ELECTRIC COOPERATIVE MEMBER-REGULATION ACT

Act 167 of 2008

AN ACT to provide for the member-regulation of electric cooperatives; to prescribe the powers and duties of certain state agencies and officials; and to provide for certain penalties and remedies.

History: 2008, Act 167, Imd. Eff. June 26, 2008

The People of the State of Michigan enact:

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460.31 Short title.

Sec. 1.

This act shall be known and may be cited as the "electric cooperative member-regulation act".

History: 2008, Act 167, Imd. Eff. June 26, 2008

460.32 Definitions.

Sec. 2.

As used in this act:

(a) "Board of directors" or "board" means the group of members democratically elected by the members of a cooperative electric utility to manage the business and affairs of the cooperative electric utility.

(b) "Commission" means the Michigan public service commission.

(c) "Cooperative" or "cooperative electric utility" means an electric utility organized as a cooperative corporation under sections 98 to 109 of 1931 PA 327, MCL 450.98 to 450.109, serving primarily members of the cooperative electric utility.

(d) "Electric utility" means a person, partnership, corporation, association, or other legal entity whose transmission or distribution of electricity the commission regulates under 1909 PA 106, MCL 460.551 to 460.559, or 1939 PA 3, MCL 460.1 to 460.10cc. Electric utility does not include a municipal utility, affiliated transmission company, or independent transmission company.

(e) "Member" means a person, partnership, corporation, association, or other legal entity that purchases electricity from a cooperative electric utility as a member of the cooperative.

(f) "Member-regulation" means the board of directors of the cooperative is charged with establishing, maintaining, and applying all rates, charges, accounting standards, billing practices, and terms and conditions of service.

History: 2008, Act 167, Imd. Eff. June 26, 2008

460.33 Cooperative electric utilities; purpose of act.

Sec. 3.

Cooperative electric utilities, which are owned by the members they serve, are regulated by their members acting through democratically elected boards of directors. It is declared that member-regulation by a cooperative in the areas of rates, charges, accounting standards, billing practices, and terms and conditions of service may be more efficient and cost-effective. The purpose of this act is to allow the board of directors to elect member-regulation for rates, charges, accounting standards, billing practices, and terms and conditions of service.

History: 2008, Act 167, Imd. Eff. June 26, 2008

460.34 Proposal by board of directors to become member-regulated; procedures.

Sec. 4.

To become member-regulated under this act, the board of directors shall comply with the following procedures:

(a) A director may propose to become member-regulated at any properly convened meeting of the board of directors. The board may not act on the proposal until 90 days has passed from the date the proposal was made.

(b) The board may only act on the proposal to become member-regulated at a meeting of the board for which written notice of the time and place of the meeting has been provided to all members of the cooperative. Notice to the members shall be written and delivered not less than 21 or more than 60 days before the date of the meeting and shall contain a copy of the proposal. Notice may be sent by first-class mail or may be published in a periodical issued by an association of cooperative electric utilities and mailed to each member of record of the cooperative.

(c) The meeting of the board of directors at which the proposal is to be acted upon shall be open to all members of the cooperative. The board shall allow members of the cooperative reasonable time to address the board prior to its acting upon the proposal.

(d) A roll call vote of the board of directors with 2/3 of the members voting in support of the proposal to become member-regulated is necessary for adoption of the proposal.

(e) The minutes of the meeting at which the proposal is acted upon, including the roll call vote, shall be provided to the members of the cooperative within 60 days from the date of the meeting in the same manner as the notice of the meeting at which the proposal was acted upon.

(f) The cooperative shall notify the commission in writing of the action of the board of directors on the proposal to become member-regulated within 10 days after the date of the action, and the cooperative shall become member-regulated as provided for in this act 90 days following the date of the notice to the commission.

(g) The board of directors may vote to rescind the proposal once adopted by following the same procedures that were followed in the adoption of the proposal.

History: 2008, Act 167, Imd. Eff. June 26, 2008

460.35 Election to become member-regulated; overturn of proposal by members.

Sec. 5.

The members of a cooperative that has elected to become member-regulated may overturn the proposal adopted by the board of directors by complying with the following:

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(a) An election to overturn the vote by the board of directors to be member-regulated shall be called not less than 120 days after receipt of a valid petition signed by 5% or 750 members of the cooperative, whichever is less.

