Michigan Department of Licensing and Regulatory Affairs
Office of Regulatory Reinvention
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REGULATORY IMPACT STATEMENT (RIS) and COST-BENEFIT ANALYSIS

PART 1: INTRODUCTION

In accordance with the Administrative Procedures Act (APA) [1969 PA 306], the department/agency responsible for promulgating the administrative rules must complete and submit this form electronically to the Office of Regulatory Reinvention (ORR) no less than (28) days before the public hearing [MCL 24.245(3)-(4)]. Submissions should be made by the departmental Regulatory Affairs Officer (RAO) to **orr@michigan.gov**. The ORR will review the form and send its response to the RAO (see last page). Upon review by the ORR, the agency shall make copies available to the public at the public hearing [MCL 24.245(4)].

Please place your cursor in each box, and answer the question completely.

ORR-assigned rule set number:

2014-037 LR
2014-038 LR

ORR rule set title:

Billing Practices Applicable to Non-residential Electric and Gas Customers;
Consumer Standards and Billing Practices for Electric and Gas Residential Service

Department:

Licensing and Regulatory Affairs (LARA)

Agency or Bureau/Division

Public Service Commission (PSC or Commission)

Name and title of person completing this form; telephone number:

Karen Kostbade, Administrative Law Specialist; 517-284-8086

Reviewed by Department Regulatory Affairs Officer:

Liz Arasim
Department of Licensing and Regulatory Affairs

PART 2: APPLICABLE SECTIONS OF THE APA

MCL 24.207a "Small business" defined.

Sec. 7a.
"Small business" means a business concern incorporated or doing business in this state, including the affiliates of the business concern, which is independently owned and operated and which employs fewer than 250 full-time employees or which has gross annual sales of less than $6,000,000.00."

MCL 24.240 Reducing disproportionate economic impact of rule on small business; applicability of section and MCL 24.245(3).

Sec. 40.
(1) When an agency proposes to adopt a rule that will apply to a small business and the rule will have a disproportionate impact on small businesses because of the size of those businesses, the agency shall consider exempting small businesses and, if not exempted, the agency proposing to adopt the rule shall reduce the economic impact of the rule on small businesses by doing all of the following when it is lawful and feasible in meeting the objectives of the act authorizing the promulgation of the rule:

- (a) Identify and estimate the number of small businesses affected by the proposed rule and its probable effect on small businesses.
- (b) Establish differing compliance or reporting requirements or timetables for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs.
- (c) Consolidate, simplify, or eliminate the compliance and reporting requirements for small businesses under the rule and identify the skills necessary to comply with the reporting requirements.
- (d) Establish performance standards to replace design or operational standards required in the proposed rule.

(2) The factors described in subsection (1)(a) to (d) shall be specifically addressed in the small business impact statement required under section 45.
(3) In reducing the disproportionate economic impact on small business of a rule as provided in subsection (1), an agency shall use the following classifications of small business:

- (a) 0-9 full-time employees.
- (b) 10-49 full-time employees.
- (c) 50-249 full-time employees.

(4) For purposes of subsection (3), an agency may include a small business with a greater number of full-time employees in a classification that applies to a business with fewer full-time employees.
(5) This section and section 45(3) do not apply to a rule that is required by federal law and that an agency promulgates without imposing standards more stringent than those required by the federal law.

MCL 24.245 (3) "Except for a rule promulgated under sections 33, 44, and 48, the agency shall prepare and include with the notice of transmittal a **regulatory impact statement** containing…" (information requested on the following pages).

[**Note**: Additional questions have been added to these statutorily-required questions to satisfy the **cost-benefit analysis** requirements of Executive Order 2011-5.]

MCL 24.245b Information to be posted on office of regulatory reinvention website.

Sec. 45b. (1) The office of regulatory reinvention shall post the following on its website within 2 business days after transmittal pursuant to section 45:
(a) The regulatory impact statement required under section 45(3).
(b) Instructions on any existing administrative remedies or appeals available to the public.
(c) Instructions regarding the method of complying with the rules, if available.
(d) Any rules filed with the secretary of state and the effective date of those rules.
(2) The office of regulatory reinvention shall facilitate linking the information posted under subsection (1) to the department or agency website.

PART 3: DEPARTMENT/AGENCY RESPONSE

Please place your cursor in each box, and provide the required information, using complete sentences. Please do not answer the question with "N/A" or "none."

Comparison of Rule(s) to Federal/State/Association Standards:

(1) Compare the proposed rule(s) to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist. Are these rule(s) required by state law or federal mandate? If these rule(s) exceed a federal standard, please identify the federal standard or citation, and describe why it is necessary that the proposed rule(s) exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.

