

## PSC LAW/ELECTRIC CHOICE PROGRAM

Mitchell Bean, Director  
Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

### House Bill 5524 (Conference Committee Report)

**Sponsor: Rep. Frank Accavitti, Jr.**

**House Committee: Energy and Technology**

**Senate Committee: Energy Policy and Public Utilities**

**Complete to 9-18-08**

### A PRELIMINARY SUMMARY OF HOUSE BILL 5524 (Conference Committee Report)

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

- Designate the Public Service Commission (PSC) as an autonomous entity within the Department of Labor and Economic Growth (DLEG) with specified management authority.
- Allow regulated utilities to implement proposed rate increases before PSC approval if the PSC has not ruled on a complete application within 180 days, subject to a refund procedure if the PSC does not subsequently approve the increase.
- Require the PSC to issue final orders within 12 months or an application for a rate increase would be automatically approved.
- Require utilities to wait at least 12 months after filing a general rate increase case (and until that case is decided) before filing another one.
- Require the PSC to approve special discounted rates or contracts for large industrial or commercial gas customers, if requested by a gas utility to help it retain those customers.
- Allow merchant plants selling electricity derived from wood or solid wood wastes under a long-term contract with a large regulated electric utility to recover additional payments from the utility to cover higher fuel and variable costs up to specified limits. (An aggregate limit per utility of one million dollars per month, subject to inflationary adjustments.)
- Grant merger review authority to the PSC and allow it to attach conditions to approvals of mergers and other covered transactions to protect the regulated utility or its customers.

- Establish a certificate of necessity process for electric utilities and require utilities requesting certificates to prepare integrated resource plans.
- Allow utilities who obtain a certificate of necessity to recover financing interest costs during construction phase of a project, instead of when the facility became "used and useful."
- Modify the electric choice program to limit the amount of electricity that could be obtained from alternative energy suppliers to an amount equal to 10 percent of an electric utility's weather-adjusted retail sales for the preceding calendar year, and establish rules for allocating that amount among customers.
- Require the PSC to study and report on the advisability of separating electric distribution and generation within utilities and on the possible creation of a statewide electricity purchasing pool.
- Appropriate 2.5 million dollars to allow the PSC to fill 25 full-time positions.
- Require electricity utilities to file plans for using dispatchable customer-owned generation.
- Require the PSC to study and report on issues relating to service quality and cost-efficiency.
- Require the adoption of cost-based rates (so-called "deskewing") and special school rates and allow the PSC to adopt low-income customer rates for large electric utilities.
- Cap the rate impact due to cost-based rates on residential and metal melting customers to 2.5 percent per year for large electric utilities.
- Require the adoption of cost-based rates for smaller electric utilities in that utility's first general rate case after the bill's effective date and allow the PSC to phase in the new rates if appropriate; limit the rate impact of cost-based rates to 2.5 percent per year.

## **DETAILED SUMMARY**

### **PSC Structure**

PSC structure. [§4a] Except as otherwise provided, the PSC would be subject to Executive Reorganization Order No. 2003-1, creating the Department of Labor and Economic Growth (DLEG), and the PSC's funding would come from assessments on utilities under Public Act 299 of 1972 and other sources. The PSC would be an "autonomous entity" within DLEG retaining its own authority for personnel, budgeting, procurement, and other managerial matters. The PSC would have to reimburse DLEG for the cost of any support or coordinated services it requests from DLEG. The PSC

chairperson would continue to be appointed by the governor as provided under Section 2, MCL 460.2. This version of the bill does not require the PSC chairperson to report directly to the Governor. This section would not supersede specified Executive Reorganization Orders.

### **Utility Rate Case Procedures**

PSC approval. [§6a(1)] A gas or electric utility could not increase its rates, charges, or schedules without first receiving PSC approval. (But note provisions described below allowing utilities to implement a proposed rate increase if the PSC does not issue an order on a filing within 180 days—subject to a refund procedure—and deeming a proposed rate increase approved if the PSC does not issue a final order in a rate case within 12 months.)

Evidence; notice of hearing. [§6a(1)] A utility petitioning to increase its rates or schedules would have to place supporting facts in evidence. The PSC would have to give notice to all interested parties within the affected service area, and they would be entitled to a reasonable opportunity for a full and complete hearing.

