



COMMITTEE OF THE WHOLE MEETING

AGENDA

May 15, 2018

5:30 P.M. – 1201 S. Washington Ave.

Lansing, MI - REO Town Depot

Board of Water & Light Headquarters

AGENDA

Call to Order

Roll Call

Public Comments on Agenda Items

1. Committee of the Whole Meeting Minutes of January 9, 2018.....**TAB 1**

2. FOIA Policy & Procedures & Resolution.....**TAB 2**

3. Customer Satisfaction Survey.....**TAB 3**

4. Tree Trimming-Presentation.....**TAB 4**

5. Collections Practices & Procedures.....**INFO ONLY**

6. General Manager's Update.....**INFO ONLY**

Other

Adjourn

COMMITTEE OF THE WHOLE

Meeting Minutes

January 9, 2018

The Committee of the Whole of the Lansing Board of Water and Light (BWL) met at the BWL Headquarters-REO Town Depot located at 1201 S. Washington Ave., Lansing, MI, at 5:30 p.m. on Tuesday, January 9, 2018.

Committee of the Whole Chair Tony Mullen called the meeting to order at 5:30 pm and asked the Corporate Secretary to call the roll.

Present: Commissioners Tony Mullen, Beth Graham, Dennis M. Louney, Anthony McCloud, David Price, Ken Ross, Tracy Thomas, and Sandra Zerkle and Non-Voting Members: William Long (Delta Township) and Doug Jester (East Lansing).

Absent: Rod Taylor (DeWitt Township)

The Corporate Secretary declared a quorum.

Public Comments

None.

Approval of Minutes

Motion by Commissioner Thomas, **Seconded** by Commissioner Ross, to approve the Committee of the Whole meeting minutes of September 12, 2017.

Action: Motion Carried.

IT Strategic Initiatives

General Manager Dick Peffley introduced Kim Ingram, Chief Information Officer (CIO), who spoke about the IT Strategic Initiatives Plan. Ms. Ingram stated that the IT goals and initiatives were aligned with the BWL Strategic Task Plan and she highlighted the completed goals of 2017 and the goals for 2018.

Strategy 4: Implement New Technologies		
Goal: Support our Customers and Employees through Enhanced Use of Technology		
	On Track	Caution
	Late	Complete
Objective 1: Support Existing and Planned Projects with IT Infrastructure		
Task 4.1a	Timeline	Milestones
Update the Information Technology Strategic Plan to coordinate with both industry best practices and planned BWL strategic and capital initiatives	2017	Finalize IT Corporate Strategic Plan -Conduct ITD Strategic Plan Roadshow.
	2018	VDI rebuilt, Corporate data centers with full backup and redundant capability and increased ability for security. Cybersecurity efforts completed for ITD Incident Response Plan.
	2019	Center of Excellence established, CMMI Assessment conducted.
	2020	IT Governance defined and in place.
Strategic Task Owner: ITD / Kim Ingram		
Task 4.1b	Timeline	Milestones
Select and maintain reliable, well supported, redundant, secure, cost-effective, and efficient IT systems and communication networks	2017	Conduct High Level ITD assessment and Deep Dive Assessment.
	2018	Define, approve technical infrastructure solution. Procure & Build infrastructure. Ensure continued enhancements to security through various alerts, tools, and monitoring.
	2019	Test infrastructure, migrate to new infrastructure. Ensure continued enhancements to security through various alerts, tools, and monitoring.
	2020	IT Corporate infrastructure stood up and operational as reliable, secure, aligned to industry standards. Continue to apply Cybersecurity protocols based on best in class industry protection trends.
Strategic Task Owner: ITD / Kim Ingram		
Task 4.1c	Timeline	Milestones
Apply business process management methodologies to create and measure business value throughout the life cycle of each technology system implementation	2017	Finalize IT Corporate Strategic Plan - create ITD Project intake form, define intake form process, communicate, execute process. The intake forms will be reviewed by the ETT.
	2018	Plan and define PMO processes aligned to industry standard requirements definition to support the ETT efforts.
	2019	Execute projects with industry standard PMO Methodology aligned to Plan, define, Execute, Control & Monitor, Close cycles; which will further support ETT insight and awareness of project status.
	2020	Enhance industry standard methodology to align to current state PMO Methodology Trends. Continue to incorporate Cybersecurity rigor.
Strategic Task Owner: ITD / Kim Ingram		
Objective 2: Enhance IT and Communications Technology		
Task 4.2a	Timeline	Milestones
Identify, prioritize, acquire, and implement technology enhancements to support business needs	2017	Solicit and acquire PMO resources through staff augmentation. Deep Dive recommendations documented.
	2018	Establish Formal ITD PMO/Center of Excellence. Socialize IT/OT variance & similarities. Deep Dive outcomes vetted for technical solution, hardware, licenses, software, peripheral components procured.
	2019	ITD corporate infrastructure secure, reliable, flexible. PMO established. Continuous ongoing cybersecurity efforts will continue based on best in class industry standard tools and options.
	2020	Solid state infrastructure, IT Governance adherence. Continue to apply Cybersecurity protocols based on best in class industry protection trends.
Strategic Task Owner: ITD / Kim Ingram		
Task 4.2b	Timeline	Milestones
Continuously research and compare current best practices as well as state-of-the-art technologies being tested and deployed by best-in-class organizations	2017	Subscribed to Gartner for IT current and Best in Class technologies
	2018	Continue enhancements to security, research pilot and test future state industry standard trends.
	2019	Continuous research to ensure industry standard alignment to corporate infrastructure.
	2020	Attain CMMI level, continuously improve to reach CMMI Level 2, aligned to BWL Corporate Governance.
Strategic Task Owner: ITD / Kim Ingram		
Task 4.2c	Timeline	Milestones
Identify the necessary experience, skills, and education needed for management and use of new technologies	2017	Formalized future state ITD organizational structure. Finalized professional development plans and staffing needs
	2018	Continue skill enhancement through various professional development platforms
	2019	Continue security awareness training sessions
	2020	Ongoing PD to support industry trends in technology
Strategic Task Owner: ITD / Kim Ingram		

IT Corporate Strategic Plan – Goals for 2017

- **4.1 Support existing & planned projects with IT Infrastructure**
 - Completed IT High Level Assessment
 - Completed IT Deep Dive on Infrastructure & Architecture
 - Completed the IT Strategic Plan
 - Completed IT Strategic Plan Roadshows throughout all departments within BWL.
 - IT / OT Network Separation.
- **4.2 Enhance IT & Communications Technology**
 - Completed the IT Organization restructuring.
 - Completed Professional Development Plans for all IT Resources.



IT Corporate Strategic Plan – Goals for 2018

- **4.1 Support Existing & Planned Projects with IT Infrastructure**
 - We are designing a new data center utilizing a Cisco ACI solution.
 - This new infrastructure gives us the ability to scale on multiple platforms, have more security in our environment, and support the future needs of existing, planned and future projects.
 - We are replacing VDI devices with laptops, further enhancing our ability to have a more mobile workforce.
 - We are underway with our Project Management Office (PMO).
 - We have enhanced our Enterprise Technology Team (ETT) Charter and its been approved and adopted.
 - In alignment, we are continuously rolling out Project Management Tools as not only a part of our IT Governance Audit, but also as a part of the PMO Development and preparation for CMMI Initiative. CMMI will provide standards, procedures and PM process that will support our IT Governance Model.
- **4.2 Enhance IT & Communications Technology**
 - We've established a PMO that will morph in to a PMO Center of Excellence.
 - We continue to enhance our security both internally and externally to our perimeter.
 - We stay abreast of current IT trends, best practices, and industry standards through Gartner.
 - We continue to invest in our IT resources through enhanced, professional development opportunities, the ability to attain certifications, and develop new skills aligned to industry standards and best practices.



Chair Price questioned the number of malicious hits, potential malware, viruses, etc. that are received per day. CIO Ingram responded that security tools have been put in place, internally and externally, and that an excess of 1,000 hits could occur daily.

Closed Session Meeting

Committee of the Whole Chair Mullen stated that the Administration has provided us with a Confidential Memorandum and discussion of such content is most appropriate in closed session. Chair Mullen asked for a motion to go into closed session for the purpose of discussing the Confidential Memo as permitted by the Open Meetings Act, specifically MCL 15.268(h) and MCL 15.243(y).

Motion by Commissioner Price, Seconded by Commissioner McCloud to go into closed session.

Action: Motion Carried.

Roll Call Vote:

Yeas: Commissioners Beth Graham, Dennis M. Louney, Anthony McCloud, Tony Mullen, David Price, Ken Ross and Tracy Thomas, Sandra Zerkle, and Non-Voting Members: Bill Long (Delta Township) and Douglas Jester (East Lansing).

Nays: None.

Action: Motion Carried.

The Committee of the Whole went into closed session at 5:42 p.m.

The Committee of the Whole reconvened to open session at 6:28 p.m.

Motion by Commissioner Graham, Seconded by Commissioner Ross to reconvene into open session.

Action: Motion Carried.

Central Substation and Westside Reinforcement Update

General Manager Peffley introduced Steve Brennan, Manager of Project Engineering. Mr. Brennan provided the Board with an update of the Westside Reinforcement and Central Substation projects. These two projects total approximately \$60 million, are part of the Lansing Energy Tomorrow plan, and must be completed in order to close the Eckert power plant. The Central Substation is necessary to remove load from the Eckert substation prior to its closing and the Westside Reinforcement is necessary to maintain reliability and meet FERC and NERC reliability compliance requirements. The Westside Reinforcement involves modifying three existing substations and building eight miles of new 138 Kv transmission line. Mr. Brennan provided details on each project and indicated that both are on schedule and within budget.

Anti-Nepotism Policy Resolution

Michael Flowers, Human Resources Executive Director, reviewed the proposed changes to the Anti-Nepotism Policy.

Nepotism Policy

WHEREAS, in order to promote a diverse workforce, avoid even the appearance of favoritism in employment matters, and to assure that an employee's hire, transfer, or promotion is based solely on the employee's qualifications and performance, the Board of Water and Light (BWL) is altering and clarifying its policy on nepotism.

RESOLVED, That as of January 30, 2004, the BWL will not hire, transfer, or promote an employee to work in any Responsibility Area (RA) that reports to a Manager or Director or through a Manager to a Director where the Manager and/or Director is a family member of the employee. Additionally, no employee will be placed in a position in which he or she reports directly to a family member. ~~Following the effective date of this policy, no family member of a Commissioner, Board Appointee, Senior Vice President, or Director shall be hired by the BWL.~~

~~FURTHER RESOLVED, That for purposes of this policy, family member shall be defined as spouse, child, parent, step parent, sibling, step sibling, adopted child, step child, foster child, grandchild, grandparent, great grandparent, in-law, aunt, uncle, or any cousin.~~

FURTHER RESOLVED, That exceptions to this Policy may be permitted for reasons related to exigent needs of the BWL.

FURTHER RESOLVED, That the General Manager shall establish procedures consistent with this policy and shall be responsible for their implementation and compliance.

~~(Approved by Board 1/29/04 - Res. 2004-01-03)~~

GM Peffley stated that he has always had the right to waive the policy, but supports the recommended modifications.

After a brief discussion regarding why the modifications were recommended the following motion was offered.

Motion by Commissioner Price, **Seconded** by Commissioner McCloud to forward the Anti-Nepotism Policy Resolution with the proposed edits to the Board for consideration.

Action: Motion Carried.

Unmanned Aerial Vehicle Storm Restoration Update

GM Peffley informed the Committee that the BWL purchased a drone and it is already paying big dividends for the BWL. He presented slides depicting the use of the drone to find hot spots on faulty wiring, transformer problems, and line feeds. An infrared camera on the drone helps to identify future failures.



There was some discussion regarding the capabilities of the drone. General Manager Peffley informed the Committee the drone is operated from a BWL truck that is set in a specific location and kept in line of sight. The discussion also touched upon the possibility of mobile mapping and data retention regarding circuit location and replacement. General Manager Peffley stated that exploration of such technology is being explored as well as the use of drones to find leaks during boiler inspections.

MIOSHA Update

A complaint was submitted to the Michigan Occupational Safety and Health Administration (MIOSHA) regarding the possibility of an explosion due to a faulty boiler. General Manager Peffley explained that more than likely it was not an explosion but a hunk of ash that fell and made a loud sound. He informed

the Committee that when MIOSHA gets involved, a fine is usually assessed. It is worth mentioning that the BWL submitted documentation regarding the matter and there were no wrong findings.

Commissioner Louney thanked GM Peffley for providing the MIOSHA information to the Commissioners and for clarifying the difference between a violation and a warning.

GM Peffley also stated that the BWL is going for a high rating from MIOSHA that only Consumers Energy has and it requires very detailed inspections of the facilities. It takes a year to get the certification and only a handful of plants have them.

Mutual Aid Assistance

GM Peffley thanked the employees for the work that they did in Florida after the recent hurricane. He said the work that was done was well organized.

Other

GM Peffley provided the Commissioners with a copy of the Focus magazine in which the BWL was named as a catalyst to redeveloping the REO town area.

Commissioner Mullen spoke about the number of questions and requests that are being submitted to the three appointed employees by members of the Board of Commissioners. He suggested that questions be tapered down and that some be submitted for agenda topics at various committee meetings.

Adjourn

Motion by Commissioner Price, **Seconded** by Commissioner McCloud to adjourn the meeting.

Meeting adjourned at 7:02 p.m.

Respectfully Submitted
Tony Mullen, Chair
Committee of the Whole



Lansing Board of Water and Light Freedom of Information Act Policy and Procedures

Proposal to Approve the BWL's FOIA Policy & Procedures

BWL Revised FOIA Policy

- ▶ BWL FOIA policy & procedures in alignment with the City of Lansing

Governing Authority

▶ Section 19.4 - BWL Rules of Administrative Procedure


19.4 Freedom of Information

It shall be the policy of this Board to follow the provisions of Public Act 442, 1976, as it may be amended by legislative enactment or judicial decision.

Benefits to the BWL and Customers

- ▶ Increased clarity for requestors
- ▶ Streamlined process for FOIA processing
- ▶ Increased efficiency for Appeals process
- ▶ Compliance with FOIA timelines, & other requirements

FOIA Request Form



LANSING BWL
Hometown People. Hometown Power.

P.O. Box 13007
Lansing, MI 48901
www.lbw1.com

Freedom of Information Act Request Form

You may download this form, fill out and email the completed form to FOIARequests@lbw1.com or you may mail this form to the address listed above, Attn: FOIA Coordinator

Pursuant to the State of Michigan Freedom of Information Act, MCL-15.231-15.246, I am requesting the following documents:

If the requested documents are available, and not subject to any exemption by applicable law, please select your preference for access to records:

- Examine Original (BWL FOIA Coordinator will arrange a time/date with you)
- Receive Copy
 - I prefer to receive a copy by email (be sure your email is listed legibly below)
 - I prefer to receive a copy by USPS (you may be charged for postage depending on the number of documents requested)

Email address where I wish to receive a copy of the documents: _____ @ _____ . _____

Address where I wish to receive a copy of the documents: Name: _____
 Street: _____ Apt.: _____
 City: _____ Zip Code: _____

For Lansing Board of Water and Light Use Only		
Date Received: ○	FOIA Log Request Number: ○	Comments: ○

Personal information contained on this form is collected pursuant to the Freedom of Information Act and will be used only for the purposes of responding to your FOIA request. Questions about this collection should be directed to the Freedom of Information Act Coordinator to FOIARequests@lbw1.com.

LANSING BOARD OF WATER & LIGHT

Written Public Summary of FOIA Procedures and Guidelines

Consistent with the Michigan Freedom of Information Act (FOIA), Public Act 442 of 1976, the following is the Written Public Summary of the Board of Water & Light's FOIA Procedures and Guidelines relevant to the general public.

As used herein, "BWL" includes all departments and boards of the Lansing Board of Water & Light.

This is only a summary of the BWL's FOIA Procedures and Guidelines. For more details and information, copies of the BWL's FOIA Procedures and Guidelines are available at no charge at the BWL REO town office, the BWL Haco Drive customer service center and on the BWL's website at: www.LBWL.com.

1. How do I submit a FOIA request to the BWL?

A request to inspect or obtain copies of public records prepared, owned, used, possessed, or retained by the BWL must be submitted in writing and may be delivered to the below addresses in person, by mail, or by email. Please include the term "FOIA" or "FOIA Request" on all communications to ensure a prompt response. A request must sufficiently describe a public record so as to enable the BWL to find it.

Direct all requests for Lansing Board of Water & Light records to:

VIA U.S. Mail:

Lansing Board of Water & Light
FOIA Coordinator
1201 S. Washington Ave.
P.O. Box 13007
Lansing, Michigan 48910-1650

VIA Electronic Mail:

Email: foiarequests@lbwl.com

~~VIA Facsimile:~~

~~(517) 702 6743~~

Commented [EM1]: We are proposing striking the use of the BWL Fax Option for FOIA. The fax is not being utilized by requestors as an option, nor is it required by the Act.

2. What kind of response can I expect to my request?

Within 5 business days after receiving a FOIA request the BWL will issue a response. If a request is received ~~by U.S. mail, or by fax or~~ email, the request is deemed to have been received on the following business day. The BWL will respond to your request in one of the following ways:

- Grant the request, or
- Issue a written notice denying the request, or
- Grant the request in part and issue a written notice denying in part the request, or
- Issue a notice indicating that due to the nature of the request the BWL needs an additional 10 business days to respond, or
- Issue a written notice indicating that the public record requested is available at no charge on the BWL's website.

If the request is granted, or granted in part, the BWL will ask that payment be made for the allowable fees associated with responding to the request before the public record is made available.

If the cost of processing the request is expected to exceed \$50, or if you have not paid for a previously granted request, the BWL will require a deposit before processing the request.

3. What are the BWL's deposit requirements?

If the BWL has made a good faith calculation that the total fee for processing the request will exceed \$50.00, the BWL will require that you provide a deposit in the amount of 50% of the total estimated fee. When the BWL requests the deposit, it will provide you a non-binding best efforts estimate of how long it will take to process the request after you have paid your deposit.

If the BWL receives a request from a person who has not paid the BWL for copies of public records made in fulfillment of a previously granted written request, the BWL will require a

deposit of 100% of the estimated processing fee before it begins to search for the public record for any subsequent written request when **all** of the following conditions exist:

- The final fee for the prior written request is not more than 105% of the estimated fee;
- The public records made available contained the information sought in the prior written request and remain in the BWL's possession;
- The public records were made available to the individual, subject to payment, within the best effort time frame estimated by the BWL to provide the records;
- Ninety (90) days have passed since the BWL notified the individual in writing that the public records were available for pickup or mailing;
- The individual is unable to show proof of prior payment to the BWL; and
- The BWL has calculated an estimated detailed itemization that is the basis for the current written request's increased fee deposit.