No comparable federal rules or standards set by a state or national licensing agency or accreditation association exist. The rules are authorized by state law. MCL 460.55 provides, in relevant part, that the Commission "shall have power and authority to make, adopt and enforce rules and regulations for the conduct of its business and the proper discharge of its functions hereunder, and all persons dealing with the commission or interested in any matter or proceedings pending before it shall be bound by such rules and regulations. The commission shall also have authority to make and prescribe regulations for the conducting of the business of public utilities, subject to the jurisdiction thereof, and it shall be the duty of every corporation, joint stock company, association or individual owning, managing or operating any such utility to obey such rules and regulations." MCL 460.557(2) provides, in part, that the Commission "may establish by order rules and conditions of service that are just and reasonable." The two rule sets identified in this statement are essential to the Commission's exercise of its authority to promulgate rules for the conduct of the business of regulated public utilities in this state because the rule sets set forth the standards regulated public utilities must follow in billing and providing service to customers for gas and electric utility service. The rules also constitute "rules and conditions of service that are just and reasonable" pursuant to MCL 460.557(2).

(2) Compare the proposed rule(s) to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities. If the rule(s) exceed standards in those states, please explain why, and specify the costs and benefits arising out of the deviation.

There are standards in other similarly situated states that govern the billing of electric and gas utility service as well as the conditions of utility service, yet each state has a different way of overseeing the regulation of public utilities and more specifically the provision of electric and natural gas service to customers who reside in that state. Ohio, Illinois, Wisconsin, and Indiana are all states that bear a close proximity to Michigan and therefore similar geographical locations, topographies, natural resources, commonalities, or economic similarities. Yet, each of these states regulates the billing of and provision of electric and natural gas utility service in a way that is unique to that state's regulatory agency. For example, the Public Utility Commission of Ohio segregates billing rules based on the type of service provided. It has one set of billing rules that apply only to the provision of natural gas service, and a different set of billing rules regarding the provision of electric service. (See Ohio Admin. Code, R 4901:1-13-11 and R 4901:1-10-16 through R 4901:1-10-19). In contrast, the Illinois Commerce Commission has administrative billing rules that apply uniformly to several different types of utility service including gas, electric, water and sanitary sewer. (See 83 Ill. Admin. Code 280.40, *et seq.*). Wisconsin's Public Service Commission, like the Public Utility Commission of Ohio, separates billing rules and conditions of service by industry, with one set service rules for electrical utilities and a different set of rules for the provision of natural gas service. (Compare Wisconsin Administrative Code PSC 113.01 *et seq*. with PSC 134.01 *et seq.*). The Indiana Utility Regulatory Commission also has segregated conditions of service by utility industry with certain rules for natural gas and different ones for electric service. (See 170 Ind. Admin. Code 4-4.1-1 *et seq*. governing standards of service for electric utilities and 170 Ind. Admin. Code 5-1-1 *et seq*. governing standards of service for gas utilities.) These differences make it impractical if not impossible to provide a side by side comparison. Further, although other states' standards regarding deposits, disconnection, billing, and complaint procedures for electric and natural gas utility service may, in some cases, differ from the rules under review in this statement, those differences do not necessarily lend themselves to an analysis regarding whether these rules "exceed" the standards in other states. It is also important to note that the rule sets being combined in this rulemaking proceeding have been in place for almost a decade and the vast majority of the combined rules remain substantively unchanged.

(3) Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rule(s). Explain how the rule has been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.

These rules do not duplicate, overlap, or conflict with any federal, state, or local laws, rules, or other legal requirements. The comprehensive rule set proposed here is an amalgamation of two distinct rule sets that address utility billing practices and standards of service for different sectors of utility customers. The purpose in combining the two rule sets is to eliminate redundant and inconsistent language by codifying one set of rules pertaining to all different types of utility customers. This rulemaking is an effort to avoid or minimize duplication by creating a single comprehensive set of rules.

Purpose and Objectives of the Rule(s):

(4) Identify the behavior and frequency of behavior that the proposed rule(s) are designed to alter. Estimate the change in the frequency of the targeted behavior expected from the proposed rule(s). Describe the difference between current behavior/practice and desired behavior/practice. What is the desired outcome?

The rules at issue here serve several purposes. They set forth the standards a regulated utility must comply with when a customer applies for utility service, a utility requires a deposit or guarantee as a condition of service, a utility reads or estimates a meter reading or meter/billing errors occur, a utility bills a customer for service, utility service is disconnected, voluntarily terminated, or restored, a utility customer has a complaint in need of resolution, a utility customer wishes to appeal a complaint determination, a customer qualifies for energy assistance or shutoff protection programs, or a customer enters into a payment plan or settlement agreement with a utility. These proposed standards are important because electric and gas utility service are essential services that customers depend on. They rely on the Michigan Public Service Commission to ensure that they are not unfairly deprived of utility service and are billed properly for that service. Conversely, regulated utilities rely on these standards to ensure they receive prompt payment for the provision of utility service, to set forth a procedure to resolve customer complaints and appeals, and to regulate conditions of utility service in Michigan.