Use of projected costs and revenues. [§6a(1)] The bill would allow a utility to use projected costs and revenues for a future consecutive 12-month period when proposing new rates and charges (but doing so could affect the timing of the implementation of a proposed increase, as described below).

30-day rule. [§6a(1)] The PSC would have to notify a utility within 30 days whether its petition or application is complete. If the PSC failed to do so, the petition or application would be deemed complete. Moreover, the PSC would have to consider the petition or application complete if it complied with new filing forms and instructions to be adopted [§6a(6)], as described below. (A petition or application pending before adoption of the new forms and instructions would be evaluated under requirements in effect at the time of the filing.) The PSC would have to notify the utility what information was missing from an incomplete application.

180-day rule. [§6a(1)] If the PSC does not issue an order within 180 days from the filing of a complete application, the utility could implement up to the amount of the proposed annual rate request through equal percentage increases applied to all base rates, subject to a refund procedure, described below. For pending cases, the 180-day period would begin on the bill's effective date.

Application of 180-day rule when projections are used. [§6a(1)] If a utility uses projected costs and revenues in proposing new rates or charges, it could not implement equal percentage increases before the beginning of the 12-month period to which the projections apply.

Temporary orders blocking implementation of proposed new rates or charges. [§6a(1)] For good cause, the PSC could issue a temporary order preventing or delaying the implementation of rates or charges until the PSC issues a final order.

Refund procedure. [§6a(1)] If a utility implements increased rates or charges before a final order by the PSC, it would have to refund to its customers, with interest, any portion of the revenues collected exceeding the total that would have been produced by the rates or charges subsequently approved. The PSC would allocate any required refund to primary customers based on a pro rata basis, and to secondary and residential customers in a manner it determines appropriate.

Refund interest rate. [§6a(1)] The interest rate on refunds would be five percent plus the London Interbank Offered Rate (LIBOR) for the appropriate time period. For any portion of the refund that exceeds 25 percent of the approved revenue increase, not counting interest, the interest rate on the portion that exceeds 25 percent would be the authorized rate of return on the common stock of the utility during the appropriate period. Any refund or interest awarded could not be included, in whole or part, in a utility's application for a rate increase.

Show cause authority. [§6a(1)] The PSC would retain the ability to issue show cause orders as part of its ratemaking authority.

If PSC doesn't rule within 12 months, rate increase automatically approved. [§6a(2)-(3)] Under current law, the PSC is required to adopt rules and procedures to enable it to decide rate cases within nine months from the filing of a petition or application. The bill would change this deadline to 12 months from the filing of a complete petition or application.

Currently, if the PSC has not ruled within nine months, it has to give the case greater priority and expedite its final decision. Under the bill, if the PSC does not issue a final decision within 12 months, the petition or application would be considered approved, unless the utility had made significant amendments to its filing or had requested an extension of time. If the utility makes any significant amendment to its filing, the PSC would have an additional 12 months from the date of the amendment to make its ruling. If a utility files for an extension of time, the PSC's 12-month deadline would be extended by the amount of additional time requested by the utility.

One general rate increase case per year per utility. [§6a(4)] A utility would have to wait at least 12 months after it files a complete general rate increase application—and until the PSC decided that case or the filing was deemed approved because the PSC missed its deadline—before it could apply for another general rate increase.

Discounted rates or contracts to help gas utilities retain large customers. [§6a(5)] If requested by a gas utility, the PSC would have to establish discounted "load retention transportation rate schedules" or approve discounted "gas transportation contracts" to help a gas utility retain large industrial or commercial customers whose annual

transportation volumes exceed 500,000 decatherms and who have a viable alternative to service from the gas utility. The PSC would have to approve these discounts for large gas customers if:

- The utility entered into the rates or contracts in good faith.
- The large industrial or commercial customer has "the installed capacity to use an alternative fuel or otherwise has a viable alternative to receiving natural gas transportation service from the utility."
- The customer could get a better price using the alternative.
- The customer makes a significant contribution to the utility's fixed costs.

The PSC would have to ensure through accounting and rate-making policies that discounts given to large industrial or commercial customers are recovered by charges paid by the utility's other customers so long as the additional costs paid by the other customers do not exceed the additional fixed costs that would be passed on to them if the utility lost the large customers.

