

DEPARTMENT OF LABOR AND ECONOMIC GROWTH

PUBLIC SERVICE COMMISSION

BILLING PRACTICES APPLICABLE TO NON-RESIDENTIAL ELECTRIC AND GAS CUSTOMERS

(By authority conferred on the public service commission by section 2 of 1909 PA 300, section 5 of 1919 PA 419, and section 6 of 1939 PA 3, MCL 460.55, MCL 460.6, and MCL 462.2(12).)

PART 1. GENERAL PROVISIONS

R 460.1601 Applicability; purpose.

Rule 1. (1) These rules apply to non-residential retail service provided by electric and gas utilities subject to the jurisdiction of the commission.

(2) These rules are intended to promote safe and adequate service to the public and to provide standards for uniform and reasonable practices by electric and gas utilities in dealing with non-residential customers.

(3) These rules do not relieve a utility from any of its duties under the laws of the state of Michigan.

History: 2008 AACCS.

R 460.1602 Definitions.

Rule 2. As used in these rules:

(a) "Actual meter reading" means a gas or electric meter reading that is based on the customer's actual energy use during the period reported and that was performed by a company representative, by the customer and communicated to the company by mail, telephone, fax, a secure company website, or other reasonable means, or that was transmitted by an automated meter reading device.

(b) "Applicant" means a person over the age of 18 or a business entity requesting non-residential retail utility gas or electric service in the name of that person or entity.

(c) "Billing error" means an undercharge or overcharge caused by any of the following:

(i) An incorrect actual meter read by a company representative.

(ii) An incorrect remote meter read.

(iii) An incorrect meter constant or pressure factor.

(iv) An incorrect calculation of the applicable rate.

(v) A meter switched by a utility or utility representative.

(vi) An incorrect application of the rate schedule.

(vii) Other similar act or omission by the utility in determining the amount of a customer's bill. An undercharge or overcharge that is caused by a non-registering meter, a metering inaccuracy, or the use of an estimated meter read or a customer read is not a billing error.

(d) "Commission" means the Michigan public service commission.

(e) "Complaint determination" means the written decision of a hearing officer after an informal hearing.

(f) "Customer" means a purchaser of electricity or natural gas that is supplied or distributed by a utility for non-residential purposes, including service to schools and centrally metered apartment buildings.

(g) "Existing customer" means a customer who has been receiving service continuously for at least the last 6 months.

(h) "Hearing officer" means a notary public who is qualified to administer oaths to conduct informal small commercial customer complaint hearings against the utility company and who is on a list on file with the commission.

(i) "Informal appeal" means an appeal of a complaint determination of a hearing officer made to the commission staff.

(j) "Informal hearing" means a dispute resolution process for small commercial customers that is administered by a hearing officer.

(k) "Meter" means a device that measures the quantity of gas used by a customer, including a device that measures the heat content of gas or a device that measures and registers the amount of electrical power used.

(l) "Positive identification information" means a consistently used appropriate identification including, but not limited to:

(i) A driver's license or ID card issued by a state, U.S. military card, military dependent's ID card, native American tribal document, or passport.

(ii) Articles of incorporation, tax identification documents, business license, certificate of authority, or similar documents proving identity of a business.

(m) "Regulation officer" means a member of the commission staff who resolves complaints in accordance with these rules.

(n) "Settlement agreement" means a documented agreement that is entered into by a customer and a utility and that resolves any matter in dispute or provides for the payment of amounts not in dispute over a reasonable period of time.

(o) "Small commercial customer" means a non-residential customer with usage of 200 Mcf of gas or less per year or 15,000 kWh of electric usage or less per year.

(p) "Space heating season" means the period from November 1 through March 31.

(q) "Unauthorized use of utility service" means theft, fraud, interference, or diversion of service, including but not limited to, meter tampering (for example, any act which affects the proper registration of service through a meter), bypassing (for example, unmetered service that flows through a device connected between a service line and customer facilities), and service restoration by anyone other than the utility or its representative.

(r) "Utility" means a person, firm, corporation, cooperative, association, or other legal entity that is subject to the jurisdiction of the commission and that distributes or sells electricity or natural gas for non-residential use.

History: 2008 AACCS.

R 460.1603 Discrimination prohibited.

Rule 3. A utility shall not discriminate against or penalize a customer for exercising any right granted by these rules.