The vast majority of the rules proposed here are rules that have been in place for nearly a decade with few substantive changes. Rules have been added to address issues including data privacy, newer metering technology, unauthorized use of utility service, and utility payment plans. Some changes to the current rules benefit the utility customer, such as changes to the rule regarding estimated meter readings, changes in the rules that permit customers to enter into payment plans with a utility, a new rule requiring utilities to present a plan to the Commission for the continuation of service during extreme weather conditions, and changes that permit a customer hearing to take place by telephone or other electronic media. Other changes benefit regulated utilities, such as a rule that allows utilities to hold responsible for a delinquent account both the customer and occupant who resided at the address when the service was billed, and a reduction to the annual interest rate regulated utilities must pay on deposits and billing errors. The proposed rules define a small nonresidential customer to include more nonresidential customers than the previous definition. The definition of "utility" was changed to eliminate "a person" from that term. Some definitions were added, such as "occupant" and other definitions were omitted, such as "weather adjusted consumption data." Other specific changes are explained in detail below.

(5) Identify the harm resulting from the behavior that the proposed rule(s) are designed to alter and the likelihood that the harm will occur in the absence of the rule. What is the rationale for changing the rule(s) and not leaving them as currently written?

The rules are being updated to address changes in metering technology, concerns about data privacy and to reference recent state legislation regarding unauthorized use of utility service, among other issues. The rules will require that, when a utility estimates a meter read, the utility cannot deprive a customer of the benefit of a lower tiered rate. This is a benefit to the customer that did not exist before in the previous rules and it is designed to address the hardship of utilities unfairly charging customers at a higher rate. The proposed rules also require utilities to have in place a data privacy tariff so as to provide customers with some assurance that their personal information will not be distributed to third parties without their knowledge or consent. There are proposed rules that will make it easier for customers to participate in a customer hearing with the utility if they have a complaint by allowing them to participate in the hearing via telephone or other electronic media. The proposed rules reduce the percentage of interest that a utility must pay on all customer deposits and billing errors from 7% per annum to 5%. This change was designed to reduce the cost of interest regulated utilities must pay to a more equitable and reasonable rate.

A new rule was added regarding responsibility for unauthorized use of utility service that explains that the utility may back bill for service used and charge interest, fees, and, if a utility shuts off service, may bill a customer for the costs of investigating the unauthorized use, relocating the meter, and for damage to utility-owned equipment. Under the proposed rules, the utility has a longer period of time to back bill a customer for meter errors, which was extended to 12 months preceding the discovery of the error. The same time period applies for customer refunds due to meter errors. The 12-month time period is proposed to achieve some uniformity and consistency within this rule set and other rule sets setting forth the technical standards and the testing of meters. The proposed rules reference an exception for prepaid service when discussing prompt billing of utility service. The proposed rules allow for bill consolidation with a customer's documented consent instead of a customer's written consent. This change makes it easier for customers to consolidate their active accounts. Under the proposed rules, when a utility transfers an unpaid balance, it is required to notify a customer in writing and to provide information that includes the balance transfer address, the amount of the transfer, the commission rule that allows the transfer, and the process a customer may follow to refute the action. This change will provide customers with more information when a utility transfers an unpaid balance to another residential service account of that customer.

A proposed rule was added that requires regulated utilities to adopt and submit an extreme weather condition policy to the commission for approval that details the criteria a utility follows in suspending disconnection of service to residential customers during extreme hot and cold weather as well as any preferential treatment given to certain classes of residential customers. This rule was added to make sure utilities have an extreme weather condition policy in place that meets with Commission approval. The proposed rules also set forth payment plan procedures for residential customers and small nonresidential customers. The rules allow customers to enter into payment plans with the utility over the telephone provided that the utility documents the payment plan arrangement, and the rules set forth the information a utility must send a customer considering a payment plan. The purpose of the payment plan rule is to permit regulated utilities to work out payment plan arrangements with customers over the telephone instead of in writing.

(6) Describe how the proposed rule(s) protect the health, safety, and welfare of Michigan citizens while promoting a regulatory environment in Michigan that is the least burdensome alternative for those required to comply.

The rules protect the health, safety, and welfare of Michigan citizens by setting forth clear standards for the provision of electric and gas utility service, by providing for emergency shut off of service for health or safety reasons or for a national emergency, by requiring that utilities present their extreme weather condition policies to the Commission for approval, by allowing for expedited payment plan arrangements so customers can continue receiving utility service, by identifying those customers who are eligible for shut off protection and by setting forth the parameters of that protection, by setting forth the rules utilities must follow in establishing, disconnecting, and restoring service, by prohibiting discrimination against customers who exercise their rights under these rules, by providing a framework a customer may follow to lodge a complaint against a utility or appeal a determination, by establishing rules that govern the payment of a deposit, bill payment, late payment charges, billing and meter errors, data privacy, balance transfers and bill consolidation, by identifying the scope of the rules, and by establishing a procedure to request a waiver of a rule.

(7) Describe any rules in the affected rule set that are obsolete, unnecessary, and can be rescinded.

