Resilience*. Lawrence Berkeley National Laboratory. February 2021. https://www.researchgate.net/publication/349746078_A_Hybrid_Approach_to_Estimating_the_Economic_Value_of_Enhanced_Power_System_Resilience

⁵ Citizens Utility Board of Michigan, Utility Performance Report 2023 Edition, released December 2023. https://www.cubofmichigan.org/utility_performance_report_2023_edition

⁶ For example, Consumers Energy's reply comments, Oct. 20, 2023: "But the level of data collection and analysis presented by CEO for a performance-based mechanism is beyond the scope of these proceedings. This type of analysis would be better suited for the Commission's Energy Affordability and Accessibility Collaborative ("EAAC")." Page 12, <https://mi-psc.my.site.com/sfc/servlet.shepherd/version/download/0688y00000AL7eyAAD>.

other.⁷ Relegating affordability to a separate collaborative will divorce these issues that need to be linked so that the incentives/disincentives mechanism does not come at the expense of affordability.

We put forth an idea in [our initial comments](#) in this proceeding on what the first steps should be to link affordability to a performance-based mechanism: “We recommend the MPSC form a separate workgroup to determine a process for conducting cost-benefit analyses of reliability measures that would compare the potential gains in reliability from a given measure to the associated impact on customer rates. Customers should be made whole for any costs associated with the need to fix the grid due to utility negligence.”⁸

5. The staff is undercounting major event days while overcounting non-major event days

It is a mistake to have a mechanism for SAIDI excluding major event days (MEDs) and a separate mechanism for all-weather SAIDI. By separating SAIDI into one mechanism that includes MEDs and one that does not, the Staff proposal is overweighting non-MEDs, which sends a misleading signal to utilities. Specifically, MEDs are much more powerful drivers of outages than non-MEDs. This effect can be seen by comparing 2021 SAIDI for Michigan without MEDs (177.9 minutes) to SAIDI for Michigan with MEDs (873 minutes).⁹ Including MEDs makes the SAIDI score nearly five times larger than when they are excluded.

But by counting non-MEDs once in the SAIDI excluding MED metric and then again in the all-weather SAIDI metric, the Staff is counting non-MEDs—the less significant driver of poor reliability—twice, while counting MEDs—the much more significant driver—only once. The result, if implemented, would be that utilities would be less motivated to focus on the most important factors that lead to poor performance on reliability. They will instead focus more on factors causing outages linked to non-MEDs, leaving the majority of the causes of Michigan’s reliability problem insufficiently addressed.

We recommend that the proposal be amended to include all-weather SAIDI only.

⁷ J.D. Power Comments, Sept. 22, 2023, page 1. “[J.D. Power] commend[s] the Commission in its efforts to develop a set of incentives and disincentives to accelerate reliability improvements in Michigan and recognize[s] the challenges in balancing required infrastructure spending with the need to maintain or increase energy affordability.”

<https://mi-psc.my.site.com/sfc/servlet.shepherd/version/download/0688y00000A0F5uAAF>

⁸ Comments of the Citizens Utility Board of Michigan. Sept. 22, 2023.

<https://mi-psc.my.site.com/sfc/servlet.shepherd/version/download/0688y00000A17sTAAR>

⁹ CUB Utility Performance Report.

6. Evaluating worst-performing circuits excluding MEDs is an ineffective and likely inequitable metric

There are two problems with this metric. First, evaluating circuit level performance misses the differences in customer experience between those near the hubs or those near the edges of a circuit. While circuit performance may be a helpful tool for identifying where problems are consolidating, as a metric it encourages utilities to ignore particular customers who are experiencing especially poor performance if the circuit as a whole is performing well. In keeping with the position of many stakeholders in this case that the penalties associated with performance issues should be distributed to the customers bearing the cost of those performance issues, a circuit level metric also raises the question of how to equitably allocate the penalty if customers on the circuit experienced different levels of outage in a given year.

The second problem is that the exclusion of MEDs dissociates the performance metric from actual customer experience. A circuit that performs similarly to others under normal conditions but experiences complete failure during major weather events would not register in this performance metric, while a circuit with more minor routine failures would. Like the inclusion of a SAIDI metric that excludes non-MEDs, the Staff's choice of metric here again risks incentivizing utilities to ignore customers experiencing the greatest real costs in favor of optimizing the more generally stable areas of the system.

A better measure would be to analyze a subset of the worst-performing customer accounts under all weather conditions. If there are significantly poorly-performing circuits, those accounts should end up being clustered in those circuits and thus serve to penalize a failure to address those circuit-level issues. Once major circuit deficiencies have been corrected, this measure will continue to incentivize utilities to focus on the customers with the worst experience. Assigning penalties associated with worst-performing customer accounts, and delivering those penalties directly to those customers, will also serve the goal of ratepayer equity by ensuring that, at the very least, the customers experiencing the most deficient service will be made whole relative to ratepayers experiencing a service level closer to the norm.

Thank you again for the opportunity to comment.

Respectfully submitted,

**CITIZENS UTILITY BOARD OF MICHIGAN
ECOLOGY CENTER
ENVIRONMENTAL LAW & POLICY CENTER
MICHIGAN MUNICIPAL ASSOCIATION FOR UTILITY ISSUES
UNION OF CONCERNED SCIENTISTS
VOTE SOLAR**