

Legislative Analysis



ELECTRIC CHOICE

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House Bill 5184

Sponsor: Rep. Mike Shirkey

Committee: Energy and Technology

Complete to 3-23-14

A SUMMARY OF HOUSE BILL 5184 AS INTRODUCED 12-10-13

BRIEF SUMMARY:

Briefly stated, the bill would:

- Move the state from a system of hybrid-electric regulation to deregulation, with a stated purpose of ensuring safe, reliable electric power fully available at market competitive rates.
- Require large electric utility companies (at least 1 million customers) to submit plans to the Michigan Public Service Commission to either sell off or to transfer their electric generation assets to an affiliate—thus separating electric generation from distribution. The affiliate would not be regulated by the MPSC.
- Remove the 10 percent cap on electric choice for customers of large utilities.
- Prohibit undue market power by a large utility.
- Require large utilities to offer to purchase the receivables of an alternative energy supplier for electric sales to residential and small commercial customers.
- Allow, but not require, local governments, schools, colleges, and universities to aggregate to purchase electricity for residential and small commercial customers within their boundaries.

DETAILED SUMMARY:

The bill would amend the Public Service Commission (PSC) law, Public Act 3 of 1939, MCL 460.6a et al., including the portion known as the Customer Choice and Electricity Reliability Act (Public Act 141 of 2000), in the following ways:

Utility Rate Case Procedures

PSC approval. [Section 6a(1)] A gas or electric utility is prohibited from increasing its rates, charges, or schedules without first receiving PSC approval. The PSC law also establishes procedures for the petition process to alter or change a rate schedule. The bill would also apply these provisions to an "electric distribution utility," defined to mean an electric utility that has divested or transferred its electric generation facilities under Section 10g.

Currently, a utility cannot increase rates based upon changes in cost of fuel or purchased gas unless notice has been given within the affected service area and a reasonable opportunity for a complete hearing on that cost change. In the case of an electric distribution utility, the bill would limit that recovery (and limit the purchases the PSC could authorize) to the cost of fuel, purchased gas, or purchased power the PSC determines is necessary for the electric distribution utility to perform its obligations in an efficient manner.

PSC Merger Review Authority

PSC merger review authority. [Section 6q(1)] The act prohibits a person from acquiring, controlling, or merging, directly or indirectly, with a jurisdictional regulated utility and prohibits that utility from selling, assigning, transferring, or encumbering its assets to another person without first applying for and receiving PSC approval. The bill would not apply this provision to divestitures or transfers under proposed changes to Section 10g.

Relevant factors in evaluating a proposed transaction. [Section 6q(7)] The act requires the PSC to consider several factors in determining whether or not to approve a proposed acquisition, transfer, merger, or encumbrance. The bill would also require the PSC to consider whether the action will have an adverse impact on the competitive retail electric market.

Certificates of Necessity

[Section 6s(1)] An electric utility is required to apply for a certificate of necessity (CON) for certain purposes, such as a proposal to construct an electric generation facility. CON approval is not needed for an environmental upgrade to existing electric generation facilities or a renewable energy system. Under the bill, a CON would not be needed for any electric distribution utility.

Customer Choice and Electricity Reliability Act

Modify electricity choice program. The bill makes numerous amendments to the section of the act formally called the "Customer Choice and Electricity Reliability Act," also known as the customer choice program or simply "electric choice."

Purposes. [Section 10(2)] The bill makes several revisions to current listed purposes of the choice program and adds two new purposes, as follows (*italics denote changes*):

- Ensure all Michigan retail customers of electric power have a choice of electric *generation* suppliers.
- *Ensure* (rather than allow and encourage) the PSC fosters competition regarding the provision of electric supply.
- Encourage the development and construction of *independently owned* merchant *generation* plants, *to encourage innovation and investment of generation and storage assets, and to* diversify the ownership of electric generation in Michigan.
- Ensure that all persons in Michigan are afforded safe, reliable electric power *fully available at market competitive rates* (rather than "at a reasonable rate").

- Add:
 - Ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and from a competitive retail electric service to a noncompetitive retail electric service.
 - Ensure that retail electric service consumers are protected from unreasonable sales practices, market deficiencies, and market power.

