

September 4, 2012

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

Via email

**Re: In the matter of the application and request of THE DETROIT EDISON COMPANY seeking approval and authority to implement its proposed Advanced Metering Infrastructure Opt Out Program.**

**MPSC Case No. U-17053**

Dear Ms. Kunkle:

Enclosed for filing in the above-referenced case is the *Petition to Intervene of Linda Kurtz and Proof of Service*.

If you have any questions, please contact me.

Very truly yours,

Linda Kurtz  
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**STATE OF MICHIGAN**

## BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

|  |   |                  |
|--|---|------------------|
| In the matter of the application and request | ) |                  |
| of the DETROIT EDISON COMPANY                | ) |                  |
| seeking approval and authority to            | ) |                  |
| implement its proposed Advanced Metering     | ) | Case No. U-17053 |
| Infrastructure Opt Out Program.              | ) |                  |

### PETITION TO INTERVENE OF LINDA KURTZ

Linda Kurtz, appearing in pro per, hereafter referred to as “Petitioner”, submits this petition to intervene in and become a party in this case pursuant to Rule 201(1) of the Rules of Practice and Procedure Before the Commission. In support of this petition, Petitioner represents that the rights and interests of this Petitioner, the grounds of the proposed intervention and Petitioner’s position in the proceedings are as follows:

#### I Statement of Rights and Interests

1. Petitioner is a residential customer of Detroit Edison, residing at 2150 Foss St, Ann Arbor, MI, at which address she takes electrical service. As a customer, she is affected by any change in rates.
2. Petitioner asserts that she has certain rights or a protected legal interest as an electrical customer under the contract for electrical service known as the “tariff” or “Rate Book”. This document is the contract between Detroit Edison and its electrical customers, as approved by the Michigan Public Service Commission following contested case procedures, as required by due process

of law. Petitioner alleges that her rights under the existing contract have been violated because Detroit Edison attempted to install an electric smart meter on her home and the utility has no authority to do so pursuant to its own tariff. Furthermore, Petitioner sent a letter to the utility from her doctor stating that she could not have a smart meter on her home; she included with this letter her own statement of the effect smart meters have on her health. Detroit Edison has never told her that a smart meter will not be installed on her home, nor has it responded in any way except a phone call saying that her letter had been “received.” Petitioner knows other individuals who have recently told Detroit Edison and/or its installer, AccuRead, that they do not want a smart meter installed on their home, only to have one installed. Petitioner has no assurance that Detroit Edison will not install a smart meter on her home. Tariff No. 9, under which the utility claimed authority up until August 31, 2012,” defines a “time-of-use meter” and explicitly stated that such a meter may be installed only when the customer requested one. Tariff No. 10, effective September 1<sup>st</sup>, also defines a “time-of-use meter,” provides no mandate that the customer accept this type of meter, provides no definition of an “AMI meter” or “smart meter,” and provides no authority for installing such a device upon a customer’s home without customer request or permission. Neither tariff provides any specification of, or authority for, installing a radio-transmitting device upon a customer’s home.

3. MPSC Rule 460.115 allows individuals and businesses to read their own meters. Under this rule, if Petitioner reads her meters monthly, there is no

need for DTE to charge a \$15 fee because she does not have an electric or gas smart meter installed on her home.

4. Petitioner asserts that DTE will likely read smart meters manually either for a period of time after their installation or will read them manually from time to time to assure their accuracy, as is being done by other utility companies around the United States.
5. Petitioner asserts that she and many others are covered by the Americans with Disabilities Act, 42 U.S.C. §12101 *et seq.* Petitioner experiences many detrimental health effects when in buildings with smart meters or when in sections of municipalities where the radiofrequency radiation is extremely high outdoors. She is thus substantially limited in the performance of one or more major life activities, including accessing the services of health-care professionals, accessing public buildings, accessing grocery and other stores. She is unable to visit friends in their homes if those friends have smart meters installed on their homes. She is or will be unable to take required continuing education classes to keep her massage therapy license because she cannot be in a building with smart meters and is or will be unable to take continuing education classes in her other modalities, thus limiting her ability to earn an income. She is unable to apply for employment at any business that has smart meters installed. The above are covered by Titles II and III of the ADA.
6. Petitioner asserts that she and many others are covered by Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794. This is elaborated on in the section on Statement of Position.

