

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

460.38b Access disputes under section 8a; jurisdiction; liability for damages; burden of proof; rebuttable presumption; court actions.

Sec. 8b.

(1) Claims in law or equity for disputes under section 8a are governed by this section.

(2) The Marquette County Circuit Court, the Ingham County Circuit Court, or the circuit court of the county where the cooperative electric utility that is member-regulated under this act has located its headquarters has jurisdiction to determine all disputes arising under section 8a and grant remedies under this section.

(3) In a dispute governed under this section, the cooperative electric utility that is member-regulated under this act is not liable for damages in law or equity unless the complainant establishes both of the following:

(a) That a rate, term, or condition complained of is not just and reasonable or that a denial of access was unlawful.

(b) One of the following:

(i) That the rate, term, or condition complained of is contained in a new pole attachment agreement or in a previously existing pole attachment agreement that is amended, renewed, or replaced by executing a new agreement on or after the effective date of the amendatory act that added this section.

(ii) That there has been an unreasonable denial of access or unreasonable refusal to enter into a new, amended, renewed, or replacement pole attachment agreement on or after the effective date of the amendatory act that added this section.

(4) The complainant has the burden of establishing a prima facie case that the rate, term, or condition is not just and reasonable or that the denial of access was unlawful. If, however, a cooperative electric utility that is member-regulated under this act argues that the proposed rate is lower than its incremental costs, the cooperative electric utility that is member-regulated under this act has the burden of establishing that the proposed rate is below the statutory minimum just and reasonable rate. In a case involving a denial of access, the cooperative electric utility that is member-regulated under this act has the burden of establishing that the denial is lawful, once a prima facie case is established by the complainant.

(5) In a dispute governed under this section, there is a rebuttable presumption that the charged rate is just and reasonable if the cooperative electric utility that is member-regulated under this act can show that its charged rate does not exceed an annual recurring rate permitted under rules and regulations adopted by the Federal Communications Commission under 47 USC 224(d).

(6) If the court determines that the rate, term, or condition complained of is not just and reasonable, it may prescribe a just and reasonable rate, term, or condition and may do any of the following:

(a) Terminate the unjust and unreasonable rate, term, or condition.

(b) Require entry into a pole attachment agreement on reasonable rates, terms, and conditions.

(c) Require access to poles as provided under section 8a.

(d) Substitute in the pole attachment agreement the just and reasonable rate, term, or condition established by the court.

(e) Order a refund, or payment, if appropriate. The refund or payment may not exceed the difference between the actual amount paid under the unjust and unreasonable rate, term, or condition and the amount that would have been paid under the rate, term, or condition established by the court for the period at issue, but not to exceed 2 years.

History: Add. 2020, Act 61, Imd. Eff. Mar. 10, 2020