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BILL ANALYSIS

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Senate Bill 585 (as introduced 6-12-07)
Sponsor: Senator Bruce Patterson
Committee: Energy Policy and Public Utilities

Date Completed: 9-12-07

CONTENT

The bill would amend Public Act 3 of 1939, the Michigan Public Service Commission (PSC) law, to require the parties to an agreement for the purchase or sale of a regulated utility's assets or the controlling interest in a regulated utility, to file with the PSC specified information regarding the transaction for the PSC's review.

A person would have to comply with the bill's provisions before completing either of the following transactions:

- The purchase or sale, or other acquisition or disposition, of at least 51% of the then-outstanding shares of a regulated utility's stock, or of a controlling interest in a regulated utility, either directly or indirectly.
- The purchase or sale, or other acquisition or disposition, of all or a substantial part of a regulated utility's existing and operating assets used or useful at the time of the transaction in providing regulated service in Michigan.

The bill would not apply to the acquisition or transfer of assets acquired or sold in the normal course of business.

("Regulated utility" would mean an investor-owned electric utility, an electric cooperative, or a natural gas distribution utility, with rates subject to the PSC's jurisdiction.)

The Commission would have to promulgate rules for the administration of the bill's provisions.

Within a reasonable period after entering into an agreement for a transaction described in the bill, the parties would have to file all of the following material with the PSC:

- A concise summary of the terms and conditions of the proposed transaction.
- Copies of the material transaction documents, if available.
- A summary of the projected impacts of the transaction on rates and regulated utility services in Michigan.
- Pro forma financial statements that were relevant to the transaction.
- Copies of the parties' public filings with other State or Federal regulatory agencies regarding the same transaction, including any regulatory orders issued by the agencies regarding the transaction.

Within 30 days after a person made a filing, the PSC would have to notify the person what, if any, of the materials required or requested under the bill had not been provided. The PSC would have 30 days from the date that it received all of the required or requested materials to determine whether any investigations or hearings were necessary to review the proposed

transaction. At the end of the 30-day period, the Commission would have to issue one of the following:

- Advisory comments that could include any proposed recommendations, modifications, or changes to the structure of the proposed transaction based on the factors specified in the bill (listed below).
- A written statement that review was completed and no further comment was necessary.

The PSC could extend the time period for the review and the issuance of its advisory comments for up to 120 days from the date that it received all of the material required or requested within 30 days of the initial filing.

The Commission would be entitled, upon written request, to documents reasonably related to making the advisory comments.

Nonpublic information and materials submitted by a person under the bill clearly designated by the person as confidential would be exempt from the Freedom of Information Act. The PSC would have to issue protective orders as necessary to protect information designated by a party as confidential.

The Commission would have to consider and could issue advisory comments, including specific recommendations, modifications, or changes to the structure of a proposed transaction subject to the bill, regarding any of the following:

- Whether the proposed transaction would have a material adverse impact on the rates regulated by the PSC of the Michigan customers affected by the transaction.
- Whether the proposed transaction would have a material adverse impact on the provision of safe, reliable, and adequate energy service.
- Whether the proposed transaction would result in the subsidization of a nonregulated activity of a person through the rates paid by the customers of a regulated utility, to the extent prohibited by a code of conduct established by the PSC under the Act.
- Whether the proposed transaction significantly would impair a regulated utility's ability to raise necessary capital or to maintain a reasonable capital structure.
- Whether the proposed transaction would have a material adverse impact on competition in Michigan.

The bill specifies that it would not apply to a transaction subject to a written agreement entered into before the bill's effective date.

Proposed MCL 460.6r

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill would increase the expenses of the Public Service Commission by an unknown amount. The requirements in the bill for rule-making and review of substantial acquisitions and dispositions of public utility stock or assets would tend to increase the PSC's costs. Expenses also would increase if the Commission determined it was necessary to conduct investigations or hearings or issue an advisory opinion. The administration of the PSC is funded primarily by public utility assessments, which are established at a level to recover the PSC's public utility regulatory expenses.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.