

ELECTRIC COOPERATIVE MEMBER-REGULATION ACT (EXCERPT)
Act 167 of 2008

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 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