History: 2008 AACCS.

R 460.1604 Form of proceedings.

Rule 4. The informal procedures required by these rules shall not constitute a contested case as defined by section 3 of 1969 PA 306, MCL 24.203.

History: 2008 AACCS.

R 460.1605 Additional rules.

Rule 5. A utility may adopt additional rules governing relations with its customers that are reasonable and necessary and that are consistent with these rules. The utility's rules shall be an integral part of its tariffs and shall be subject to approval by the commission. If there is a conflict between these rules and a utility's rules or tariffs, these rules govern.

History: 2008 AACCS.

PART 2. APPLICATION FOR SERVICE

R 460.1606 Application for new service.

Rule 6. Applicants for service may become new customers by requesting service in person at the utility company office, in writing, via telephone, fax, internet or other means of communication. Using any of these methods, an applicant shall do all of the following:

- (a) Provide positive identification information.
- (b) Show ownership or a lease for the property where service will be rendered.
- (c) Pay a deposit as a new customer, if applicable.

History: 2008 AACS.

PART 3. GENERAL CUSTOMER DEPOSIT CONDITIONS

R 460.1607 Customer deposits.

Rule 7. (1) Except as provided in this subrule, a utility shall not require a deposit from a new customer as a condition of receiving service. A utility may require a deposit from a new customer if the customer has an unfavorable credit rating with a credit reporting agency, an unpaid delinquent bill for utility service, or has engaged in unauthorized use of utility service within the last 6 years.

(2) A utility may require a deposit from an existing customer if 2 or more final disconnect notices have been issued within the most recent 12-month period, service has been discontinued for nonpayment, the customer has engaged in unauthorized use of utility electric or gas service, or the customer exhibited an unsatisfactory record of bill payment within the first 6 months after service commenced.

(3) A deposit for small commercial customers shall not be more than 15% of the customer's annual electric or gas bill. All other non-residential customers may be required to pay a deposit equal to 25% of the customer's annual electric or gas bill. The deposit required as a condition of providing, restoring, or continuing service due to unauthorized use of utility service shall not be more than 4 times the average peak season monthly bill, or 4 times the utility's system average peak season monthly bill for the same class of service if the customer's consumption history for the service is unavailable.

(4) A deposit may be retained by the utility until the customer compiles a record of 12 continuous months of bill payment on or before the due date.

(5) Interest shall be paid on deposits at a rate of 7% per annum.

(6) If service is terminated, the utility may apply the deposit, plus accrued interest, to the customer's unpaid balance. If the deposit plus accrued interest is more than the unpaid balance, then the utility shall return the excess to the customer.

(7) Each utility shall keep records that show all of the following information:

- (a) The name and address of each depositor.
- (b) The amount and date of the deposit.
- (c) Each transaction concerning the deposit.

(8) Each utility shall issue a receipt of deposit to each customer from whom a deposit is received and shall provide means whereby a depositor may establish a claim if the receipt is lost.

(9) The utility shall make reasonable efforts to locate customers due unclaimed deposits and credits.

(10) Each utility shall, within 60 days of the effective date of this rule, transmit a notice explaining the conditions under which a deposit may be required to all existing customers. This notice shall also be provided to new customers within 30 days after service has commenced or, at the utility's option, with the first bill rendered.

(11) During the space heating season a small commercial customer shall not pay a deposit unless that customer has been shut off for nonpayment during the prior 12 months or where unauthorized use of utility service has occurred. A customer deposit under this subrule may not exceed the customer's average monthly bill.

(12) The utility may, at its option, accept an irrevocable financial institution letter of credit, a surety bond, or other corporate guarantee instead of a deposit.

History: 2008 AACS.

PART 4. METER READING, ESTIMATED BILLS, BILLING ADJUSTMENTS, VOLUNTARY TERMINATION, AND METER RELOCATION

R 460.1608 Meter reading interval and estimated bills.

Rule 8. (1) Except as specified in this rule, a utility shall provide all non-residential customers with an actual monthly meter read. The utility may permit a customer to supply meter readings on a form furnished by the utility, on a secure company website, by telephone, or by other reasonable means if an employee of the utility reads the meter at least once each 12 months. A bill that is rendered on an estimated basis shall be clearly and conspicuously identified as such. Estimated bills shall not be rendered unless estimating procedures have been approved by the commission. If a utility cannot obtain an actual meter reading, then the utility shall maintain records of the efforts made to obtain an actual meter reading and its reasons for failure to obtain an actual meter reading.

