

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



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April 16, 2012

Ms. Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
Lansing, MI 48911

Dear Ms. Kunkle:

RE: MPSC Case No. U-17000

Pursuant to the Commission's E-Dockets User Manual, I am attaching the Attorney General's Comments Pursuant to the MPSC Order Dated January 12, 2012.

Sincerely,

Donald E. Erickson (P 13212)
Robert P. Reichel (P31878)
Assistant Attorney General
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c: All parties

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own motion,
to review issues bearing on the deployment of smart meters by regulated electric utilities in Michigan. MPSC No. U-17000

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**ATTORNEY GENERAL'S COMMENTS
PURSUANT TO THE MPSC ORDER
DATED JANUARY 12, 2012**

In its January 23, 2012 Order, the Michigan Public Service Commission (MPSC or Commission) directed all regulated electric utilities to submit information regarding several topics involving the deployment of "smart meters" Those topics include, but are not limited to: ¹

- The estimated cost of deploying smart meters and any sources of funding.
- An estimate of the savings to be achieved by the deployment of smart meters
- Whether the electric utility intends to allow customers to opt out of having a smart meter; and
- How the electric utility intends to recover the cost of an opt out program if one will exist.

¹ Other topics listed in the Commission's Order including scientific information that bears on the safety of smart meters, and steps each utility intends to take to safeguard the privacy of customer information gathered through smart meters, are the subject of extensive comments filed by other parties in this case, and will not be addressed here. We urge the Commission to carefully consider those comments.

In response to the Order, comments were submitted by several electric utilities. Among those, Detroit Edison Company (Document No.0146) and Consumers Energy Company (Document No. 0148) disclosed the most extensive plans to install smart meters.

The Attorney General respectfully submits that, notwithstanding the comments submitted by Detroit Edison Company (Detroit Edison) and Consumers Energy Company (Consumers), at least two very substantial issues remain that must be further addressed before the MPSC authorizes or approves any further deployment of smart meters by Michigan electric utilities and the recovery from ratepayers of the costs of smart meter deployment. First, there must be a sufficient demonstration that implementation of the smart meter programs will actually produce a net economic benefit to customers. Second, customers must be afforded a meaningful and fair opportunity to opt out of smart meter installation without being penalized by unwarranted and excessive costs.

Inadequate Demonstration of Economic Benefit to Ratepayers

A net economic benefit to electric utility ratepayers from Detroit Edison's and Consumers smart meter programs has yet to be established. In the absence of such demonstrated benefit, the Attorney General has opposed, and will oppose any Commission action that unjustly and unreasonably imposes the costs of such programs upon ratepayers. To a significant extent, the asserted *potential* benefits to utility customers depend upon assumptions that a customer will consider additional "real time" data on electricity usage provided by smart meters, and

adjust their electrical consumption to achieve cost savings under variable pricing programs that do not yet exist. (See Edison, Document No. 0146, p 5; and Consumers, Document No. 0148, pp. 6-7). Any assumption that large numbers of residential customers will have the time, ability and motivation to attend to, and act upon daily or even hourly changes in their electrical is questionable.

The absence of sufficient economic justification for Detroit Edison's smart meter program was emphatically recognized by the Court of Appeals in the consolidated appeals by the Attorney General and the Association of Businesses Advocating Tariff Equity from the Commission's January 11, 2010 Order in Case No. U-15768, *In re Application of Det Edison Co* (Michigan Court of Appeals Nos. 296374, 296379, slip opinion, pp. 7-9, April 10, 2012):

We agree with appellants that the PSC erred in approving funding for Detroit Edison's advanced metering infrastructure (AMI) program. The PSC describes AMI as "an information gathering technology that allows Detroit Edison to collect real-time energy consumption data from its customers." As ABATE explains, "[t]he so-called 'smart meters' allow the utility to remotely monitor and shut-off electricity to customers that have these meters installed." According to ABATE, the intention appears to be to "allow customers to access real time energy consumption data and make alterations in their energy consumption patterns in order to reduce their own costs and to reduce the demands placed upon the system at time of system peak." However, appellants have established that the PSC's decision to approve the nearly \$37 million rate increase to fund the program was unreasonable because it was not supported by "competent, material and substantial evidence on the whole record." *In re Consumers Energy Co*, 279 Mich App at 188; MCL 24.306.

