

STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30755  
LANSING, MICHIGAN 48909

DANA NESSEL  
ATTORNEY GENERAL

March 1, 2024

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

Dear Ms. Felice:

**Re: MPSC Case No. U-21400 – *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.***

On February 13, 2024, the Commission requested additional comments from interested parties in this captioned docket. Specifically, the Commission requested comments on the following topics.

1. Should incentives be available, even if a utility’s performance on one or more metrics falls below the minimum standards for service quality found in the Commission’s rules? Or is it worth incentivizing faster progress given the reliability challenges affecting customers?
2. If the level of performance needed to earn an incentive is increased to align with the Commission’s service quality standards, should there be changes to the penalties as well (e.g., changing the threshold to incur a penalty and/or phasing in penalty amounts)?
3. There was a fair amount of discussion in the comments on the metrics proposed in the revised straw proposal. What is the appropriate number of metrics to encourage a comprehensive approach to improving distribution reliability without overly diluting the most important metrics? Which metrics should be used (with particular focus on CEMI and MED-only SAIDI)? How should these metrics be weighted?

4. How should any penalties assessed under this framework be used? Should they be refunded to all customers? Used to fund a pool focused on low-income or particularly hard-hit customers? Be plugged back into additional system investments above those included in rates? Or some other way?

As with previous requests from the Commission, the Attorney General is pleased to provide additional clarifying comments and support this valuable undertaking. The Attorney has previously provided a detailed proposal for a mechanism of penalties and incentives that challenge the electric utilities in Michigan to improve the level of service to customers. We have also provided several rounds of comments to the Commission's straw proposals and rebuttal comments to other parties to this proceeding.

In the comments below, the Attorney General will endeavor to provide further assistance and clarity for a mechanism of financial penalties and incentives that is workable, just, and fair to both customers and the utilities, and concurrently addresses the reality of the current level of service provided by Michigan electric utilities. All parties to this proceeding, including the utilities, have acknowledged that the current level of service is deficient.

The Attorney General as well as other parties to this proceeding agree that no incentives should be paid until service levels improve significantly. The comments offered by the Attorney General in this letter provide a middle ground that addresses some of the concerns expressed by those other parties to this proceeding.

**1. Should incentives be available, even if a utility's performance on one or more metrics falls below the minimum standards for service quality found in the Commission's rules? Or is it worth incentivizing faster progress given the reliability challenges affecting customers?**

Some of the participants in this proceeding have made general comments about no incentives to be paid until the utility meet all the requirements imbedded in the Service Quality and Reliability Standards (SQRS) approved by the Commission in its March 24, 2023 order. For clarity, it is important to understand what the service levels in the SQRS require.

Rule 460.722 sets unacceptable performance as performance falling below the following standards (paraphrased):

- a) An electric utility or cooperative shall restore service within 36 hours to not less than 90% of its customers experiencing sustained interruptions under all conditions.
- b) Considering data including only catastrophic conditions, an electric utility or cooperative shall restore service within 48 hours to not less than 90% of its customers experiencing sustained interruptions.
- c) Considering data including only gray sky conditions, an electric utility or cooperative shall restore service within 24 hours to not less than 90% of its customers experiencing sustained interruptions.

- d) Considering data including only normal conditions, an electric utility or cooperative shall restore service within 8 hours to not less than 90% of its customers experiencing sustained interruptions.
- e) From the effective date of these rules until December 31, 2029, considering data derived through the amalgamation of data from all conditions, not more than 6% of an electric utility's or cooperative's customers may experience 4 or more sustained interruptions in a calendar year.
- f) Beginning January 1, 2030, considering data derived through the amalgamation of data from all conditions, not more than 5% of an electric utility's or cooperative's customers may experience 4 or more sustained interruptions in a calendar year.

The Attorney General's previous proposals and comments incorporate most of these standards and the service levels defined in those standards. The question for the Commission and other parties to consider is which of these standards should be incorporated in a PBR mechanism of incentives and disincentives. In her comments submitted on February 2, 2024 to the Commission's revised straw proposal, the Attorney General proposed that the mechanism include the following metrics: (1) SAIDI-excluding MEDs, (2) SAIDI-All Weather, (3) 48-hour (Catastrophic) Storm Restoration, (4) 72-hours (Catastrophic) Storm Restoration, (5) a target percentage of customers restored within 24-hours in Grey-Sky conditions, (6) CEMI-4 or CEMI-5 target (Customers Experiencing 4 or 5 Interruptions in a 12 months period), and (7) Worst Performing Circuits.

The Attorney General believes that these 7 metrics are essential. The SQRS do not include any standards for SAIDI or Worst Performing Circuits other than reporting requirements. Although the other metrics in the SQRS are important, incorporating them within the PBR mechanism would unnecessarily dilute the 7 essential metrics.