7. Petitioner asserts that she and many others are covered by the Michigan Persons with Disabilities Civil Rights Act,, MCL 37.1101 et seq. This is elaborated on in the section on Statement of Position.
8. Petitioner asserts that she has a protected legal interest under the Fourth Amendment to the United States Constitution not to have the privacy of her home invaded by a private, monopoly company acting under the financial incentives provided by the federal government.
9. Petitioner asserts that she has a protected legal interest under the “Takings Clause”, also known as the eminent domain clause, of the Fifth Amendment to the United States Constitution, not to have her health taken or the value of her property substantially diminished, without just compensation, by a private, monopoly company acting under financial incentives provided by the state or federal government under a smart grid, or any other, program. The diminution of home value would be caused by either the loss of privacy or by the creation of a condition detrimental to health, or both, as will be further developed at the evidentiary hearing.
10. Petitioner alleges that her protected legal interests under the Fourth and Fifth Amendments would be violated were she forced to permit the installation of a smart meter upon her home.
11. Petitioner alleges that she has a protected legal right to refuse installation of a smart meter, founded in the common law of property rights and the common law of torts.

12. Petitioner alleges that her right to freedom of association and freedom of religion under the First Amendment to the U.S. Constitution is abrogated by the installation of smart meters on buildings and by the lack of an opt-out for businesses and religious institutions. Petitioner alleges that she has a protected legal interest, under the First Amendment to the United States Constitution, to not have government, or a private entity acting under government authority because of its government-granted monopoly status, take actions that severely limit her ability to freely associate with others or attend the religious institution of her choice. Detroit Edison's opt out proposal makes no provision for any business or non-residential customer to opt out of a smart meter. The fact that no non-residential customer may opt out under this proposal effectively limits major life activities for Petitioner, including associating with others in homes that are smart-meter-equipped, from patronizing businesses that are smart-meter-equipped, from attending the religious institution of her choice, and, in some instances, of freely assembling with others outdoors.

## II. Statement of General Position

Petitioner will argue that opt-out fees for smart meters should *not* be established or made legal in Michigan for the following reasons:

13. That the Michigan Public Service Commission is, pursuant to Michigan

Compiled Laws 460.6, “vested with the power and jurisdiction to regulate all rates, fares, fees, charges, *services, rules, conditions of service*, and all other matters pertaining to the formation, operation, or direction of public utilities” (emphasis added). Petitioner will argue that the Commission has not exercised its responsibility to determine whether smart meters should be the standard of metering in this state from now on, or whether such meters should be required as a condition of service. The Commission, in abrogation of its responsibility under law, has held no contested hearing process, wherein evidence might have been admitted to the record as to whether smart meters are an appropriate technology that utility customers must allow to be installed on their homes, nor has it held a contested hearing process to determine whether smart meters should even be allowed in this state.

14. Petitioner will argue that, should the Commission impose a schedule of fees on persons wishing to opt out of a smart meter, in the absence of a prior determination by due process that such meters ought to be the standard for receiving electrical service in this state, such fees would be illegal.

15. Petitioner will argue that the entire rollout of some half a million smart meters so far in this state to date by Detroit Edison has been an illegal undertaking because the company had no authority under its tariffs to impose such a

condition of service and has made no attempt to obtain the consent of the affected customers.

16. Petitioner will argue that if the Commission takes no action to approve Detroit Edison's proposed opt-out fees, the company's smart meter program will remain illegal and that individual customers may raise the issue of its illegality in the circuit courts of this state as a defense to any action by Detroit Edison, including shut-off of electrical service.

17. Petitioner will argue that if the Commission were to impose the suggested opt-out fee schedule, the effect would be to legalize smart meters by a back-door process that never really considered whether such technology should even be implemented in this state at this time, let alone become the new standard for metering.

18. Petitioner will argue that the appropriate action for the Commission to take at this time is to issue an Order that smart meters in this state violate the ADA and so are not legal in this state. Alternatively, Petitioner will argue that the appropriate action for the Commission to take at this time is to issue an Order that smart meters in this state, at this time, are voluntary, i.e., that residential and business customers may *opt in* to having one if they so choose but are under no compulsion to accept one if they do not wish.