(2) A utility may render estimated bills to seasonally billed customers in accordance with the tariffs approved by the commission.

(3) Except for seasonally billed customers, bills may be estimated only if the utility representative is unable to gain access to the meter or meter reading equipment failure occurs. If a meter reading equipment failure occurs, the equipment shall be promptly replaced or repaired so that not more than 2 estimated bills are necessary.

(4) If the utility estimates a customer's bill for 2 or more consecutive months, notwithstanding the provisions of subrules (1) and (3) of this rule, when an actual read is obtained the utility shall offer small commercial customers the opportunity to pay the bill in equal monthly payments over the same number of months as consecutively estimated bills.

(5) An estimated bill generated because the actual read is outside the range for the premise usage shall not be issued in consecutive months. If the utility is actively engaged in resolving the problem, then an additional 30 days is permitted to correct the problem and obtain an actual meter reading.

History: 2008 AACS.

R 460.1609 Metering inaccuracies; billing adjustments.

Rule 9. If any utility meters are determined to be inaccurate as described in the Technical Standards for Gas Service, R 460.2301 to 460.2384, or Technical Standards for Electric Service, R 460.3101 to 460.3804, then a utility shall make customer billing adjustments in accordance with these rules.

History: 2008 AACS.

R 460.1610 Voluntary termination.

Rule 10. (1) A utility customer or authorized representative shall do all of the following:

(a) Notify the utility in person, or by telephone, in writing, by fax or on the internet at least 10 business days prior to requested service termination.

(b) Allow access to the utility, if necessary, to perform a final meter read.

(c) Provide an address for final billing at the time of request for a final read.

(2) The utility shall do both of the following:

(a) Provide a final actual meter reading within 10 business days of the request for termination or estimate the final read and offer the customer the option to provide an actual read. If the meter is not read within the 10-day time frame, then the utility must document the reason for no actual reading. A meter read shall be obtained by the next normal reading cycle.

(b) Schedule the customer's final read within a 4-hour time frame if the utility cannot access the meter.

History: 2008 AACS.

R 460.1611 Meter or facilities relocation charge.

Rule 11. (1) A utility may assess a relocation charge in any of the following situations:

(a) The utility shut off service by disconnection at the street or pole because the utility could not obtain access to the meter or utility facilities.

(b) The customer or its agent refused to permit the utility access to the meter or utility facilities on 2 separate occasions or on a single occasion if harm is threatened, and the utility can produce documentation of requests for access and/or requests for the customer to perform a meter reading that were refused.

(c) The utility shut off service due to unauthorized use of utility service or the customer acknowledges personal responsibility and the utility bills the customer for unauthorized use of utility service.

(d) The customer requests that the utility relocate the meter or other utility facilities.

(2) If the utility moves the meter or facilities for reasons other than the reasons in subrule (1) of this rule, and the customer wants the meter or facilities placed in a different location than that selected by the utility, then the customer shall pay any additional costs.

History: 2008 AACS.

PART 5. BILLING AND PAYMENTS

R 460.1612 Cycle billing.

Rule 12. A utility may use cycle billing if each customer receives a bill on or about the same day of each billing month. If a utility changes meter reading routes or schedules by more than 7 days, it shall provide notice to affected customers at least 10 days before making the change.

History: 2008 AACS.

R 460.1613 Billing information.

Rule 13. (1) The utility shall bill each customer promptly after reading the meter. The bill shall show all of the following information:

(a) The beginning and ending meter readings of the billing period and the dates thereof.

(b) The due date.

(c) The number and kind of units metered.

(d) The applicable rate schedule or identification of the applicable rate schedule. If the actual rates are not shown, then the bill shall carry a statement to the effect that the applicable rate schedule will be furnished on request.

(e) The gross amount or net amount of the bill, or both, including any applicable tax shown separately from the net amount.

(f) The date by which the customer must pay the bill to benefit from any discount or to avoid any penalty.

(g) A distinct marking to identify an estimated bill.

(h) Any conversions from meter reading units to billing units, any calculations to determine billing units from recording or other devices, or any other factors, such as power supply cost recovery adjustments, used in determining the bill.

(i) The address and telephone number of the utility designating where the customer may initiate an inquiry or complaint regarding the bill as rendered or the service provided by the utility.