The Attorney General still proposes that these 7 metrics be used within the PBR mechanism and the performance target be set at a level that conforms with the SQRS for restoration time and CEMI levels. Setting target performance levels to correspond with the SQRS should resolve the concerns of certain parties to this proceeding that utilities would be rewarded for failing to meet the requirements of the SQRS. Therefore, a balanced approach of incentives and penalties triggered off of the 7 metrics and the SQRS level of performance should be acceptable. In other words, if the utilities exceed the SQRS target level of performance, they can be rewarded with incentives and if they fall short, they would be assessed penalties.

The remaining part of the question asked by the Commission is whether incentives should be available, even if a utility's performance on one or more metrics falls below the minimum standards for service quality found in the Commission's rules. As previously stated, and presented at a granular level, the Attorney General proposal is to use a total scorecard approach with an appropriate weight for each metric to assess penalties or determine incentive payments. This approach would ensure that the utility would need to exceed the performance targets on the majority

of the 7 metrics to get any incentive awards. Likewise, if the utility fails to achieve the performance targets for a majority of the metrics, it would be assessed penalties. Such a mechanism would be fair, just, and balanced for both customers and the utilities.

**2. If the level of performance needed to earn an incentive is increased to align with the Commission's service quality standards, should there be changes to the penalties as well (e.g., changing the threshold to incur a penalty and/or phasing in penalty amounts)?**

As discussed in item 1 above, the Attorney General believes that with a balanced scorecard approach the penalties and incentives triggered off of the SQRS service levels for the applicable metrics and for the remaining metrics should be symmetrical, unless some other obvious problem exists that needs to be addressed.

**3. There was a fair amount of discussion in the comments on the metrics proposed in the revised straw proposal. What is the appropriate number of metrics to encourage a comprehensive approach to improving distribution reliability without overly diluting the most important metrics? Which metrics should be used (with particular focus on CEMI and MED-only SAIDI)? How should these metrics be weighted?**

The Attorney General has addressed this question in item 1 above. To reiterate, the Attorney General proposes the following 7 metrics: (1) SAIDI-excluding MEDs, (2) SAIDI-All Weather, (3) 48-hour (Catastrophic) Storm Restoration, (4) 72-hours (Catastrophic) Storm Restoration, (5) a target percentage of customers restored within 24-hours in Grey-Sky conditions, (6) CEMI-4 or CEMI-5 target, and (7) Worst Performing Circuits.

The Attorney General proposes that the Commission assign the following weights: 25% to 48-hour Catastrophic Restoration Time, 25% to 72-hour Catastrophic Restoration Time, 15% to SAIDI-All Weather, 15% to SAIDI-excluding MEDs, 10% to 24-hour Grey-Sky Restoration Time, 5% to CEMI-5 or CEMI-4, and 5% to Worst Performing Circuits. The lower weight of 5% for CEMI and Worst Performing Circuits reflects the fact that fewer customers are impacted by those metrics relative to the number of customers affected during a catastrophic weather event.

**4. How should any penalties assessed under this framework be used? Should they be refunded to all customers? Used to fund a pool focused on low-income or particularly hard-hit customers? Be plugged back into additional system investments above those included in rates? Or some other way?**

The Attorney General believes that the most equitable approach is to refund or charge all customers for any penalties or incentive payments emanating from the PBR mechanism. All customers over time will experience power outages, hopefully with less frequency and duration in the future. All customers certainly would

appreciate knowing that if the utilities are assessed penalties that a portion of those penalties will be reflected in their electric bill and similarly if the utilities are paid certain incentives for exceeding the performance standards, they will pay their fair share of those costs. To remove this symmetry and charge all customers for any paid incentives and direct penalty funds to the benefit of only select customer groups would be unfair and could create wide customer ill-will with the PBR mechanism. The Attorney General also would object to returning any penalties back to the utilities to go toward additional capital expenditures. Instead, utilities should be investing any incentives into providing greater reliability to customers.

As stated in previous comments provided by the Attorney General under this docket, it is critical to directly link the incentives and penalties to those costs that the utility is recovering in rates for two reasons. First, it communicates to the utility that if it makes capital investments and incurs other costs to improve the grid and those investments do not yield the expected performance results that a portion of the revenue requirement recovered in customer rates will be returned to customers.

Second, from a customer perspective, the Commission can communicate to customers that the performance incentives and penalties assessed against the utility are directly related to what the customer is paying on its electric bill and if the utility does not meet the expected performance improvements a portion of the billed amount will be returned to the customer.

The Attorney General reiterates its previous recommendation, as further outlined in the September 22, 2023 comments, that penalties and incentives be calculated based on the revenue requirement recovered by the utility pertaining to capital investments, O&M expenses, and other related costs made for distribution plant assets.

The Attorney General again appreciates the Commission's examination of this issue of electric reliability and the need for accountability. The Attorney General recommends that this utility accountability mechanism be implemented on an expedited schedule and to continue discussion after implementation to adjust as needed. Further delay in implementing this needed accountability makes it difficult for customers to trust the utilities stated electric reliability goals and requests for additional increases to meet those goals.

Sincerely,

Michael E. Moody (P-51985)  
Assistant Attorney General  
Michigan Department of Attorney  
General, Special Litigation Division  
Ph: 517-335-7627  
Email: [moodym2@michigan.gov](mailto:moodym2@michigan.gov)