Choice program orders. [Section 10a(1)] Currently, Section 10a instructs the PSC to issue orders establishing the rates, terms, and conditions of service that would allow all retail customers of an electric utility or provider to choose an alternative electric supplier (AES). The bill would apply the orders currently in the act to an electric utility or provider *with less than 1 million retail customers on the bill's effective date.*

The act requires the PSC orders to fulfill several stated purposes. The bill would not amend the required elements of the orders, including the cap on the amount of electricity allowed to be provided by an AES in an electric utility's distribution service territory (currently capped at no more than 10 percent of the utility's average weather-adjusted retail sales for the preceding calendar year).

Choice program orders for utilities with at least 1 million customers. [Section 10a(2)] For an electric utility or provider with *more than 1 million retail customers* on the bill's effective date, the PSC would have to issue orders establishing the rates, terms, and conditions of service allowing those customers to choose an AES. The orders would have to do all of the following:

- Provide that all customers of an electric utility with more than 1 million retail customers and all customers of an electric distribution utility could take service from an alternative electric supplier. (Customers would not be required to switch to an AES.)
- Set forth procedures necessary to ensure customers of an electric distribution utility or an electric utility that does not complete a plan within the periods proposed under Section 10g are provided, on a comparable and nondiscriminatory basis, a market-based standard tariff service for electric generation. [The act defines "standard tariff service" to mean, for each regulated electric utility, the retail rates, terms, and conditions of service approved by the commission for service to customers who do not elect to receive generation service from alternative electric suppliers.] The procedures would have to include:
 - A competitive bidding process to acquire a wholesale product that consists of all competitive retail electric services necessary to maintain essential electric service to standard tariff service customers, including a firm supply of load following electric generation service.
 - Reasonable financial and technical requirements to evaluate prospective bidders in advance of a competitive bid process so that only bidders with

the financial and technological integrity to reliably provide standard tariff service may participate.

- Rules preventing an electric distribution utility or electric utility (utilities) from providing any portion of standard tariff service, though either could select an independent affiliate as a standard tariff service provider.
- Rules preventing the exercise of market power, collusion, or gaming by bidders and preventing utilities from providing any other competitive advantage to affiliates in the competitive bidding process. The PSC could not limit participation in an action on the basis of the portion or quantity of standard tariff service already won or supplied by a particular bidder.
- PSC or independent third-party review to approve and certify the results and awards under the competitive bidding process.
- A contingency plan, filed and approved by the PSC, to ensure the continual availability of standard tariff service to all customers if a standard tariff service provider defaults on its obligations or a competitive bid process fails to attract any bidders. The contingency plan would be limited to one year in duration or until a new competitive bid process could be held, whichever was shorter.

Code of conduct. [Section 10a(5)] The act requires the PSC to establish a code of conduct that applies to all electric utilities and that is also applicable to electric utilities and alternate electric suppliers consistent with Sections 10, 10a, and 10b through 10cc. The bill would also apply the code of conduct to electric distribution utilities and independent affiliates of electric distribution utilities.

Self-service power. (Section 10a(13)) The bill would include an electric distribution utility's transmission and distribution system in the definition of "self-service power."

Purchase of receivables program for energy service of AES by utility. [Section 10a(18-21)] Within six months of the bill's effective date, a large utility (1 million or more retail customers) or an electric distribution utility would have to file a tariff with the PSC that provides qualifying alternative electric suppliers with the option to have the utility purchase their receivables for electric sales made to residential and small commercial customers. This energy purchase would be charged on the utility's bill.

Utilities would purchase the receivables for energy service from an AES at a just and reasonable discount rate to be reviewed and approved by the PSC, after notice and a hearing. The discount rate would be designed to recover all start-up and ongoing costs, including uncollectible amounts associated with the electric supply provided by the AES to its customers that are incrementally incurred by the utility in providing the purchase of receivables services. The PSC would have to base the initial discount rates (established separately for residential and commercial classes that receive AES services but are not transport customers) on all of the following:

- The utility's historical bad debt experience for a similar period and rate class.
- Any working capital costs arising from the lag in collections of receivables associated with the utility's purchase of receivables.
- Estimated incremental start-up costs.
- Administrative costs associated with the purchase of receivables.

