

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



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ATTORNEY GENERAL

August 9, 2019

Ms. Barbara Kunkle
Acting Executive Secretary
Michigan Public Service Commission
7109 West Saginaw Highway
Lansing, MI 48917

Dear Ms. Kunkle:

Re: MPSC Case No. U-20464 – *In the matter, on the Commission's own motion, to issue a report on the state's supply, engineering, and deliverability of natural gas, electricity, and propane, and contingency planning as requested by the Governor.*

On January 30, 2019 a fire started at Consumers Energy Company's Ray Compressor Station in Macomb County, Michigan. The fire occurred during a period of extreme cold weather dubbed the Polar Vortex of 2019 (PV19). Due to concerns regarding the supply of natural gas in Michigan, two of the largest utilities, Consumers Energy and DTE Energy requested that their customers conserve natural gas by dialing their thermostats down (Consumers Energy) and reduce the use of electricity (DTE). These actions, along with others, were credited with helping to stabilize the natural gas system. At the request of Governor Whitmer, the Michigan Public Service Commission issued an order dated February 7, 2019, opening this docket and requiring the Commission to conduct an assessment of the state's energy resources and provide a report of its findings.

On July 1, 2019, the Commission issued the Initial Report of the Michigan Statewide Energy Assessment. The Initial Report addresses Michigan's Energy System including electric, natural gas, propane, cyber and physical security, energy emergency management, gaps in existing planning, operational, and emergency response processes. It also provides recommendations for further actions and observations. The Commission also issued an order dated July 2, 2019, inviting interested persons to comment on the Initial Report by August 9, 2019. A final report is scheduled to be issued by September 13, 2019. The Attorney General thanks the Commission for an opportunity to comment on the Commission's Initial Report.

In her role as ratepayer advocate for Michigan utility customers, the Attorney General is concerned with ability of customers to afford utility service and the quality of that service to the customer. The Attorney General appreciates the effort put forth by the Commission in its assessment and Initial Report. While the report does acknowledge affordability as an issue for ratepayers of the regulated utilities, it focuses primarily on energy supply reliability and resilience. Before providing comments (and in some cases recommendations) on the report, the Attorney General requests that the Commission be mindful of the fact that Michigan utility customers, especially residential ratepayers pay some of the highest rates for utility service in the Country.¹ And, that their “investment” in utility infrastructure be returned to them in the form of safe, reliable and affordable energy.

The Initial Report provides a generally favorable outlook on the state of energy in Michigan noting in section 2.2 certain advantages based on the state’s unique geography. Of course, those advantages depend on a certain set of circumstances existing and persisting over time. The Commission also recommends a number of items for further review and investigation, many of which, the Attorney General does not object to. However, the Attorney General objects to the extent that any of the recommendations are interpreted as requiring a mandated outcome in future proceedings. The determination of the reasonableness and prudence of any proposal in future cases must be made on the basis of the record established in that proceeding and not be considered to be preordained by the Initial or Final report or any comments made in this case.

Electric

On page 5 of the Initial Report, the Commission states that its purpose is to ensure regulated utilities have adequate supply of electric energy to serve all Michigan’s homes and businesses when demand is highest and to approve the rates and conditions for service to residential, commercial, and industrial customers. It points to several “advantages” that it asserts are unique to Michigan including: access to electricity markets – MISO and PJM; Ludington Pumped Storage facility; diversity in power supply, electric demand response capabilities, and legislative framework under which the Commission operates.

Some of the diversity in supply is mandated by law. PA 342 of 2016 mandates that by 2025, 35% of electrical energy would be met through renewable energy and energy waste reductions. According to the Commission’s reliance on intermittent resources could create future operational challenges although it asserts

¹ Citizens Utility Board, *Electric Utility Performance, Ranking Michigan Amongst the States*, 2019 Edition. The Report can be found on the Citizens Utility Board website: https://d3n8a8pro7vhmx.cloudfront.net/cubofmichigan/pages/15/attachments/original/1563405525/CUB_of_MI_Electric_UTILITY_Performance_Report_2019_Edition_Final_for_Website.pdf?1563405525.

that those challenges *should* be manageable with proper planning, enhancement to wholesale market rules and products, infrastructure development such as new transmission facilities, and effective deployment of emerging technologies such as energy storage. Report pp 19 – 20. Managing the challenges will require concerted effort. Some of the listed mitigating factors are outside the control or influence of the Commission and/or utilities. Notwithstanding the statutory mandates, utilities need to be careful in their energy resource planning and the Commission needs to be diligent in holding the utilities accountable for providing reliable energy to their customers. As noted by the Commission, the Integrated Resource Plan process provide the utilities, Commission and interested parties with the opportunity to examine each companies' proposed resource mix.