(b) The proposition to overturn the vote by the board of directors to be member-regulated shall be presented to a meeting of the members of the cooperative, the notice of which shall set forth the proposition for member-regulation and the time and place of the meeting. The cooperative shall deliver written notice to members not less than 21 days or more than 60 days before the date of the meeting. Notice shall be sent in the same manner as the notice for the meeting at which the proposal was acted upon. The cooperative shall pay the costs to notify the members of an election under this subdivision.

(c) Voting on the proposition to overturn the vote by the board of directors to be member-regulated shall be by mail ballot, and internet, provided members attending the meeting provided for in subdivision (b) may execute and deliver their ballot to the cooperative during or at the conclusion of the meeting. Proxy voting shall not be permitted.

(d) If the proposition to overturn the vote by the board of directors to be member-regulated is approved by the affirmative vote of not less than 2/3 of the members voting on the proposition, and at least 10% of the total number of members cast a vote, the cooperative shall notify the commission in writing of the results within 10 days after the date of the election, and the cooperative shall no longer be member-regulated as provided for in this act 90 days following the date of the notice to the commission.

(e) A cooperative's members may vote no more than once every 24 months to overturn the vote by the board of directors to be member-regulated as provided in this act.

(f) If the proposition to overturn the vote by the board of directors to be member-regulated is approved by the members in accordance with this section, the board of directors may not act on a proposal to member-regulate as provided for under section 4 until 36 months from the date notice of the election to overturn the vote of the board of directors was provided to the commission under subdivision (d).

History: 2008, Act 167, Imd. Eff. June 26, 2008

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460.36 Rates, charges, accounting standards, billing practices, and terms and conditions of service; jurisdiction and control by commission; scope.

Sec. 6.

(1) A cooperative electing to be member-regulated under this act shall, by board action, establish, maintain, and apply all rates, charges, accounting standards, billing practices, and terms and conditions of service in accordance with this act.

(2) Notwithstanding the provisions of this act, the commission shall retain jurisdiction and control over all member-regulated cooperatives for matters involving safety, interconnection, code of conduct including, but not limited to, all relationships between a member-regulated cooperative and an affiliated alternative electric supplier, customer choice including, but not limited to, the ability of customers to elect service from an alternative electric supplier under 1939 PA 3, MCL 460.1 to 460.10cc, and the member-regulated cooperative's rates, terms, and conditions of service for customers electing service from an alternative electric supplier, service area, distribution performance standards, and quality of service, including interpretation of applicable commission rules and resolution of complaints and disputes, except any penalties pertaining to performance standards and quality of service shall be established by the cooperative's members when voting on the proposition for member-regulation or at an annual meeting of the cooperative.

History: 2008, Act 167, Imd. Eff. June 26, 2008

460.37 Establishment, maintenance, and applicability of rates and charges; adoption, amendment, repeal, or addition to billing practices and service rules; availability of electronic copy; notice of rate increase or other changes.

Sec. 7.

(1) A cooperative electric utility that is member-regulated under this act shall determine how rates and charges for service provided are to be established, maintained, and applied. The rates and charges shall reasonably reflect the costs of providing service and shall be uniform within the classes of service provided by the cooperative.

(2) The board of directors of a cooperative electric utility that is member-regulated may adopt, amend, repeal, or add to the cooperative's billing practices and service rules provided it has given written notice to members at least 30 days prior to the effective date of any action taken.

(3) Each cooperative which has elected to be member-regulated shall maintain and make available to the public an electronic copy of its rates, charges, accounting standards, billing practices and service rules, and terms and conditions of service on a website and shall maintain a paper copy at all offices of the cooperative for review by the general public. In addition, the cooperative shall provide a copy of the same to the commission as well as a copy of the cooperative's most recent audited financial statement.

(4) If a cooperative is member-regulated under this act, the board shall give at least 10 days' notice to all members of the cooperative of the time and place of any meeting of the board at which an increase in rates affecting at least 5% of the members or substantive changes in billing practices and service rules or terms and conditions of service are to be discussed and voted on. Any such meeting shall be open to all members. Notice under this subsection shall be sent by first-class mail to all members or may be published in a periodical issued by an association of cooperative electric utilities and mailed to each member of record of the cooperative electric utility.

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History: 2008, Act 167, Imd. Eff. June 26, 2008

460.38 Notice of rate change or other changes; time period; publication.

Sec. 8.

(1) A cooperative electric utility that is member-regulated shall publish notice of any rate change or any change in billing practices and service rules or terms and conditions of service at least 30 days prior to the effective date of the change.