All of the rules applicable to nonresidential customers were rescinded to the extent possible, and essential rules for nonresidential customers were then combined with the rules for residential customers. Many of these rules for nonresidential and residential customers were the same and could easily be combined together. As a result of combining the rules, approximately 39 rules were rescinded. These rescinded rules consist of the entire rule set titled “Billing Practices Applicable to Non-residential Electric and Gas Customers”. Those rules are now a part of the new 70 rules that also apply to residential customers. This reduces the total number of rules but continues the administrative regulatory standards that enable utilities to continue conducting business as before and that still provide customers the same protections and standards that have existed for some time without significant changes.

Fiscal Impact on the Agency:

Fiscal impact is an increase or decrease in expenditures from the current level of expenditures, i.e. hiring additional staff, an increase in the cost of a contract, programming costs, changes in reimbursement rates, etc. over and above what is currently expended for that function. It would not include more intangible costs or benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

(8) Please provide the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings on the agency promulgating the rule).

None of the proposed changes to the rules will have a tangible fiscal impact on the Public Service

Commission or LARA. There will be no need to hire additional staff, no increase in agency costs, and there will be no changes in reimbursement rates. The Public Service Commission will continue to monitor compliance with the proposed rules when a matter is brought to its attention. Although commission review of a utility's data privacy tariff or a utility's policy regarding suspending termination of utility service during extreme weather conditions will require the investment of staff time that could otherwise be devoted to other matters, this review will not require the hiring additional staff. Therefore, there is no measurable impact on expenditures.

(9) Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rule(s).

There are no expenditures associated with the proposed rules that do not already exist for the continued regulation of public utilities under the Public Service Commission's jurisdiction and that are not already provided for in costs to the utilities that are ultimately passed on to Michigan ratepayers. Accordingly, no agency appropriation has been made and no funding source provided that does not already exist.

(10) Describe how the proposed rule(s) is necessary and suitable to accomplish its purpose, in relationship to the burden(s) it places on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts. So despite the identified burden(s), identify how the requirements in the rule(s) are still needed and reasonable compared to the burdens.

Utilities will be required, when estimating meter reads, to provide residential customers with the benefit of a lower rate, if available. This rule will impose a burden on utility companies in that the companies will be required both to determine if a lower-tiered rate is available, and will be required to charge the residential customer less money for utility service than it would have otherwise charged the customer. Both of those burdens are fiscal ones but are outweighed by the purpose of the proposed rule, which is to eliminate the inequity of unfairly charging customers higher utility service rates than they would otherwise be charged because the utility is estimating meter readings rather than actually reading the meter. Further, the number of estimated meter readings is expected to fall dramatically as utilities complete the installation of smart meters in residences across Michigan. The financial burden to utilities will decline as the number of estimated meter reads declines.

The data privacy rule imposes an administrative burden on utilities to submit for Commission approval each utility's data privacy policy and to make that policy accessible to their customers. Again, the customer protections embodied in this rule will outweigh any inconvenience to the utility as the rule will provide customers with assurance regarding the privacy of personal information.

There will be a fiscal burden to customers who will receive a lower rate of interest as a result of a reduction in the interest rate charged to a utility that returns a customer's deposit or refunds a customer money due to utility meter and billing errors. However, given the overall decline in interest rates, the proposed rule would prevent a utility from being charged a much higher interest rate than the general population.

The rule that requires regulated utilities to submit an extreme weather policy to the Commission for its approval will burden the utilities administratively and financially to some extent, but it will accomplish the rule's objective of ensuring that utilities have a plan in place to suspend the termination of utility service during extremely hot and cold weather so as not to endanger the health and safety of the utility customers they serve. Public health and safety is the overriding concern this proposed rule is designed to address.

The rule that permits a utility to hold utility hearings over the telephone will make it less burdensome to both the customer and the utility to resolve customer complaints, as the hearing adjudicator, customer, and utility representative will no longer have to travel any distance to appear at an in-person hearing. Likewise, another proposed rule change allows utilities and customers to agree on payment plans over the phone instead of in writing, provided that the utility documents the agreed-upon payment plan arrangement. This rule is designed to make it easier for utilities and customers to reach agreements on payment plans that will reduce outstanding bills and will enable the utility to continue to provide utility service. This rule is less burdensome to the utility and utility customers than the predecessor rule that required signed and written settlement agreements instead.

A new rule was added regarding responsibility for unauthorized use of utility service that explains that the utility may back bill for service used and charge interest, fees, and, if a utility shuts off service, may bill a customer for the costs of investigating the unauthorized use, relocating the meter, and for damage to utility-owned equipment. This rule is consistent with recent state law that permits utilities to recover the exact same fees and costs. To a large extent this rule merely restates what is permitted in the statute, but the goal of having it in the rule set is to inform utilities and customers of the customer's responsibility for unauthorized use. Customers who use utility service without authorization are fiscally burdened by this rule, but this imposed burden is consistent with state law that permits utilities to recoup the costs associated with unauthorized use.