(2) In place of the billing information in subrule (1)(h) of this rule, a statement may appear on the bill advising the customer that the information can be obtained by contacting the utility. Any multiplier used to determine billing units shall be shown when used.

(3) If the billing period differs from the meter reading cycle and the reading data is calculated from actual metered data, then the actual meter reading shall be shown on the bill.

History: 2008 AACS.

R 460.1614 Discounts and late payment charges.

Rule 14. Where provided in an approved rate schedule, a utility may grant a discount for prompt payment of a bill or may include a late payment charge for failure to make prompt payment. Unless the utility's tariff states otherwise, a late payment charge of not more than 2%, not compounded, may be applied to the unpaid balance outstanding, net of taxes, if the bill is not paid in full on or before the date on which the bill is due.

History: 2008 AACS.

R 460.1615 Delivery and payment of bills.

Rule 15. A bill shall be mailed, transmitted, or delivered to the customer not less than 21 days before the due date. Failure to receive a bill properly mailed, transmitted, or delivered by the utility does not extend the due date. If the day on which the bill is due falls on Saturday, Sunday, or a holiday, then the bill shall be due on the next business day. Customer remittances postmarked on the due date shall be considered to have been timely paid. If the postmark is illegible, the date of mailing shall be designated as 2 days before receipt by the utility.

History: 2008 AACS.

R 460.1616 Billing for unregulated service.

Rule 16. A utility may include charges for unregulated services with charges for utility service on the same monthly bill if the charges for the unregulated services are designated clearly and separately from the charges for electric or gas service. If partial payment is made, and if no designation of the payment is given by the customer, then the utility shall first credit all payments to the balance outstanding for utility service.

History: 2008 AACS.

R 460.1617 Billing errors.

Rule 17. (1) If a customer has been overcharged, then the utility shall refund or credit the amount of the paid overcharge to the customer. Overcharges shall be credited to customers with 7% interest, commencing on the 60th day following payment. A utility is not required to adjust, refund, or credit an overcharge beyond the 3-year period immediately preceding discovery of the billing error, unless the customer is able to present a record establishing an earlier date of occurrence or commencement of the error.

(2) In cases of unauthorized use of utility service the customer may be back billed for the amount of the undercharge. The back bill may include interest at the same 7% interest rate applied to overcharges.

(3) In cases not involving unauthorized use of utility service, the customer may be back billed for the amount of the undercharge during the 12-month period immediately preceding discovery of the error. The utility shall offer the customer at least the same number of months for repayment equal to the time of the error. The back bill shall not include interest.

History: 2008 AACS.

PART 6. CUSTOMER RELATIONS AND UTILITY PROCEDURES

R 460.1618 Selection of rate, customer information, and service.

Rule 18. Each utility shall do all of the following:

(a) Maintain information necessary to advise the customer or prospective customers and others entitled to the information about the facilities available to serve prospective customers in the utility's service area.

(b) Assist the customer in selecting the most economical rate schedule based on information supplied by the customer; however, selection of the appropriate rate is the responsibility of the customer. Once the selection is made, the customer shall stay on that rate not less than 12 months unless the customer notifies the utility of permanent changes in the conditions of service that warrant a different rate schedule.

(c) Notify customers affected by a proposed change in rates or schedule classification by publishing a notice in newspapers of general circulation in the utility's service area, by giving notice to customers individually, or as otherwise required by the commission.

(d) Post suitable signs in conspicuous locations at all bill payment offices that are operated by the utility indicating that the rules, regulations, rate schedules, proposed rate schedules, explanations of rate schedules, and explanations of proposed rate schedules are on file and available for inspection. Upon request, a utility shall provide 1 copy of the rules, explanations, or schedules to a customer without charge.

(e) Upon request, inform the utility's customers as to the method of reading meters.

(f) Furnish any reasonable additional information.

History: 2008 AACS.

R 460.1619 Inspection.

Rule 19. A utility shall permit authorized staff of the commission to inspect all of the utility's operations that relate to customer service.

History: 2008 AACS.

R 460.1620 Customer access to consumption data.

Rule 20. A utility shall provide to each customer, upon request, a clear and concise statement of the customer's actual energy usage, or weather adjusted consumption data, for each billing period during the last 12 months, unless that data is not reasonably ascertainable by the utility. A utility shall notify its customers at least once each year in writing, or by whatever method is used to transmit the customers' bills, that a customer may request consumption data.