(2) The notice under this section shall be sent by first-class mail to all members or may be published in a periodical issued by an association of cooperative electric utilities and mailed to each member of record of the cooperative electric utility.

History: 2008, Act 167, Imd. Eff. June 26, 2008

460.38a Nondiscriminatory access to poles; grounds for denial; make-ready work; attachment requirements; request for access; modification costs; definitions.

Sec. 8a.

(1) A cooperative electric utility that is member-regulated under this act shall provide a video service provider, broadband provider, wireless provider, or any telecommunication provider with nondiscriminatory access to its poles upon just and reasonable rates, terms, and conditions for their attachments. A cooperative electric utility that is member-regulated under this act may deny a video service provider, broadband provider, wireless provider, or any telecommunication provider access to its poles on a nondiscriminatory basis for either of the following:

(a) If there is insufficient capacity.

(b) For reasons of safety, reliability, or generally applicable engineering standards.

(2) A video service provider, broadband provider, wireless provider, or any telecommunication provider and the cooperative electric utility that is member-regulated under this act shall comply with the process for make-ready work under 47 USC 224 and the orders and regulations implementing 47 USC 224 adopted by the Federal Communications Commission. A good-faith estimate established by the cooperative electric utility that is member-regulated under this act for any make-ready work for poles must include pole replacement if necessary. All make-ready costs must be based on actual costs not recovered through the annual recurring rate, with detailed documentation provided.

(3) A cooperative electric utility that is member-regulated under this act may require a video service provider, broadband provider, wireless provider, or any telecommunication provider to execute an agreement for attachments on reasonable terms and conditions if that agreement is required of all others.

(4) The attachment of facilities on the poles of a cooperative electric utility that is member-regulated under this act by a video service provider, broadband provider, wireless provider, or any telecommunication provider must comply with the most recent applicable, nondiscriminatory safety and reliability standards adopted by the cooperative electric utility and with the National Electric Safety Code published by the Institute of Electrical and Electronics Engineers, in effect on the date of the attachment.

(5) A request for access to the poles of a cooperative electric utility that is member-regulated under this act by a video service provider, broadband provider, wireless provider, or any telecommunication provider must be in writing. Access must be granted or denied within the time frame established by the regulations implementing 47 USC 224 adopted by the Federal Communications Commission. If access is denied, the cooperative electric utility that is member-regulated under this act must confirm the denial in writing. The denial of access issued by the cooperative electric utility that is member-regulated under this act must be specific, include all relevant evidence and information supporting the denial, and explain how that evidence and information relate to a denial of access for reasons of insufficient capacity, safety, reliability, or generally applicable engineering standards.

(6) The costs of modifying a facility must be borne by all parties that obtain access to the facility as a result of the modification and by all parties that directly benefit from the modification. Each party that obtains access to the facility as a result of the modification and each party that directly benefits from the modification shall share proportionately in the cost of the modification. Except as otherwise provided in this subsection, a party with a preexisting attachment to the modified facility is considered to directly benefit from a modification if, after receiving notification of that modification, it adds to or modifies its attachment. A party with a preexisting attachment to a pole is not required to bear any of the costs of rearranging or replacing its attachment if that rearrangement or replacement is necessitated solely as a result of an additional attachment or the modification of an existing attachment sought by another party, unless the modification is necessitated by the cooperative electric utility that is

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member-regulated under this act for an electric service, that includes, but is not limited to, smart grid technologies. If a party makes an attachment to the facility after the completion of the modification, that party shall share proportionately in the cost of the modification if that modification rendered the added attachment possible.

(7) An attaching party shall obtain any necessary authorization before occupying public ways or private rights-of-way with its attachment.

(8) As used in this section:

(a) "Attachment" means any wire, cable, antennae facility, or apparatus for the transmission of writing, signs, signals, pictures, sounds, or other forms of information installed by or on behalf of a provider of cable service or telecommunications service upon any pole owned or controlled, in whole or in part, by 1 or more cooperative electric utilities that are member-regulated under this act. Attachment includes, but is not limited to, a micro wireless facility or small cell wireless facility as those terms are defined in section 7 of the small wireless communications facilities deployment act, 2018 PA 365, MCL 460.1307, if either of the following are met:

(i) The micro wireless facility or small cell wireless facility is installed in the communications space, as that term is defined in the National Electrical Safety Code published by the Institute of Electrical and Electronics Engineers as of the date of the installation.