In setting subsequent discount rates, the PSC must use the average of the historical bad debt experience for all participating AES, without accounting for the historical bad debt of the utility. The bill would also authorize the PSC to prescribe reconciliation procedures to annually reconcile a utility's bad debt experience and costs to provide purchase of receivables services with the cost estimates in setting the initial or subsequent discount rate.

A utility would have to use similar processes for collection from AES customers whose receivables are purchased as are used for utility customers. Unless a utility demonstrated that it instituted collection methods reflecting PSC-determined best practices, the PSC could not allow the utility to recover uncollectible amounts associated with the electric supply provided by the AES to its customers.

"Administrative costs" would mean all of the electric utility's or electric distribution utility's costs incurred in its administration of the purchase of receivables program. "Qualifying alternative electric supplier" would mean an AES that includes its charges for electric sales made in a utility's service area on that utility's bill.

Undue market power by large utilities; plan. [Section 10g(3-10,14)] "Undue market power" is defined to mean anticompetitive or discriminatory conduct or influence. The term includes, but is not limited to, unlawful acts of collusion, that prevent Michigan retail electric customers from obtaining the benefits of a properly functioning and fully available competitive retail electric market.

Within 90 days of the bill's effective date, the PSC must promulgate rules to ensure that all retail customers of an electric utility with 1 million or more retail customers (large utility) have a choice of electric suppliers and that no such electric utility exhibits undue market power.

Within 60 days of the rule promulgation, a large utility must file a plan with the PSC to mitigate any undue market power and ensure that retail customers in the state have a choice of electric suppliers. A plan could include, but not be limited to: (1) divestiture of the utility's electric generating facilities in a competitive sale; or, (2) transfer of the electric generating facilities to an independent affiliate. "Independent affiliate" would mean a person or entity that directly, or indirectly through one or more intermediaries, is controlled by, or is under common control with, another specified entity.

The PSC would have to promulgate rules creating procedures for the plan. The plan must include, but not be limited to, all of the following information:

- A concise summary of the terms and conditions of the proposed plan.
- Copies of any material divestiture or transfer documents if available.
- Summary of any projected impacts of the plan on electric service in the state.

- Financial statements relevant to any divestiture or transfer.

Comments by interested parties, including the attorney general, could be filed with the PSC within 60 days from the date a plan is filed. After notice and hearing, and within 180 days from the date the plan was filed, the PSC must issue an order approving or rejecting the proposed plan. "Interested party" would mean any person or AES directly or indirectly affected by the proposed divestiture or transfer.

An electric utility subject to this provision would have to provide all interested parties access to all books, records, accounts, documents, and any other data and information the commission considers necessary to effectively assess the impact of the proposed plan. However, nonpublic information and materials submitted by a utility clearly designated as confidential would be exempt from disclosure under the Freedom of Information Act. The PSC would be required to issue protective orders as necessary to protect such information as confidential.

In ensuring that all Michigan retail customers of any large electric utility have a choice of electric suppliers and that no such utility exhibits undue market power, the PSC must consider – in its order and determination of whether or not to approve a proposed plan – whether the proposed action would have an adverse impact on the rates of customers affected by the plan; have an adverse impact on the provision of safe, reliable, and adequate electric service in the state; and is otherwise inconsistent with public policy and interest.

In approving a plan, the PSC could impose reasonable terms and conditions on the plan to protect Michigan electric customers. If the commission determines that a utility should recover stranded costs, the terms and condition must include a requirement that net stranded costs are recovered in a way that results in the lowest total costs for the customers who are required to pay those net stranded costs. An electric utility could reject the PSC-imposed terms and conditions by filing different ones within 30 days of the PSC's proposal. If the different terms and conditions are not approved, the electric utility must comply with the ones imposed by the PSC and proceed with the transaction.

Electric distribution utility. [Section 10g(11-13)] If an electric utility divested or transferred its electric generating facilities according to a PSC-approved plan, the utility will become an electric distribution facility. As such, it could not own, operate, or control any electric generation facility.

An electric distribution facility would have an obligation to connect and provide regulated distribution service to retail customers within its assigned service area at rates and on terms and conditions as authorized by the PSC.