The BWL will not require the 100% estimated fee deposit if any of the following apply:

- The person making the request is able to show proof of prior payment in full to the BWL;
- The BWL is subsequently paid in full for all applicable prior written requests; or
- Three hundred sixty five (365) days have passed since the person made the request for which full payment was not remitted to the BWL.

4. How does the BWL calculate FOIA processing fees?

The Michigan FOIA statute permits the BWL to charge for the following costs associated with processing a request:

- Labor costs associated with searching for, locating and examining a requested public record, when failure to charge a fee will result in unreasonably high costs to the BWL.
- Labor costs associated with a review of a record to separate and delete information exempt from disclosure, when failure to charge a fee will result in unreasonably high costs to the BWL.

- Labor costs associated with copying or duplication, which includes making paper copies, making digital copies, or transferring digital public records to non-paper physical media or through the Internet.
- The cost of copying or duplication, not including labor, of paper copies of public records.
- The cost of computer discs, computer tapes or other digital or similar media when the requestor asks for records in non-paper physical media. This may include the cost for copies of records already on the BWL's website if you ask for the BWL to make copies.
- The cost to mail or send a copy of the public record to a requestor. ~~copies.~~

Labor Costs

A labor cost will not be charged for the search, examination, review and the deletion and separation of exempt from nonexempt information unless failure to charge a fee would result in unreasonably high costs to the BWL. Costs are unreasonably high when they are excessive and beyond the normal or usual amount for those services compared to the BWL's usual FOIA requests, because of the nature of the request in the particular instance. The BWL must specifically identify the nature of the unreasonably high costs in writing.

- All labor costs will be estimated and charged in 15-minute increments, with all partial time increments rounded down.
- Labor costs will be charged at the hourly wage of the lowest-paid BWL employee capable of doing the work in the specific fee category, regardless of who actually performs work.
- Labor costs will also include a charge to cover or partially cover the cost of fringe benefits

Copying and Duplication

The BWL must use the most economical method for making copies of public records, including using double-sided printing, if cost-saving and available.

Non-paper Copies on Physical Media

- The cost for records provided on non-paper physical media, such as computer discs, computer tapes or other digital or similar media will be at the actual and most reasonably economical cost for the non-paper media.
- This cost will be charged only if the BWL has the technological capability necessary to provide the public record in the requested non-paper physical media format.

Paper Copies

- Paper copies of public records made on standard letter (8 ½ x 11) or legal (8 ½ x 14) sized paper will not exceed \$.10 per sheet of paper. Copies for non-standard sized sheets will reflect the actual cost of reproduction.

Mailing Costs

- The cost to mail public records will use a reasonably economical and justified means.
- The BWL may charge for the least expensive form of postal delivery confirmation.
- No extra cost will be charged for expedited shipping or insurance unless you request it.

5. How do I qualify for an indigence discount on the fee?

The BWL will discount the first \$20.00 of fees for a request if you submit an affidavit stating that you are:

- Indigent and receiving specific public assistance; or
- If not receiving public assistance, stating facts demonstrating an inability to pay because of indigence.

You are **not** eligible to receive the \$20.00 discount if you:

- Have previously received discounted copies of public records from the BWL twice during the calendar year; or
- Are requesting information on behalf of other persons who are offering or providing payment to you to make the request.

An affidavit is a sworn statement.

6. May a nonprofit organization receive a discount on the fee?

A nonprofit organization advocating for developmentally disabled or mentally ill individuals that is formally designated by the state to carry out activities under subtitle C of the federal developmental disabilities assistance and bill of rights act of 2000, Public Law 106-402, and the protection and advocacy for individuals with mental illness act, Public Law 99-319, may receive a \$20.00 discount if the request meets all of the following requirements in the Act:

- Is made directly on behalf of the organization or its clients.
- Is made for a reason wholly consistent with the mission and provisions of those laws under section 931 of the mental health code, 1974 PA 258, MCL 330.1931.
- Is accompanied by documentation of its designation by the state, if requested by the public body.

7. How may I challenge the denial of a public record or an excessive fee?

Appeal of a Denial of a Public Record

If you believe that all or a portion of a public record has not been disclosed or has been improperly exempted from disclosure, you may appeal to the BWL Chair of the Board of Commissioners (the “Chair”) Attorney by filing a written appeal of the denial with the office of the FOIA Coordinator.

The appeal must be in writing, specifically state the word “appeal,” and identify the reason or reasons you are seeking a reversal of the denial.

Within 10 business days of receiving the appeal the BWL Chair Attorney will respond in writing by:

- Reversing the disclosure denial; or
- Upholding the disclosure denial; or
- Reverse the disclosure denial in part and uphold the disclosure denial in part.

Whether or not you submitted an appeal of a denial to the BWL ~~Chair-Attorney~~, you may file a civil action in Ingham County Circuit Court within 180 days after the BWL's final determination to deny your request. If you prevail in the civil action the court will award you reasonable attorneys' fees, costs and disbursements. If the court determines that the BWL acted arbitrarily and capriciously in refusing to disclose or provide a public record, the court shall award you damages in the amount of \$1,000.

Appeal of an Excessive FOIA Processing Fee

If you believe that the fee charged by the BWL to process your FOIA request exceeds the amount permitted by state law, you must first appeal to the BWL ~~Chair Attorney~~ by filing a written appeal for a fee reduction to the ~~Chair FOIA Coordinator~~.

The appeal must specifically state the word "appeal" and identify how the required fee exceeds the amount permitted.

Within 10 business days after receiving the appeal, the BWL ~~Chair Attorney~~ will respond in writing by:

- Waiving the fee; or
- Reducing the fee and issue a written determination indicating the specific basis that supports the remaining fee; or
- Upholding the fee and issue a written determination indicating the specific basis that supports the required fee; or
- Issuing a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the BWL ~~Chair Attorney~~ will respond to the written appeal.

Within 45 days after receiving notice of the BWL ~~Chair Attorney's~~ determination of the processing fee appeal, you may commence a civil action in Ingham County Circuit Court for a fee reduction. If you prevail in the civil action by receiving a reduction of 50% or more of the total fee, the court may award all or appropriate amount of reasonable attorneys' fees, costs and

disbursements. If the court determines that the BWL acted arbitrarily and capriciously by charging an excessive fee, court may also award you punitive damages in the amount of \$500.

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Email: foiarequests@lbwl.com

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Within 5 business days after receiving a FOIA request the BWL will issue a response. If a request is received by U.S. mail, or email, the request is deemed to have been received on the following business day. The BWL will respond to your request in one of the following ways:

- Grant the request, or
- Issue a written notice denying the request, or
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If the BWL receives a request from a person who has not paid the BWL for copies of public records made in fulfillment of a previously granted written request, the BWL will require a deposit of 100% of the estimated processing fee before it begins to search for the public record for any subsequent written request when all of the following conditions exist:

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- The cost to mail or send a copy of the public record to a requestor

Labor Costs

A labor cost will not be charged for the search, examination, review and the deletion and separation of exempt from nonexempt information unless failure to charge a fee would result in unreasonably high costs to the BWL. Costs are unreasonably high when they are excessive and beyond the normal or usual amount for those services compared to the BWL's usual FOIA requests, because of the nature of the request in the particular instance. The BWL must specifically identify the nature of the unreasonably high costs in writing.

- All labor costs will be estimated and charged in 15-minute increments, with all partial time increments rounded down.
- Labor costs will be charged at the hourly wage of the lowest-paid BWL employee capable of doing the work in the specific fee category, regardless of who actually performs work.
- Labor costs will also include a charge to cover or partially cover the cost of fringe benefits

Copying and Duplication

The BWL must use the most economical method for making copies of public records, including using double-sided printing, if cost-saving and available.

Non-paper Copies on Physical Media

- The cost for records provided on non-paper physical media, such as computer discs, computer tapes or other digital or similar media will be at the actual and most reasonably economical cost for the non-paper media.
- This cost will be charged only if the BWL has the technological capability necessary to provide the public record in the requested non-paper physical media format.

Paper Copies

- Paper copies of public records made on standard letter (8 ½ x 11) or legal (8 ½ x 14) sized paper will not exceed \$.10 per sheet of paper. Copies for non-standard sized sheets will paper will reflect the actual cost of reproduction.

Mailing Costs

- The cost to mail public records will use a reasonably economical and justified means.
- The BWL may charge for the least expensive form of postal delivery confirmation.
- No extra cost will be charged for expedited shipping or insurance unless you request it.

5. How do I qualify for an indigence discount on the fee?

The BWL will discount the first \$20.00 of fees for a request if you submit an affidavit stating that you are:

- Indigent and receiving specific public assistance; or
- If not receiving public assistance, stating facts demonstrating an inability to pay because of indigence.

You are **not** eligible to receive the \$20.00 discount if you:

- Have previously received discounted copies of public records from the BWL twice during the calendar year; or
- Are requesting information on behalf of other persons who are offering or providing payment to you to make the request.

An affidavit is a sworn statement.

6. May a nonprofit organization receive a discount on the fee?

A nonprofit organization advocating for developmentally disabled or mentally ill individuals that is formally designated by the state to carry out activities under subtitle C of the federal

developmental disabilities assistance and bill of rights act of 2000, Public Law 106-402, and the protection and advocacy for individuals with mental illness act, Public Law 99-319, may receive a \$20.00 discount if the request meets all of the following requirements in the Act:

- Is made directly on behalf of the organization or its clients.
- Is made for a reason wholly consistent with the mission and provisions of those laws under section 931 of the mental health code, 1974 PA 258, MCL 330.1931.
- Is accompanied by documentation of its designation by the state, if requested by the public body.

7. How may I challenge the denial of a public record or an excessive fee?

Appeal of a Denial of a Public Record

If you believe that all or a portion of a public record has not been disclosed or has been improperly exempted from disclosure, you may appeal to the BWL Chair of the Board of Commissioners (the “Chair”) by filing a written appeal of the denial with the office of the FOIA Coordinator.

The appeal must be in writing, specifically state the word “appeal,” and identify the reason or reasons you are seeking a reversal of the denial.

Within 10 business days of receiving the appeal the BWL Chair will respond in writing by:

- Reversing the disclosure denial; or
- Upholding the disclosure denial; or
- Reverse the disclosure denial in part and uphold the disclosure denial in part.

Whether or not you submitted an appeal of a denial to the BWL Chair, you may file a civil action in Ingham County Circuit Court within 180 days after the BWL's final determination to deny your request. If you prevail in the civil action the court will award you reasonable attorneys’ fees, costs and disbursements. If the court determines that the BWL acted arbitrarily and capriciously in refusing to disclose or provide a public record, the court shall award you damages in the amount of \$1,000.

Appeal of an Excessive FOIA Processing Fee

If you believe that the fee charged by the BWL to process your FOIA request exceeds the amount permitted by state law, you must first appeal to the BWL Chair by filing a written appeal for a fee reduction to the Chair.

The appeal must specifically state the word “appeal” and identify how the required fee exceeds the amount permitted.

Within 10 business days after receiving the appeal, the BWL Chair will respond in writing by:

- Waiving the fee; or
- Reducing the fee and issue a written determination indicating the specific basis that supports the remaining fee; or
- Upholding the fee and issue a written determination indicating the specific basis that supports the required fee; or
- Issuing a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the BWL Chair will respond to the written appeal.

Within 45 days after receiving notice of the BWL Chair determination of the processing fee appeal, you may commence a civil action in Ingham County Circuit Court for a fee reduction. If you prevail in the civil action by receiving a reduction of 50% or more of the total fee, the court may award all or appropriate amount of reasonable attorneys’ fees, costs and disbursements. If the court determines that the BWL acted arbitrarily and capriciously by charging an excessive fee, court may also award you punitive damages in the amount of \$500.00.

LANSING BOARD OF WATER & LIGHT

FOIA PROCEDURES AND GUIDELINES

Preamble: Statement of Principles

It is the policy of the Lansing Board of Water & Light (hereinafter, "BWL") that all persons, except those incarcerated, consistent with the Michigan Freedom of Information Act (FOIA), are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. The people shall be informed so that they fully participate in the democratic process.

The BWL's policy with respect to FOIA requests is to comply with State law in all respects and to respond to FOIA requests in a consistent, fair, and even-handed manner regardless of who makes such a request.

The BWL acknowledges that it has a legal obligation to disclose all nonexempt public records in its possession pursuant to a FOIA request. The BWL acknowledges that sometimes it is necessary to invoke the exemptions identified under FOIA in order to ensure the effective operation of government and to protect the privacy of individuals.

The BWL will protect the public's interest in disclosure, while balancing the requirement to withhold or redact portions of certain records. The BWL's policy is to disclose public records consistent with and in compliance with State law.

The BWL has established the following written procedures and guidelines to implement the FOIA and will create a written public summary of the specific procedures and guidelines relevant to the general public regarding how to submit written requests to the public body and explaining how to understand a public body's written responses, deposit requirements, fee calculations, and avenues for challenge and appeal. The written public summary will be written in a manner so as to be easily understood by the general public.

As used herein, "BWL" includes all departments, and boards of the BWL.

Section 1: General Policies

The BWL, acting pursuant to the authority at MCL 15.236, designates the BWL General Counsel ~~BWL Attorney~~ as the FOIA Coordinator for the BWL. He or she is authorized to designate others to act on his or her behalf to accept and process written requests for the BWL's public records and approve denials.

If a request for a public record is received by fax or email, the request is deemed to have been received on the following business day. If a request is sent by email and delivered to a BWL spam or junk-mail folder, the request is not deemed received until one business day after the FOIA Coordinator first becomes aware of the request. The FOIA Coordinator shall note in the FOIA log both the date the request was delivered to the spam or junk-mail folder and the date the FOIA Coordinator became aware of the request.

The FOIA Coordinator may, in his or her discretion, implement administrative rules, consistent with State law and these Procedures and Guidelines to administer the acceptance and processing of FOIA requests.

The BWL is not obligated to create a new public record or make a compilation or summary of information which does not already exist. The FOIA Coordinator shall keep a copy of all written requests for public records received by the BWL on file for a period of at least one year.

The BWL will make this Procedures and Guidelines document and the Written Public Summary publicly available without charge. A copy of this Procedures and Guidelines document and the BWL's Written Public Summary must be publicly available by providing free copies both in the BWL's response to a written request and upon request by visitors at the BWL Main Office and at the BWL Customer Service Center. This Procedures and Guidelines document and the BWL's Written Public Summary will be maintained on the BWL's website at www.LBWL.com, so a link to those documents will be provided in lieu of providing paper copies when possible.

Section 2: Requesting a Public Record

A person requesting to inspect or obtain copies of public records prepared, owned, used, possessed, or retained by the BWL must do so in writing. A request must sufficiently describe a public record so as to enable BWL personnel to identify and find the requested public record. No specific form to submit a request for a public record is required. However the FOIA Coordinator may make available a FOIA Request Form for use by the public.

Written requests for public records may be submitted in person or by mail, fax, or email to the FOIA Coordinator the following:

VIA U.S. Mail:

Lansing Board of Water & Light
FOIA Coordinator
1201 S. Washington Ave.

P.O. Box 13007
Lansing, Michigan 48910-1650

VIA Electronic Mail:

Email: foiarequests@lbwl.com

VIA Facsimile:

(517) 702-6743

Upon their receipt or discovery, requests for public records misdirected shall be promptly forwarded to the appropriate FOIA Coordinator for processing.

A person may request that public records be provided on non-paper physical media, emailed or otherwise provided to him or her in digital form in lieu of paper copies. The BWL will comply with the request only if it possesses the necessary technological capability to provide records in the requested non-paper physical media format.

A person may subscribe to future issues of public records that are created, issued or disseminated by the BWL on a regular basis. A subscription is valid for up to 6 months and may be renewed by the subscriber.

A person serving a sentence of imprisonment in a local, state or federal correctional facility is not entitled to submit a request for a public record. The FOIA Coordinator will deny all such requests.

Section 3: Processing a Request

Unless otherwise agreed to in writing by the person making the request, the BWL will issue a response within 5 business days of receipt of a FOIA request. If a request is received by ~~U.S. mail, fax, or email or other electronic transmission~~, the request is deemed to have been received on the following business day.

The BWL will respond to a request in one of the following ways:

- Grant the request, or
- Issue a written notice denying the request, or
- Grant the request in part and issue a written notice denying in part the request, or

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- Issue a notice indicating that due to the nature of the request the BWL needs an additional 10 business days to respond for a total of no more than 15 business days. Only one such extension is permitted, unless otherwise permitted by law.
- Issue a written notice indicating that the public record requested is available at no charge on the BWL's website.

When a request is granted:

If the request is granted, or granted in part, the FOIA Coordinator will require that payment be made in full for the allowable fees associated with responding to the request before the public record is made available. The FOIA Coordinator shall provide a detailed itemization of the allowable costs incurred to process the request to the person making the request. A copy of these Procedures and Guidelines and the Written Public Summary will be provided to the requestor free of charge with the response to a written request for public records, provided however, that because these Procedures and Guidelines, and the Written Public Summary are maintained on the BWL's website at www.lbw.com, a link to the Procedures and Guidelines and the Written Public Summary may be provided in lieu of providing paper copies of those documents.

If the cost of processing a FOIA request is \$50 or less, the requestor will be notified of the amount due and where the documents can be obtained.

If the cost of processing a FOIA request is expected to exceed \$50 based on a good-faith calculation, or if the requestor has not paid in full for a previously granted request, the BWL will require a good-faith deposit pursuant to Section 4 of this policy before processing the request. In making the request for a good-faith deposit the FOIA Coordinator shall provide the requestor with a detailed itemization of the allowable costs estimated to be incurred by the BWL to process the request and also provide a best-efforts estimate of a time frame it will take the BWL to provide the records to the requestor. The best efforts estimate shall be nonbinding on the BWL, but will be made in good faith and will strive to be reasonably accurate, given the nature of the request in the particular instance, so as to provide the requested records in a manner based on the public policy expressed by Section 1 of the FOIA.

When a request is denied or denied in part:

If the request is denied or denied in part, the FOIA Coordinator will issue a Notice of Denial which shall provide in the applicable circumstance:

- An explanation as to why a requested public record is exempt from disclosure; or

- A certificate that the requested record does not exist under the name or description provided by the requestor, or another name reasonably known by the BWL; or
- An explanation or description of the public record or information within a public record that is separated or deleted from the public record; and
- An explanation of the person's right to submit an appeal of the denial to the BWL Chair of the Board of Commissioners (the "Chair")-Attorney, or seek judicial review in the Ingham County Circuit Court;
- An explanation of the right to receive attorneys' fees, costs, and disbursements as well as actual or compensatory damages, and punitive damages of \$1,000, should they prevail in Circuit Court.
- The Notice of Denial shall be signed by the FOIA Coordinator.