(ii) The micro wireless facility or small cell wireless facility is installed in or above the electric space, as that term is defined in the National Electrical Safety Code published by the Institute of Electrical and Electronics Engineers as of the date of the installation, and that facility is installed and maintained by either of the following:

(A) A cooperative electric utility that is member-regulated under this act.

(B) A qualified contractor that meets both of the following:

(I) Generally applicable written contractor specifications of the cooperative electric utility that is member-regulated under this act.

(II) The definition of qualified as provided in the National Electrical Safety Code published by the Institute of Electrical and Electronics Engineers as of the date of the installation or maintenance, as applicable.

(b) "Broadband provider" means a person that provides broadband internet access transport services as that term is defined in section 2 of the metropolitan extension telecommunications rights-of-way oversight act, 2002 PA 48, MCL 484.3102.

(c) "Telecommunication provider" means that term as defined in section 102 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2102.

(d) "Video service provider" means that term as defined in section 1 of the uniform video services local franchise act, 2006 PA 480, MCL 484.3301.

(e) "Wireless provider" means that term as defined in section 9 of the small wireless communications facilities deployment act, 2018 PA 365, MCL 460.1309.

History: Add. 2020, Act 61, Imd. Eff. Mar. 10, 2020

460.38b Access disputes under section 8a; jurisdiction; liability for damages; burden of proof; rebuttable presumption; court actions.

Sec. 8b.

(1) Claims in law or equity for disputes under section 8a are governed by this section.

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(2) The Marquette County Circuit Court, the Ingham County Circuit Court, or the circuit court of the county where the cooperative electric utility that is member-regulated under this act has located its headquarters has jurisdiction to determine all disputes arising under section 8a and grant remedies under this section.

(3) In a dispute governed under this section, the cooperative electric utility that is member-regulated under this act is not liable for damages in law or equity unless the complainant establishes both of the following:

(a) That a rate, term, or condition complained of is not just and reasonable or that a denial of access was unlawful.

(b) One of the following:

(i) That the rate, term, or condition complained of is contained in a new pole attachment agreement or in a previously existing pole attachment agreement that is amended, renewed, or replaced by executing a new agreement on or after the effective date of the amendatory act that added this section.

(ii) That there has been an unreasonable denial of access or unreasonable refusal to enter into a new, amended, renewed, or replacement pole attachment agreement on or after the effective date of the amendatory act that added this section.

(4) The complainant has the burden of establishing a prima facie case that the rate, term, or condition is not just and reasonable or that the denial of access was unlawful. If, however, a cooperative electric utility that is member-regulated under this act argues that the proposed rate is lower than its incremental costs, the cooperative electric utility that is member-regulated under this act has the burden of establishing that the proposed rate is below the statutory minimum just and reasonable rate. In a case involving a denial of access, the cooperative electric utility that is member-regulated under this act has the burden of establishing that the denial is lawful, once a prima facie case is established by the complainant.

(5) In a dispute governed under this section, there is a rebuttable presumption that the charged rate is just and reasonable if the cooperative electric utility that is member-regulated under this act can show that its charged rate does not exceed an annual recurring rate permitted under rules and regulations adopted by the Federal Communications Commission under 47 USC 224(d).

(6) If the court determines that the rate, term, or condition complained of is not just and reasonable, it may prescribe a just and reasonable rate, term, or condition and may do any of the following:

(a) Terminate the unjust and unreasonable rate, term, or condition.

(b) Require entry into a pole attachment agreement on reasonable rates, terms, and conditions.

(c) Require access to poles as provided under section 8a.

(d) Substitute in the pole attachment agreement the just and reasonable rate, term, or condition established by the court.

(e) Order a refund, or payment, if appropriate. The refund or payment may not exceed the difference between the actual amount paid under the unjust and unreasonable rate, term, or condition and the amount that would have been paid under the rate, term, or condition established by the court for the period at issue, but not to exceed 2 years.

History: Add. 2020, Act 61, Imd. Eff. Mar. 10, 2020

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460.39 Areas served and line extension disputes involving member-regulated cooperative electric utility and electric utility; jurisdiction of commission; procedures.

Sec. 9.