History: 2008 AACS.

R 460.1621 Servicing utility equipment on customer's premises.

Rule 21. Each utility shall service and maintain its equipment used on a customer's premises and shall correctly set and keep in proper adjustment any devices that control the customer's service in accordance with the utility's rate schedules.

History: 2008 AACS.

R 460.1622 Customer complaints; investigation; records.

Rule 22. The utility shall promptly and thoroughly investigate customer complaints concerning the charges, practices, facilities, or services of the utility. The utility shall keep records of customer complaints that will enable the utility to review and analyze its procedures and actions. The records shall be available to the commission.

History: 2008 AACS.

R 460.1623 Records and reports.

Rule 23. Upon request by the commission or its designated representative, records which are required by these rules or which are necessary for the administration of these rules shall be available within the state of Michigan for examination by the commission or its designated representative.

History: 2008 AACCS.

PART 7. SHUTOFFS AND RESTORATION

R 460.1624 Notice of shutoff.

Rule 24. (1) Not less than 10 days before the proposed shutoff of service to a non-residential facility, the utility shall send a notice to the customer that includes the following information:

(a) A clear and concise reason for the proposed shutoff of service.
(b) The date on or after which the utility may shut off service unless the customer takes appropriate action.

(2) Not less than 10 days before the proposed shutoff of service to a non-residential facility that is occupied by more than 5 business entities that are not responsible for payment of the bill, a utility shall make a reasonable attempt to notify each occupant that service may be subject to shutoff after a specified date.

History: 2008 AACCS.

R 460.1625 Denial or shutoff of service to customers.

Rule 25. (1) Service to non-residential customers may be denied or shut off for any of the following reasons:

(a) Without notice, if a condition on the customer's premises is determined by the utility or a governmental agency to be hazardous.

(b) Without notice, if a customer uses equipment in a manner that adversely affects the utility's equipment or the utility's service to others.

(c) Without notice, for unauthorized use of utility service.

(d) Without notice, if unauthorized use of the equipment furnished and owned by the utility occurs, including obtaining the use of equipment by submitting an application containing false information.

(e) For violation of, or noncompliance with, the utility's rules on file with, and approved by, the commission.

(f) For failure of the customer to fulfill his or her contractual obligations for service or facilities that are subject to regulation by the commission.

(g) For failure of the customer to permit the utility reasonable access to the utility's equipment.

(h) For failure of the customer to provide the utility with a deposit as authorized by these rules.

(i) For nonpayment of a delinquent account for electric or gas service.

(j) For nonpayment of unpaid balances on any other non-residential account incurred by the customer under a different account name by the customer's predecessor in interest, or by any other entity, the debt of which the customer is legally obligated to assume.

(2) Service to non-residential customers may not be denied for the following reasons:

(a) Delinquency in payment for service by a previous occupant of the premises to be served.

(b) Failure to pay for items such as merchandise, appliances, or services that are not approved by the commission as an integral part of the electric or gas service provided by the utility.

(c) Failure to pay for a different type or class of utility service.

(d) Failure to pay the bill of another customer as guarantor.

(3) Service shall not be shut off during a reasonable time period given to a customer to pay the amount of a back billing as provided in these rules.

(4) If a shutoff or termination of service to a non-residential customer occurs, then a utility may transfer an unpaid balance to any other non-residential account of the customer.

History: 2008 AACs.

R 460.1626 Manner of shutoff for service provided with remote shutoff and restoration capability.

Rule 26. (1) For an involuntary shutoff of service using remote shutoff and restoration capability, at least 1 day before shutoff of service, the utility shall make at least 2 attempts to contact the customer by telephone, if a telephone number is available to the utility, to advise the customer of the pending shutoff and what steps the customer must take to avoid shutoff. The utility shall either document all attempts to contact the customer or shall document that automated procedures are in place that will make at least 2 attempts to contact the customer by telephone. If the telephone number is not available, the customer has no telephone, or the telephone contacts are not made, then the utility shall either leave a notice at the premises advising the customer that service will be shutoff on or after the next business day or send notice by first-class mail postmarked at least 5 business days before shutoff of service is scheduled. The notice shall conspicuously state that the disconnection of service will be done remotely and that a utility representative will not return to the premises before disconnection.