A new provision to the payment of a bill rule was added that allows a utility to hold both a customer and an occupant responsible for a utility bill for service at a location where both resided together the past 3 years, continue to live together, and a delinquent account accrued during the period of shared residence. The purpose of the rule is to prevent termination of service at the location by holding the occupant responsible for the bill and to prevent the avoidance of bill payment due to name swapping of the customer of record. The rule burdens the occupant now being held responsible for utility service, but it benefits both the customer and the occupant in a sense that the occupant will now have a chance to pay the utility bill to keep service going before the utility terminates service under the rules that permit shut off of service. It also assists the utility in collecting payment for utility service provided.

Under the proposed rules, the utility has a longer period of time to back bill a customer for meter errors, which was extended to 12 months preceding the discovery of the error. The same time period applies for customer refunds due to meter errors. This is a fiscal burden on ratepayers, but it is equitable in the sense that utilities must also refund customers who have overpaid due to a meter error for a 12-month period. There is also a benefit to having a uniform time period for refunding and back billing meter errors that is consistent with the time periods identified in rules that deal with technical standards and the testing of meters.

The proposed rules allow for bill consolidation with a customer's documented consent instead of a customer's written consent. This will not impose a burden on either customer or the utility and instead is intended to make it easier for a customer to consolidate bills.

Under the proposed rules, when a utility transfers an unpaid balance, it is required to notify a customer in writing and to provide information that includes the balance transfer address, the amount of the transfer, the commission rule that allows the transfer, and the process a customer may follow to refute the action. This results in the utility having to include more information on either the utility bill or in a written letter to customers, which would be more burdensome to the utility, but the goal is to inform customers where the unpaid balance transfer is coming from so as to lessen the number of disputes and complaints that could result from confusion about the amount owed to the utility.

Impact on Other State or Local Governmental Units:

(11) Estimate any increase or decrease in revenues to other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Estimate the cost increases or reductions on other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Please include the cost of equipment, supplies, labor, and increased administrative costs, in both the initial imposition of the rule and any ongoing monitoring.

There is no impact to other state or local governmental units resulting from the initial imposition or ongoing monitoring of the proposed rules.

(12) Discuss any program, service, duty or responsibility imposed upon any city, county, town, village, or school district by the rule(s). Describe any actions that governmental units must take to be in compliance with the rule(s). This section should include items such as record keeping and reporting requirements or changing operational practices.

No program, service, duty, or responsibility will be imposed upon any city, county, town, village, or school district by these proposed rules. There are no actions that governmental units must take to comply with the rules.

(13) Describe whether or not an appropriation to state or local governmental units has been made or a funding source provided for any additional expenditures associated with the proposed rule(s).

No appropriation has been made to state or local governmental units. A funding source has not been provided for any additional expenditures associated with the proposed rules, other than the Public Service Commission's general budget which comes from utility payments passed on to Michigan ratepayers. Regulating the conditions of utility service and utility bill payment is not a new responsibility for the Public Service Commission, and the Commission will continue to utilize its resources to ensure compliance with these rules.

Rural Impact:

(14) In general, what impact will the rules have on rural areas? Describe the types of public or private interests in rural areas that will be affected by the rule(s).

The impact to rural areas will be the same as the impact to more heavily-populated urban areas. Any utility customers living in rural areas will receive the same benefits and have the same responsibilities and or burdens as utility customers living in more populated areas. The protections and requirements in this rule set really do not differentiate between urban and rural areas. To the extent that customers in rural areas live further away from utility offices and utility hearing locations than do urban customers, rural customers will benefit even more from the convenience that hearings by telephone offer. They will also benefit from being able to enter into a payment plan or consolidate a customer account over the telephone.

Environmental Impact:

(15) Do the proposed rule(s) have any impact on the environment? If yes, please explain.

To the extent that the proposed rules assist utilities in moving toward paperless interactions with utility customers, the rules aid in protecting natural resources and therefore positively impact the environment. Energy use has a negative impact on the environment but it is a necessary service that the lives of Michigan residents depend on and is vital to the state's economy. The regular provision of utility service therefore impacts the environment as utilities must purchase the supply of natural gas and electricity to distribute to customers in the utility's service territory. The proposed rules make it possible for utilities to provide customers with utility service within the context of clearly established regulatory standards. The rules, in allowing for the provision of utility service in Michigan, impact the environment, but it is impossible to determine with any specificity the exact effect they have on the environment. Their primary focus is on the customers who use natural gas and electric utility service and the regulated utilities that provide that service. These rules are not meant to address or regulate the effects of utility service on the environment.

Small Business Impact Statement:

[Please refer to the discussion of "small business" on page 2 of this form.]

(16) Describe whether and how the agency considered exempting small businesses from the proposed rules.

The Public Service Commission did not consider exempting small businesses from the proposed rules because this would deprive this category of utility customers from many benefits and protections set forth in these rules.