What the record does reveal is that AMI is a pilot program that even Robert Ozar, Manager of the Energy Efficiency Section in the Electric Reliability Division of the PSC, concedes "is as yet commercially untested and highly capital intensive, resulting in the potential for significant economic risk and substantial rate impact." At best, the

actual evidence presented by Detroit Edison to support the rate increase was aspirational testimony describing the AMI program in optimistic, but speculative terms. *What the record sadly lacks is a discussion of competing considerations regarding the program or the necessity of the program and its costs as related to any net benefit to customers.*

* * *

Moreover, we will not rubber stamp a decision permitting such a substantial expenditure—a cost to be borne by the citizens of this state—that is not properly supported. Were we to do so, we would abdicate our judicial review obligations. Again, *the PSC may allow recovery of a utility's costs only when the utility proves recovery of costs is just and reasonable.* On the record before the PSC and, perforce, before us, the PSC's decision was erroneous. Accordingly, *we remand this matter for the PSC to conduct a full hearing on the AMI program,* during which it shall consider, among other relevant matters, evidence related to the benefits, usefulness, and potential burdens of the AMI, specific information gleaned from pilot phases of the program regarding costs, operations, and customer response and impact, an assessment of similar programs initiated here or in other states, risks associated with AMI, and projected effects on rates. In other words, a real record, with solid evidence, should support whatever decision the PSC makes upon remand.

[Slip Op. pp. 7-9, (Emphasis added, footnote omitted)]

Opt-Out Provisions

Given the questionable benefit of smart meter program to customers, as well as the extensive public concern about the effect and potential intrusiveness of smart meter infrastructure acknowledged in the Commission's January 12, 2012 Order in this matter, the Commission appropriately directed Michigan's electrical utilities deploying or proposing to deploy smart meters to provide information about their plans for allowing customers to opt out of having a smart meter, and how they intend to recover the cost of such an opt-out program.

The Attorney General respectfully submits that utility customers should be given a meaningful choice of whether to have smart meters installed and operated on their property. An “opt-out” program that requires those customers who opt out to pay an unwarranted economic penalty for doing so does not afford customers such a meaningful choice.

The information provided by Detroit Edison, and Consumers in response to the Commission’s Order does not sufficiently establish that they intend to offer customers a fair choice of whether to accept smart meters on their property. Detroit Edison’s response on this subject is based upon the assertion that “Edison’s AMI [Advanced Meter Infrastructure] program is beneficial for all customers.” (Document No. 0148, p. 7). Proceeding from the unsubstantiated assertion, Detroit Edison apparently proposes to impose what it broadly describes as “all incremental costs” solely upon customers who choose not to accept installation of smart meters. (Document 0148, pp. 8-9). Consumers’ submission similarly states that while it proposes to provide customers with the option to retain their existing meter equipment, it apparently intends to subject customers making such a choice to additional charges, including charges for “maintaining ready testing and billing traditional meters”. (Document No. 0146, pp. 16-17). While neither Detroit Edison nor Consumers provide details regarding their opt-out proposals and associated charges, both of their comments suggest that they intend to effectively penalize customers who choose to opt-out of smart meters. Presumably, under the utilities proposals, customers who opt-out of smart meters would be required to pay rates

covering *both* the costs of the smart meter program, and expansively defined incremental costs “of retaining traditional meters. These proposals raise substantial questions as to whether their respective customers would, in fact, be afforded a fair and meaningful choice to “opt-out”.

Another argument which may be important for the Commission to consider is whether a financial incentive to homeowners who allow smart meters to be installed in their home might be an alternative approach to a rate increase if a homeowner refuses to permit a smart meter to be installed.

Respectively submitted,

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Dated: April 16, 2012