(1) The commission shall retain jurisdiction over all areas served and line extension disputes involving a cooperative electric utility that is member-regulated under this act and a regulated electric utility. This act does not limit the commission's jurisdiction over areas served and line extension disputes granted to the commission under any other law or statute. A cooperative electric utility that is member-regulated under this act shall operate in compliance with R 460.3411 of the Michigan administrative code, regarding extension of electric service in areas served by 2 or more utilities. The commission shall continue to possess all jurisdiction and authority necessary to administer and enforce the provisions of 1929 PA 69, MCL 460.501 to 460.506, and R 460.3411 of the Michigan administrative code with respect to member-regulated cooperative electric utilities.

(2) When a member-regulated cooperative is required to give notice to the commission and any affected electric utility of its intention to extend service to a prospective customer as required under R 460.3411 of the Michigan administrative code, the notice shall also include the charge to extend service, if any, and the rate or rates for the service offered.

(3) If the electric utility, after being notified under R 460.3411 of the Michigan administrative code, believes that a cooperative that is member-regulated under this act either proposes to unlawfully extend service to a prospective customer or has offered an unjustly preferential charge for extension of service or unjust rate to a prospective customer and that prospective customer could otherwise be served by the electric utility pursuant to the commission's rules for extension of electric service, the affected electric utility may file an objection with the commission. Any objection allowed under this subsection shall be filed within 60 days from the date notice of the intent to extend service was provided by the cooperative. If an objection is filed by the utility notified under R 460.3411 of the Michigan administrative code, the commission shall first determine whether the complaining utility or the cooperative, or both, have the lawful right to provide service to the prospective customer and then, if necessary, determine whether the charges or rates offered by the cooperative are just and reasonable based on the cooperative's cost of service. That determination shall be made at a contested case proceeding conducted pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. A cooperative's charges or rates offered to a prospective customer shall be considered just and reasonable upon a showing by the cooperative that the charges to extend service to a prospective customer and the rates offered are equivalent to the cooperative's charges to extend service and rates charged to other similarly situated customers served by the cooperative. If the cooperative does not provide service to other similarly situated customers, the cooperative shall demonstrate that its charges to extend service and the rates offered to the prospective customer are just and reasonable based on the cooperative's cost of providing service to the prospective customer, consistent with industry practice. At the choice of the customer, either the electric utility or the member-regulated cooperative may provide service to the prospective customer until the commission determines the appropriate service provider.

(4) A municipally owned utility that has entered into a service area agreement with a cooperative in accordance with section 10y(6) of 1939 PA 3, MCL 460.10y, may file an action in the circuit court in the district where the cooperative's main office is located alleging that a rate or charge offered by the cooperative is unjust and unreasonable. An action filed under this

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subsection shall be filed within 60 days after the municipally owned utility becomes aware of the rate or charge. In determining whether a rate or charge is just and reasonable, the circuit court shall use the standards set forth in subsection (3) for determinations made by the commission. If the circuit court determines that the rate or charge offered to the prospective customer is unjust or unreasonable, the court shall order the cooperative to assess the appropriate rate or charge to the prospective customer. Notwithstanding any law to the contrary, if the circuit court issues an order under this subsection, any prospective customer directly affected by the order shall be permitted by the cooperative to switch service to the objecting municipally owned utility, if the affected customer has given the cooperative written notice of the customer's intent to switch within 60 days from the date of the court's order and the objecting municipally owned utility agrees to pay the cooperative the reasonable value, as determined by the circuit court, of its facilities that will continue to be used to serve the customer by the objecting municipally owned utility.

(5) If the commission finds that an electric utility or cooperative providing temporary service to a customer under this act is not a lawful service provider for that customer, the commission shall order service to that customer transferred to the lawful provider. That order shall require the provider acquiring the customer to pay for the reasonable cost of the facilities, as determined by the commission, constructed to serve the transferred customer, which will be used by the acquiring provider to serve the transferred customer.

(6) If the commission finds that the cooperative is a lawful service provider but the cooperative's charges to extend service, if any, or the rates offered to the prospective customer are unjust or unreasonable, the commission shall order the cooperative to assess the appropriate charges to extend service and assess the appropriate rates to the prospective customer. Notwithstanding rules to the contrary, if the commission issues an order under this subsection, any prospective customer directly affected by the commission's order shall be permitted by the cooperative to switch service to the objecting electric utility, if the affected customer has given the cooperative written notice of the customer's intent to switch within 60 days from the date of the commission's order and the objecting electric utility agrees to pay the cooperative the reasonable value, as determined by the commission, of its facilities that will continue to be used to serve the customer by the objecting electric utility.

History: 2008, Act 167, Imd. Eff. June 26, 2008

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