(2) The utility shall document all attempts to contact the customer.

(3) If the utility contacts the customer or other responsible person at the customer's premises by telephone on the day service is to be shut off, the utility shall inform the customer or other responsible person that shutoff of service is imminent and the steps that are necessary to avoid shutoff. Unless the customer presents evidence that reasonably demonstrates that the claim is satisfied or is in dispute, or the customer makes payment, the utility may shut off service.

(4) If the utility mailed the notice of shutoff to the customer as provided in subrule (1) of this rule, and if telephone contact with the customer cannot be made, then no further customer contact is required on the day service is to be shut off and the utility may shut off service.

History: 2008 AACs.

PART 8. DISPUTED CLAIMS, HEARINGS AND SETTLEMENT AGREEMENTS

R 460.1628 Disputed claim.

Rule 28. (1) If a customer advises a utility, before the date of the proposed shutoff of service, that all or part of a bill is in dispute, then the utility shall do all of the following:

(a) Immediately record the date, time, and place the customer made the complaint and transmit verification to the customer.

(b) Investigate the dispute promptly and completely.

(c) Advise the customer of the results of the investigation.

(d) Attempt to resolve the dispute informally in a manner that is satisfactory to both parties.

(e) Provide the opportunity for the customer to settle the disputed claim or to satisfy any liability that is not in dispute.

(2) A customer may advise a utility that a claim is in dispute in any reasonable manner, such as by written notice, in person, or by a telephone call directed to the utility.

(3) A utility, in attempting to resolve the dispute, may employ telephone communication, personal meetings, on-site visits, or any other technique that is reasonably conducive to obtaining a settlement.

History: 2008 AACs.

R 460.1629 Settlement agreement.

Rule 29. (1) If the utility and a small commercial customer arrive at a mutually satisfactory settlement of any claim in dispute, or the customer does not dispute liability to the utility but claims inability to pay the outstanding bill in full, a utility shall offer the customer an opportunity to enter into a settlement agreement.

(2) The utility shall confirm the terms of the settlement agreement with the customer and shall send a copy of the settlement to the customer or the customer's authorized representative. The utility shall retain

documentation of the original settlement agreement for 2 years. In case of a dispute over the terms of a settlement agreement, the utility shall have the burden of proving that the customer understood and accepted the terms of the settlement agreement.

(3) Every settlement agreement entered into due to the customer's inability to pay the outstanding bill in full shall provide that service will not be discontinued if the customer pays a reasonable amount of the outstanding bill and agrees to pay a reasonable portion of the remaining outstanding balance in installments until the bill is paid.

History: 2008 AACS.

R 460.1630 Default of settlement agreement.

Rule 30. (1) If a small commercial customer fails to comply with the terms and conditions of a settlement agreement, a utility may discontinue service after notifying the customer, in writing, by personal service or first-class mail, of all of the following:

(a) That the customer is in default of the settlement agreement.

(b) The nature of the default.

(c) That unless full payment of the claim is made within 10 days of mailing of the notice, the utility will discontinue service.

(d) The date upon which service is scheduled to be discontinued.

(2) A utility is not required to enter into any subsequent settlement agreement with a customer until the customer has fully complied with the terms of any previous settlement agreement.

(3) A utility is not required to enter into any subsequent settlement agreement with a customer who has defaulted upon the terms and conditions of a previous agreement.

(4) If a settlement agreement is reached following a notice of discontinuance, the failure of the customer to abide by the terms of the settlement agreement during the first 60 days after the agreement is made constitutes a waiver of the notice required by subrule (1) of this rule. However, before discontinuance, a utility shall comply with the notice requirements of these rules.

History: 2008 AACS.

R 460.1631 Informal hearing and hearing officers.

Rule 31. (1) If the parties are unable to resolve the dispute, then the utility shall offer small commercial customers the opportunity for an informal hearing before a hearing officer selected from a list of hearing officers previously filed with the commission.

(2) If the customer chooses to have an informal hearing, then the customer shall do both of the following:

(a) Notify the utility within 5 business days of acceptance of the utility offer for an informal hearing.

(b) Pay the amount not in dispute, or, if the utility and customer cannot agree, pay 50% of the disputed amount.

(3) When the customer notifies the utility of the intent to pursue an informal hearing the utility shall do all of the following:

(a) Complete the necessary investigation.