The Commission has rules – Service Quality and Reliability Standards for Electric Distribution Systems, which as noted in the Report are designed to monitor service quality and reliability performance of a distribution utility. Initial Report, p. 29. There are some financial repercussions when a utility fails to meet certain performance criteria using bill credits for ratepayers. See, R 460.744 – R 460.748. In her letter dated July 25, 2019, the Attorney General asked the Commission to consider revising Part 4 of these Standards to take advantage of new meter technology and remove the reporting burden placed on ratepayers, provide for automatic credits based on the nature and duration of outages, and to increase the amount of the credits to better reflect actual losses incurred by ratepayers during outages. The Attorney General acknowledges Commissioner Talberg's response indicating the Commission's agreement that issues such as annual reliability report, reduction in the length of time for acceptable customer call answer time, automatic service credits, and reduction in annual same circuit repetitive interruptions need improvement.² We urge the Commission to go beyond just those issues identified in the footnote to its report and consider all recommendations included in Attorney General Nessel's letter. And, the Attorney General is interested in having the Special Litigation Division participate in any workgroups established for investigating and making recommendations to update the Service Quality and Reliability Standards for Electric Distribution Systems.

Natural Gas

According to the Commission, Michigan is fortunate to have a diversity of natural gas supplies and billions of cubic feet of underground storage space. However, as was seen with the Ray Compressor Station Fire, there is still some vulnerabilities especially as it relates to infrastructure. The report identified other potential risks including extreme weather and increased demand due to the increasing use of natural gas for electric generation.

² Initial Report p. 60, fn 75.

Concerns regarding natural gas supply and adequacy is a recurring theme in Chapter 4 of the Initial Report. The Commission discussed several approaches to address what it calls system redundancy – the overall capacity of the system to deal with planned or unplanned events. System redundancy is intended to address the vulnerability of single source supplies. The Commission has asked staff to evaluate increased redundancy, contingencies and increased peak-day rate designs as a way to address its concerns. All of the proffered solutions have the potential to increase costs to residential ratepayers, especially since they are the largest group using natural gas for home heating. However, there is no guarantee that the increased financial burden will be offset with commensurate benefit or if it is necessary at all. Any proposals need to be vetted thoroughly to ensure that any increase in costs that residential ratepayers are asked to bear are reasonable and prudent.

The Initial Report highlights the Commission’s concerns about the adequacy of existing rules and regulations to enforce the requirements and penalize violations. Specifically, the Commission notes that Michigan’s statutory requirements are not as stringent than federal requirements with regard to its ability to issue penalties for violation of Michigan’s Gas Safety Standards. Initial Report pp 106 – 107. Michigan’s penalty provisions are lower per violation and the maximum allowable penalty amount is lower. Further, unlike the federal regulations, Michigan’s penalties do not automatically adjust for inflation. This is something that should be looked at the next time the legislation is amended.

Other Recommendations

In addition to the specific items listed above, the Attorney General recommends the Commission also look at existing rules or promulgate new rules with regard to protecting customers in the event of major disasters. While the Commission has rules addressing emergency situations and restoring power to customers, there does not appear to be anything directed to assisting displaced ratepayers. In light of the recent increase in extreme weather this issue is especially relevant, although major disasters are not limited to weather or other natural disasters. It includes other situations in which the President or Governor make a formal declaration of emergency.

The National Association of State Utility Consumer Advocates approved a resolution 2019-01 urging states to enact protections for residential utility customers in the event of major disasters, natural or otherwise. Among other things it encourages state utility regulators and utilities to implement disaster relief measure with regards to electricity and gas services, such as:

- waiving deposit requirements for affected residential customers seeking to reestablish service and expedite move-in and move-out service requests;
- Suspending estimated billing during period that home is unoccupied due to an emergency;

- Developing rate treatments for discontinuance of billing during period that home is unoccupied due to an emergency;
- Implementing deferred payment agreement/plan options for residential customers during the period a home is unoccupied due to an emergency;
- Suspending disconnections for nonpayment and associated fees, unless necessary for public safety or necessity and waive deposit and late-fee requirements during the period a home is unoccupied due to an emergency;
- Supporting low-income residential customers who are enrolled in energy public purpose programs during the period a home is unoccupied due to an emergency by (1) freezing all standard and high-usage reviews or renewal eligibility for customers in impacted counties for at least one-year; (2) contacting community outreach contractors and community-based organizations who enroll hard-to-reach, low-income customer in the energy public purpose programs, (3) increasing the limit amount for emergency assistance programs for customers affected by major disasters for one year, and (4) indicating how energy-savings assistance programs can be deployed to assist customer affected by major disasters;
- Tracking costs to consumers affected by major disasters and record them in appropriate memorandum accounts; and
- Meeting and conferring with community choice aggregators and community distributed generation providers when an emergency necessitates such coordination.

The Attorney General recommends that the Commission review its rules and ensure that such protections for residential customers are considered.

The Attorney General also asks the Commission to consider whether there is a need to rethink structural issues related to billing and payment. The requirement to pay huge bills before continuing or reinstating service for delinquent bills is often a hardship or impossible for customers especially lower income customers. While utilities are allowed to set up their own programs that may address payment plans after shut-off, they are not required to do so. And, the reluctance to allow those behind in paying their bills to set up payment plans after shut-offs forces them to rely on energy assistance programs, assuming they qualify for such programs, when the possibility of entering into payment plans may be all that is needed for them to eliminate their arrearages over time. The Attorney General understands that customers who repeatedly take advantage of or fail to comply with payment plans or other accommodations may not be able to participate in these programs. However, customers, who are already struggling to pay their bills should be allowed at least once to reinstate service without being required to make large payments up front including deposits. The Attorney General requests that the Commission consider such a provision if the next time it reviews its rules regarding billing procedures.

Sincerely,

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