19. Petitioner will argue that a *prima facie* case has already been made by the submissions of experts and others under public comments in Case No. U-17000, that smart meters do in fact violate the utility customer's health, privacy, and safety. The documents submitted or referenced in that case



alone should be enough to trigger a contested case as to whether smart meters should be the standard in this state or whether they should remain on an experimental or voluntary basis.

20. Petitioner will argue that, under Section 12131 of the Americans With Disabilities Act of 1990 as amended, it is illegal for a public entity, such as the MPSC, to adopt a discriminatory policy with respect to persons who are or may be electro-sensitive and that a fee schedule for access to electrical service that must be paid primarily by those who must avoid the radio-frequency exposure would constitute such discrimination.
21. Petitioner will argue that under Section 12131 of the Americans With Disabilities Act of 1990 as amended, it would be illegal for a public entity such as the MPSC to adopt a policy that has the effect of denying access of electro-sensitive people to public accommodations and that the legalization of smart meters in this state has that effect.
22. Petitioner will argue that businesses *must be allowed* to opt out because there are business owners, employees, vendors, and customers who are sensitive to smart meters and digital meters and/or who will be physiologically harmed by smart meters over time; there are business patrons who are sensitive to smart meters and digital meters who will be unable to patronize businesses at all or who will be unable to browse, and therefore businesses will lose business; electro-sensitive people will be unable to access necessary services and to participate in major life activities, which is prohibited under the ADA.

23. Petitioner will argue that businesses are *required* to opt out because Title III of the ADA applies to public accommodations, prohibiting activity that would deny “full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation” to any person with a disability. 42 U.S.C. § 12132. Similarly, under the Michigan Persons with Disabilities Civil Rights Act, MCL 37.1101 et seq., “The opportunity to obtain employment, housing, and other real estate and full and equal utilization of public accommodations, public services, and educational facilities without discrimination because of a disability is guaranteed by this act and is a civil right.” Under MCL 37.1102, individuals who are physiologically affected by smart meters must be accommodated: “[A]n individual [may not be denied] the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation or public service because of a disability that is unrelated to the individual's ability to utilize and benefit from the goods, services, facilities, privileges, advantages, or accommodations.”

24. Educational institutions must be allowed to opt out and smart meters must not be allowed to be installed on any building that is used for educational purposes as defined in MCL 37.1401 because a) electro-sensitive individuals will be denied the opportunity of an education; and b) electro-sensitive individuals will be unable to fulfill the licensing and continuing education requirements of their profession. MCL 37.1402 prohibits an educational institution from discriminating “in any manner in the full utilization of or benefit

from the institution, or the services provided and rendered by the institution to an individual because of a disability that is unrelated to the individual's ability to utilize and benefit from the institution or its services, or because of the use by an individual of adaptive devices or aids.” Similarly, Titles I and III of the ADA prohibit discrimination against individuals with disabilities by any public educational institutions (Title II) and by private institutions that receive federal funds (Title III).

25. An individual who is physiologically harmed by smart meters cannot buy or rent a home with a smart meter without suffering severe health effects. This is discrimination under MCL 37.1501 et seq. By the same token, this prevents an individual or business from selling or renting a home to a person who is harmed by smart meter radiation.
26. Public entities must be *required* to opt out. Title II of the ADA applies to public entities, prohibiting discrimination by forbidding people with disabilities from being “excluded from participation in or be[ing] denied the benefits of the services, programs, or activities of a public entity.” 42 U.S.C. § 12132; 28 C.F.R. §35.130(f). Similarly the Michigan Persons with Disabilities Civil Rights Act, MCL 37.1101 et seq.
27. Petitioner will argue that although the Michigan Consumer Protection Act specifically exempts companies under regulation by the MPSC, the general standards of fair conduct enumerated in that act should serve as a guide at least to criteria that should be considered by the MPSC before reaching any

determination that smart meters should be forced on uninformed utility customers.

28. Smart meters are discriminatory under the ADA and smart meter opt-out fees are discriminatory. Smart meter opt-out fees are discriminatory because a person who is affected by smart meters has no choice about “opting out.” In order to protect their health, at least within their home, they must opt out. Petitioner will argue that Title II of the ADA prohibits the exclusion from participation of, the denial of benefits to, or discrimination against any qualified person with a disability in the services, programs, or activities of a public entity. 42 U.S.C. § 12132. She will argue similarly under the Michigan Persons with Disabilities Civil Rights Act, MCL 37.1101 et seq.
29. Petitioner will argue that because DTE’s smart meter programs are supported by federal funds, they and the MPSC are subject to the requirements of Section 504 of the Rehabilitation Act of 1973.
30. Petitioner will argue that Detroit Edison is a public accommodation as defined by the ADA and that the ADA applies to Detroit Edison and its supplying of services to petitioner and others.
31. Petitioner will argue that the Michigan Public Service Commission is bound by Title II of the ADA to avoid discrimination against people with disabilities by ensuring that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity. . . .”<sup>38</sup> 42 U.S.C. § 12132. To the extent that a Commission decision regarding the installation of a smart

meter prevents a customer from the benefits of access to electricity, the ADA requires the Commission to take action to avoid such an outcome.

32. Petitioner will argue that under the ADA, the opt-out program is insufficient because a) businesses are not included, b) the radio frequencies from smart meters penetrate all materials and tissues except metal and therefore even if an individual or individual business is able to opt-out, the radio frequencies of neighboring smart meters and collecting stations are penetrating an individual's home and her/his business or the businesses s/he patronizes, c) the voltage transients from digital and smart meters will pass through a home or business, whether or not that particular home or business has a smart meter, d) the radio frequency waves from smart meters amplify when they intersect, thus making the total dose of radiation much higher in a home, business, or neighborhood than the dosage from a single meter in isolation, e) in an area like a downtown where there are a lot of reflective surfaces—glass, asphalt, concrete, etc.—the waves reflect off the surfaces and intersect more often and thus amplify more strongly than in an area where there are fewer reflective surfaces and where buildings are spaced more widely, thus causing the same health effects that smart meters cause within a building, sometimes even more strongly, thus making it impossible for a person who is immediately physiologically affected by smart meter radiation to travel through or spend time in these areas even if they do not go into a building without experiencing harm to their health—and that this also impinges on a person's right to freedom of assembly and association, and f) that the addition of smart meter

radiation to areas already strongly filled with other radio frequencies from things such as Wi-Fi, saturates an area like a downtown so completely that it makes it impossible for a person who is immediately physiologically affected by smart meter radiation to travel through or spend time in these areas even if they do not go into a building without experiencing harm to their health.

33. Petitioner will argue that under the First Amendment to the U.S. Constitution she has the right to freedom of association and freedom of religion; that the installation of smart meters on buildings prevents her from freely associating with religious and other groups protected under the First Amendment; that the lack of an opt-out for businesses prevents her from freely associating with religious and other groups protected under the First Amendment.

### III. Specific Issues In Event Opt Out Fees Are Enacted

Petitioner has set forth in the preceding sections the general reasons why opt-out fees should not be legal in Michigan. However, in the event an opt-out fee schedule is nonetheless to be implemented, Petitioner wishes to raise these specific, fee-oriented comments:

34. Because MPSC Rule 460.115 allows individuals and businesses to read their own meters, the proposed opt-out fee is too high.

35. Petitioner asserts that DTE will likely read smart meters manually either for a period of time after their installation or will read them manually from time to time to assure their accuracy, as is being done by other utility companies

around the United States. If opt-out fees are charged, this must be taken into account in determining the fees.

36. Where there are banks of meters, or more than one meter in close proximity to another, there is clearly going to be a major saving of meter-reader time, and therefore the proposed opt-out fee must take this into account and the fee be reduced. For example, if there are multiple meters on a residential structure or apartment building, the utility should not be able to charge \$15 per meter for reading each meter.

37. If Detroit Edison is like other utilities in the U.S., it will continue to manually read smart meters, at least from time-to-time if not monthly, for at least several years, negating the need for any opt-out charges for those times

38. The \$15 per month meter-reading fee is too high, whether DTE reads meters once a month or once a year. In his comments pursuant to MPSC Order U-17000, dated Jan 12, 2012, the Michigan Attorney General stated: “An “opt-out” program that requires those customers who opt out to pay an unwarranted economic penalty for doing so does not afford customers such a meaningful choice.” The Attorney General also stated that DTE’s “comments suggest that they intend to effectively penalize customers who choose to opt-out of smart meters. Presumably, under the utilities’ proposals, customers who opt-out of smart meters would be required to pay rates higher than normal.”

*Ibid.*

39. Customers who elect to opt out of smart meters should not have to pay replacement fees (the \$87 fee).

- a. Customers who still have an analog meter and elect to keep it should not incur an \$87 replacement fee as nothing is being replaced or changed.
  - b. Customers who still have an analog meter that is not being replaced should be refunded the \$74 that they paid in smart meter fees on their monthly electric bill.
40. Customers who were not given an option to opt out initially should not have to pay a fee for having their smart meter replaced with a digital or analog meter because they were not given a choice about installation. Petitioner will argue, in this connection, that most people who have had smart meters installed on their homes or businesses did not even know that a smart meter had been installed or was going to be installed. She will also argue that some people requested that Detroit Edison or its smart-meter installers, AccuRead, not install a meter on their home and were told they had no choice and a meter was installed.
41. Persons who enjoy protected legal status under ADA are exempted from payment of any opt-out fees otherwise applicable.

#### IV. Issues as to Type of Alternative Meter to Be Allowed:

Regardless of whether opt-out fees are charged, the issue arises as to what sort of alternative meter a utility customer must accept as an alternative to the smart meter. Petitioner argues that Detroit Edison's proposal that the only alternative



meter be a “digital meter” with the radios turned off is not acceptable for the following reasons:

42. Petitioner will argue that a digital meter, of the electronic type currently being offered, even with radios removed or turned off, does not adequately address health concerns because these meters contain a switched-mode power supply that emits harmonics and transient pulses that travel through the wiring of a home or business. This energy has often been characterized by experts as “dirty electricity” and there is ample evidence that this can make residents ill even when there are no intentional radio transmissions.
43. Petitioner will argue that a digital meter with radios turned off leaves the door open for privacy invasion and is not acceptable for that reason. The digital meter, with or without radio transmissions, can still monitor electrical usage down to the hour, or even in finer increments, and can store that data in its memory so that a meter reader or any other person with the right hand-held device can download the data.
44. Petitioner will argue that under the ADA, anyone who is electro-sensitive must be allowed to have an analog meter because of the voltage transients (dirty electricity) emitted by digital meters.
45. Petitioner will argue that anyone, whether qualified under the ADA or not, who wishes to keep their analog meter or have their smart meter replaced with an analog meter must be allowed to do so because of the long-term health effects of the voltage transients put out by digital meters.

46. Petitioner will argue that analog meters cannot be hacked and so are a more secure power supply.
47. Digital meters can be converted to smart meters with the simple addition of the appropriate module or software upgrade. This means that no customer is assured that a conversion to a smart meter will not take place at Detroit Edison's discretion and possibly without the customer's knowledge.
48. It costs no more to install a digital meter than a smart meter; therefore customers who have *not* already had their analog meter replaced with a smart meter and wish to have a digital meter rather than a smart meter should not be charged an \$87 fee.
49. Petitioner maintains that these arguments about opt-out fees and/or the replacement of meters in no way admit that the opt-out fee or the smart meter rollout is legal, for all the reasons listed in this document.

WHEREFORE, Petitioner asks that this Petition for Intervenor Status be granted by the Commission, and that Petitioner be treated as a party to the case.

Petitioner also asks that the Commission issue an Order halting the installation of smart meters in Michigan, at least until such time as the Commission has completed evidentiary hearings on the health, safety, and privacy effects of smart meters.

Petitioner also asks that Commission issue an Order that smart meters are voluntary in Michigan, and that no fee may be imposed for those who do not opt-in, at

least until such time as Commission has completed evidentiary hearings on the health, safety, and privacy effects of smart meters..

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Linda Kurtz', with a long horizontal flourish extending to the right.

Linda Kurtz

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Dated: September 4, 2012

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application and request     )  
of the DETROIT EDISON COMPANY     )  
seeking approval and authority to     )  
implement its proposed Advanced Metering     )     Case No. U-15645  
Infrastructure Opt Out Program.     )

PROOF OF SERVICE

I, Linda Kurtz, affirm that on September 4th, 2012, I did cause to be served, by email attachment, my Petition to Intervene, along with Proof of Service, in the above docket, on the persons identified on the attached service list.



Linda Kurtz

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Dated: September 4th, 2012

SERVICE LIST – PARTIES SERVED BY EMAIL ATTACHMENT

CASE NO. U-17053

DETROIT EDISON COMPANY

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