(17) If small businesses are not exempt, describe (a) the manner in which the agency reduced the economic impact of the proposed rule(s) on small businesses, including a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rule(s) upon small businesses as described below (in accordance with MCL 24.240(1)(A-D)), or (b) the reasons such a reduction was not lawful or feasible.

For small businesses, utility service can comprise a significant business expense. Recognizing that the needs of small businesses differ from other types of utility customers, the proposed rules provide benefits to small businesses that do not exist for large non-residential utility customers. These include a smaller deposit limit for utility services, protection from having to pay a deposit during the heating season, the ability to enter into payment plans and settlement agreements, the ability to attend a customer hearing to resolve a dispute, consolidation of accounts, an extended length of time to pay an estimated utility bill, and required publication of utility procedures.

(A) Identify and estimate the number of small businesses affected by the proposed rule(s) and the probable effect on small business.

There are approximately 470,000 commercial customers in Michigan and, although the term "commercial" is not synonymous in all respects with "small business", it is the closest indicator available to the Public Service Commission regarding the number of small businesses affected by these rules. These proposed rules identify three general classes of customers: residential, small non-residential, and large non-residential. Small non-residential customers are defined in the rules based on energy usage in a given year, and that definition was expanded to include more businesses who use more energy.

This expanded definition benefits small businesses because the small non-residential customer receives some of the customer protections and benefits also afforded to residential customers. For example, a small non-residential customer may enter into a payment plan or a settlement agreement with a utility to keep utility service going and to pay past amounts due. Small non-residential customers have the same protections as residential customers when it comes to how long a customer has to pay a utility bill that is calculated based on an estimated meter reading. Small non-residential customers may consolidate their bills just like residential customers, and the rules on transferring a balance apply to both of those classes of customers. Small non-residential customers have a right to request a customer hearing over a disputed matter, and, just like for residential customers, the utility must publish its procedures and make them available to the small non-residential customer. There are limits in the rules that prevent a utility from requesting a deposit that is greater than 15% of a small non-residential customer's energy usage in a given year. For large non-residential customers, that percentage is 25%. This rule benefits small business. Also, certain small non-residential customers may not be charged a deposit during the heating season, which is another benefit for small businesses.

(B) Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs.

There are no differing compliance or reporting requirements or timetables for small businesses under these rules.

(C) Describe how the agency consolidated or simplified the compliance and reporting requirements and identify the skills necessary to comply with the reporting requirements.

There are no compliance or reporting requirements that are unique to small businesses. These rules lay out the general terms and conditions of utility service in Michigan.

(D) Describe how the agency established performance standards to replace design or operation standards required by the proposed rules.

The Public Service Commission did not establish performance standards to replace design or operation standards required by the proposed rules.

(18) Identify any disproportionate impact the proposed rule(s) may have on small businesses because of their size or geographic location.

As set forth in the answers to question 17, the proposed rules recognize that small businesses are a unique sector of utility customers because they require utility service and the cost of that service may amount to a large business expense when compared with total revenues. In the interests of keeping small businesses viable and continuing utility service, the rules allow small businesses to enter into payment plans and settlement agreements with utilities. The rules also prevent the utilities from requiring a deposit from certain small businesses during the heating season. In addition, the rules impose a ceiling on the deposit amounts small businesses have to pay. That deposit limit consists of a lower percentage than what large non-residential customers have to pay. This benefits small businesses. Small businesses also have a right to a customer hearing, and are entitled to receive notification of a utility's procedures.

(19) Identify the nature of any report and the estimated cost of its preparation by small business required to comply with the proposed rule(s).

There are no reporting requirements for small businesses under these proposed rules.

(20) Analyze the costs of compliance for all small businesses affected by the proposed rule(s), including costs of equipment, supplies, labor, and increased administrative costs.

There are no costs of compliance for small businesses affected by the proposed rules.

(21) Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rule(s).

There are no estimated costs of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rules.

(22) Estimate the ability of small businesses to absorb the costs without suffering economic harm and without adversely affecting competition in the marketplace.

This line of inquiry assumes that the proposed rules burden small businesses with added costs. The opposite is true, because, although small businesses must pay for utility service like all other customers, the proposed rules do not impose costs or cause economic harm. These rules are instead designed to protect small businesses from losing utility service. The rules do not hinder the ability of small businesses to compete in the marketplace but instead have the ancillary effect of keeping small businesses viable through the continued provision of utility service.

(23) Estimate the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.

The proposed rules do not cost the Public Service Commission money to administer or enforce a rule that exempts or sets lesser standards for compliance by small businesses. The protections and benefits in the rules that impact small businesses have been in place for some time, and they do not result in costs to the Public Service Commission.

(24) Identify the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.

Small businesses are not exempt under these rules, as these rules require the payment of utility service for all classes of customers including small businesses and they establish the conditions of regulated utility service in Michigan. Exempting small businesses from paying for utility service would result in other classes of customers, such as residential customers and large non-residential customers, subsidizing the cost of utility service for small businesses, a result that defies basic cost of service principles in utility regulation.