(b) Schedule the hearing within 10 business days of the customer's request for a hearing.

(c) Hold the hearing within 30 business days of the customer's request for a hearing.

(4) If the customer fails to pay the part of the bill that is determined under subrule (2)(b) of this rule within 10 business days of the date that the utility sends the hearing notice, then the utility may exercise its right to shut off service pursuant to these rules.

(5) A utility shall select hearing officers on the basis of all of the following:

(a) They are on the list of hearing officers filed with the commission.

(b) They are notaries public qualified to administer oaths.

(c) They are not engaged in any other activities for or on behalf of the utility.

(6) If the dispute is ultimately resolved in favor of the customer, in whole or in part, then the utility shall return promptly any excess amount paid by the customer, with interest at the rate specified in these rules.

History: 2008 AACs.

R 460.1632 Notice of hearing.

Rule 32. (1) The utility shall personally serve the customer with written notice of the time, date, and place of the hearing on the day scheduling is determined.

(2) The notice shall describe the hearing procedures as contained in these rules.

(3) The notice shall include the amount of the required payment and due date of 10 business days from the date of the notice.

History: 2008 AACs.

R 460.1633 Hearing procedures.

Rule 33. (1) A utility shall establish hearing procedures that ensure the impartiality and integrity of the hearing process and that provide the customer and the utility with all of the following:

(a) The right to represent themselves or to be assisted by persons of their choice who are not attorneys.

(b) The right to examine, not less than 2 business days before a scheduled hearing, a list of all witnesses who will testify and all documents, records, files, account data, and similar material that may be relevant to the issues to be raised at the hearing.

(c) The right to present evidence, testimony, and oral and written argument.

(d) The right to question witnesses appearing on behalf of the other party.

(2) A hearing shall be held during normal business hours. A utility shall take reasonable steps to ensure that a customer who is unable to attend a hearing due to physical incapacity is not denied the right to a hearing. Failure of the customer, or the utility, to attend the hearing without good reason, or without having requested an adjournment, constitutes a waiver of that party's right to the hearing.

(3) The utility has the burden of proof by a preponderance of the evidence.

(4) All witnesses who appear for either party shall testify under oath.

(5) A hearing shall be informal and the proceedings need not be recorded or transcribed. All relevant evidence shall be received and the formal rules of evidence shall not apply.

(6) For each hearing where the customer has not put his or her position in writing, the hearing officer shall compile a record that contains all of the following:

(a) A concise statement, in writing, of the position of the utility.

(b) A concise statement, in writing, of the position of the customer.

(c) Copies of all evidence submitted by the parties.

(7) At the conclusion of the hearing, the hearing officer may orally state his or her findings and decision, or adjourn the hearing and inform the parties that the decision will be transmitted within 7 business days. At the request of the customer, the hearing officer shall adjourn the hearing and transmit the decision within 7 business days. In all cases, the hearing officer shall issue a complaint determination in a form that is approved by the commission. The complaint determination shall contain both of the following:

(a) A concise summary of the evidence and arguments presented by the parties.

(b) The decision, and the reasons for the decision, based solely upon the evidence received.

(8) At the conclusion of the hearing and again upon issuance of the complaint determination, the hearing officer shall advise the customer and the utility of all of the following:

(a) That each party has the right to make an informal appeal to the commission staff, by mail, telephone, internet, fax, or in person, within 7 business days of issuance of the complaint determination.

(b) That, if appealed, the decision of the hearing officer, including a finding that service may be shut off, cannot be implemented until a review by the commission staff is completed.

(c) The address and telephone number where the customer or the utility may make an informal appeal to the commission staff.

(9) Before issuance of a complaint determination, the hearing officer may propose a settlement to the parties. If both parties accept the settlement, it shall be put in writing and signed by both parties.

(10) Within 7 business days of the conclusion of the hearing, the hearing officer shall serve the parties with all of the following:

(a) A copy of the complaint determination.

(b) Appeal information as provided in subrule (8) of this rule.

(c) If applicable, a copy of the signed settlement agreement as provided in subrule (9) of this rule.

(11) The complaint determination and a copy of the signed settlement agreement, if any, shall be made part of the hearing record. The hearing officer shall certify the hearing record.

(12) The complaint determination is binding upon the parties, unless appealed, as provided in these rules.

(13) A utility's hearing procedures shall be subject to investigation and review by the commission.