If a request does not sufficiently describe a public record, the FOIA Coordinator may, in lieu of issuing a Notice of Denial indicating that the request is deficient, seek clarification or amendment of the request by the person making the request. Any clarification or amendment will be considered a new request subject to the timelines described in this Section.

Requests to inspect public records:

The BWL shall provide reasonable facilities and opportunities for persons to examine and inspect public records during normal business hours. The FOIA Coordinator is authorized to promulgate rules regulating the manner in which records may be viewed so as to protect BWL records from loss, alteration, mutilation or destruction and to prevent excessive interference with normal BWL operations. Requests for examination and inspection are subject to fees as provided by the Act.

Section 4: Fee Deposits

If the fee estimate is expected to exceed \$50.00 based on a good-faith calculation, the requestor will be asked to provide a deposit not exceeding one-half of the total estimated fee.

If a request for public records is from a person who has not paid the BWL in full for copies of public records made in fulfillment of a previously granted written request, the FOIA Coordinator will require a deposit of 100% of the estimated processing fee before beginning to search for a public record for any subsequent written request by that person when all of the following conditions exist:

- The final fee for the prior written request is not more than 105% of the estimated fee;

- The public records made available contained the information sought in the prior written request and remain in the BWL's possession;
- The public records were made available to the individual, subject to payment, within the time frame estimated by the BWL to provide the records;
- Ninety (90) days have passed since the FOIA Coordinator notified the individual in writing that the public records were available for pickup or mailing;
- The individual is unable to show proof of prior payment to the BWL; and
- The FOIA Coordinator has calculated a detailed itemization that is the basis for the current written request's increased estimated fee deposit.

The FOIA Coordinator will not require an increased estimated fee deposit if any of the following apply:

- The person making the request is able to show proof of prior payment in full to the BWL;
- The BWL is subsequently paid in full for the applicable prior written request; or
- Three hundred sixty five (365) days have passed since the person made the request for which full payment was not remitted to the BWL.

Section 5: Calculation of Fees

A fee will *not* be charged for the labor cost of search, examination, review and the deletion and separation of exempt from nonexempt information *unless* failure to charge a fee would result in unreasonably high costs to the BWL because of the nature of the request in the particular instance, and the BWL specifically identifies the nature of the unreasonably high costs.

Costs for the search, examination review, and deletion and separation of exempt from non-exempt information are "unreasonably high" when they are excessive and beyond the normal or usual amount for those services (Attorney General Opinion 7083 of 2001) compared to the costs of the BWL's usual FOIA requests, not compared to the BWL's operating budget. (*Bloch v. Davison Community Schools*, Michigan Court of Appeals, Unpublished, April 26, 2011).

The following factors shall be used to determine an unreasonably high cost to the BWL:

- Volume of the public record requested
- Amount of time spent to search for, examine, review and separate exempt from non-exempt information in the record requested.

- Whether the public records are from more than one BWL department or whether various BWL offices are necessary to respond to the request.
- The available staffing to respond to the request.
- Any other similar factors identified by the FOIA Coordinator in responding to the particular request.

The BWL may charge for the following costs associated with processing a request:

- Labor costs associated with copying or duplication, which includes making paper copies, making digital copies, or transferring digital public records to non-paper physical media or through the Internet.
- Labor costs associated with searching for, locating and examining a requested public record.
- Labor costs associated with a review of a record to separate and delete information exempt from disclosure.
- The cost of copying or duplication, not including labor, of paper copies of public records. This may include the cost for copies of records already on the BWL's website if the requestor asks for the BWL to make copies.
- The cost of computer discs, computer tapes or other digital or similar media when the requestor asks for records in non-paper physical media. This may include the cost for copies of records already on the BWL's website if the requestor asks for the BWL to make copies.
- The cost to mail or send a public record to a requestor.

Labor costs will be calculated based on the following requirements:

- All labor costs will be estimated and charged in 15-minute increments, with all partial time increments rounded down.
- Labor costs will be charged at the hourly wage of the lowest-paid BWL employee capable of doing the work in the specific fee category, regardless of who actually performs work.
- The BWL may add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits, but in no case may it exceed the actual cost of fringe benefits.
- Overtime wages will not be included in labor costs unless agreed to by the requestor; overtime costs will not be used to calculate the fringe benefit cost.

The cost to provide records on non-paper physical media when so requested will be based on the following requirements:

- Computer disks, computer tapes or other digital or similar media will be at the actual and most reasonably economical cost for the non-paper media.
- This cost will only be assessed if the BWL has the technological capability necessary to provide the public record in the requested non-paper physical media format.
- The BWL will procure any non-paper media and will not accept media from the requestor in order to ensure integrity of the BWL's technology infrastructure.

The cost to provide paper copies of records will be based on the following requirements:

- Paper copies of public records made on standard letter (8 ½ x 11) or legal (8 ½ x 14) sized paper will not exceed \$.10 per sheet of paper. Copies for non-standard sized sheets of paper will reflect the actual cost of reproduction.
- The BWL may provide records using double-sided printing, if it is cost-saving and available.

The cost to mail records to a requestor will be based on the following requirements:

- The actual cost to mail public records using a reasonably economical and justified means.
- The BWL may charge for the least expensive form of postal delivery confirmation.
- No cost will be made for expedited shipping or insurance unless specified by the requestor.

If the FOIA Coordinator does not respond to a written request in a timely manner, the BWL must:

- Reduce the labor costs by 5% for each day the BWL exceeds the time permitted under FOIA up to a 50% maximum reduction, if *any* of the following applies:
 - The BWL's late response was willful and intentional,
 - The written request conveyed a request for information within the first 250 words of the body of a letter facsimile, email or email attachment, or
 - The written request included the words, characters, or abbreviations for "freedom of information," "information," "FOIA," "copy" or a recognizable misspelling of such, or legal code reference to MCL 15. 231, et seq. or 1976 Public Act 442 on the front of an envelope or in the subject line of an email, letter or facsimile cover page.
- Fully note the charge reduction in the Detailed Itemization of Costs Form.

Section 6: Waiver of Fees

The cost of the search for and copying of a public record may be waived or reduced if in the sole judgment of the FOIA Coordinator a waiver or reduced fee is in the public interest because it can be considered as primarily benefitting the general public.

Section 7: Discounted Fees

Indigence

The FOIA Coordinator will discount the first \$20.00 of the processing fee for a request if the person requesting a public record submits an affidavit stating that they are:

- Indigent and receiving specific public assistance, or
- If not receiving public assistance, stating facts demonstrating an inability to pay because of indigence.

An individual is not eligible to receive the waiver if:

- The requestor has previously received discounted copies of public records from the BWL twice during the calendar year; or
- The requestor requests information in connection with other persons who are offering or providing payment to make the request.

An affidavit is a sworn statement. The FOIA Coordinator may make a Fee Waiver Affidavit Form available for use by the public.

Nonprofit organization advocating for developmentally disabled or mentally ill individuals

The FOIA Coordinator will discount the first \$20.00 of the processing fee for a request from a nonprofit organization formally designated by the state to carry out activities under subtitle C of the federal developmental disabilities assistance and bill of rights act of 2000, Public Law 106-402, and the protection and advocacy for individuals with mental illness act, Public Law 99-319, or their successors, if the request meets all of the following requirements:

- Is made directly on behalf of the organization or its clients.

- Is made for a reason wholly consistent with the mission and provisions of those laws under section 931 of the mental health code, 1974 PA 258, MCL 330.1931.
- Is accompanied by documentation of its designation by the state, if requested by the public body.

Section 8: Appeal of a Denial of a Public Record

When a requestor believes that all or a portion of a public record has not been disclosed or has been improperly exempted from disclosure, he or she may appeal to the BWL ~~Chair Attorney~~ by filing an appeal of the denial with the ~~Chair, FOIA Coordinator~~. The appeal must be in writing, specifically state the word "appeal" and identify the reason or reasons the requestor is seeking a reversal of the denial.

Within 10 business days of receiving the appeal the BWL ~~Chair Attorney~~ will respond in writing by:

- Reversing the disclosure denial;
- Upholding the disclosure denial; or
- Reverse the disclosure denial in part and uphold the disclosure denial in part; or
- Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the BWL ~~Chair Attorney~~ shall respond to the written appeal. The BWL ~~Chair Attorney~~ shall not issue more than 1 notice of extension for a particular written appeal.

If the BWL ~~Chair Attorney~~ fails to respond to a written appeal, or if the BWL ~~Chair Attorney~~ upholds all or a portion of the disclosure denial that is the subject of the written appeal, the requesting person may seek judicial review of the nondisclosure by commencing a civil action in Ingham County Circuit Court.

Whether or not a requestor submitted an appeal of a denial to the BWL ~~Chair Attorney~~, he or she may file a civil action in Ingham County Circuit Court within 180 days after the BWL's final determination to deny the request.

If a court determines a public record is not exempt from disclosure, it shall order the BWL to cease withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location of the public record. Failure to comply with an order of the court may be punished as contempt of court.

If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in such an action, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or BWL prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements.

If the court determines that the BWL has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall order the BWL to pay a civil fine of \$1,000.00, which shall be deposited into the general fund of the state treasury. The court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of \$1,000.00 to the person seeking the right to inspect or receive a copy of a public record. The damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

Section 9: Appeal of an Excessive FOIA Processing Fee

“Fee” means the total fee or any component of the total fee calculated under section 4 of the FOIA, including any deposit.

If a requestor believes that the fee charged by the BWL to process a FOIA request exceeds the amount permitted by state law or under this policy, he or she must first appeal to the BWL ~~Chair~~Attorney by submitting a written appeal for a fee reduction to the ~~BWL Chair~~FOIA Coordinator.

The appeal must be in writing, specifically state the word "appeal" and identify how the required fee exceeds the amount permitted.

Within 10 business days after receiving the appeal, the BWL ~~Chair~~Attorney will respond in writing by:

- Waiving the fee;
- Reducing the fee and issuing a written determination indicating the specific basis that supports the remaining fee;
- Upholding the fee and issuing a written determination indicating the specific basis that supports the required fee; or
- Issuing a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the BWL Attorney will respond to the written appeal. The BWL ~~Chair~~Attorney shall not issue more than 1 notice of extension for a particular written appeal.

Where the BWL ~~Chair~~Attorney reduces or upholds the fee, the determination must include a certification from the BWL ~~Chair~~Attorney that the statements in the determination are accurate and that the reduced fee amount complies with its publicly available procedures and guidelines and Section 4 of the FOIA.

Within 45 days after receiving notice of the ~~BWL-ChairAttorney~~'s determination of an appeal, the requesting person may commence a civil action in Ingham County Circuit Court for a fee reduction. If a civil action is commenced against the BWL for an excess fee, the BWL is not obligated to complete the processing of the written request for the public record at issue until the court resolves the fee dispute. An action shall not be filed in circuit court unless one of the following applies:

- The BWL ~~Chair Attorney~~ failed to respond to a written appeal as required, or the ~~BWL Chair Attorney~~ issued a determination to a written appeal.

If a court determines that the BWL required a fee that exceeds the amount permitted under its publicly available procedures and guidelines or Section 4 of the FOIA, the court shall reduce the fee to a permissible amount. Failure to comply with an order of the court may be punished as contempt of court.

If the requesting person prevails in court by receiving a reduction of 50% or more of the total fee, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. The award shall be assessed against the public body liable for damages.

If the court determines that the BWL has arbitrarily and capriciously violated the FOIA by charging an excessive fee, the court shall order the BWL to pay a civil fine of \$500.00, which shall be deposited in the general fund of the state treasury. The court may also award, in addition to any actual or compensatory damages, punitive damages in the amount of \$500.00 to the person seeking the fee reduction. The fine and any damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

Section 10: Conflict with Prior FOIA Policies and Procedures; Effective Date

To the extent that these Procedures and Guidelines conflict with previous FOIA policies promulgated by the BWL, these Procedures and Guidelines are controlling. To the extent that any administrative rule promulgated by the FOIA Coordinator subsequent to the adoption of this resolution is found to be in conflict with any previous policy promulgated by the BWL, the administrative rule promulgated by the FOIA Coordinator is controlling.

To the extent that any provision of these Procedures and Guidelines or any administrative rule promulgated by the FOIA Coordinator pertaining to the release of public records is found to be in conflict with any State statute, the applicable statute shall control. The FOIA Coordinator is authorized to modify this policy and all previous policies adopted by the BWL, and the Written Public Summary, and to adopt Cost Worksheet(s) and administrative rules as he or she may deem necessary, to facilitate the legal review and processing of requests for

public records made pursuant to Michigan's FOIA statute, provided that such modifications and rules are consistent with State law. The FOIA Coordinator shall inform the ~~General Manager-mayor~~ and BWL Board of Commissioners-Council of any changes to these Procedures and Guidelines or Written Public Summary.

These FOIA Policies and Guidelines become effective July 1, 2018.

Section 11: Additional Internal FOIA Procedures

I. TRAINING.

- A. ~~Consistent with longstanding OCA practice, all~~ FOIA Personnel shall receive continuous and comprehensive FOIA training, consistent with BWL operational training objectives. including written certification thereof.
- B. The training shall include, at a minimum:
1. Preliminary training before being designated as a FOIA Coordinator-~~or Officer~~, including support staff, which shall include knowledge of and proficiency with:
 - a. The Act;
 - b. Leading cases and AG opinions under the Act;
 - c. FOIA Guidelines and Procedures.
 2. All-FOIA Personnel shall be encouraged to participate in ~~receive~~ continuing legal education and training, including:
 - a. Annual participation in seminars focusing on FOIA, including the Institute for Continuing Legal Education (ICLE), the Michigan Municipal League (MML)/Michigan Association of Municipal Attorneys (MAMA), and other providers of such training; .
 - b. Subscription to the MML's listserv, including especially threads and updates on FOIA decisions and issues, which are then circulated to the group;
 - c. Review and discussion of FOIA in staff meetings, led by BWL Attorney/FOIA Coordinator, including:
 - (i) All significant incoming ~~advance sheets~~, court decisions, and AG opinions on FOIA issues;

- (ii) Circulation of such materials to all FOIA Personnel, along with analysis and application of those materials;
- d. Interoffice memoranda to FOIA Personnel regarding updates on FOIA issues, cases, policies, and procedures.

II. FOIA REQUEST RECEIVED.

A. ~~The Legal Analyst will date stamp request when received (if by U.S. mail), and then note receipt date per the Act in the BWL electronic filing system, whether received by email or by U.S. mail, and assign a FOIA log number within the BWL electronic filing system accordingly. If the FOIA Request Form is utilized by the requestor, the Legal Analyst will note the FOIA log number accordingly on the FOIA Request form and file the FOIA Request Form accordingly within the BWL electronic filing system. (faxed requests do not need to be stamped; date is at top of fax copy).~~

B. As soon as possible, but not later than the day after receipt, log into BWL electronic filing system and assign to attorney for review. ~~transmit the request to coordinating assistant.~~

C. ~~Coordinating assistant logs FOIA request on computerized log sheet.~~

~~1. Using computerized system, update in the BWL electronic filing system, the FOIA-Response due date, and update relevant requestor addressee information. "Due out" date computed (5 working days after receipt; electronically received requests are logged in on the next day's date).~~

~~2. Print copy of updated log sheet for file.~~

~~3.1. Determine departments to forward request to, and begin gathering requested documents.~~

III. REQUEST RECORDS FROM APPLICABLE DEPARTMENT(S).

- A. Prepare electronic request cover memo to applicable department(s).
- B. Provide electronic copy of such cover memo to the City of Lansing Attorney, within one business day of receipt of the FOIA request. File copy in the electronic record keeping system where applicable records are retained. ~~Make copies and deliver hard or electronic copy to department where~~
- C. Keep the original request and a copy of the cover memo for BWL electronic ~~OCA~~-records.

IV. TRACKING AND EXTENSION NOTICE.

- A. Track request so that it is responded to according to the time frames established in the Act.

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- B. If the request requires a voluminous amount of records to be copied or records are being requested of several departments, it may be necessary to send a notice of extension.
- C. The extension notice is sent out on the first “due date” and extends the period for response an additional 10 business days. Note this extended due date appropriately within the BWL electronic filing system.

V. RECEIPT AND REVIEW OF RECORDS REQUESTED AND RESPONSE.

A. RECEIPT AND REVIEW.

- 1. Once all documents/records are received, the assigned FOIA coordinator or Delegee will review records for compliance with request and for any information which may need to be redacted due to applicable exemptions.
- 2. When review is complete, the coordinating assistant will determine costs (utilizing the cost worksheet) and the assigned FOIA coordinator will prepare cover letter to requestor.
- 3. Submit letter of response and copies of any applicable requested documents to the requestor and file a copy of the response within the BWL electronic filing system to assigned attorney for review and signature.

- B. RESPONSE: FOIA personnel will respond consistently with these Guidelines and Procedures.

VI. PROCEDURAL AND SUBSTANTIVE SAFEGUARDS PRIOR TO RESPONSE.

A. PROCEDURAL SAFEGUARDS.

- 1. Are all Social Security Numbers and any applicable personal information that should be protected per applicable privacy laws redacted? (See below in Section B, related privacy safeguards).
- ~~2. Are all redactions illegible in production copy, including production of a copy of the redacted document instead of the original?~~
- ~~3. For law enforcement matters:~~
 - ~~a. Is information properly redacted to prevent disclosure of confidential source or information?~~
 - ~~b. Is information properly redacted to prevent disclosure of other exempted information?~~
 - ~~(i) Identity of informant?~~
 - ~~(ii) Identity of undercover officer, agent, or plain clothes officer?~~
 - ~~(iii) Personal address or telephone number of active or retired law enforcement officers or their special skills?~~
 - ~~(iv) Name, address, or telephone numbers of family members, relatives, children, or parents of active or retired law enforcement officers or agents?~~

- ~~(v) Operational instructions for law enforcement officers or agents?~~
- ~~(vi) Contents of staff manuals provided for law enforcement officers or agents? (vii)
Danger to the life or safety of law enforcement officers or agents or their families, relatives, children, parents, or those who furnish information to law enforcement departments or agencies?~~
- ~~(viii) Identity of person as a law enforcement officer, agent, or informant?~~
- ~~(ix) Personnel records of law enforcement agencies?~~
- ~~(x) Identity of residences that law enforcement agencies are requested to check in the absence of their owners or tenants?~~

~~4. For criminal prosecutions in which denial is based on pending investigation, has status of case been confirmed with ICPO?~~

B. SUBSTANTIVE SAFEGUARDS.

1. Have all exemptions been considered?
2. Where an exemption is claimed, has sufficient explanation been given?
3. For personnel matters, does response comply with Bullard-Plawicki?
4. Have privacy concerns been adequately addressed?
 - a. Has information covered by Health Insurance Portability Accountability Act of 1996 (HIPAA) been redacted?
 - b. Has information covered by the Public Health Code, 1978 PA 368, especially as codified at MCL 333.1531, been redacted?
 - c. Has information covered by the Mental Health Code, 1974 PA 258, especially as codified at MCL 330.1748, been redacted?
 - d. If not covered by HIPAA, the Public Health Code, or the Mental Health Code, has medical information been appropriately redacted, including especially a person's actual or alleged HIV status?
 - e. Have appropriate redactions been made for "[i]nformation of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy," MCL 243(1)(a)?

VII. FINALIZATION PROCEDURES.

- A. Mark FOIA log with date out, whether it was released or denied, and costs, if any.
- B. File ~~in BWL designated electronic record-keeping system. packet in monthly folder in FOIA file cabinet.~~

- C. File FOIA response letter-billing sheet (copy of cover letter of released records) in electronic filing system, FOIA receivables folder in FOIA file cabinet.

VIII. FOIA PAYMENT RECEIVED.

- A. When a check for payment of a FOIA request is received, provide the check to BWL Accounting Department and these are the steps that should be taken in recording and processing the payment:

- ~~1. Date stamp the cover letter and/or check.~~
- ~~2. Hold checks until there are 3-5 of them to process.~~
- ~~3. Pull the copy of the original cover letter (which serves as an invoice) from the "FOIA Receivables" file folder.~~
- ~~4.1. m~~Mark the FOIA log with date received and check number.
- ~~5. Copy "invoice" cover letters to attach to receipt.~~
- ~~6. Prepare receipts.~~
- ~~7. Attach copy of "invoice" letter to receipt book.~~
- ~~8. Prepare deposit slip.~~
- ~~9. Give deposit slip and checks to 2nd person to take down to Treasurer's for deposit.~~
- ~~10. Prepare envelopes for mailing receipts.~~
- ~~11. File "invoice" copies in "FOIA payments rec'd" file folder.~~
- ~~12. Get yellow copy of deposit slip back from 2nd person (after deposit with Treasurer) and file with other slips.~~

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Sections in large part-Sections 4-10 of these Procedures and Guidelines are adapted from those promulgated by the Michigan Township Association and the Michigan Association of Municipal Attorneys and the City of Lansing's FOIA Policy and Procedures.

LANSING BOARD OF WATER & LIGHT

FOIA PROCEDURES AND GUIDELINES

Preamble: Statement of Principles

It is the policy of the Lansing Board of Water & Light (hereinafter, “BWL”) that all persons, except those incarcerated, consistent with the Michigan Freedom of Information Act (FOIA), are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. The people shall be informed so that they fully participate in the democratic process.

The BWL’s policy with respect to FOIA requests is to comply with State law in all respects and to respond to FOIA requests in a consistent, fair, and even-handed manner regardless of who makes such a request.

The BWL acknowledges that it has a legal obligation to disclose all nonexempt public records in its possession pursuant to a FOIA request. The BWL acknowledges that sometimes it is necessary to invoke the exemptions identified under FOIA in order to ensure the effective operation of government and to protect the privacy of individuals.

The BWL will protect the public's interest in disclosure, while balancing the requirement to withhold or redact portions of certain records. The BWL’s policy is to disclose public records consistent with and in compliance with State law.

The BWL has established the following written procedures and guidelines to implement the FOIA and will create a written public summary of the specific procedures and guidelines relevant to the general public regarding how to submit written requests to the public body and explaining how to understand a public body’s written responses, deposit requirements, fee calculations, and avenues for challenge and appeal. The written public summary will be written in a manner so as to be easily understood by the general public.

As used herein, “BWL” includes all departments, and boards of the BWL.

Section 1: General Policies

The BWL, acting pursuant to the authority at MCL 15.236, designates the BWL General Counsel as the FOIA Coordinator for the BWL. He or she is authorized to designate others to act on his or her behalf to accept and process written requests for the BWL’s public records and approve denials.

If a request for a public record is received by fax or email, the request is deemed to have been received on the following business day. If a request is sent by email and delivered to a BWL spam or junk-mail folder, the request is not deemed received until one business day after the FOIA Coordinator first becomes aware of the request. The FOIA Coordinator shall note in the FOIA log both the date the request was delivered to the spam or junk-mail folder and the date the FOIA Coordinator became aware of the request.

The FOIA Coordinator may, in his or her discretion, implement administrative rules, consistent with State law and these Procedures and Guidelines to administer the acceptance and processing of FOIA requests.

The BWL is not obligated to create a new public record or make a compilation or summary of information which does not already exist. The FOIA Coordinator shall keep a copy of all written requests for public records received by the BWL on file for a period of at least one year.

The BWL will make this Procedures and Guidelines document and the Written Public Summary publicly available without charge. A copy of this Procedures and Guidelines document and the BWL's Written Public Summary must be publicly available by providing free copies both in the BWL's response to a written request and upon request by visitors at the BWL Main Office and at the BWL Customer Service Center. This Procedures and Guidelines document and the BWL's Written Public Summary will be maintained on the BWL's website at www.LBWL.com, so a link to those documents will be provided in lieu of providing paper copies when possible.

Section 2: Requesting a Public Record

A person requesting to inspect or obtain copies of public records prepared, owned, used, possessed, or retained by the BWL must do so in writing. A request must sufficiently describe a public record so as to enable BWL personnel to identify and find the requested public record. No specific form to submit a request for a public record is required. However the FOIA Coordinator may make available a FOIA Request Form for use by the public.

Written requests for public records may be submitted in person or by mail, fax, or email to the FOIA Coordinator the following:

VIA U.S. Mail:

Lansing Board of Water & Light
FOIA Coordinator
1201 S. Washington Ave.
P.O. Box 13007
Lansing, Michigan 48910-1650

VIA Electronic Mail:

Email: foiarequests@lbwl.com

Upon their receipt or discovery, requests for public records misdirected shall be promptly forwarded to the appropriate FOIA Coordinator for processing.

A person may request that public records be provided on non-paper physical media, emailed or otherwise provided to him or her in digital form in lieu of paper copies. The BWL will comply with the request only if it possesses the necessary technological capability to provide records in the requested non-paper physical media format.

A person may subscribe to future issues of public records that are created, issued or disseminated by the BWL on a regular basis. A subscription is valid for up to 6 months and may be renewed by the subscriber.

A person serving a sentence of imprisonment in a local, state or federal correctional facility is not entitled to submit a request for a public record. The FOIA Coordinator will deny all such requests.

Section 3: Processing a Request

Unless otherwise agreed to in writing by the person making the request, the BWL will issue a response within 5 business days of receipt of a FOIA request. If a request is received by U.S. mail, , or email, the request is deemed to have been received on the following business day.

The BWL will respond to a request in one of the following ways:

- Grant the request, or
- Issue a written notice denying the request, or
- Grant the request in part and issue a written notice denying in part the request, or
- Issue a notice indicating that due to the nature of the request the BWL needs an additional 10 business days to respond for a total of no more than 15 business days. Only one such extension is permitted, unless otherwise permitted by law.
- Issue a written notice indicating that the public record requested is available at no charge on the BWL's website.

When a request is granted:

If the request is granted, or granted in part, the FOIA Coordinator will require that payment be made in full for the allowable fees associated with responding to the request before the public record is made available. The FOIA Coordinator shall provide a detailed itemization of the allowable costs incurred to process the request to the person making the request. A copy of these Procedures and Guidelines and the Written Public Summary will be provided to the requestor free of charge with the response to a written request for public records, provided however, that because these Procedures and Guidelines, and the Written Public Summary are maintained on the BWL's website at www.lbwl.com, a link to the Procedures and Guidelines and the Written Public Summary may be provided in lieu of providing paper copies of those documents.

If the cost of processing a FOIA request is \$50 or less, the requestor will be notified of the amount due and where the documents can be obtained.

If the cost of processing a FOIA request is expected to exceed \$50 based on a good-faith calculation, or if the requestor has not paid in full for a previously granted request, the BWL will require a good-faith deposit pursuant to Section 4 of this policy before processing the request. In making the request for a good-faith deposit the FOIA Coordinator shall provide the requestor with a detailed itemization of the allowable costs estimated to be incurred by the BWL to process the request and also provide a best-efforts estimate of a time frame it will take the BWL to provide the records to the requestor. The best efforts estimate shall be nonbinding on the BWL, but will be made in good faith and will strive to be reasonably accurate, given the nature of the request in the particular instance, so as to provide the requested records in a manner based on the public policy expressed by Section 1 of the FOIA.

When a request is denied or denied in part:

If the request is denied or denied in part, the FOIA Coordinator will issue a Notice of Denial which shall provide in the applicable circumstance:

- An explanation as to why a requested public record is exempt from disclosure; or
- A certificate that the requested record does not exist under the name or description provided by the requestor, or another name reasonably known by the BWL; or
- An explanation or description of the public record or information within a public record that is separated or deleted from the public record; and
- An explanation of the person's right to submit an appeal of the denial to the BWL Chair of the Board of Commissioners (the "Chair"), or seek judicial review in the Ingham County Circuit Court;

- An explanation of the right to receive attorneys' fees, costs, and disbursements as well as actual or compensatory damages, and punitive damages of \$1,000, should they prevail in Circuit Court.
- The Notice of Denial shall be signed by the FOIA Coordinator.

If a request does not sufficiently describe a public record, the FOIA Coordinator may, in lieu of issuing a Notice of Denial indicating that the request is deficient, seek clarification or amendment of the request by the person making the request. Any clarification or amendment will be considered a new request subject to the timelines described in this Section.

Requests to inspect public records:

The BWL shall provide reasonable facilities and opportunities for persons to examine and inspect public records during normal business hours. The FOIA Coordinator is authorized to promulgate rules regulating the manner in which records may be viewed so as to protect BWL records from loss, alteration, mutilation or destruction and to prevent excessive interference with normal BWL operations. Requests for examination and inspection are subject to fees as provided by the Act.

Section 4: Fee Deposits

If the fee estimate is expected to exceed \$50.00 based on a good-faith calculation, the requestor will be asked to provide a deposit not exceeding one-half of the total estimated fee.

If a request for public records is from a person who has not paid the BWL in full for copies of public records made in fulfillment of a previously granted written request, the FOIA Coordinator will require a deposit of 100% of the estimated processing fee before beginning to search for a public record for any subsequent written request by that person when all of the following conditions exist:

- The final fee for the prior written request is not more than 105% of the estimated fee;
- The public records made available contained the information sought in the prior written request and remain in the BWL's possession;
- The public records were made available to the individual, subject to payment, within the time frame estimated by the BWL to provide the records;
- Ninety (90) days have passed since the FOIA Coordinator notified the individual in writing that the public records were available for pickup or mailing;
- The individual is unable to show proof of prior payment to the BWL; and

- The FOIA Coordinator has calculated a detailed itemization that is the basis for the current written request's increased estimated fee deposit.

The FOIA Coordinator will not require an increased estimated fee deposit if any of the following apply:

- The person making the request is able to show proof of prior payment in full to the BWL;
- The BWL is subsequently paid in full for the applicable prior written request; or
- Three hundred sixty five (365) days have passed since the person made the request for which full payment was not remitted to the BWL.

Section 5: Calculation of Fees

A fee will **not** be charged for the labor cost of search, examination, review and the deletion and separation of exempt from nonexempt information **unless** failure to charge a fee would result in unreasonably high costs to the BWL because of the nature of the request in the particular instance, and the BWL specifically identifies the nature of the unreasonably high costs.

Costs for the search, examination review, and deletion and separation of exempt from non-exempt information are “unreasonably high” when they are excessive and beyond the normal or usual amount for those services (Attorney General Opinion 7083 of 2001) compared to the costs of the BWL’s usual FOIA requests, not compared to the BWL’s operating budget. (*Bloch v. Davison Community Schools*, Michigan Court of Appeals, Unpublished, April 26, 2011).

The following factors shall be used to determine an unreasonably high cost to the BWL:

- Volume of the public record requested
- Amount of time spent to search for, examine, review and separate exempt from non-exempt information in the record requested.
- Whether the public records are from more than one BWL department or whether various BWL offices are necessary to respond to the request.
- The available staffing to respond to the request.
- Any other similar factors identified by the FOIA Coordinator in responding to the particular request.

The BWL may charge for the following costs associated with processing a request:

- Labor costs associated with copying or duplication, which includes making paper copies, making digital copies, or transferring digital public records to non-paper physical media or through the Internet.
- Labor costs associated with searching for, locating and examining a requested public record.
- Labor costs associated with a review of a record to separate and delete information exempt from disclosure.
- The cost of copying or duplication, not including labor, of paper copies of public records. This may include the cost for copies of records already on the BWL's website if the requestor asks for the BWL to make copies.
- The cost of computer discs, computer tapes or other digital or similar media when the requestor asks for records in non-paper physical media. This may include the cost for copies of records already on the BWL's website if the requestor asks for the BWL to make copies.
- The cost to mail or send a public record to a requestor.

Labor costs will be calculated based on the following requirements:

- All labor costs will be estimated and charged in 15-minute increments, with all partial time increments rounded down.
- Labor costs will be charged at the hourly wage of the lowest-paid BWL employee capable of doing the work in the specific fee category, regardless of who actually performs work.
- The BWL may add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits, but in no case may it exceed the actual cost of fringe benefits.
- Overtime wages will not be included in labor costs unless agreed to by the requestor; overtime costs will not be used to calculate the fringe benefit cost.

The cost to provide records on non-paper physical media when so requested will be based on the following requirements:

- Computer disks, computer tapes or other digital or similar media will be at the actual and most reasonably economical cost for the non-paper media.
- This cost will only be assessed if the BWL has the technological capability necessary to provide the public record in the requested non-paper physical media format.
- The BWL will procure any non-paper media and will not accept media from the requestor in order to ensure integrity of the BWL's technology infrastructure.

The cost to provide paper copies of records will be based on the following requirements:

- Paper copies of public records made on standard letter (8 ½ x 11) or legal (8 ½ x 14) sized paper will not exceed \$.10 per sheet of paper. Copies for non-standard sized sheets of paper will reflect the actual cost of reproduction.
- The BWL may provide records using double-sided printing, if it is cost-saving and available.

The cost to mail records to a requestor will be based on the following requirements:

- The actual cost to mail public records using a reasonably economical and justified means.
- The BWL may charge for the least expensive form of postal delivery confirmation.
- No cost will be made for expedited shipping or insurance unless specified by the requestor.

If the FOIA Coordinator does not respond to a written request in a timely manner, the BWL must:

- Reduce the labor costs by 5% for each day the BWL exceeds the time permitted under FOIA up to a 50% maximum reduction, if *any* of the following applies:
 - The BWL's late response was willful and intentional,
 - The written request conveyed a request for information within the first 250 words of the body of a letter facsimile, email or email attachment, or
 - The written request included the words, characters, or abbreviations for "freedom of information," "information," "FOIA," "copy" or a recognizable misspelling of such, or legal code reference to MCL 15. 231, et seq. or 1976 Public Act 442 on the front of an envelope or in the subject line of an email, letter or facsimile cover page.
- Fully note the charge reduction in the Detailed Itemization of Costs Form.

Section 6: Waiver of Fees

The cost of the search for and copying of a public record may be waived or reduced if in the sole judgment of the FOIA Coordinator a waiver or reduced fee is in the public interest because it can be considered as primarily benefitting the general public.

Section 7: Discounted Fees

Indigence

The FOIA Coordinator will discount the first \$20.00 of the processing fee for a request if the person requesting a public record submits an affidavit stating that they are:

- Indigent and receiving specific public assistance, or
- If not receiving public assistance, stating facts demonstrating an inability to pay because of indigence.

An individual is not eligible to receive the waiver if:

- The requestor has previously received discounted copies of public records from the BWL twice during the calendar year; or
- The requestor requests information in connection with other persons who are offering or providing payment to make the request.

An affidavit is a sworn statement. The FOIA Coordinator may make a Fee Waiver Affidavit Form available for use by the public.

Nonprofit organization advocating for developmentally disabled or mentally ill individuals

The FOIA Coordinator will discount the first \$20.00 of the processing fee for a request from a nonprofit organization formally designated by the state to carry out activities under subtitle C of the federal developmental disabilities assistance and bill of rights act of 2000, Public Law 106-402, and the protection and advocacy for individuals with mental illness act, Public Law 99-319, or their successors, if the request meets all of the following requirements:

- Is made directly on behalf of the organization or its clients.
- Is made for a reason wholly consistent with the mission and provisions of those laws under section 931 of the mental health code, 1974 PA 258, MCL 330.1931.
- Is accompanied by documentation of its designation by the state, if requested by the public body.

Section 8: Appeal of a Denial of a Public Record

When a requestor believes that all or a portion of a public record has not been disclosed or has been improperly exempted from disclosure, he or she may appeal to the BWL Chair by filing an appeal of the denial with the Chair. The appeal must be in writing, specifically state the word "appeal" and identify the reason or reasons the requestor is seeking a reversal of the denial.

Within 10 business days of receiving the appeal the BWL Chair will respond in writing by:

- Reversing the disclosure denial;
- Upholding the disclosure denial; or
- Reverse the disclosure denial in part and uphold the disclosure denial in part; or
- Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the BWL Chair shall respond to the written appeal. The BWL Chair shall not issue more than 1 notice of extension for a particular written appeal.

If the BWL Chair fails to respond to a written appeal, or if the BWL Chair upholds all or a portion of the disclosure denial that is the subject of the written appeal, the requesting person may seek judicial review of the nondisclosure by commencing a civil action in Ingham County Circuit Court.

Whether or not a requestor submitted an appeal of a denial to the BWL Chair, he or she may file a civil action in Ingham County Circuit Court within 180 days after the BWL's final determination to deny the request.

If a court determines a public record is not exempt from disclosure, it shall order the BWL to cease withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location of the public record. Failure to comply with an order of the court may be punished as contempt of court.

If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in such an action, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or BWL prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements.

If the court determines that the BWL has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall order the BWL to pay a civil fine of \$1,000.00, which shall be deposited into the general fund of the state treasury. The court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of \$1,000.00 to the person seeking the right to

inspect or receive a copy of a public record. The damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

Section 9: Appeal of an Excessive FOIA Processing Fee

“Fee” means the total fee or any component of the total fee calculated under section 4 of the FOIA, including any deposit.

If a requestor believes that the fee charged by the BWL to process a FOIA request exceeds the amount permitted by state law or under this policy, he or she must first appeal to the BWL Chair by submitting a written appeal for a fee reduction to the BWL Chair

The appeal must be in writing, specifically state the word "appeal" and identify how the required fee exceeds the amount permitted.

Within 10 business days after receiving the appeal, the BWL Chair will respond in writing by:

- Waiving the fee;
- Reducing the fee and issuing a written determination indicating the specific basis that supports the remaining fee;
- Upholding the fee and issuing a written determination indicating the specific basis that supports the required fee; or
- Issuing a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the BWL Attorney will respond to the written appeal. The BWL Chair shall not issue more than 1 notice of extension for a particular written appeal.

Where the BWL Chair reduces or upholds the fee, the determination must include a certification from the BWL Chair that the statements in the determination are accurate and that the reduced fee amount complies with its publicly available procedures and guidelines and Section 4 of the FOIA.

Within 45 days after receiving notice of the BWL Chair’s determination of an appeal, the requesting person may commence a civil action in Ingham County Circuit Court for a fee reduction. If a civil action is commenced against the BWL for an excess fee, the BWL is not obligated to complete the processing of the written request for the public record at issue until the court resolves the fee dispute. An action shall not be filed in circuit court unless one of the following applies:

- The BWL Chair failed to respond to a written appeal as required, or the BWL Chair issued a determination to a written appeal.

If a court determines that the BWL required a fee that exceeds the amount permitted under its publicly available procedures and guidelines or Section 4 of the FOIA, the court shall reduce the fee to a permissible amount. Failure to comply with an order of the court may be punished as contempt of court.

If the requesting person prevails in court by receiving a reduction of 50% or more of the total fee, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. The award shall be assessed against the public body liable for damages.

If the court determines that the BWL has arbitrarily and capriciously violated the FOIA by charging an excessive fee, the court shall order the BWL to pay a civil fine of \$500.00, which shall be deposited in the general fund of the state treasury. The court may also award, in addition to any actual or compensatory damages, punitive damages in the amount of \$500.00 to the person seeking the fee reduction. The fine and any damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

Section 10: Conflict with Prior FOIA Policies and Procedures; Effective Date

To the extent that these Procedures and Guidelines conflict with previous FOIA policies promulgated by the BWL, these Procedures and Guidelines are controlling. To the extent that any administrative rule promulgated by the FOIA Coordinator subsequent to the adoption of this resolution is found to be in conflict with any previous policy promulgated by the BWL, the administrative rule promulgated by the FOIA Coordinator is controlling.

To the extent that any provision of these Procedures and Guidelines or any administrative rule promulgated by the FOIA Coordinator pertaining to the release of public records is found to be in conflict with any State statute, the applicable statute shall control. The FOIA Coordinator is authorized to modify this policy and all previous policies adopted by the BWL, and the Written Public Summary, and to adopt Cost Worksheet(s) and administrative rules as he or she may deem necessary, to facilitate the legal review and processing of requests for public records made pursuant to Michigan's FOIA statute, provided that such modifications and rules are consistent with State law. The FOIA Coordinator shall inform the General Manager and BWL Board of Commissioners of any changes to these Procedures and Guidelines or Written Public Summary.

These FOIA Policies and Guidelines become effective July 1, 2018.

Section 11: Additional Internal FOIA Procedures

I. TRAINING.

- A. FOIA Personnel shall receive continuous and comprehensive FOIA training, consistent with BWL operational training objectives.
- B. The training shall include, at a minimum:
 - 1. Preliminary training before being designated as a FOIA Coordinator, including support staff, which shall include knowledge of and proficiency with:
 - a. The Act;
 - b. Leading cases and AG opinions under the Act;
 - c. FOIA Guidelines and Procedures.
 - 2. All FOIA Personnel shall be encouraged to participate in continuing legal education and training, including:
 - a. Annual participation in seminars focusing on FOIA, including the Institute for Continuing Legal Education (ICLE), the Michigan Municipal League (MML)/Michigan Association of Municipal Attorneys (MAMA), and other providers of such training;
 - b. Subscription to the MML's listserv, including especially threads and updates on FOIA decisions and issues, which are then circulated to the group;
 - c. Review and discussion of FOIA in staff meetings, led by BWL Attorney/FOIA Coordinator, including:
 - (i) All significant incoming court decisions, and AG opinions on FOIA issues;
 - (ii) Circulation of such materials to all FOIA Personnel, along with analysis and application of those materials;
 - d. Interoffice memoranda to FOIA Personnel regarding updates on FOIA issues, cases, polices, and procedures.

II. FOIA REQUEST RECEIVED.

A. The Legal Analyst will date stamp request when received (if by U.S. mail), and then note receipt date per the Act in the BWL electronic filing system, whether received by email or by U.S. mail, and assign a FOIA log number within the BWL electronic filing system accordingly. If the FOIA Request Form is utilized by the requestor, the Legal Analyst will note the FOIA log number accordingly on the FOIA Request form and file the FOIA Request Form accordingly within the BWL electronic filing system.

B. As soon as possible, but not later than the day after receipt, log into BWL electronic filing system and assign to attorney for review.

1. Using computerized system, update in the BWL electronic filing system, the FOIA Response due date, and update relevant requestor addressee information.
2. Determine departments to forward request to, and begin gathering requested documents.

III. REQUEST RECORDS FROM APPLICABLE DEPARTMENT(S).

A. Prepare electronic request cover memo to applicable department(s).

B. Provide electronic copy of such cover memo to the City of Lansing Attorney, within one business day of receipt of the FOIA request. File copy in the electronic record keeping system where applicable records are retained.

C. Keep the original request and a copy of the cover memo for BWL electronic records.

IV. TRACKING AND EXTENSION NOTICE.

A. Track request so that it is responded to according to the time frames established in the Act.

B. If the request requires a voluminous amount of records to be copied or records are being requested of several departments, it may be necessary to send a notice of extension.

C. The extension notice is sent out on the first “due date” and extends the period for response an additional 10 business days. Note this extended due date appropriately within the BWL electronic filing system.

V. RECEIPT AND REVIEW OF RECORDS REQUESTED AND RESPONSE.

A. RECEIPT AND REVIEW.

1. Once all documents/records are received, the assigned FOIA coordinator or Delegee will review records for compliance with request and for any information which may need to be redacted due to applicable exemptions.

2. When review is complete, the coordinating assistant will determine costs (utilizing the cost worksheet) and the assigned FOIA coordinator will prepare cover letter to requestor.
3. Submit letter of response and copies of any applicable requested documents to the requestor and file a copy of the response within the BWL electronic filing system

B. RESPONSE: FOIA personnel will respond consistently with these Guidelines and Procedures.

VI. PROCEDURAL AND SUBSTANTIVE SAFEGUARDS PRIOR TO RESPONSE.

A. PROCEDURAL SAFEGUARDS.

1. Are all Social Security Numbers and any applicable personal information that should be protected per applicable privacy laws redacted? (See below in Section B, related privacy safeguards).

B. SUBSTANTIVE SAFEGUARDS.

1. Have all exemptions been considered?
2. Where an exemption is claimed, has sufficient explanation been given?
3. For personnel matters, does response comply with Bullard-Plawicki?
4. Have privacy concerns been adequately addressed?
 - a. Has information covered by Health Insurance Portability Accountability Act of 1996 (HIPAA) been redacted?
 - b. Has information covered by the Public Health Code, 1978 PA 368, especially as codified at MCL 333.1531, been redacted?
 - c. Has information covered by the Mental Health Code, 1974 PA 258, especially as codified at MCL 330.1748, been redacted?
 - d. If not covered by HIPAA, the Public Health Code, or the Mental Health Code, has medical information been appropriately redacted, including especially a person's actual or alleged HIV status?
 - e. Have appropriate redactions been made for "[i]nformation of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy," MCL 243(1)(a)?

VII. FINALIZATION PROCEDURES.

- A. Mark FOIA log with date out, whether it was released or denied, and costs, if any.
- B. File in BWL designated electronic record-keeping system.

- C. File FOIA response letter (copy of cover letter of released records) in electronic filing system.

VIII. FOIA PAYMENT RECEIVED.

- A. When a check for payment of a FOIA request is received, provide the check to BWL Accounting Department and mark the FOIA log with date received and check number.

Sections in large part of these Procedures and Guidelines are adapted from those promulgated by the Michigan Township Association and the Michigan Association of Municipal Attorneys and the City of Lansing's FOIA Policy and Procedures.



P.O. Box 13007
Lansing, MI 48901
www.lbwl.com

Freedom of Information Act Request Form

You may download this form, fill out and email the completed form to FOIARequests@lbwl.com or you may mail this form to the address listed above, **Attn: FOIA Coordinator**

Pursuant to the State of Michigan Freedom of Information Act, **MCL 15.231-15.246**, I am requesting the following documents:

If the requested documents are available, and not subject to any exemption by applicable law, please select your preference for access to records:

- Examine Original** (BWL FOIA Coordinator will arrange a time/date with you)
- Receive Copy**
 - I prefer to receive a copy by email (be sure your email is listed legibly below)
 - I prefer to receive a copy by USPS (you may be charged for postage depending on the number of documents requested)

Email address where I wish to receive a copy of the documents: _____@_____._____.

Address where I wish to receive a copy of the documents: Name: _____
Street: _____ Apt. _____
City: _____ Zip Code: _____

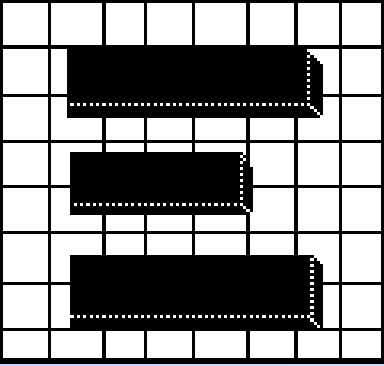
For Lansing Board of Water and Light Use Only		
Date Received:	FOIA Log Request Number:	Comments:
<small>Personal Information contained on this form is collected pursuant to the Freedom of Information Act and will be used only for the purposes of responding to your FOIA request. Questions about this collection should be directed to the Freedom of Information Act Coordinator to FOIARequests@lbwl.com.</small>		

PROPOSED RESOLUTION

Board of Water and Light Freedom of Information Act (FOIA) Policy

RESOLVED, pursuant to the authority of MCL 15.240, PA 442 of 1976, and Section 19.4 of the BWL's Administrative Rules of Procedure, the BWL approves the FOIA Policy as recommended.

BE IT RESOLVED, the FOIA Policy is effective upon approval.



EPIC-MRA



Hometown People. Hometown Power.

Lansing Board of Water and Light Customer Satisfaction Survey

Residential Customer Survey conducted March 22-25, 2018

Sample size: 400

Error rate: $\pm 4.9\%$

BWL job rating providing electric service

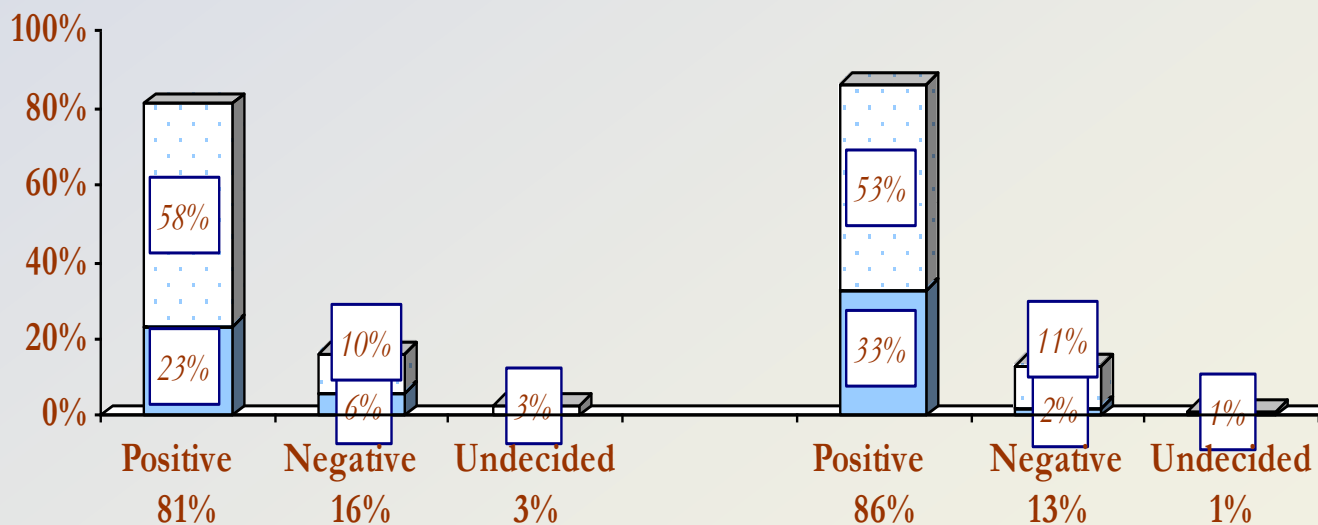
□ *good/fair*

■ *excel/poor*

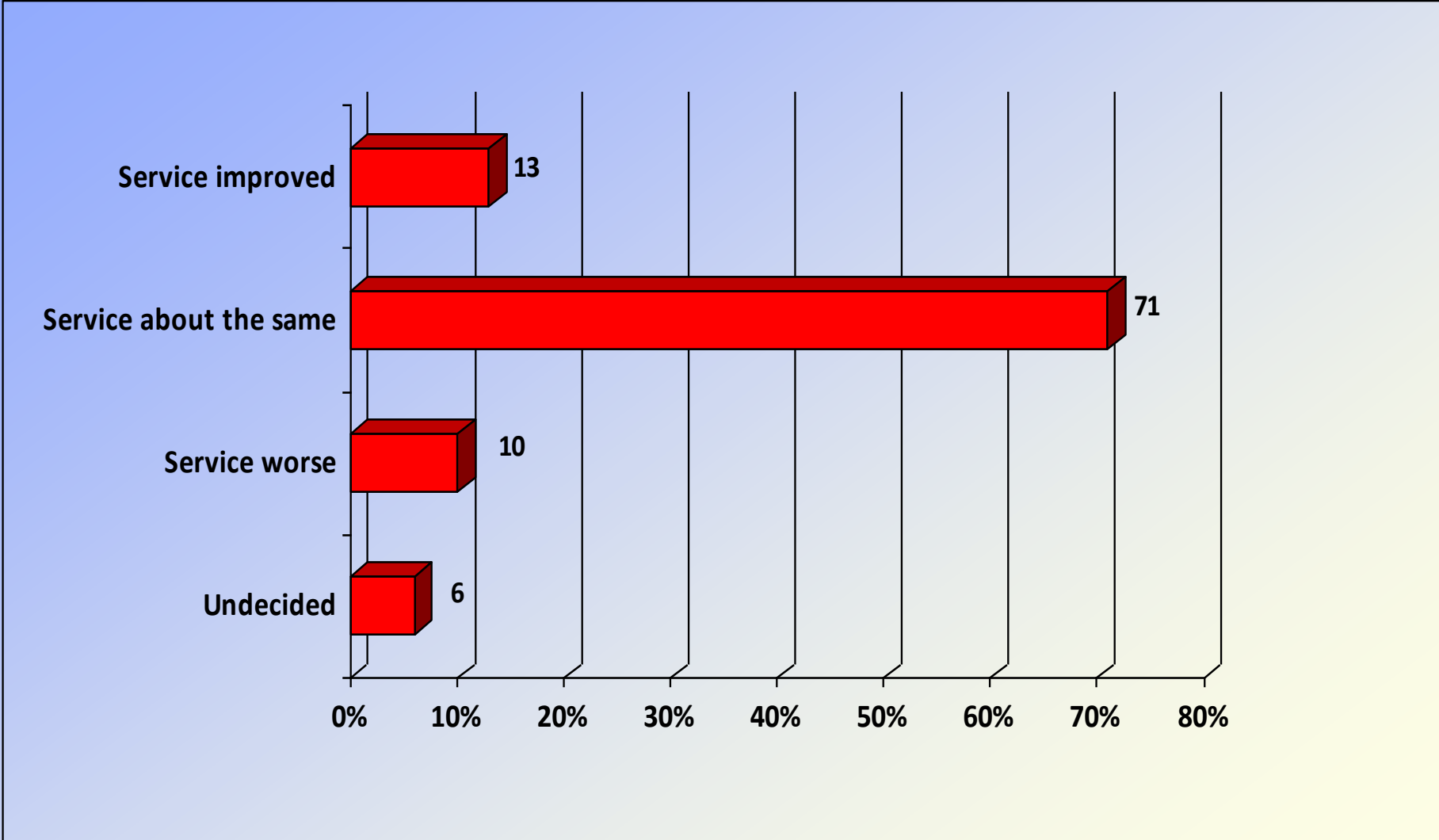
Rating for the job done by the BWL providing reliable, affordable electric service

2015

2018



7-in-10 say quality, reliability, affordability of electric services remained about the same over past few years



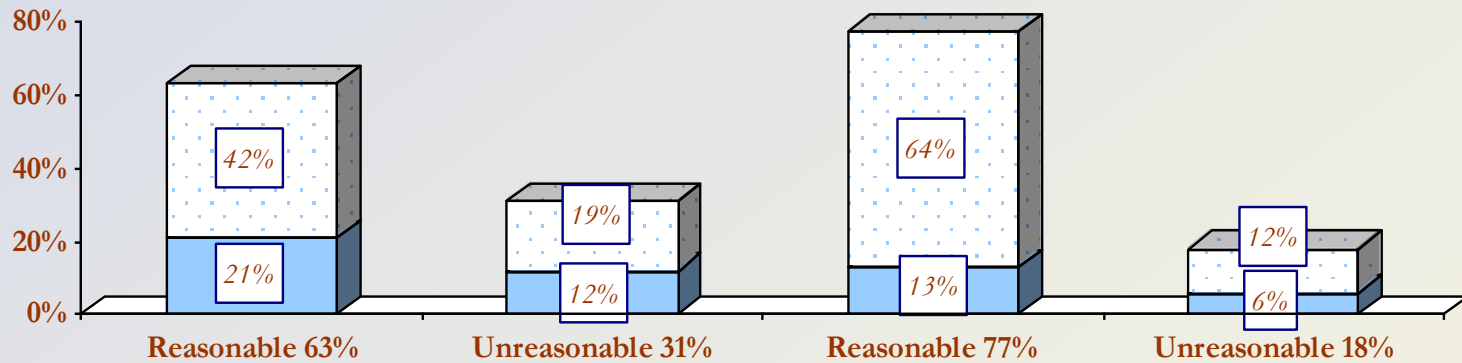
Solid majority say electric rates are reasonable

- *Mostly*
- *Very*

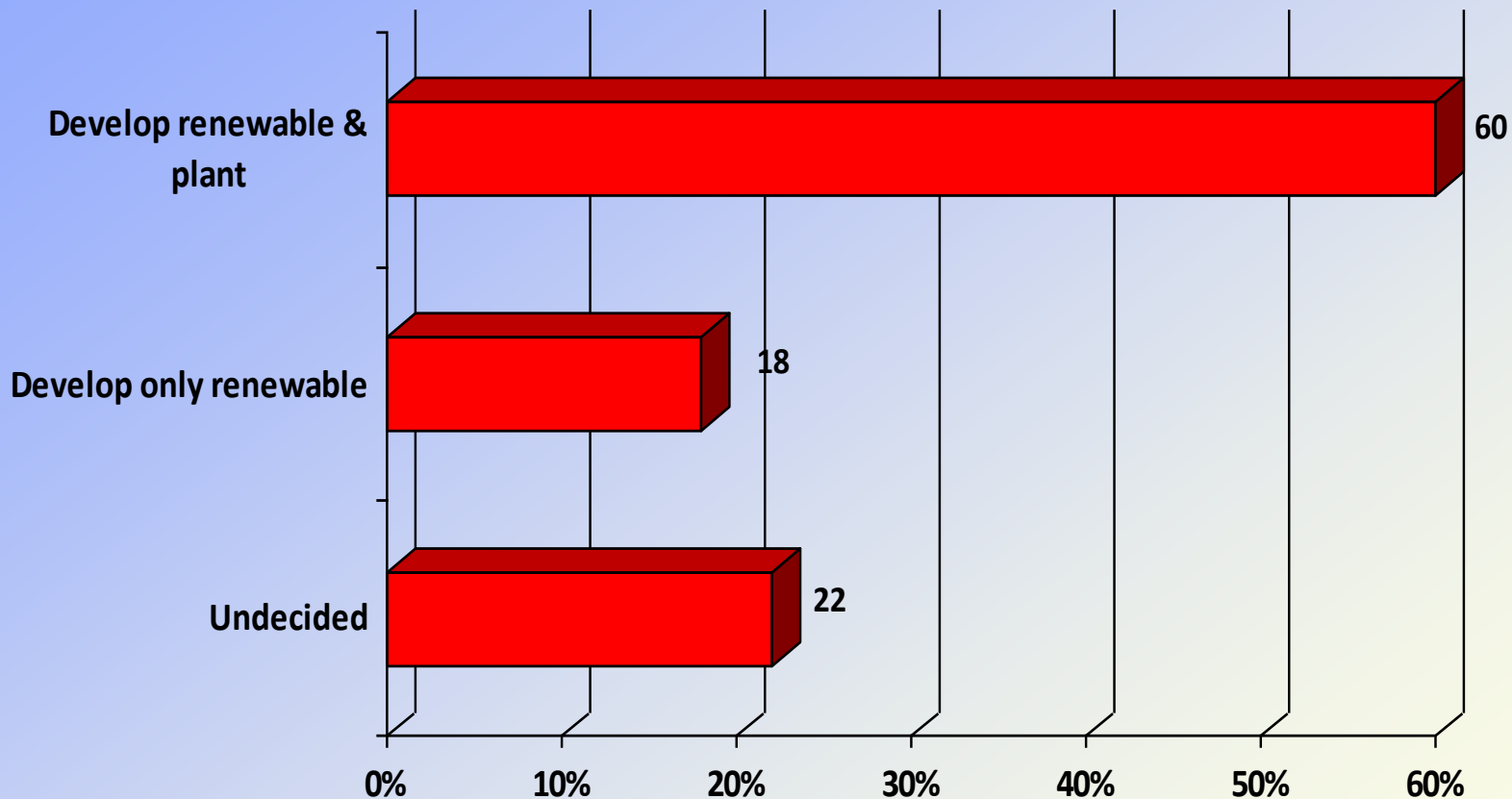
BWL electric rates considered reasonable, especially after learning competition rates

2015

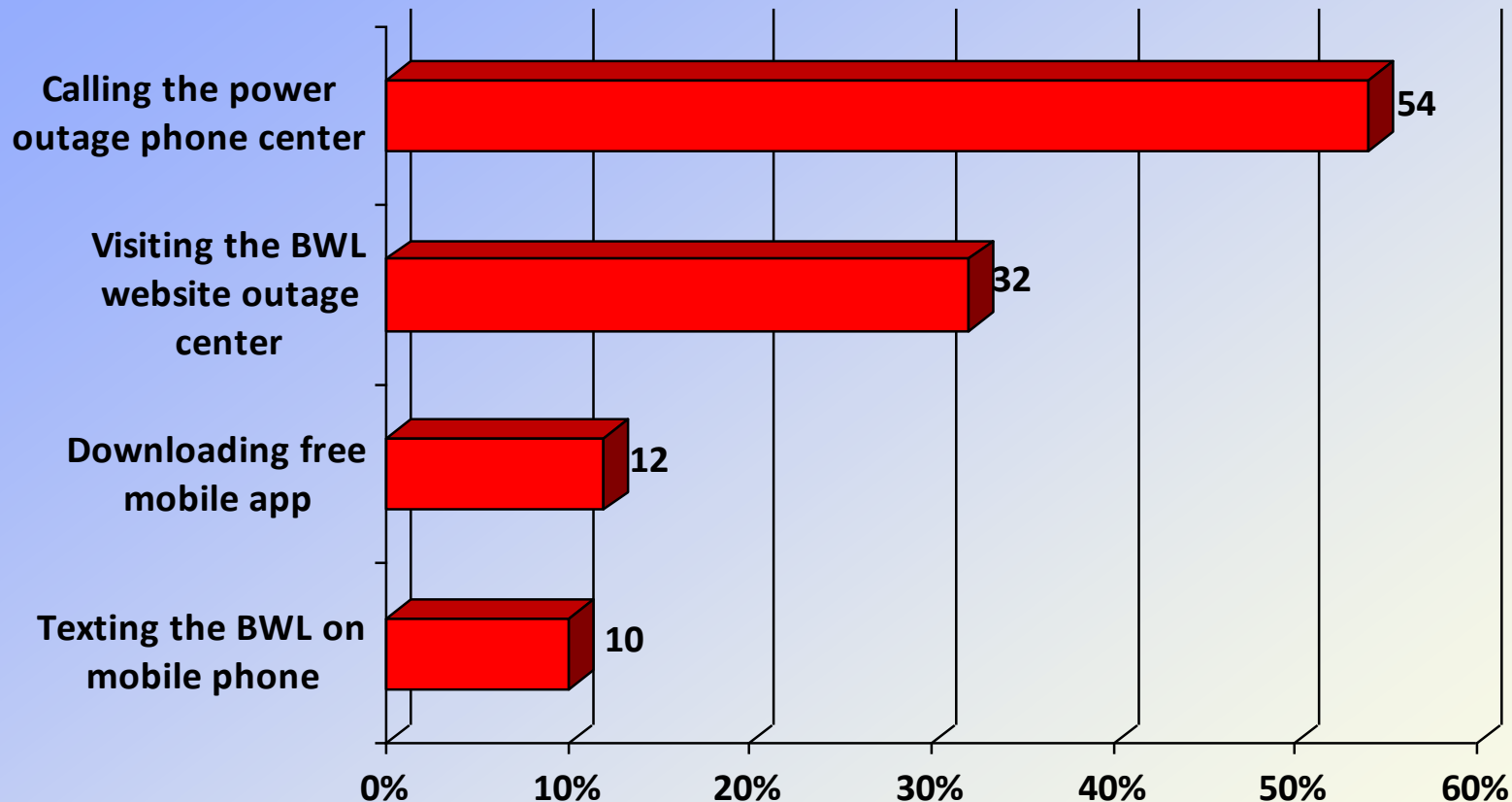
2018



6-in-10 prefer developing renewable energy AND building a natural gas fired plant



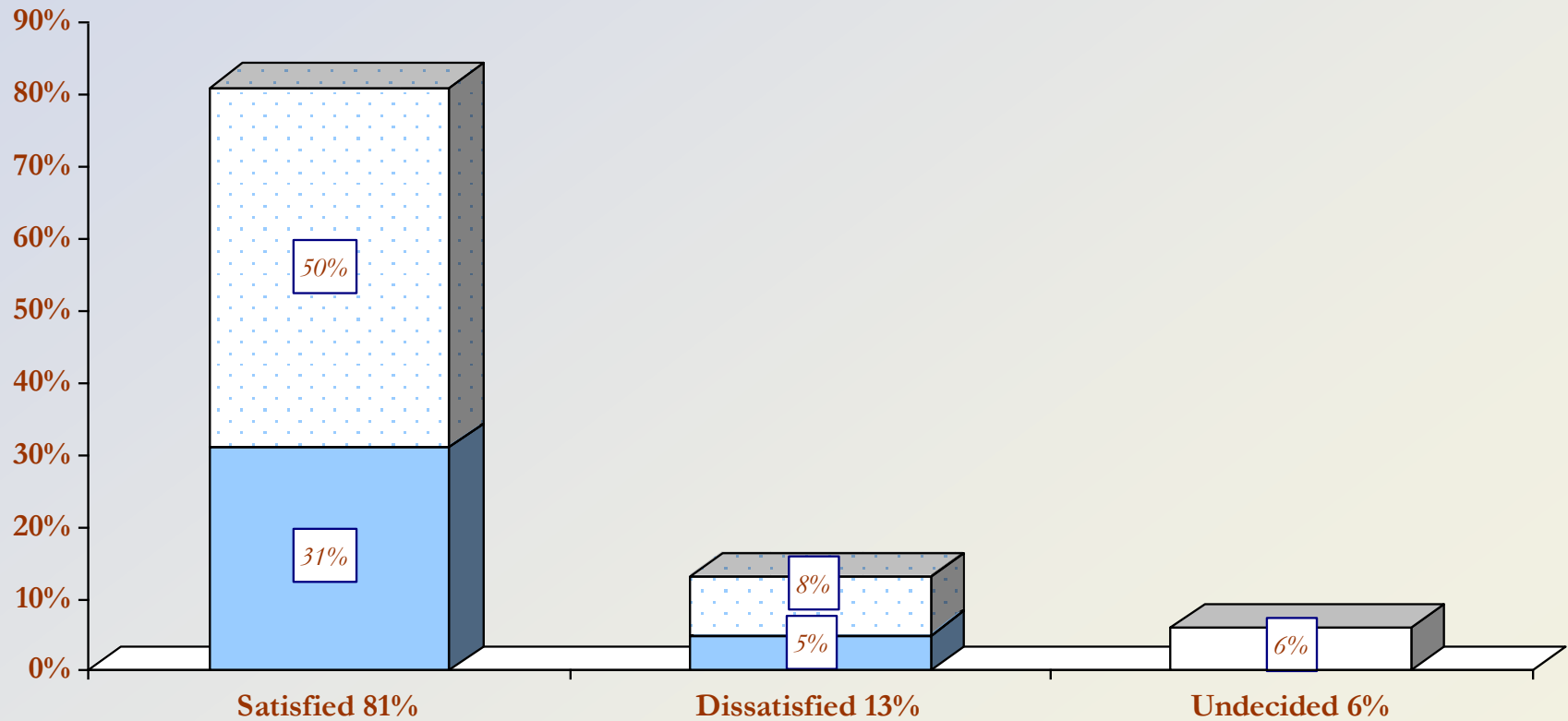
What are the most to least used methods of reporting a power outage?



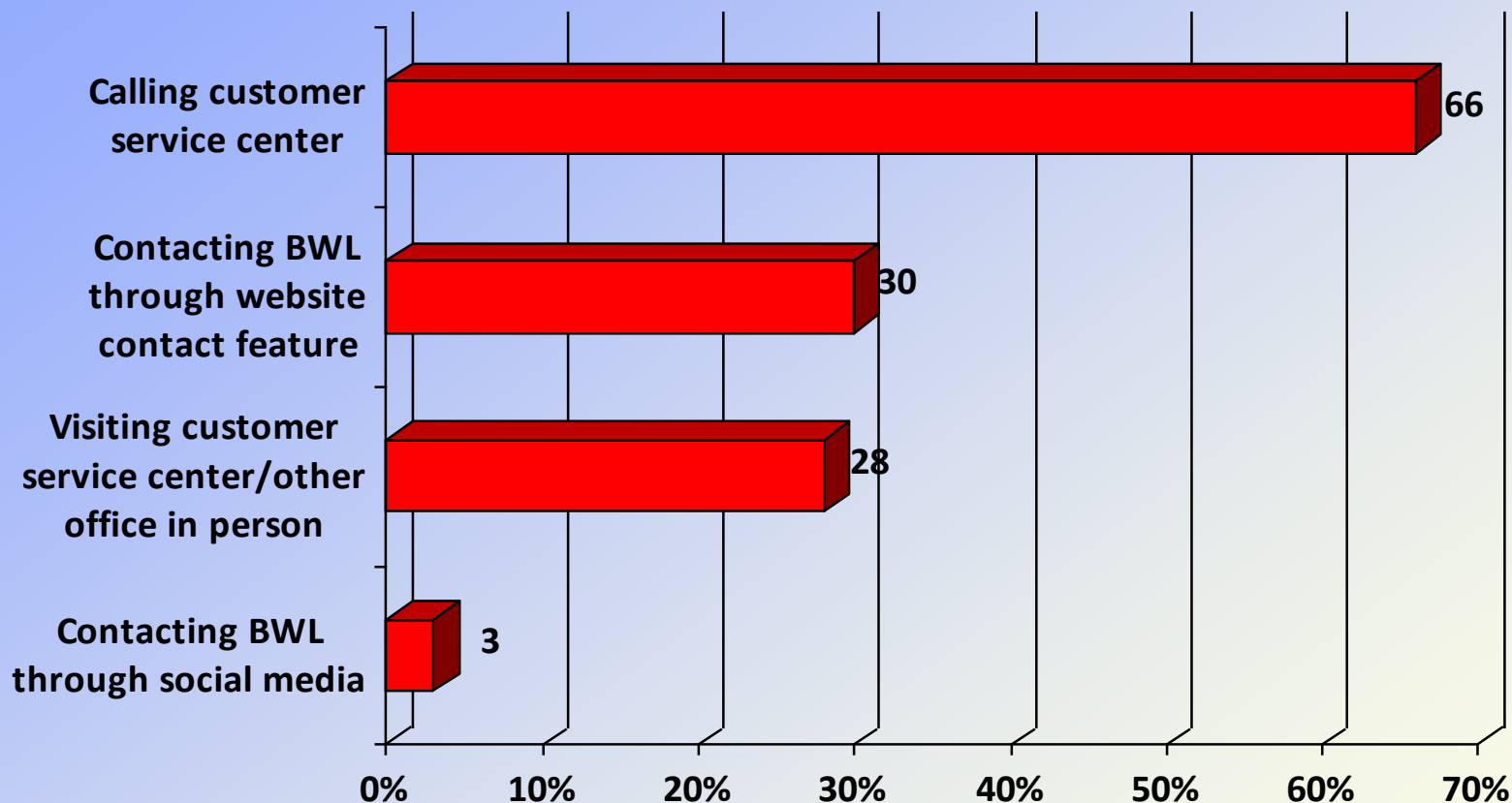
More than 8-in-10 satisfied with experience of contacting BWL to report a power outage

- *Mostly*
- *Very*

8-in-10 customers satisfied with experience of contacting BWL about power outage



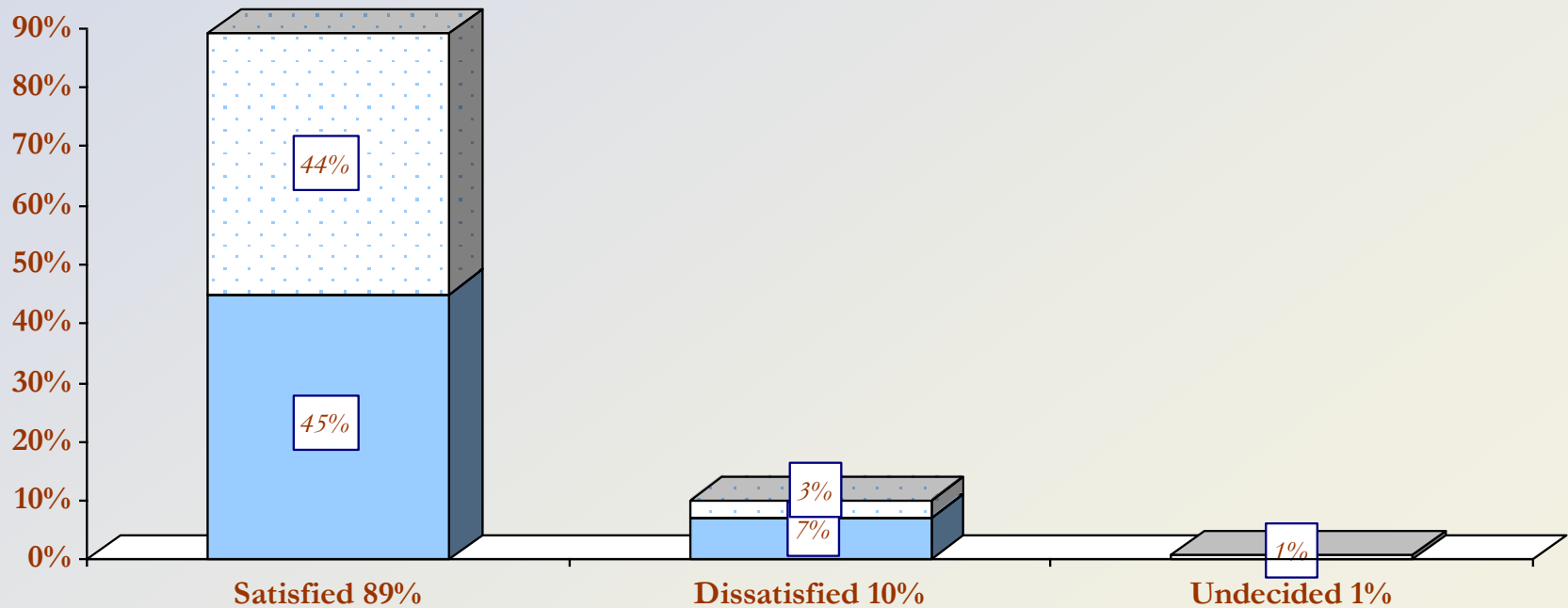
What are the most to least used methods of contacting the BWL for reasons other than reporting a power outage?



Nearly 9-in-10 satisfied with experience of contacting BWL for reasons other than reporting a power outage

- *Mostly*
- *Very*

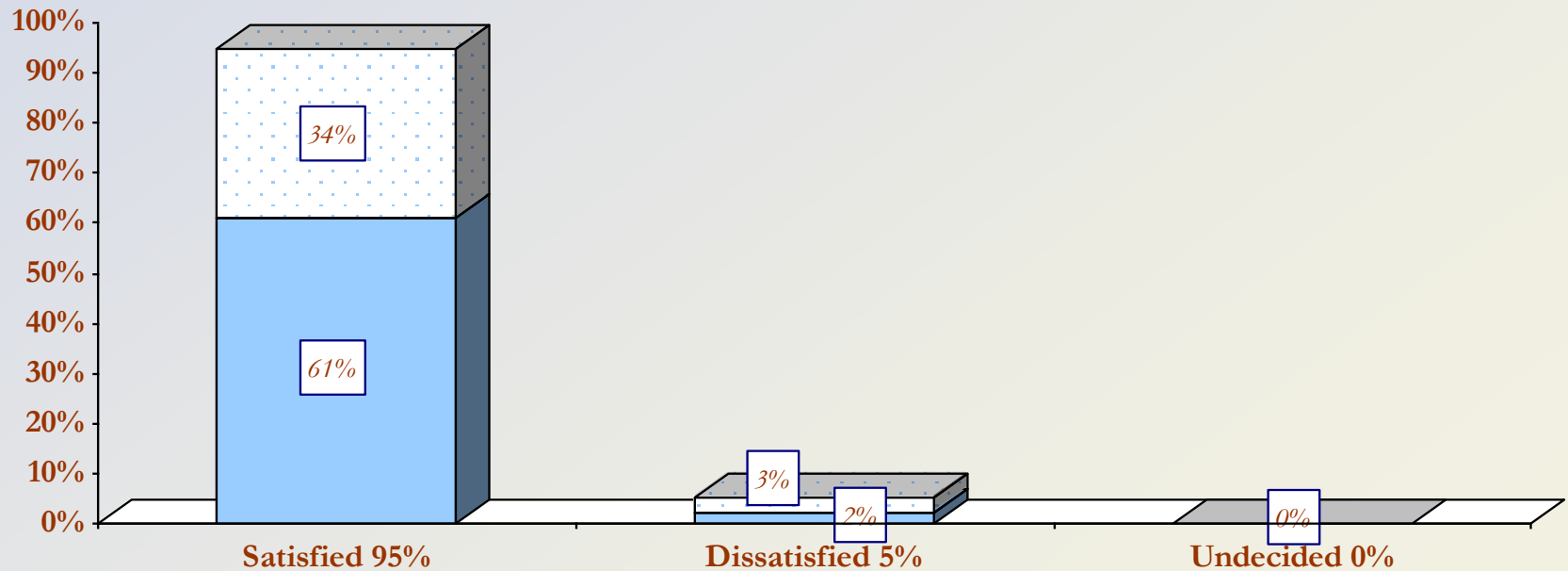
Nearly 9-in-10 customers satisfied with experience of contacting BWL for reasons other than reporting a power outage



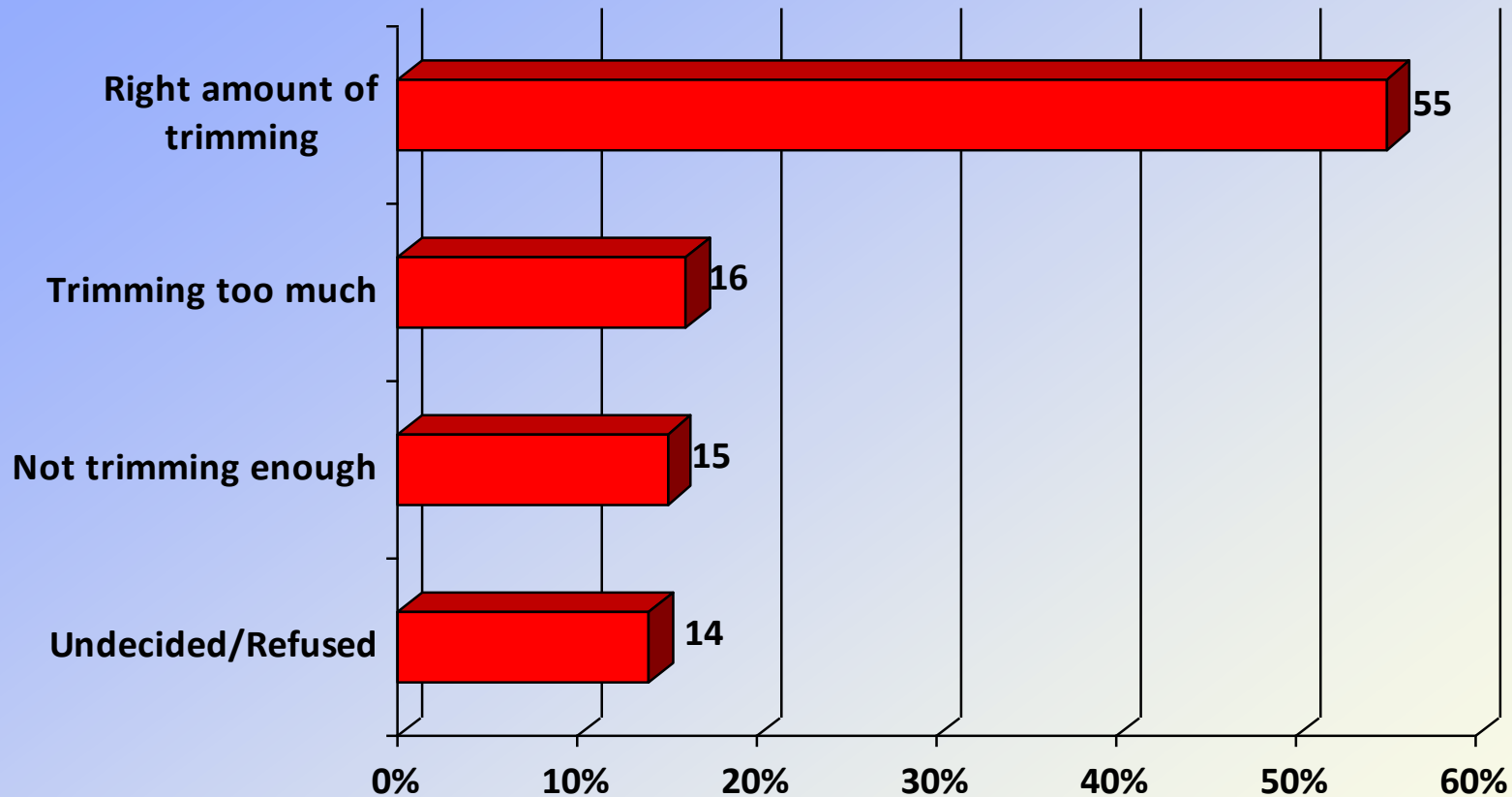
Near unanimous satisfaction with experience of paying BWL bills

- *Mostly*
- *Very*

Near unanimous satisfaction with experience of paying BWL bills



Majority says that BWL is doing the right amount of tree trimming while protecting appearance of trees

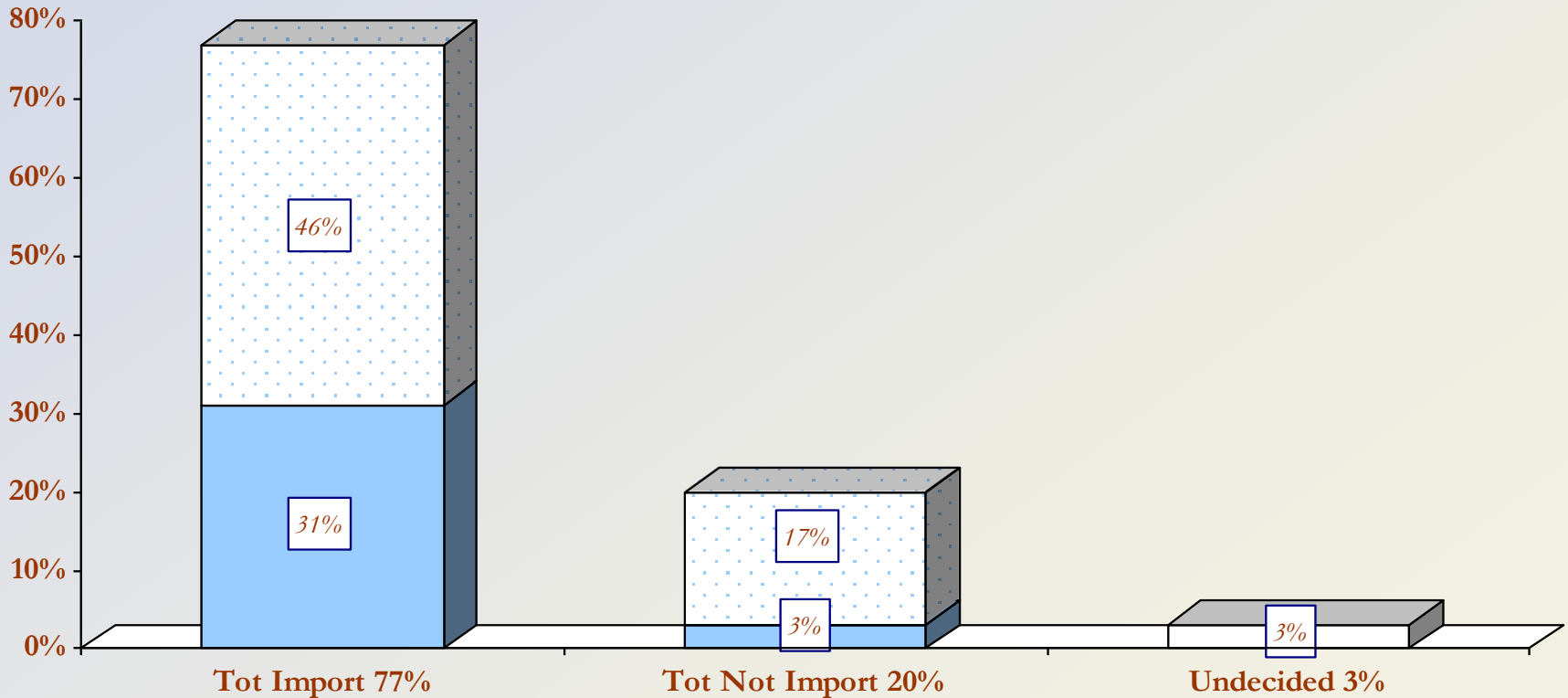


Nearly 8-in-10 said energy provided for economic development a top priority or very important

□ *Very import/Smmt import*

■ *Top prior/Not import*

Nearly 8-in-10 customers say energy for economic development important

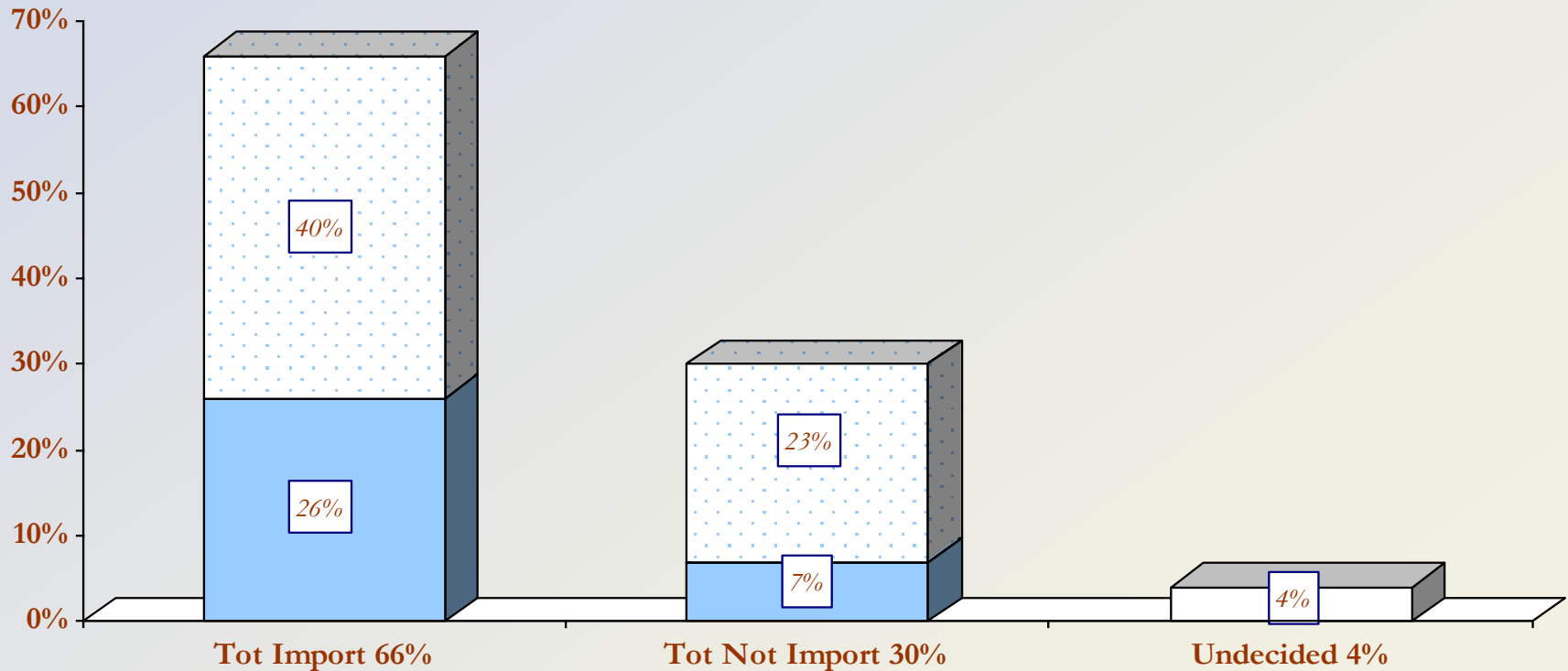


2-in-3 say it's important for BWL to offer programs to manage power use

□ *Very import/Smart import*

■ *Top prior/Not import*

It's important to offer programs so customers can manage power use

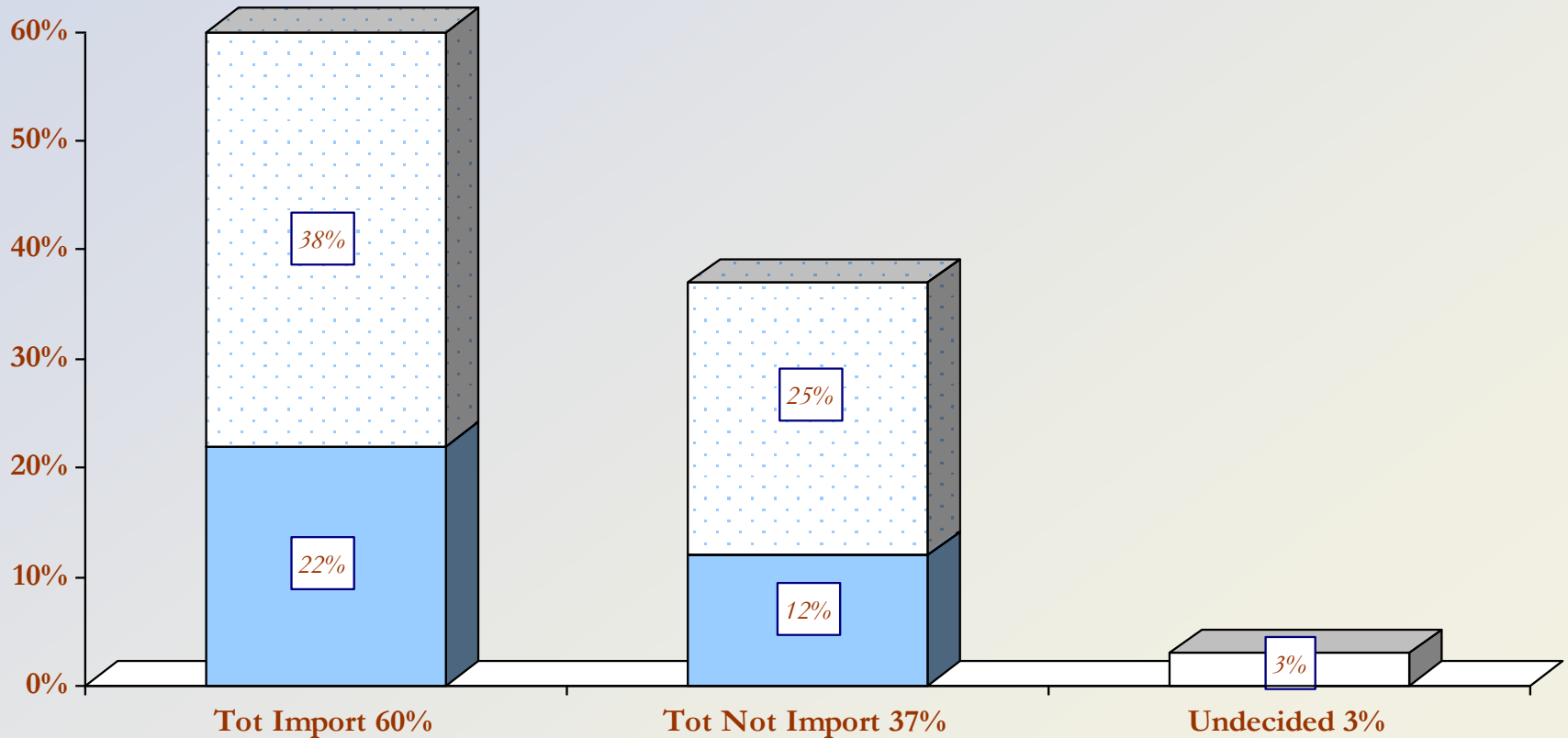


6-in-10 customers say it's important to install smart meters in customer homes

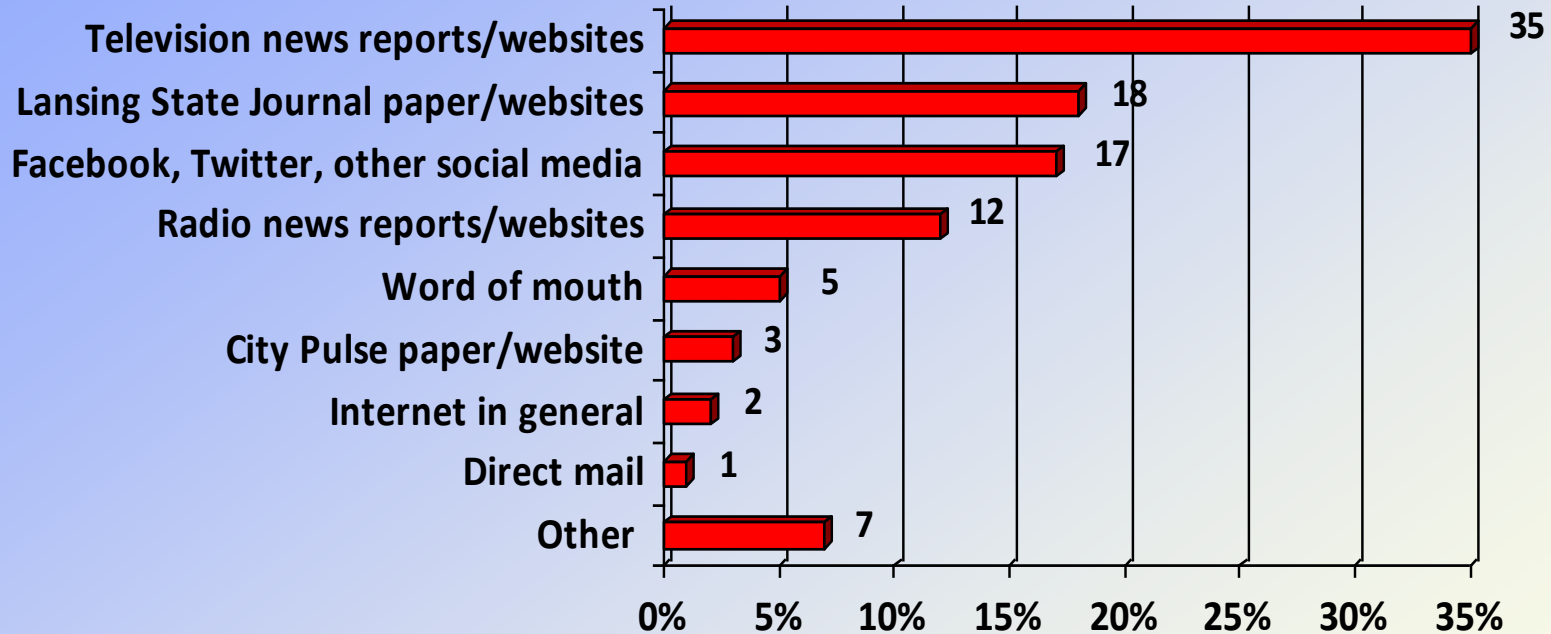
□ *Very import/ Smtt import*

■ *Top prior/ Not import*

6-in-10 customers say it's important to install smart meters in homes



Where BWL customers get their information about local government





Vegetation Management

4th Year of 5 Year Trimming Cycle

Planning

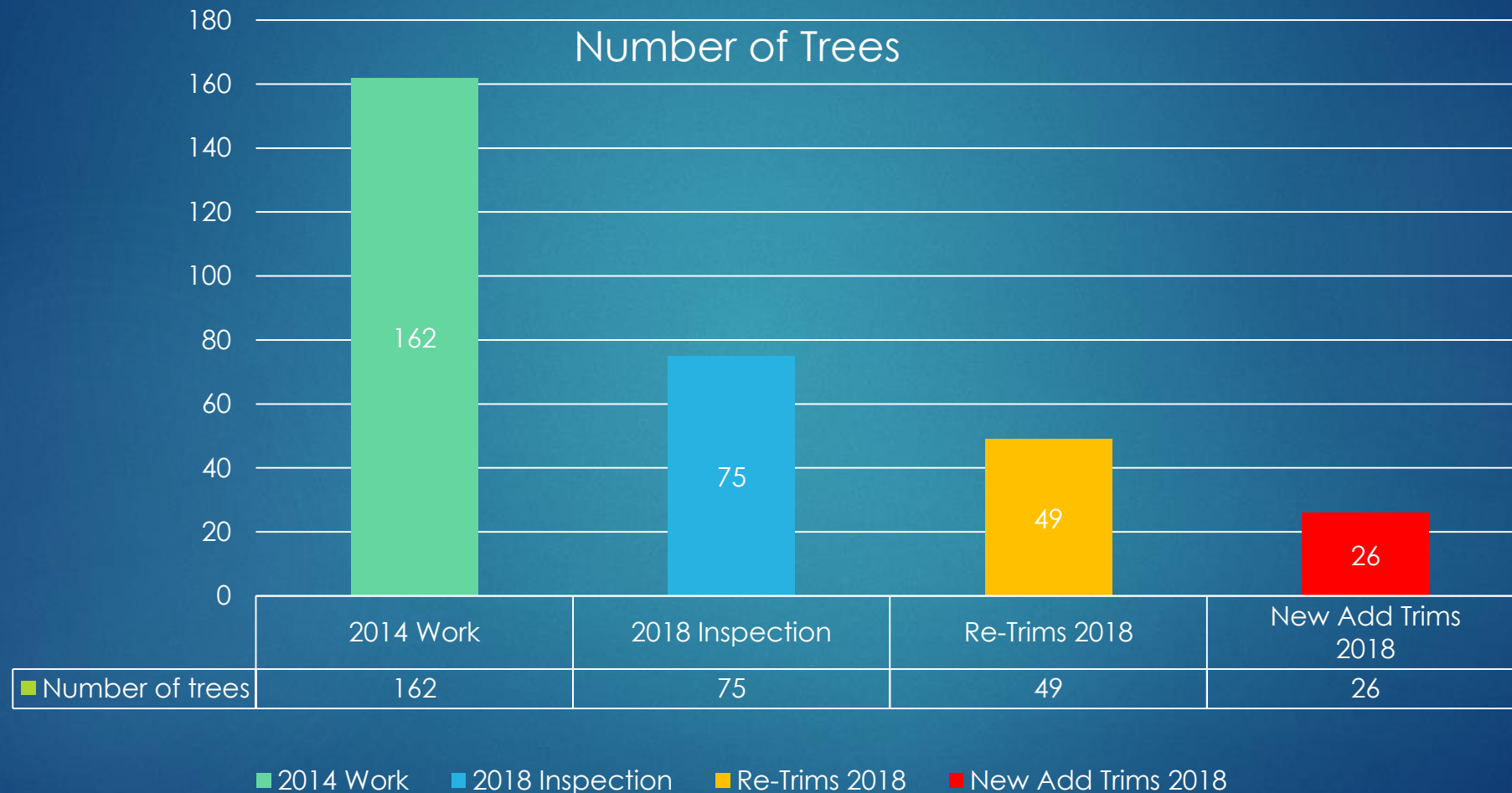
- ▶ Mock planned blocks in quarter sections trimmed in FY14
- ▶ 4-5 blocks per quarter section
- ▶ Compared old planned work to create new work plan if this area were going to be trimmed FY18
- ▶ Currently in the 4th year of our cycle; there will be another year of growth.

NELG18

2014-2018

GENESEE AND GRACE AREA

NELG18 Work Sample



Plans on NELG18

2014 Plans

- ▶ 44 addresses
- ▶ A few addresses refused removals

2018 Plans

- ▶ 26 addresses need trimming
- ▶ 6 addresses were added
- ▶ Cutting to larger branches would aid in slowing next cycles growth

Pictures of Re-Growth



Pictures of Re-Growth



Comparison



Conclusion of NELG18

- ▶ Of all the yards walked out, roughly 60% needed trimming on next cycle
- ▶ Of that 60%, most trees seemed to be Maple trees suckering back
- ▶ A few refusals could be removals next cycle
- ▶ Small amount were trimmed before the no-overhang policy
- ▶ Considerable grow back in the 4 years; will still require a fair amount of trimming next cycle.

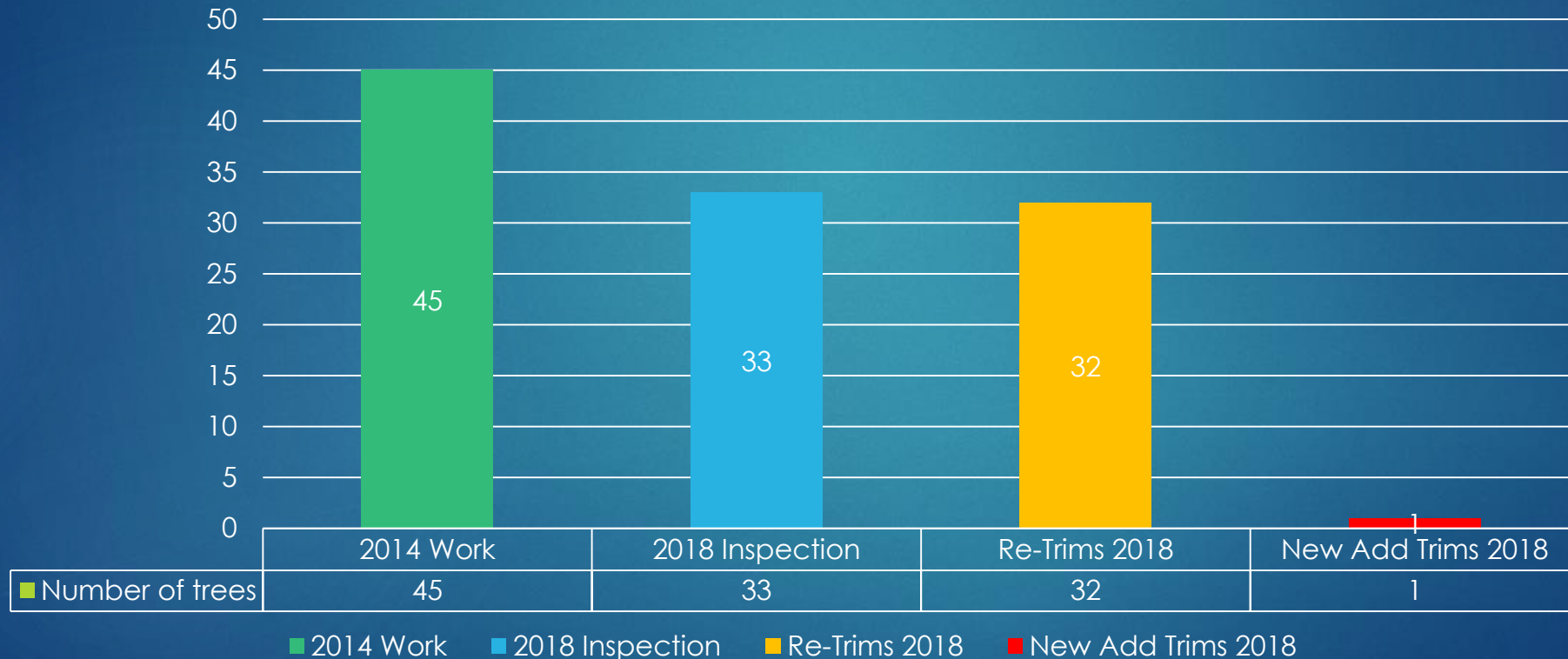
SWLG21

2014-2018

MOORES RIVER PARK AREA

SWLG21 Work Sample

Number of Trees



SWLG21

- ▶ Area along the Grand River near Moores River Park
- ▶ Area consists of many mature City trees
- ▶ City doesn't want removals so higher amount of sucker growth
 - ▶ May see increase in removals in rear lines due to re-trimming hard trimmed trees from last cycle
- ▶ Most common trees grown back are Maple or Zelkova that grow like weeds
 - ▶ These are the fastest growing species
- ▶ Most of trees needing trimming are bucket trees
- ▶ Some trees were recommend for removal, however, homeowners opted to keep the trees resulting in many topped trees that are now dead or sending new shoots towards the lines





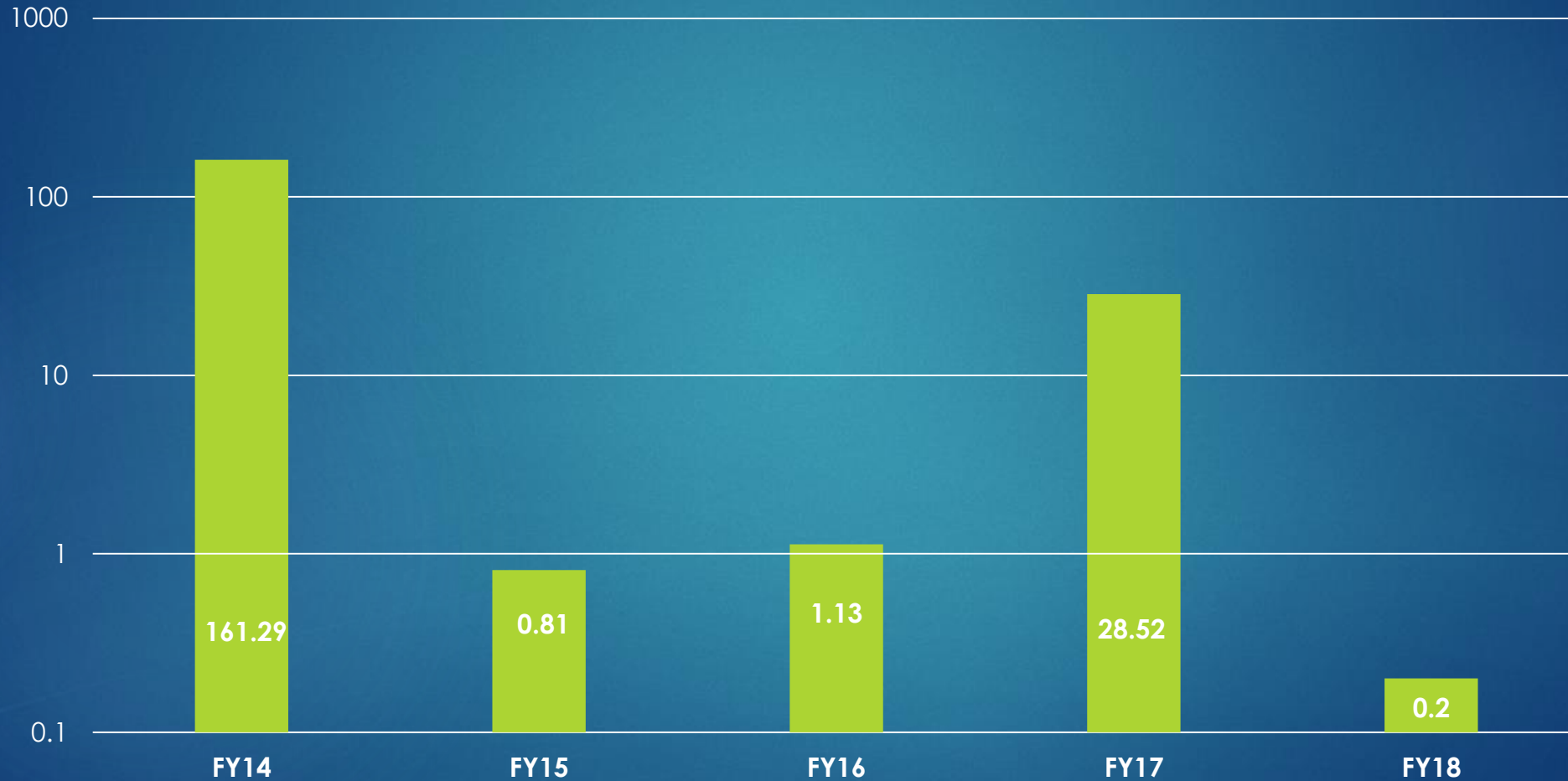
Before Trimming and Mowing



After Trimming and Mowing

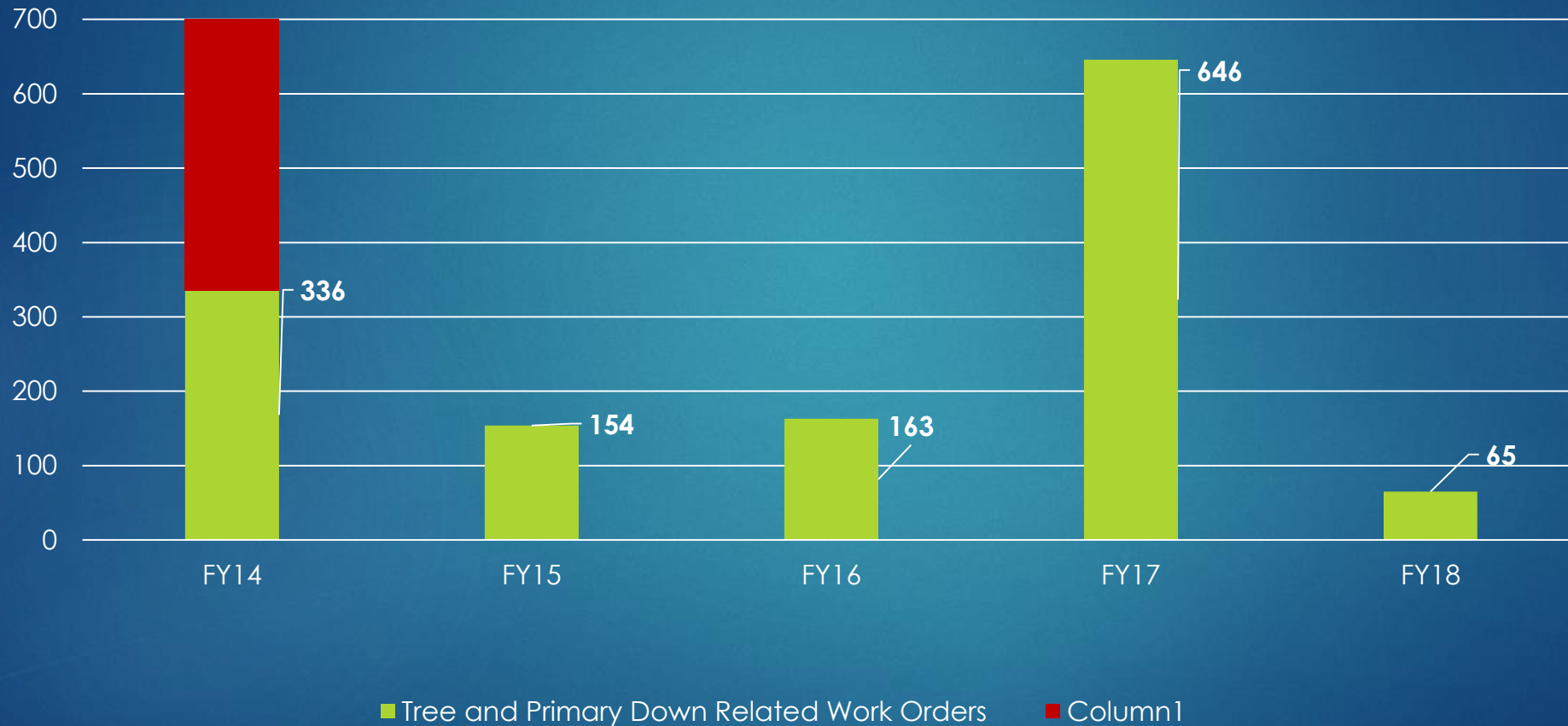


Reliability – Tree Related Outages SAIDI



Tree and Primary Down OMS Orders

FY14 data is not a good representation of the actual number of tree and primary down related orders, due to OMS complications during the 2013 ice storm we were not able to properly model outages. There were 3158 wires down reported in OMS



Conclusion

- ▶ At least 40-50% of trees trimmed 5 years ago require trimming
- ▶ Mostly Maple trees are sprouting back
- ▶ Amount of trees is far less
- ▶ Workload will decrease after the first cycle is completed
- ▶ Sucker growth will compose the majority of tree trimming in the future cycles, however, some areas will still require extensive trimming.

Tree Trimming Status