(25) Describe whether and how the agency has involved small businesses in the development of the proposed rule(s). If small business was involved in the development of the rule(s), please identify the business(es).

Small businesses and other members of the public are welcome to attend the public hearing on these proposed rules to express their views on their revision and promulgation. If they do so, their input will be considered before the rules are finalized. In drafting these rules, the Public Service Commission met with stakeholders from a variety of backgrounds including utility representatives, a representative from Salvation Army who represented low income residential customers, an attorney representing the Attorney General as well as the Commission Staff. Both the Attorney General, who represents the citizens of Michigan, and the Commission Staff, had the interests of customers including small businesses in mind when drafting these rules.

Cost-Benefit Analysis of Rules (independent of statutory impact):

(26) Estimate the actual statewide compliance costs of the rule amendments on businesses or groups. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rule(s). What additional costs will be imposed on businesses and other groups as a result of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping)? Please identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.

The Public Service Commission reached out to all regulated Michigan utilities and received feedback from three utilities doing business in Michigan regarding the compliance costs of the rule amendments on their respective businesses. These utilities include Consumers Energy Company, DTE, and Wisconsin Electric Power Company. Wisconsin Electric Power Company reports that the proposed revisions will either have no impact or “a minimal process impact” with no identified dollar amount.

With respect to the new definition “small non-residential customer” which will include more small businesses, Consumers Energy reports a net revenue of $2,800. DTE, on the other hand, reports that this expanded definition will result in an IT implementation cost of $17,600. As this expanded definition will enable more businesses to enjoy the protections and benefits of these proposed rules afforded small non-residential customers, there is a financial benefit to those businesses who, because of this definition, now fall in the small non-residential customer category but the exact dollar value of that benefit is impossible to determine.

The rules regarding the return of customer deposits that reduce the interest rate utilities must pay from 7% to 5% will obviously benefit all regulated utilities in Michigan. DTE projects an IT implementation cost of $3,200 but a revenue increase of $520,000. Consumers Energy projects a revenue increase of $632,800.

With respect to the lower interest rate owed on customer refunds due to meter errors, DTE indicates that this will result in a positive impact that cannot be estimated at this time. Consumers Energy reports this will result in an expense of $43,300 but does not explain how a lower interest rate would result in an expense to the utility rather than an increase in revenue.

Regarding the interest rate reduction on refunds for billing errors, DTE reports it will cost the company $16,000 in IT implementation costs but does not indicate any increased revenue. Consumers Energy reports the proposed change will have a positive impact but that there is no data to calculate the precise impact.

Applying a 5% interest rate to residential customers who engage in unauthorized use will result in a $125,300 increase in revenue for Consumers Energy Company.

Regarding the revised rule that requires utilities to provide customers with the benefit of a lower tiered rate when estimating a meter reading, DTE reports that this will not impact the company because this represents its current practice. In contrast, Consumers Energy asserts that it will result in an IT implementation cost of $160,000 and an expense of $4,403,800. However, that expense will translate in a comparable $4,403,800 financial benefit to Consumers Energy customers who will be charged lower utility bills as a result of the change.

The change in the rule extending back billing for meter errors to 12 months will increase Consumers Energy's revenues by $616,900. DTE reports that this will result in a positive impact that cannot be estimated at this time.

Regarding the rule that will require utilities to distribute a publication including customer's rights and responsibilities to small non-residential customers, Consumers Energy Company reports that this will result in an incremental cost of $1,800. In addition, the company reports an IT implementation cost of $108,000 as well as a one-time bill insert cost of $335,000 to inform all customers of significant rule changes. DTE reports that the publication of procedures for residential and small non-residential customers will result in an IT implementation cost of $3,200 and an operational cost of $1,034,985.

(27) Estimate the actual statewide compliance costs of the proposed rule(s) on individuals (regulated individuals or the public). Please include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping). How many and what category of individuals will be affected by the rules? What qualitative and quantitative impact does the proposed change in rule(s) have on these individuals?

Any costs to the utilities listed above in question 26 will be passed on to the utilities' customers through customer rates. In addition, the reduction in the interest rate that utilities must pay on refunded deposits, billing errors, and meter errors will result in 2% less interest for a utility customer than they would otherwise receive. However, the rule that requires utilities to give customers the benefit of a lower tiered rate when estimating a bill will result in a significant benefit to customers of Consumers Energy Company who are currently being deprived of this benefit.

(28) Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rule(s).

The reduced interest rate on customer deposits is projected to save DTE and Consumers Energy a combined total of $1,152,800. DTE reports a positive impact on the reduced interest it must pay in refunding money to customers resulting from meter errors but it is unable to quantify the exact amount of this cost reduction. Consumers Energy reports a cost reduction that results from the lower interest rate due customer refunds on billing errors but is unable to quantify the exact cost reduction. Consumers Energy Company reports a $125,300 cost reduction from charging residential customers who engage in unauthorized use 5% interest. Residential customers of Consumers Energy Company can expect a cost reduction with respect to estimated bills where they qualify for a lower tiered rate and the utility projects this benefit to be approximately $4,403,800. Consumers Energy Company reports that extending back billing for meter errors to 12 months will increase the company's revenues by $616,900.