Except as otherwise provided, within two years of the bill's effective date, a large utility or electric distribution utility could not sell or offer for sale generation service to any retail consumer of electric energy in this state, either directly or through an affiliate, unless the utility implements and operates under a PSC-approved plan that is consistent with the policies of Section 10 and does all of the following:

- If the PSC requires divestiture or transfer, at a minimum, the utility divests or transfers all generation assets and generation-related business activities except for an ownership interest in a generation asset that the PSC determines is necessary for the electric distribution utility to perform its obligations in an efficient manner. Divestiture may be in whole or in part to an independent affiliate of the electric distribution utility for the provision of competitive retail electric service, if the plan includes separate accounting requirements, the code of conduct, and other measures necessary to effectuate the policies in Section 10.
- Proposes a methodology to determine the electric distribution utility's net stranded costs and implementation costs, if any.
- Satisfies the public interest in preventing unfair competitive advantage and preventing undue market power.
- Ensures that the electric distribution utility will not extend any undue preference or advantage to any affiliate, division, or part engaged in the business of supplying standard tariff service, competitive retail electric service, or any nonelectric product or service. This includes, but is not limited to, utility resources such as trucks, tools, office equipment, advertising, and other business-related activities as listed in the bill.
- Ensures that any affiliate, division, or part of an electric distribution utility will not receive undue preference or advantage from any other affiliate, division, or part of the utility engaged in the business of supplying noncompetitive retail electric service.

Failure to complete a plan. [Section 10g(15)] If an electric utility does not complete a plan under the bill's provisions within two years of the bill's effective date, the PSC must obtain electric service for the customers of that electric utility as provided in Section 10a(2)(b).

True-up. [Section 10g(16)] The PSC would be required to, after a contested case hearing, annually issue an order approving for each electric distribution utility a true-up adjustment to reconcile any over- or undercollections of the preceding 12 months, to ensure the recovery of all amounts of net stranded costs in a competitively neutral manner. The electric distribution utility's net stranded cost recovery charges and securitization charges implemented for the preceding 12 months would be reviewed and the PSC would adjust the stranded cost recovery charge, by way of supplemental surcharges or credits, to allow the netting of stranded costs. The PSC must consider the reasonableness and appropriateness of various methods to determine net stranded costs, including, but not limited to, all of the following:

- Evaluating the relationship of market value to the net book value of generation assets and purchased power contracts.
- Evaluating net stranded costs based on the market price of power plus any revenues from a regional transmission organization (RTO) or other sources in relation to revenues assumed by the PSC under cost of service regulation.
- Any other method the PSC considers appropriate.

Finding of undue market power. [Section 10g(17)] If a utility is found to exhibit undue market power, the PSC must conduct an investigation and refer its findings to the

attorney general, the U.S. Department of Justice, the U.S. Securities and Exchange Commission, or the federal Energy Regulatory Commission, as appropriate.

Ownership of electric distribution facility. [Section 10q(4)] With some exceptions, the act currently restricts ownership, construction, or operation of electric distribution facilities or electric meter equipment used in the distribution of electricity in the state to only investor-owned, cooperative, or municipal electric utilities. The bill would add electric distribution utilities to the list.

Aggregation. [Section 10bb] Currently, aggregation may be used for the purchasing of electricity and related services from an alternative energy supplier. Local units of government, public and private schools, universities, and community colleges may aggregate for the purpose of purchasing electricity for themselves or for customers within their boundaries with the written consent of each customer aggregated.

The bill would delete the underlined text and allow the specified entities to aggregate to purchase electricity for themselves or *residential customers and small commercial customers* within their boundaries. *Residential customers and small commercial customers* within a local unit of government *may choose not to* purchase electricity through the aggregator. (Italicized text indicates revisions to current language in the act.)

Further, the bill would specify that local units of government may aggregate for the purpose of purchasing electricity for large commercial customers and industrial customers within their boundaries with the written or electronic consent of each of those customers aggregated.

"Large commercial customers" would mean a commercial customer with an electric demand of greater than 25 kilowatts. "Small commercial customer" would mean a commercial customer with an electric demand of 25 kilowatts or less.

FISCAL IMPACT:

A fiscal analysis is in process.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.