History: 2008 AACS.

R 460.1634 Informal appeal procedures.

Rule 34. (1) The commission staff shall assign the informal appeal to a regulation officer or another employee of the commission as the commission may designate. The officer or designated employee shall do all of the following:

(a) Advise the appealing party of the procedures of the commission by telephone or in writing.

(b) Advise the other party that an informal appeal has been filed.

(c) Issue interim determinations as necessary.

(d) Review or investigate the appeal as provided in these rules.

(e) Issue an informal appeal decision.

(2) Upon notification by the commission staff that an informal appeal has been made, the utility shall promptly file, with the commission staff, the certified hearing record. The parties shall be bound by the evidence presented at the hearing and contained in the hearing record. In arriving at the informal appeal decision, the regulation officer or designated employee shall not be required to receive or consider any additional evidence or information.

(3) In all informal appeals, the utility has the burden of proof by a preponderance of the evidence.

History: 2008 AACS.

R 460.1635 Interim determination.

Rule 35. (1) After receiving the hearing record and pending the final resolution of an informal appeal, the regulation officer or designated employee may issue an interim determination with appropriate terms and conditions. In the case of an appeal regarding a bill or deposit, the regulation officer or designated employee may require a customer to pay the undisputed portion of a claim in order to continue the prohibition against the shutoff of service as provided in these rules. The regulation officer or designated employee may consider the amounts that reasonably appear to reflect the cost of utility service in determining the undisputed portion of a claim.

(2) If a customer fails to abide by the terms and conditions of an interim determination within 10 days of the date of personal service or mailing of the interim determination by first-class mail, then the utility may shut off service as provided in these rules.

History: 2008 AACS.

R 460.1636 Appeal review.

Rule 36. The regulation officer or designated employee shall review the informal appeal thoroughly and, when necessary, conduct further investigation. A party may offer new evidence if the regulation officer or designated employee determines that it is relevant. When further investigation is necessary, the regulation officer or designated employee may request additional evidence or, at his or her own initiative, may hold an informal appeal conference with the parties or their representatives at a time and place designated by the officer or employee. If either party fails to appear at the informal conference without a good reason or without having requested an adjournment, then the right of the absent party to appear at the conference shall be waived. At an informal appeal conference, the parties may do all of the following:

(a) Represent themselves or be assisted by persons of their choice who are not attorneys.

(b) Offer oral and documentary evidence, which may be considered at the discretion of the regulation officer.

(c) Refute, in a reasonable manner, the evidence of the other party.

(d) Submit an oral or written statement of position.

History: 2008 AACS.

R 460.1637 Shutoff pending decision.

Rule 37. A utility shall not shut off service or issue a notice of shutoff related to the matter in dispute pending the decision of the commission staff, except pursuant to the terms of an interim determination.

History: 2008 AACS.

R 460.1638 Informal appeal decision.

Rule 38. The regulation officer or other employee so designated by the commission shall, within 30 days after the utility files the certified record, issue a written informal appeal decision affirming, modifying, or reversing the informal hearing determination. In reversing or modifying the informal hearing determination, the decision shall set forth the terms and conditions for continued service, shutoff, or a proposed settlement agreement, as required by the facts and circumstances. The decision shall state the relevant findings of fact, the reasons for the decision, and remedies for failure to comply with the informal appeal decision. A copy of the informal appeal decision shall be served personally or by first-class mail on the parties.

History: 2008 AACS.

R 460.1639 Failure to comply with informal appeal decision.

Rule 39. Failure of either party to comply with the decision within 10 days from the date of service by mailing shall permit implementation of the action or remedy provided by the decision.

History: 2008 AACS.

R 460.1640 Scope of rules.

Rule 40. (1) Nothing contained in these rules covering billing practices applicable to non-residential electric and gas customers should be implemented in a manner that circumvents or is inconsistent with these rules, commission orders, or utility tariffs approved by the commission to ensure the safe and reliable delivery of energy service.

(2) After notice and an opportunity to be heard, utilities determined by the commission to be in violation of these rules shall be subject to all damages and fines contained within the statutes under which these rules are promulgated.

(3) Upon written request of a person, utility, or on its own motion, the commission may temporarily waive any requirements of these rules when it determines the waiver will further the effective and efficient administration of these rules and is in the public interest.

History: 2008 AACS.