DTE also reports a positive impact but cannot determine the exact amount of the cost reduction.

(29) Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rule(s). Please provide both quantitative and qualitative information, as well as your assumptions.

There are several benefits of the proposed rules. First, the rules will be brought up to date by referencing new metering technology, data privacy, payment plans, extreme weather condition policies, new ways to add people as responsible parties to accounts, new ways to participate in a hearing over the telephone or through other electronic media, recovery of costs and fees due to unauthorized use of utility service, a new definition for a small non-residential customer, new procedures for back billing due to meter errors, and new procedures for bill consolidation and bill transfer. Second, by combining all billing rules in one rule set, they will hopefully be easy to access and the Commission will clear up any inconsistencies that exist between the two rule sets currently in place. Third, the Commission has reduced the total number of rules that exist by a sizeable number. Many of the benefits of these proposed rules are referenced elsewhere in greater detail throughout this document.

(30) Explain how the proposed rule(s) will impact business growth and job creation (or elimination) in Michigan.

The rules support small business growth by expanding the definition of small non-residential customer to include more businesses. In providing clear guidelines for the provision and conditions of electric and natural gas utility service in Michigan, businesses and utilities understand their rights and responsibilities and this enables utilities to continue to provide and be compensated for utility service and for businesses to continue to receive service. In keeping essential utility service going, Michigan businesses are able to remain viable and, hopefully, job-creating entities.

(31) Identify any individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

Regulated natural gas and electric utilities are affected by these rules the most as they are the focus of the proposed rules in question. The central purpose of these rules is to regulate the conditions of utility service and payment for utility service, so it stands to reason that regulated electric and natural gas utilities will be disproportionately affected by the proposed rules. Also disproportionately affected by these rules are residential and non-residential gas and electric utility customers in Michigan, again because of the purpose of the proposed rules.

(32) Identify the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of a proposed rule(s) and a cost-benefit analysis of the proposed rule(s). How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., which demonstrate a need for the proposed rule(s).

The Commission relied on the current draft of the proposed rules, summaries provided by three Michigan utilities discussing the financial impact of the proposed rules, Michigan statutory law, and institutional knowledge from various members of the Commission Staff who played a central role in drafting the proposed rules.

Alternatives to Regulation:

(33) Identify any reasonable alternatives to the proposed rule(s) that would achieve the same or similar goals. In enumerating your alternatives, please include any statutory amendments that may be necessary to achieve such alternatives.

There are no other administrative rule sets that achieve the purpose of the proposed rules within the State of Michigan. The State Legislature could pass several statutes providing for the same regulatory oversight provided here. However, to date, the State Legislature has authorized the Michigan Public Service Commission to promulgate rules that regulate the conduct of business among regulated utilities and the conditions of utility service. In the current regulatory scheme, the State Legislature has chosen to enact statutes that govern the conditions of utility service for municipally-owned utilities that are not under the Commission's regulatory jurisdiction. However, for the utilities that the Public Service Commission regulates, the State Legislature has, by statute, directed the Commission to promulgate these rules. In short, without a change to the roles and duties statutorily assigned to the Public Service Commission, no reasonable alternatives to the proposed rules exist.

(34) Discuss the feasibility of establishing a regulatory program similar to that proposed in the rule(s) that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.

The utilities that these rules regulate enjoy a monopoly over service they provide to the customers in their service territory. There is not competition among these regulated utilities due to the expensive infrastructure required to deliver natural gas and electric service in Michigan. There is no competitive market for the distribution of natural gas and electric service. Therefore private market-based mechanisms do not exist. Other states likewise do not use private market-based systems to regulate utility service.

(35) Discuss all significant alternatives the agency considered during rule development and why they were not incorporated into the rule(s). This section should include ideas considered both during internal discussions and discussions with stakeholders, affected parties, or advisory groups.

The Commission staff involved in this rulemaking considered leaving the two distinct rule sets that have been combined here alone without any modification but considered doing nothing to be the least effective in terms of moving utility regulation forward in Michigan and addressing many of the new issues and changes in the law that are not in the current rules.

Additional Information

(36) As required by MCL 24.245b(1)(c), please describe any instructions regarding the method of complying with the rules, if applicable.

There are no specific instructions regarding the method of complying with the rules. The Commission believes that the rules make plain what is required of utilities and customers. In the event that a utility or a customer has a question about how the Commission is interpreting the rule, they are welcome to contact the Public Service Commission to discuss their inquiry.

PART 4: REVIEW BY THE ORR

Date Regulatory Impact Statement (RIS) received:

6-9-2016

Date RIS approved:	**6/16/2016**
ORR assigned rule set number:	**2014-037 LR**

Date of disapproval:	Explain:
More information needed:	Explain: