

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the complaint)
of Daniel Schulte against)
DTE Energy Company.)

Case No. U-20041

NOTICE OF PROPOSAL FOR DECISION

The attached Proposal for Decision is being issued and served on all parties of record in the above matter on May 3, 2019.

Exceptions, if any, must be filed with the Michigan Public Service Commission, 7109 West Saginaw, Lansing, Michigan 48917, and served on all other parties of record on or before May 24, 2019, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before June 14, 2019.

At the expiration of the period for filing exceptions, an Order of the Commission will be issued in conformity with the attached Proposal for Decision and will become effective unless exceptions are filed seasonably or unless the Proposal for Decision is reviewed by action of the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due.

MICHIGAN OFFICE OF ADMINISTRATIVE
HEARINGS AND RULES

For the Michigan Public Service Commission

**Sharon L.
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May 3, 2019
Lansing, Michigan

Sharon L. Feldman
Administrative Law Judge

STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the complaint)
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PROPOSAL FOR DECISION

I.

PROCEDURAL HISTORY

On February 22, 2018, the complainant in this matter, Daniel Schulte, filed an amended formal complaint with the Michigan Public Service Commission related to DTE Energy Company's (DTE's) October 29, 2017 disconnection of his electric service.¹ The complaint alleged violations MCL 750.383a and several administrative rules promulgated by the Commission as part of the *Service Quality and Reliability Standards for Electric Distribution Systems*,² R 460.721, R 460.722(c), R 460.724(a), and R 460.745. On February 23, 2018, the Commission's Regulatory Affairs Division determined that the formal complaint set forth a prima facie case as required by Rule 442 of the administrative rules of Practice and Procedure before the Commission, Mich Admin Code, R 792.10442. An evidentiary hearing was scheduled for May 2, 2018.

¹ The docket reflects that an earlier complaint filed January 2, 2018 was not deemed to state a prima facie case.

² See 2004 AACCS R 460.701 *et seq.*

On April 23, 2018, through its counsel, DTE requested an adjournment of the evidentiary hearing. This request was granted, and the evidentiary hearing was scheduled for June 21, 2018. On April 25, 2018, DTE filed its answer and affirmative defenses to the formal complaint, denying any wrongdoing and asserting that it acted lawfully pursuant to the applicable tariffs, rules, and regulations.

At the June 21, 2018 evidentiary hearing, the complainant appeared on his own behalf, attorney Stephen J. Rhodes appeared on behalf of DTE, and Assistant Attorney General Monica Stephens appeared on behalf of Commission Staff. Also at the evidentiary hearing, Mr. Schulte identified two additional rules he contended DTE had violated, R 460.137 and R 460.138 of the Consumers Standards and Billing Practices For Electric and Gas Residential Service. Mr. Schulte testified on his behalf and called two additional witnesses. DTE presented the testimony of five witnesses. The parties were also given the opportunity to present oral argument.

On June 26, 2018, the complainant emailed the ALJ to inquire about reopening the record to provide additional evidence regarding the date that one of the photographs in evidence was taken. By email copied to all parties, the ALJ informed Mr. Schulte that he would have to file a formal motion. On July 6, 2018, Mr. Schulte served his motion on the parties, although it was not filed with the MPSC until July 19, 2018. DTE served its response on July 26, 2018, and filed it on July 27, 2018. In its response, DTE opposed reopening the record to consider the additional evidence. Staff did not take a position on the motion to reopen the record, but left it to the discretion of the Administrative Law Judge to determine. By ruling dated August 15, 2018, the ALJ granted the request to reopen the record subject to certain conditions. Following this

ruling, an additional hearing was held on September 21, 2018, at which all parties appeared. Mr. Schulte presented additional testimony and was subject to cross-examination.

In the discussion that follows, an overview of the record and positions of the parties is presented in section II, and findings of fact and conclusions of law are presented in section III.

II.

OVERVIEW OF THE RECORD AND POSITIONS OF THE PARTIES

This section reviews the pleadings, the evidentiary record, and the additional arguments of the parties.

A. Pleadings

Mr. Schulte's complaint alleges that on a Sunday, October 29, 2017 visit to his home to install AMI meters, DTE wrongfully disconnected his power and did not reconnect his service in a timely manner. The complaint states that although Mr. Schulte objects to the AMI meters, he agreed to the installation. It states that DTE completed the installation, and that subsequently Mr. Schulte sought to keep one of the discarded analog meters. The complaint states that a DTE employee disagreed and instructed the crew to return to their trucks, and that Mr. Schulte was told that DTE would cut his wires. The complaint contends that Mr. Schulte offered to return the analog meter but the DTE employee stated: "It's too late." The complaint stated that DTE staff disconnected his service and started laughing; it characterizes this as a malicious act of revenge. The complaint states that although Mr. Schulte called DTE several times, he was more than 48 hours before his service was restored. It requests

that DTE be ordered to financially compensate him for hardship and loss caused by DTE's actions.

DTE's answer contends that after multiple unsuccessful attempts to install AMI equipment at Mr. Schulte's residence, DTE provided him with timely and otherwise proper notification that he was subject to a shutoff. It states that DTE personnel arrived at Mr. Schulte's residence on October 29, 2017 to shut off service and gave him the option of an AMI meter replacement. DTE's answer contends that Mr. Schulte initially agreed to the replacement but became abusive and threatening to DTE personnel, preventing them from completing the installation of the meters, and also that Mr. Schulte took and would not return an analog meter. DTE's answer contends that the company employee responsible for job site safety saw Mr. Schulte clench his fist "and knew from experience that the complainant was likely to become violent if Company personnel stayed." The answer asserts that DTE personnel left the with the meter installation unfinished and unsecured. It asserts that the unfinished meter installation presented safety issues, as did the complainant's retention of the analog meter.³ DTE's answer agrees that Mr. Schulte's power was restored on October 31, 2017. It asserts that DTE personnel were always as cordial and helpful as reasonably possible. DTE also cites *Detroit Edison Co v Stenman*, 311 Mich App 367 (2015).

³ DTE's answer also cites a November 2, 2017 letter to Mr. Schulte from the MPSC's compliance and investigation section providing Mr. Schulte with DTE's response to his earlier complaint call to the MPSC. The letter was not attached to Mr. Schulte's amended complaint, and is not part of the record.

B. Evidentiary Record

The evidentiary record is contained in two transcripts with a total of 210 pages and 18 exhibits, 6 exhibits submitted by the complainant and 12 exhibits submitted by DTE.⁴

1. Complainant

Mr. Schulte testified on his own behalf and called two additional witnesses.

Daniel Schulte

Mr. Schulte testified that on Sunday, October 29, 2017, several DTE trucks arrived in front of his home. He testified that one of the occupants came to his door and indicated that DTE was going to install smart meters on his house and that any refusal would result in having his power cut.⁵ Mr. Schulte stated that he told the DTE personnel that he needed some time because he was transferring data from his computer to an external drive, and requested that DTE return in one hour. He stated that the DTE individual said no, they would only give him five minutes.⁶ Mr. Schulte acknowledged that he was not happy about the circumstances. He testified that he felt uncomfortable with the number of people DTE brought to his house, stating that he took the picture in Exhibit C-1 to show the number of trucks.⁷

Mr. Schulte acknowledged that while DTE staff were installing the AMI meters, he expressed his displeasure, testifying that he said, “you ought to be ashamed of

⁴ Exhibits marked by Staff as Exhibits S-1, S-2, and S-3 were not admitted, but are the same as the

⁵ See 1 Tr 22-23.

⁶ See 1 Tr 23.

⁷ See 1 Tr 23-24, 28-29. Mr. Schulte also presented as Exhibit C-5 an affidavit from a neighbor to confirm the presence of a number of trucks. The ALJ determined that because the affiant did not appear at the hearing, the exhibit would only be given limited weight. As the following discussion shows, no weight is placed on the affidavit in this PFD.

yourself because I lost data; I'm disappointed." He stated, however, that he did not confront them in an aggressive manner, threaten them, or use foul language.⁸ He also expressly denied DTE's assertion that he clenched his fist.⁹

Mr. Schulte testified that when DTE personnel came into the yard, they pulled the meter boxes open, pulled out the interruptible air conditioning meter and the main meter, and put them on the ground. He acknowledged that he took possession of one of the analog meters and put it in his home. According to Mr. Schulte, as the DTE personnel were leaving, he asked them whether they were done, and one of the DTE personnel replied: "We're going to cut your wires." He testified that he said "if it's because of the electric meter I put in my house, you can have it. It's not important." He testified that the DTE personnel replied: "It's too late."¹⁰

As Mr. Schulte described events, after DTE personnel left his property, a few minutes later some men appeared coming from the backyard of his neighbor. He stated that one man reached up, clipped the wires, laughed, and said: "see how you like that."¹¹ Mr. Schulte presented as Exhibit C-2 a photo he testified that he took of the man cutting his wires.¹²

Mr. Schulte testified that when DTE left the new smart meters were fully installed, with no danger of electrical shock, but they still cut his wires. He testified that he immediately called DTE and was told that his wires would not be cut if the meters were

⁸ See 1 Tr 24, 28, 168.

⁹ See 1 Tr 24.

¹⁰ See 1 Tr 24.

¹¹ See 1 Tr 25.

¹² See 1 Tr 24-25.

installed. He replied that the wires were cut. He further testified that he called multiple times and DTE kept telling him that they would get to him as fast as they could.¹³

Mr. Schulte stated that he again called DTE on Monday but could not get a firm commitment as to when his power would be turned on. He stated that a DTE employee came to his home asking for the analog meter, and he presented a picture of the employee with that analog meter in his Exhibit C-4. After expressing some uncertainty about the date and time of the meter return, Mr. Schulte subsequently testified that the picture was taken on Monday, October 30, 2017, at 6:11 p.m.¹⁴ Mr. Schulte stated that the DTE employee was very nice and told him that his power should be on within a couple of hours.¹⁵

Mr. Schulte testified that on October 31, 2017, he finally drove down to One Energy Plaza and requested to speak to someone in authority. He testified that after 90 minutes, a lady came down. He testified that she told him his power had been or would shortly be turned on.¹⁶

In his testimony on cross-examination by counsel for DTE, Mr. Schulte indicated that Exhibit R-10 contains a google map that accurately depicts his neighborhood.¹⁷ He also acknowledged that he served on his local city council from 2009 to 2015, and that Exhibits R-11 and R-12 contain a council resolution and meeting minutes regarding AMI meters.¹⁸

¹³ See 1 Tr 25.

¹⁴ See 1 Tr 26-27, 29-30.

¹⁵ See 1 Tr 26-27.

¹⁶ See 1 Tr 27-28.

¹⁷ See 1 Tr 32.

¹⁸ See 1 Tr 33-34.

Also in cross-examination by counsel for DTE and Staff, Mr. Schulte acknowledged receiving communications from DTE regarding the AMI meters, but could not say whether he recognized any specific letter.¹⁹ He testified that he had some difficulties receiving all his mail due to a nearby street with a similar name and the same house number.²⁰ Asked specifically about correspondence from DTE in October of 2017, he testified that he did not recall seeing any letter from DTE that close to the date they cut his power.²¹ He also stated he never saw the shutoff notice dated October 23, 2017, Exhibit R-8, questioning why he would receive a shutoff notice with that date when his power was working on that date, and reiterating in response to the ALJ's question that he did not receive a notice of any sort from DTE on the day it cut his power.²²

During the hearing on June 21, 2018, Mr. Schulte testified that he took the photograph marked as Exhibit C-3 shortly after DTE put the meters in, but was unable to state when it was taken. He testified that he took the photograph to demonstrate that the meters were installed.²³ During the hearing on September 21, 2018, which was scheduled to address this photograph, Mr. Schulte testified that the photograph was taken on Monday, October 30, 2017 at 2:28 p.m.²⁴

William S. Bathgate

Mr. Schulte called William S. Bathgate to testify. Mr. Bathgate is an electrical engineer; his resume is Exhibit C-6. Mr. Bathgate acknowledged that he had not been

¹⁹ See 1 Tr 34-35, 46-50.

²⁰ See 1 Tr 55-56.

²¹ See 1 Tr 46-52.

²² See 1 Tr 47-48, 51-52.

²³ See 1 Tr 29.

²⁴ See 2 Tr 199.

at Mr. Schulte's house.²⁵ He testified that the meters as depicted in Exhibit C-3 would not be a risk for electrical shock or any other safety concern. He testified that Exhibit C-3 appears to have the covers and locks on the meters.²⁶ Mr. Bathgate testified that a meter that has the cover off and is not locked would be a potential safety issue.²⁷ Mr. Schulte asked that Mr. Bathgate be allowed to present a video claimed to show similar conduct by DTE employees, but the ALJ did not allow the video to be presented.

Pamela Wallace

Mr. Schulte also called Pamela Wallace for the purpose of describing an allegedly similar experience when DTE installed an AMI meter at her house. Attorney Rhodes objected to Ms. Wallace's testimony as irrelevant, and the ALJ sustained the objection.

2. DTE Electric

DTE presented five witnesses in this matter, all DTE employees.

John Jamerson

John Jamerson is a manager in Distribution Operations with DTE, and has been assigned to work on the AMI project since its inception 12 years ago. His responsibilities include the company's installation of the AMI meters, account analysis, documentation related to the installation including correspondence, instructions to the field crew, and continuous improvements to the effort to increase customer

²⁵ See 1 Tr 66.

²⁶ See 1 Tr 65.

²⁷ See 1 Tr 71.

satisfaction.²⁸ Although he was the last witness called by DTE, his testimony provides important background and is therefore discussed first.

Mr. Jamerson testified that DTE developed a series of standard letters that were sent to customers detailing the AMI meter program, the opt-out program and a letter with the MPSC rule regarding shut off or termination of service if refused access to their equipment. He characterized the letter in Exhibit R-4 as an introductory letter, the letter in Exhibit R-5 as the letter containing information on the opt-out program for customers who refused an AMI meter, and the letter in Exhibit R-6 as the “cordial letter” for customers that had not responded to prior installation attempts and prior letters.²⁹ Mr. Jamerson testified that the first letter explains that only a five-minute interruption in service is required.³⁰ He testified that DTE kept copies of each letter for each customer, and that Exhibits R-4 through R-6 are copies of the actual letters sent to Mr. Schulte in 2015 and 2016.³¹ Also, they developed a letter that explained that DTE had been to a home and requesting the customer contact DTE to make an appointment for the meter exchange or select the opt-out program.³²

Mr. Jamerson testified that in the beginning of 2017, there were approximately 62,000 customers that still needed to be upgraded to the AMI meters. He explained that to meet the company’s determination that all customers needed to have the AMI meters installed by the end of the year, DTE determined that 16-hour work days and 7-day work weeks would be required. Initially, he explained, a field investigator and a cut crew were sent out, with the field investigator deemed necessary for the safety of the

²⁸ See 1 Tr 137.

²⁹ See 1 Tr 139-140.

³⁰ See 1 Tr 138.

³¹ See 1 Tr 141-142.

³² See 1 Tr 138-140 and Exhibits R-4; R-5 and R-6.

crews. He testified that DTE subsequently discovered that when faced with termination of power, a customer would often agree to permit the meter exchange, so DTE decided that it would create a “super-crew” consisting of a field investigator, a cut crew and a field operations installer. Mr. Jamerson testified that each member of the super crew had a distinct role: the field investigator was to speak to the customer and explain the options; the electric field operations installer was to switch the meters if the customer agreed; and the cut crew was to sever service at the pole if customer continued to refuse to permit the installation.³³ Mr. Jamerson testified that a super crew went to Mr. Schulte’s home on the morning of October 29, 2017.

Mr. Jamerson testified that when DTE crews began being deployed seven days a week, they had office personnel working at the same times and would be able to be contacted. DTE also had developed on-call restoration crews that were available on Sundays. Mr. Jamerson testified that during the week most people are working and not at home, by going out on weekends DTE was able to have more success.³⁴

Addressing Exhibits R-7 and R-8, Mr. Jamerson testified that the letters in Exhibit R-7 are shutoff notices sent to customers ten days and 5 days prior to a crew being dispatched.³⁵ Additionally, if service is terminated, Exhibit R-8 is a shutoff notice for the field investigator to leave, providing contact information to restore power.³⁶

Asked about the company’s safety concern with Mr. Schulte’s retention of an analog meter, Mr. Jamerson testified that there is a safety risk with the swapping of meters. He testified that customers will keep a meter or have a meter on the side, and

³³ See 1 Tr 144.

³⁴ See 1 Tr 148-149

³⁵ See 1 Tr 142 and Exhibit R-7.

³⁶ See 1 Tr 146-147 and Exhibit R-8.

after DTE installs an AMI meter, the customer will take out the AMI meter and swap in their own meter. He stated that DTE terminates service if a foreign meter is found installed.³⁷

Robin Jennings

Robin Jennings is an Executive Customer Consultant-Hearings for DTE, who reviewed DTE records concerning Mr. Schulte's account. Based on the company records in Exhibit R-1, Ms. Jennings testified that DTE sent Mr. Schulte an AMI notification letter on July 14, 2015 and on August 6, 2015, he refused to permit installation of an AMI meter;³⁸ subsequently DTE sent a letter to Mr. Schulte advising him about the AMI opt-out program, with no response received by the company;³⁹ on November 21, 2015, DTE again dispatched a technician to install an AMI meter, which was refused.⁴⁰

Referring to the letters in Exhibits R-7, and R-8, Ms. Jennings testified that DTE records reflect that a shutoff notice was sent to Mr. Schulte advising him that his service would be disconnected if he did not consent to the AMI meter installation. She testified that the October 10, 2017 letter in Exhibit R-7 indicated that Mr. Schulte was scheduled for disconnection on or after October 23, 2017, provided a phone number he could call to arrange for AMI meter installation, and repeated the availability of the opt-out program.⁴¹

Ms. Jennings testified that the records in Exhibit R-1 show that Mr. Schulte's service was cut at the pole on October 29, 2017, and that service was restored on

³⁷ See 1 Tr 154-155.

³⁸ See 1 Tr 83 and Exhibit R-1, page 7.

³⁹ See 1 Tr 82-83 and Exhibit R-1, pages 2 and 8.

⁴⁰ See 1 Tr 82 and Exhibit R-1, pages 5-6.

⁴¹ See 1 Tr 89, Exhibit R-7

October 31, 2017. She testified that these records also reflect Mr. Schulte's November 4, 2017 requests to opt out of the AMI program and to have the separate interruptible air-conditioning meter removed, and that this work was completed on November 6, 2017.⁴²

Ms. Jennings also presented records regarding Mr. Schulte's initial call to the MPSC, including the MPSC staff's communications to DTE and DTE's response in Exhibit R-2, as well as pictures submitted by Mr. Schulte in Exhibit R-3. She also testified that Exhibit R-9 contains an email Mr. Schulte sent to a private attorney, Don Keskey, seeking assistance resolving his dispute with DTE, as well as an email sent to others.⁴³

Sheldon Stanley

Sheldon Stanley is a theft investigator with DTE. He testified that his general duties are to eradicate theft, principally in the inner city, including "pretty bad neighborhoods, people stealing electricity, violent situations, hostile situations, [and] securing safety for the public."⁴⁴ He testified that on October 27, 2017, he was assigned to escort two different departments, someone from electric field operations who installs meters and a cut crew that terminates services if someone refuses an AMI meter or the meter is inaccessible. He testified that he was put in charge of the crew because he deals with hostile customers and through years of experience "can judge characteristics when situations will go bad."⁴⁵

⁴² See 1 Tr 85 and Exhibit R-1.

⁴³ See 1 Tr 89-92.

⁴⁴ See 1 Tr 97-98.

⁴⁵ See 1 Tr 97-98.

Mr. Stanley testified that upon arrival at the complainant's home, he knocked on the door and explained they were there to install the meter. He testified that initially Mr. Schulte said it was a bad time and he needed to do something. Mr. Stanley testified that after he explained that DTE could do the installation without Mr. Schulte's presence, Mr. Schulte stated that he was doing a data transfer and asked that DTE come back. Mr. Stanley testified that he replied that DTE could not come back but would grant him time to complete the data transfer. He testified that after 20 minutes, he told Mr. Schulte that he had to cut the service because too much time had passed. He stated that Mr. Schulte then said he had completed his data transfer and proceeded to unlock the gate.⁴⁶

Mr. Stanley testified that he escorted the electric field operations person, Clara Williams, to install the meter, and that it was his job to make sure she was safe. He testified that Mr. Schulte became irritated, "saying how the meter causes cancer, we were the devil, we were evil, and we were doing the devil's work, things of that nature."⁴⁷ He testified that Mr. Schulte was standing very close to Ms. Williams and making her feel uncomfortable. Mr. Stanley testified that he repeatedly requested Mr. Schulte to back up and he refused.⁴⁸

Mr. Stanley testified that when Ms. Williams removed the analog meters, she placed them on the ground as she was doing the installation. He stated that Mr. Schulte picked up one of the analog meters and took it inside his house. Mr. Stanley testified that he informed Mr. Schulte that the meter was DTE's property, and that Mr. Schulte refused to give the meter back and was bothering the installer:

⁴⁶ See 1 Tr 99.

⁴⁷ See 1 Tr 100.

⁴⁸ See 1 Tr 99-100.

And I notified him I said it's our property, we need it. He claimed it was his. I also told him it was strongarm robbery, and he claimed he didn't want to give it back. Clara kept with the installation at that time because I still was trying to get the installation complete, and he was still refusing to give it back. So at that time me and him stopped having a conversation because she was still doing installation, but then he came back again and wouldn't back off and was making her feel uncomfortable, cursing. He never threatened, he was just calling us evil and the devil and things of that nature.⁴⁹

Asked whether anything happened to escalate the situation, Mr. Stanley testified "no," but stated that he has seen situations of this nature before. He testified that the complainant would not stop despite being told to several times. Mr. Stanley testified that he had informed Mr. Schulte that if Mr. Stanley stopped the work the power would be cut. He testified that Mr. Schulte continued and when he observed Mr. Schulte clench his fist, Mr. Stanley stepped between Mr. Schulte and Ms. Williams, and then ordered Ms. Williams to leave.⁵⁰

Mr. Stanley testified that he escorted Ms. Williams back to her truck, instructed her to wait down the block, and then instructed the cut crew to perform the cut. Because of Mr. Schulte's behavior, he instructed them to circle around the block rather than go through Mr. Schulte's yard. Mr. Stanley testified that Mr. Schulte continued with the negative pushback the entire time the crews were there. Mr. Stanley testified that there was nothing left for him to do.⁵¹

Mr. Stanley then testified that when the DTE crew left Mr. Schulte's premises, the meter facings were not on the ODC leaving them exposed and a risk for electrocution. He testified that DTE is required to put the face and to put a seal on them that is

⁴⁹ See 1 Tr 101.

⁵⁰ See 1 Tr 101-102.

⁵¹ See 1 Tr 103-104.

connected to all their IDs when they leave.⁵² He identified the photograph at page 15 of Exhibit R-1 as an example of a meter without its cover. Mr. Stanley testified that there is also a risk that customers will replace an AMI meter with an analog meter to steal electricity.⁵³ Mr. Stanley testified that the photograph identified as Exhibit C-3 does not show the condition of the meters when the DTE crew left on October 29, 2017.⁵⁴ Mr. Stanley testified that DTE cut the power at the pole because Mr. Schulte's meters were unsafe and unsecure.⁵⁵ He testified that if the installation had been complete, he would not have cut Mr. Schulte's power off because he would have had no reason to do so.⁵⁶

Asked whether Mr. Schulte offered to give the meter back to DTE before the service was disconnected, Mr. Stanley said "no," but indicated that Mr. Schulte had someone from DTE on the phone:

He, when he came out, he stated that he had someone on the phone, but I had already instructed the crew to proceed with the cut. I can not remember whether he had already cut one or was still in the bucket in the process, I don't recall. But I notified him previously if he wouldn't stop and I proceeded to do the cut, I was not going to stop the crew. ⁵⁷

Asked by the ALJ about the picture in Exhibit C-2 showing a wire being cut by an individual standing by a fence, not in a bucket truck, Mr. Stanley remembered that the truck could not be driven to the poles, so the crew had to walk in and use a long stick for the cut.⁵⁸

⁵² See 1 Tr 104.

⁵³ See 1 Tr 105.

⁵⁴ See 1 Tr 109.

⁵⁵ See 1 Tr 116.

⁵⁶ See 1 Tr 113.

⁵⁷ See 1 Tr 117.

⁵⁸ See 1 Tr 117-118

Clara Williams

Clara Williams is a senior service representative with DTE. Her job duties include installing meters for residential and commercial customers. She testified that on October 29, 2017, she was part of the crew that went to Mr. Schulte's home. She testified that Mr. Stanley first approached the home and spoke to the complainant. She testified that Mr. Stanley then told her it was safe to do the install. She testified that when she removed an analog meter, she placed it on the ground, and that the complainant then "grabbed the meter and threw it in the house."⁵⁹ She testified that she informed the complainant that he could not take the meter because it belongs to DTE:

At that time I told the customer he can't take that meter, that meter belongs to DTE. The customer start getting upset and said, this meter belongs to me, it was on my house. I told the customer that it's unacceptable, that's [DTE's] meter, and the meter does not belong to him. The customer kept saying that, oh, no, this is our meter, this is my meter, I'm putting it in the house and . . . I'm not giving it back.⁶⁰

She then testified that she had to leave the job because the customer was getting upset:

I had to leave the job because the customer was getting very upset, arguing back and forth with me, walking up on me. And I'm steady telling him that he must remove that meter from his house and give it back. And the customer kept coming up on me and walking up on me, and I asked the customer to back off so I can do my job in a [safe] manner, so I can go back home safely, because if he kept walking up on me, I can't do my job. I can hit the box and do anything and it will explode and hurt me. I want to go back home safe, too. But the customer kept coming back. At that time, Sheldon got between me and the customer and he told me to leave to go get in my car, so I left.⁶¹

⁵⁹ See 1 Tr 123.

⁶⁰ See 1 Tr 123.

⁶¹ See 1 Tr 123-124.

Ms. Williams confirmed that she felt unsafe because of Mr. Schulte's actions.⁶²

Denise Diz

Denise Diz testified that she is a senior analyst supervising the Executive Consumers Affairs Center. She testified that on Tuesday, October 31, 2017 she spoke with Mr. Schulte at the DTE offices. She testified that the DTE offices are not set up for customers. She testified that when Mr. Schulte arrived and asked to speak with someone, she reviewed his account and was aware that his power was turned off and the reported circumstances. Ms. Diz testified that she had security escort her to meet with Mr. Schulte, but further testified that Mr. Schulte did not act inappropriately.⁶³

She testified that she informed Mr. Schulte that at the present time, DTE staff were in route to Mr. Schulte's home and most likely by the time he returned the service would already be on.⁶⁴ She testified that he thanked her and left.⁶⁵

C. Additional Argument

The parties were given the opportunity to present opening and closing argument. According to Mr. Schulte, DTE treated him unfairly and violated the law by interrupting his power when there was no safety issue and it had no need to do so. As noted above, at the outset of the hearing, Mr. Schulte identified R 460.137 and R 460.138 as rules he contends the utility violated. In his closing argument, he specifically cited R 460.138, indicating he would drop the other.

Mr. Schulte argues that his narrative of the events of October 29, 2017 is the correct one, that after DTE's crew finished installing the meters, they told him they were

⁶² See 1 Tr 125.

⁶³ See 1 Tr 135-136.

⁶⁴ See 1 Tr 128-130.

⁶⁵ See 1 Tr 130.

going to cut his power, that he then offered to give back the analog meter, and was told it was too late. He contends that since there was no safety issue, the disconnection must have been punitive. Mr. Schulte believes the disconnection was in retaliation for positions he took while on his local city council.

Mr. Schulte argues that the meter covers were on when the power was cut. He points to the lack of field orders in DTE records reflecting that covers were put on the meters as part of the restoration of his service. He asserts that under the circumstances DTE describes, “if there was all this hostility that they’re claiming existed,” they would have come back with supporting personnel and there would be a work order or other documentation.⁶⁶

DTE argues that it has done nothing wrong. DTE relies on Mr. Jamerson’s testimony to explain why DTE had so many employees at Mr. Schulte’s house on October 29, 2017. It acknowledges a factual dispute with Mr. Schulte over whether the covers were on the meters when DTE cut the service, but argues that there is no dispute that if the covers were off, an unsafe condition existed. DTE argues in this context that it is inappropriate to draw an inference from the lack of documentation regarding any missing meter covers. It also argues that there is no factual dispute that Mr. Schulte took an analog meter and did not return it until the following day. DTE cites the shutoff notice in Exhibit R-7. It argues that the restoration of service to Mr. Schulte was as prompt as reasonably practical once the safety concern was resolved.

Regarding the statute and rules cited in Mr. Schulte’s complaint, DTE argues that the statute is a criminal statute outside the Commission’s jurisdiction and is inapplicable to DTE’s operation of its own equipment, and that the cited regulations are not relevant.

⁶⁶ See 1 Tr 176-177.

DTE argues that Mr. Schulte has opposed smart meters for some time, but denies that DTE was taking some form of revenge against Mr. Schulte when DTE personnel came to his house on October 29, 2017. Instead, DTE argues that counsel for DTE raised this point only because counsel happened to recall Mr. Schulte from years ago, and thus put this information in the company's answer.⁶⁷

Staff argues that it does not believe DTE violated Commission rules. It argues that the statute and rules cited in the complaint are inapplicable, and identifies R 460.137, R 460.138, and R 460.141 as potentially applicable rules. It argues that DTE's shutoff was authorized under R 460.137(e) and (g), and does not find that there was improper notice under either R 460.138 and R 460.141. It argues that DTE is not required to make a phone call, and that DTE would not have known that Mr. Schulte was having difficulty receiving mail. Regarding the meter covers, Staff states that there is no concrete evidence regarding whether the covers were definitely placed on the meter, acknowledging the photograph of the meters Mr. Schulte presented but arguing that at least as of the date of the first evidentiary hearing, the date of the picture was not established.

III.

DISCUSSION

The burden of proof in complaint cases is assigned in R 792.10446 which provides:

Rule 446. The complainant generally has the burden of proof as to matters constituting the basis for the complaint and the respondent has the burden of proof as to matters constituting affirmative defenses. The burden of

⁶⁷ See 1 Tr 20, 180.

proof, however, may be differently placed or may shift, as provided by law or as may be appropriate under the circumstances.

In this case, absent any argument for a different result, the ALJ assumes that Mr. Schulte bears the burden of proof to establish a violation of a statute or rule administered by the Commission. In the discussion that follows, the factual record is addressed in section A, and the cited and applicable Commission rules are discussed in section B.

A. Findings of Fact

Many of the facts are not in dispute, or are immaterial to resolution of this matter. Where a material dispute exists, the findings of fact are based on the preponderance of the evidence in the evidentiary record.

As part of its AMI meter replacement program, DTE attempted to replace the analog meters at Mr. Schulte's home with AMI smart meters. DTE records show that DTE sent letters to Mr. Schulte explaining the AMI meter replacement and its opt-out program on July 14, 2015 and on September 22, 2015, and that Mr. Schulte (or someone at his residence) refused the meter on at least two occasions, August 6, 2015, and November 21, 2015.⁶⁸

By October of 2017, DTE had replaced all but 62,000 analog meters on its system. Mr. Jamerson was tasked with developing a plan to complete the replacements by the end of the year.⁶⁹ As part of this plan, DTE records reflect that letters were sent to Mr. Schulte on October 10, 2017 and October 17, 2017, although Mr. Schulte apparently did not receive these letters. These letters, included in Exhibit R-7, indicated DTE had been unable to gain access to its metering equipment to upgrade the meter,

⁶⁸ See Exhibit R-1, pages 2, 3, 5, 7, and 8, and Jennings, 1 Tr 81-83.

⁶⁹ See 1 Tr 140, 143.

and that Mr. Schulte's service was scheduled for disconnection on October 23, 2017. The letters also provided a number to call to prevent interruption of service, and the second page of each letter was entitled "DTE Electric Shut Off Notice."

On Sunday, October 29, 2017, DTE sent one of the "super crews" assembled by Mr. Jamerson to Mr. Schulte's residence to complete the upgrade or terminate his service if he continued to refuse AMI meters. The field investigator, Mr. Stanley, explained this to Mr. Schulte. Rather than have his service terminated, Mr. Schulte reluctantly agreed to the installation, but asked that they come back in an hour because at this time, Mr. Schulte was in the middle of a data transfer from a failing hard drive to an external drive.⁷⁰ His request was denied, although he was given some time, between 5 and 20 minutes, to complete or pause the data transfer.⁷¹

Ms. Williams was the electric field operations installer that was responsible for switching the meters at Mr. Schulte's home, and she began the installation.

Mr. Schulte by his own admission was not polite to the crew, saying they were "doing the devil's work," but he did not swear or use foul language and did not threaten them.⁷² He also hovered over Ms. Williams while she was working. Ms. Williams testified that she explained that it was dangerous for him to be so close and that she repeatedly asking him to "back-off", while Mr. Stanley testified that he was the one telling Mr. Schulte to back away while Ms. Williams worked.⁷³

⁷⁰ See 1 Tr 23.

⁷¹ According to Mr. Schulte, Mr. Stanley gave him only 5 minutes, which was insufficient, and he lost data. According to Mr. Stanley, he gave Mr. Schulte 20 minutes before determining enough time had passed. Mr. Stanley also testified to his belief that Mr. Schulte had completed his data transfer. While Mr. Schulte expressed his dissatisfaction with the data loss, he did not seek relief on that basis.

⁷² See 1 Tr 101, 107, 168.

⁷³ There is no explanation in the record why the crew did not insist that Mr. Schulte remain a safe distance away as a prerequisite for any work to proceed.

Ms. Williams continued the installation despite Mr. Schulte's continued comments. At some point after the analog meters were removed and placed on the ground, Mr. Schulte picked up one of the meters and took it into his house. Mr. Stanley testified that while Ms. Williams worked, he informed Mr. Schulte that the meter was the property of DTE and must be returned; Ms. Williams testified that she argued with Mr. Schulte regarding the analog meter while she was working, until Mr. Stanley stepped between her and Mr. Schulte. In response to Mr. Schulte taking the meter, Mr. Stanley admittedly accused Mr. Schulte of "strongarm robbery."⁷⁴ At some point, Mr. Stanley instructed Ms. Williams to leave, and instructed the cut crew to cut the power to Mr. Schulte's home at the pole.

After Mr. Stanley informed Mr. Schulte that his power was going to be cut, Mr. Schulte told him he would return the analog meter, but was told that it was too late.⁷⁵ Mr. Schulte pleaded with Mr. Stanley not to cut his power; as described in Mr. Schulte's letter to Mr. Keskey, Exhibit R-9, and as confirmed by Mr. Stanley, Mr. Schulte called DTE before his power was cut in an effort to resolve the situation, but Mr. Stanley decided that he would not stop the disconnection after he had given the disconnection order.⁷⁶

Although Mr. Jamerson had prepared shutoff notices of the form included in Exhibit R-8 to be left at customer premises if service was disconnected because a customer refused access,⁷⁷ DTE personnel did not leave any shutoff notice with Mr.

⁷⁴ See 1 Tr 101.

⁷⁵ See 1 Tr 24, 90.

⁷⁶ As noted above, Mr. Stanley originally explained this decision in the context of having a man in a bucket truck, but subsequently acknowledged that no bucket truck was used to cut Mr. Schulte's power, as shown in Exhibit C-2.

⁷⁷ See 1 Tr 146, 147-148.

Schulte when they disconnected his power on October 29, 2017.⁷⁸ Unlike the notices in Exhibit R-7, which DTE records reflect were mailed to Mr. Schulte, DTE's records do not show that it left this notice with Mr. Schulte when it cut his power. DTE did not present any evidence from Mr. Stanley or Ms. Williams that a notice was left at the premises, and Mr. Schulte testified persuasively that DTE did not leave him this notice.⁷⁹

Mr. Schulte immediately began calling DTE to have his power restored, continuing to call on Monday, October 30, 2017.⁸⁰ Prior to the restoration of his service, Mr. Schulte also complained to the MPSC, took additional photos, contacted an attorney, and went to DTE's headquarters. As shown in Exhibit R-2, Mr. Schulte's complaint to the MPSC was made before 9:00 a.m. the morning of October 30, 2017. As shown in Exhibit C-3 and as supported by Mr. Schulte's testimony, at approximately 2:30 p.m. on the afternoon of October 30, 2017, Mr. Schulte also took a picture of the meters showing the covers on and the meters tagged. As shown in Exhibit R-9, Mr. Schulte wrote to an attorney that afternoon, at approximately 4:00 p.m., describing his experiences. Later that day, at approximately 6:00 p.m., a DTE employee went to Mr. Schulte's home and retrieved the analog meter from Mr. Schulte.⁸¹ Mr. Schulte took a photograph of the individual to whom he gave the analog meter, which is Exhibit C-4.

On Tuesday morning, October 31, 2017, Mr. Schulte went to DTE's headquarters and asked to speak with someone. He eventually spoke with Ms. Diz, as she testified.

⁷⁸ See 1 Tr 47-48. As Mr. Schulte correctly pointed out at the hearing, the form notice was dated for October 23, 2017, rather than October 29, 2017. Mr. Jamerson explained why the notice was not dated correctly; it would also have been a simple matter to leave the date blank and to instruct personnel to fill in the correct date upon shutoff, or even to strike through the incorrect date and write in the correct date. Because no such notice was left with Mr. Schulte on October 29, 2017, the date on the notice is immaterial.

⁷⁹ See 1 Tr 47-48.

⁸⁰ See 1 Tr 25-26.

⁸¹ See 1 Tr 26, 30.

On October 31, 2017 at 9:47 a.m. an order to restore power at Mr. Schulte's home was entered by DTE, and his power was restored later that morning.

The central factual question to resolve in this matter is whether the meter covers were on the meters when DTE employees left the premises. The ALJ finds by a preponderance of the evidence, based on Mr. Schulte's persuasive testimony and other circumstances presented, that the meter covers were on the meters and properly locked and tagged when DTE employees left the premises on October 29, 2019, prior to cutting Mr. Schulte's service line.

The ALJ finds Mr. Schulte's testimony generally credible that the meter covers were on when the DTE employees left his property.⁸² Mr. Schulte's testimony is further supported by the photograph in Exhibit C-3, which was taken prior to the restoration of his service. And, as Mr. Schulte argues, nothing in the field notes in DTE's records indicate that the meter covers were left lying on the ground, as Mr. Stanley stated in his testimony, and nothing in DTE's records indicate that the meter covers were replaced as part of the restoration of Mr. Schulte's service.⁸³ Indeed, it is more than a little surprising that DTE employees would leave meter covers lying on the ground at Mr. Schulte's house, given that these employees knew that Mr. Schulte had already taken an analog meter.

Also supporting his testimony, it is clear from the circumstances that Mr. Schulte wanted his power turned back on as soon as possible, yet in his complaint to the MPSC, and in his email to an attorney, both prior to the restoration of his service, he never identified missing meter covers as something that the company needed to

⁸² See 1 Tr 25, 166-167, 168-169, 171-172, 173; Exhibit C-3.

⁸³ See Diz, 1 Tr 152-153.

redress. Indeed, in the email Mr. Schulte wrote to an attorney on the afternoon of October 30, 2017, which DTE presented as Exhibit R-9, Mr. Schulte clearly states that the meters were installed.⁸⁴ Mr. Schulte was clearly annoyed by DTE's presence at his house, and unhappy that he needed to permit the installation or have his service disconnected. It is difficult to believe that if DTE employees left parts of the meter lying in his yard, he would have failed to mention this significant fact in his recitation of his grievances. In contrast, Mr. Stanley did not have a clear recollection of events at Mr. Schulte's house that day, since he referred more than once to cutting the power using a bucket truck, until it was pointed out to him that the line was cut by an employee standing on the ground. Additionally, Ms. Williams never expressly stated that she left the meter covers on the ground, testifying only that an uncovered meter is a safety hazard.

Thus, acknowledging the disputed testimony on this point, the ALJ finds by a preponderance of the evidence that DTE employees did not leave the AMI meter covers on the ground when they left Mr. Schulte's property, but instead the meters were fully installed and the covers were properly attached as shown in Exhibit C-3.

The ALJ further finds that while Mr. Schulte was rude and annoying on October 29, 2017, he was not violent or threatening. Mr. Schulte acknowledged his rude comments, but testified persuasively that he did not threaten or act violently, and did not clench his fist.⁸⁵ The email DTE presented as Exhibit R-9, which Mr. Schulte wrote to an attorney on October 30, 2017, also contains a representation from Mr.

⁸⁴ DTE's records regarding Mr. Schulte's complaint to the MPSC, Exhibit R-2, shows that DTE first responded to the complaint on October 30, 2017, which tends to explain why Mr. Schulte took the photograph of the installed meters, and why he mentioned this in his letter to an attorney, Exhibit R-9.

⁸⁵ See 1 Tr 24, 63.

Schulte that he would never be threatening or violent. The safety issue Ms. Williams described was not the threat of violence from Mr. Schulte, but the danger of working with electricity with someone standing too close to her.⁸⁶ Mr. Schulte did not lose his temper during a more than 90-minute visit to DTE headquarters, as confirmed by Ms. Diz, and the ALJ observed that Mr. Schulte did not lose his temper in the hearing room notwithstanding numerous adverse evidentiary rulings.

The ALJ further finds that Mr. Schulte did offer to return the analog meter prior to DTE disconnecting his service, finding his testimony on this point persuasive.⁸⁷ Putting aside the questions of DTE's legal rights and responsibilities as discussed in section B below, the ALJ concludes that DTE's disconnection of Mr. Schulte's service on October 29, 2017, could have been avoided. Mr. Schulte's behavior and statements on that date show that he would have done whatever he believed was necessary to keep his power on. Mr. Schulte's phone call to DTE prior to the cutting of his power provided a clear opening for DTE personnel to pause and seek resolution. Nonetheless, Mr. Stanley had predetermined that he would not withdraw his order for the power to be cut, once he had given that order.

⁸⁶ See 1 Tr 123-124.

⁸⁷ See Schulte, 1 Tr 24, 41; Exhibit R-2. The ALJ is also skeptical of DTE's claim that Mr. Schulte's retention of the analog meter created a safety concern that required his service to be disconnected. While it may be that an analog meter is frequently used to steal electricity, it is difficult to reconcile the company's claim that Mr. Schulte could have stolen electricity by substituting the analog meter for his *transmitting* AMI meter with the capabilities of transmitting AMI meters in detecting tampering. Note that in its October 17, 2013 order in Case No. U-15768, the Commission found that AMI meters provide tampering notification and theft detection, citing testimony that DTE provided in that case. See October 17, 2013 order, page 19. Mr. Stanley also claimed that if the meter installation was completed, he would not have cut Mr. Schulte's power because he would have had no reason to do so. See 1 Tr 113-114. Additionally, the company's professed safety concern is undermined in this case by its failure to leave a shutoff notice with Mr. Schulte on the day it disconnected his service, because such notices are required to contain a statement warning that customer efforts to restore service are unlawful and dangerous. See R 460.141(7).

B. Conclusions of Law

Mr. Schulte initially alleged that DTE violated MCL 750.383a, a criminal statute that prohibits tampering with utility infrastructure:

A person, without lawful authority, shall not willfully cut, break, obstruct, injure, destroy, tamper with or manipulate, deface or steal any machinery, tools, equipment, telephone line or post, telegraph line or post, telecommunication line, tower, or post, electric line, post, tower or supporting structures, electric wire, insulator, switch or signal, natural gas pipeline, water pipeline, steam heat pipeline or the valves or other appliances or equipment appertaining to or used in connection without those lines or any other appliance or component of the electric, telecommunication or natural gas infrastructure that is the property of a utility. A person who violates this section is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$5,000.00 or both.

As DTE argues, the MPSC does not have jurisdiction over alleged violations of the criminal code.

In his amended complaint, Mr. Schulte also cited four specific rules, R 460.721, R 460.722(c), R 460.724(a), and R 460.745, which as noted above are part of the Commission's service quality standards for electric service. R 460.721 provides:

An electric utility shall plan to operate and maintain its distribution system in a manner that will permit it to provide service to its customers without experiencing an unacceptable level of performance as defined by these rules.

An "interruption" is defined in R 460.702(l) as "the full or partial loss of service to 1 or more customers for longer than 5 minutes." R 460.722 provides that it is an unacceptable level of performance for the utility to fail to meet the listed service interruption standards, including the standard in subsection (c):

Considering data including only normal conditions, an electric utility shall restore service within 8 hours to not less than 90% of its customers experiencing service interruptions.

R 460.745 provides an additional standard for service restorations under normal conditions:

Unless an electric utility requests a waiver pursuant to part 5 of these rules, an electric utility that fails to restore service to a customer within 16 hours after an interruption that occurred during normal conditions shall provide to any affected customer that notifies the utility of the interruption a bill credit on the customer's next bill. The amount of the credit provided to a residential customer shall be the greater of \$25.00 or the customer's monthly customer charge. The amount of the credit provided to any other distribution customer shall be the customer's minimum bill prorated on a daily basis.

Because these rules apply to service interruptions, rather than intentional decisions by the utility to disconnect service, the ALJ concludes that these rules are not applicable to the circumstances presented in this case.

R 460.724 specifies minimum call answer times, including the requirement in subsection (a) that the utility "have an average customer call answer time of less than 90 seconds." As defined in R 460.702(b):

"Answer" means that a utility representative, voice response unit, or automated operator system is ready to render assistance or ready to accept information necessary to process the call. An acknowledgment that the customer is waiting on the line does not constitute an answer.

While Mr. Schulte may have waited significantly longer on one or more of his phone calls to reach a person who could help him, this rule applies to "average" response times, rather than the response time for any individual call, and on this record, there is no evidence this rule was violated.

Part 8 of the Public Service Commission's Customer Standards and Billing Practices for Electric and Natural Gas Service that were in effect until December 11, 2017 governed the procedures for shutoff and restoration of service. At the hearing, after inquiry by the ALJ, Mr. Schulte also identified two additional rules within this part

that he contends that DTE violated, R 460.127 and R 460.138.⁸⁸ Staff also identified R 460.141 as relevant, without concluding the rule had been violated. Since the Part 8 rules in effect at the time of the shutoff and restoration of service are relevant to this dispute, they are reviewed below.

Rule 36, R 460.136, provided that a utility “may shut off service temporarily for reasons of health or safety or in a state or national emergency.” In this case, DTE alleges that it shut off Mr. Schulte’s service for safety reasons, contending both that a safety hazard was presented because the meter covers had not been installed at the time DTE employees left the premises, and that a safety hazard existed because by possessing the analog meter, Mr. Schulte could attempt to replace one of the AMI meters with the analog meter. Under this rule, when service is shut off for reasons of health or safety, the utility is required to comply with the notice provisions of R 460.139(a), (b), and (i), as discussed below.

Rule 37, R 460.137, states reasons DTE may shut off service. Rule 37(d), R 460.137(d) provided that DTE may shut off service to a customer that has refused to arrange access at reasonable times for the purpose of inspection, meter reading, maintenance, or replacement of equipment that is installed upon the premises or for the removal of a meter. Under this rule, before a utility may shut off service, it must comply with several notice provisions as specified in Rules 38, 39, and 41, R 460.138, R 460.139, and R 460.141.

⁸⁸ The administrative rules were revised on December 11, 2017. The allegations in this matter will be using the previous version of the Rules as they were in affect at the time of the allegations in this matter.

Under Rule 38, R 460.138, not less than 10 days before a proposed shutoff of service, a utility shall send a notice to the customer by first-class mail or personal service. Rule 39, R 460.139 specified the items that must be included in a notice.

Rule 40, R 460.140, provides that a utility shall not shut off service on a day or a day immediately preceding a day, when the services of the utility are not available to the general public for the purpose of restoring services.

Rule 41, R 460.141, governs the manner in which a shut off may occur. It provides that after notice has been provided pursuant to R 460.139 and if the customer does not respond, the employee may shut off service. Under this rule, if the utility employee shuts off service, the employee is required to leave a notice in a conspicuous place upon the premises. The notice shall state that service has been shut off, the address and telephone number of the utility where the customer may arrange to have service restored and that any efforts by the customer to restore his or her own service are unlawful and dangerous. Rule 42, R 460.142, governs shutoffs when the utility has remote turn off and restoration capability, and Rule 43, R 460.143 prohibits a shutoff in certain circumstances not applicable here.

Rule 44, R 460.144 provides for the restoration of service. It states that after a utility has shut off service, it shall restore service promptly upon the customer's request when the cause has been cured. When a utility is required to restore service at the customer's meter manually, the utility shall make every effort to restore service on the day the customer requests restoration. Except for reasons beyond its control, including excavation or reconnection at a pole, the utility shall restore service not later than the first working day after the customer's request.

The first question to address under the Part 8 rules is whether DTE was entitled to shut off service to Mr. Schulte on Sunday, October 29, 2017. DTE contends that Mr. Schulte's power was shut off for safety concerns because the installation of the AMI meters had not been completed to a safe standard. Specifically, the installer had not been able to replace the covers and place the tags because of Mr. Schulte's actions. Mr. Schulte contends that the meters were covered and tagged before DTE personnel left his property and the power was terminated out of spite by DTE.

If the meters were uncovered, they would present a health and safety hazard as testified to by Mr. Schulte's own witness as well as the DTE personnel. This safety hazard would be sufficient reason for DTE to shut off service as provided in Rule 36. Consistent with the findings of fact made above, however, because the ALJ concludes that the meter installation was complete when Mr. Schulte's power was disconnected, there was no health or safety hazard presented by the AMI meters when DTE disconnected Mr. Schulte's service.

DTE also contends that Mr. Schulte's retention of the analog meter created a safety issue. As discussed above, the ALJ finds that prior to the disconnection, Mr. Schulte offered to give back the meter to avoid having his power disconnected, thus eliminating any safety concern. As noted above, the sincerity of Mr. Schulte's offer was demonstrated by his phone call to DTE prior to the disconnection, which provided an opportunity for the matter to be resolved. That Mr. Schulte was able to take a picture of the DTE employee cutting his power line also shows there was a time lag between his offer and the disconnection of his service. Mr. Stanley also testified that but for the

claimed unfinished installation, he would not have had a reason to cut Mr. Schulte's power.⁸⁹

When it arrived at Mr. Schulte's property on October 29, 2017, DTE planned to shut off Mr. Schulte's service if he did not permit access for the purpose of installing the AMI meters. Rule 37(d) permits a shutoff on this basis. Because DTE personnel endured Mr. Schulte's comments long enough to complete installation of the AMI meters, however, DTE cannot rely on a refusal to permit access as justification for the shutoff.

The next question is whether DTE complied with the notice requirements of the rules. In this case, DTE sent two letters by first class mail to Mr. Schulte at his residential address, one dated October 10, 2017 and one dated October 17, 2017, informing him that his electrical service was scheduled for disconnection on or after October 23, 2017. The notice provided the reason for the proposed shutoff, and contact information to make arrangements for installation of the AMI meters or to participate in the opt-out program. The notice also included information about filing a complaint with the Michigan Public Service Commission.⁹⁰ While Mr. Schulte may not have received these notices, he did not contend that the form of the notices was deficient.⁹¹ Had DTE actually disconnected Mr. Schulte's power because he refused to provide access for the purposes of replacing the AMI meter, DTE provided proper advance notice.

Regardless of the reason DTE disconnected service on October 29, 2017, however, it was also required to leave a notice with Mr. Schulte stating the reason for

⁸⁹ See 1 Tr 113-114.

⁹⁰ See Exhibit R-7.

⁹¹ Note that in the Commission's November 21, 2018 order in Case No. U-18474, DTE Electric was directed to revise its shut-off notice to conform to the requirements of the current rules, which would resolve any deficiency that may be present in the notices in Exhibit R-7.

the disconnection and providing contact information to have service restored. As discussed above, for a disconnection based on a safety concern, this notice is expressly required by Rule 36; for all disconnections, this notice is required by Rule 41. Thus, assuming DTE personnel sincerely believed there was a safety threat from Mr. Schulte's retention of the analog meter, and that they had no obligation to resolve the matter short of disconnecting his service, DTE was still required to leave notice at Mr. Schulte's premises stating the reason for the disconnection, which DTE did not do. Alternatively, had DTE personnel believed the prior notices mailed to Mr. Schulte justified the shutoff, they were still required to leave a notice, which they did not do. Thus, the ALJ concludes that DTE failed to comply with the same-day notice requirements of the rules. Note that the notice required by R 460.141 contains an important safety caution, that "any efforts by the customer to restore his or her own service is unlawful and dangerous."

The final question is whether DTE restored Mr. Schulte's service in accordance with the rules. His service was shut off on a Sunday. Normally, this would be outside the times that the services of the utility are not available. However, Mr. Jamerson testified that DTE planned to have service personnel available to restore service on that Sunday. Although Mr. Schulte testified that he was able to speak to a representative from DTE on the day that his service was shut off, DTE seemingly made no effort to restore his service on that date. Indeed, DTE did not issue an order to restore his service until Tuesday morning, October 31.

When a utility shuts off service, it is required under Rule 44 to restore service promptly upon the customer's request when the cause has been cured. There is no

doubt in this matter that Mr. Schulte requested that his power be restored on October 29, 2017. He offered to turn over the analog meter immediately. Also, it is clear from the record that any safety concern was alleviated by October 30, 2017 because DTE had possession of the analog meter and Mr. Schulte's meters were covered and tagged. However, DTE did not restore Mr. Schulte's service until October 31, 2017.

When a utility is required to restore service at the customer's meter manually, the utility shall make every effort to restore service on the day the customer requests restoration. Except for reasons beyond its control, the utility shall restore service not later than the first working day after the customer's request. In this case, Mr. Schulte requested that his service be restored on October 29, 2017. He had clearly satisfied every possible safety concern by October 30, 2017. However, DTE did not restore his service until October 31, 2017. DTE has provided no reasonable explanation as to why the service was not promptly restored on October 29 or by October 30, 2017, at the latest. DTE's actions in failing to restore service until October 31, 2017 without any reasonable explanation is a violation of Rule 460.144.

III.

CONCLUSION

For the reasons set forth above, the undersigned recommends that the Commission adopt the above proposed findings of fact and conclusions of law, including this PFD's finding that DTE had completed the meter installation at the time it shut off Mr. Schulte's service, and that Mr. Schulte agreed to give back the analog meter before

his service was cut, and this PDF's conclusions that DTE failed to comply with the same-day notice provisions of R 460.136 and R 460.141, and failed to promptly restore Mr. Schulte's service as required by R 460.144. Any arguments not specifically addressed in this Proposal for Decision are deemed irrelevant to the finding and conclusions recited above.

MICHIGAN OFFICE OF ADMINISTRATIVE
HEARINGS AND RULES
For the Michigan Public Service Commission

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Administrative Law Judge

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