

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



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DANA NESSEL
ATTORNEY GENERAL

October 6, 2023

Commissioner Daniel Scripps, Chair
Michigan Public Service Commission
P.O. Box 30221
Lansing, MI 48909
ScrippsD1@michigan.gov

Dear Chair Scripps,

My office received a citizen inquiry regarding a DTE Energy program that automatically enrolls customers into paperless billing even though there has been no affirmative consent from the customer.

From my office's review, it appears that customers who have shared their emails with DTE in order to access online resources or receive outage updates are receiving emails from DTE notifying them that they have been selected for an eBill trial. At the bottom of the eBill email, there is a statement that the customer will be automatically moved to paperless within the next billing cycle unless the customer affirmatively opts out of the program.

The problem for customers who receive paper billing is that they may not spend much time reading and reviewing DTE e-mails unless they are actively seeking information like power outages or online resources. Plus, most customers receive multiple e-mails from DTE regarding energy usage or other available utility programs such as appliance repair or energy savings.

As a result of being automatically enrolled in the paperless billing program, customers could 1) face late payments fees for failing to pay a bill that they never received via U.S. mail, as they normally have in the past, as well as 2) face shut off notices. Customers should not have to pay these fees or face the fear or embarrassment of a shut off notice for something that they were auto enrolled in, which was buried in an email.

It appears that DTE's eBill program violates the letter, and also the spirit, of several Public Service Commission rules on consumer standards and billing practices. Specifically, Rule 460.118(a) stating "[a] customer shall not be required to use electronic billing" and Rule 460.120(1) stating in part that "[a] utility shall send a bill to customers by mail unless the utility and customer agree to another method of delivery" suggest that affirmative consent on the part of the customer is necessary before a utility can move a customer to paperless billing. In fact, the Commission itself noted in a 2017 order that Rule 460.118(a) "protects customers from being enrolled in electronic billing without their consent." *In the*

matter, on the Commission's own motion, to promulgate rules governing the billing of residential and nonresidential electric and natural gas service, Docket U-18120, p 12. The Commission should find, similar to some of the data privacy rules, that silence by a customer should never be construed to mean express or implied consent to a request by a utility.

Accordingly, I request that the Commission investigate this situation to ensure that it is not being used by other utilities and to impose the appropriate penalties on DTE for its customers who were automatically switched to paperless billing without affirmative customer consent. In addition, I request that the Commission order refunds for any customers that paid late fees as a result of this eBill program.

As the Chief Consumer Advocate on behalf of all utility customers, I thank you for considering this request.

Sincerely,

A handwritten signature in blue ink that reads "Dana Nessel". The signature is written in a cursive, flowing style.

Dana Nessel
Michigan Attorney General