Standard filing forms and instructions for regulated utilities. [§6a(6)] Within 90 days of the bill's effective date, the PSC would have to adopt standard rate application filing forms and instructions for use in all general rate cases filed by regulated utilities. [As noted earlier, under Section 6(a)(1), the PSC would have to consider a petition or application complete if it complied with the new filing forms and instructions.] The PSC would have the authority to modify the standard forms and instructions.

A regulated cooperative utility could file for rates based on its "times interest earned ratio," or under the new standard forms.

Allow merchant plants selling electricity generated from wood or wood wastes to recover higher fuel and variable costs than payments called for in their long-term contracts with large electric utilities. [§6a(7)] A merchant plant<sup>1</sup> that (1) entered into a contract with an initial term of at least 20 years before January 2, 2008 to sell electricity to a regulated utility with at least one million Michigan customers (i.e., Detroit Edison or Consumers Energy) and (2) that began producing electricity, in whole or part, from wood or solid wood wastes under the contract before January 2, 2008 would be entitled to recover the amount by which its reasonable and prudent actual fuel and variable operation and maintenance costs exceed the amount that the plant is paid for these items under the contract.

This section does not apply to landfill gas plants, hydro plants, municipal solid waste plants, or to merchant plants engaged in litigation against an electric utility for higher payments.

---

<sup>1</sup> Under MCL 460.10g(1)(d), a "merchant plant" is "electric generating equipment and associated facilities with a capacity of more than 100 kilowatts located in this state that are not owned and operated by an electric utility."

Combined limit of one million dollars per utility in extra payments to merchant plants. [§6a(8)] The additional payments received by all of the eligible merchant plants combined could not exceed one million dollars per month per regulated utility but the affected merchant plants could petition the PSC once a year for an adjustment limited to the rate of national urban inflation. The PSC could only make the adjustment if filed for each affected plant. If the one million dollar limit, as adjusted, didn't cover all of the merchant plants' additional costs, the PSC would have to allocate the available funds among the eligible merchant plants.

Merchant plants could not recover fuel and specified variable cost increases relating to changes in federal or state environmental laws or regulations implemented after the bill's effective date.

The one million dollar limit would not apply when a merchant plant is selling electricity generated from wood or wood wastes to a utility that also uses wood, wood wastes, or fuels derived from those materials for fuel in its power plants.

PSC orders; costs paid for by utility ratepayers. The PSC would issue orders to permit the recovery by merchant plants described above. The merchant plants would not have to alter or amend their existing contracts with the utility in order to get the extra payments. The PSC would have to permit or require a regulated electric utility to pass along these additional costs to its ratepayers.

### **PSC Merger Review Authority**

PSC merger review authority. [§6q(1)] A person could not "acquire, control, or merge, directly or indirectly, in whole or in part, with a jurisdictional regulated utility" nor could such a utility "sell, assign, transfer, or encumber its assets to another person" before applying for and receiving PSC approval. ("Jurisdictional regulated utility" would mean a utility whose rates are regulated by the PSC, not including telecommunications providers or motor carriers.)

Order concerning covered transactions. [§6q(2)] After notice and a hearing, the PSC would issue an order defining what transactions would need approval. The bill explicitly excludes certain transactions that might occur in the normal course of business and the issuance of securities or other financing transactions not directly or indirectly involved in a covered transaction.

Rules. [§6q(3)] The PSC would promulgate procedural rules under this section.

Applications. [§6q(3)] An application would have to include, but would not be limited to, all of the following information:

- A concise summary of the terms of the proposed acquisition, transfer, merger, or encumbrance.
- Copies of material documents relating to the transaction, if available.

- A summary of the projected impacts of the transaction on rates and electric service in Michigan.
- Relevant pro forma financial statements.
- Copies of the parties' public filings with other state or federal regulatory agencies regarding the same transaction, including any orders issued by those agencies.

60-day comment period. [§6q(4)] Within 60 days from a filing under this section, interested parties, including the Attorney General, could file comments with the PSC relating to the proposed transaction.

180-day decision deadline. [§6q(5)] After notice and a hearing, and within 180 days from the filing, the PSC would have to issue an order approving or rejecting the proposed transaction.

Access to information. [§6q(6)] All parties to a covered transaction would have to provide the PSC and the Attorney General access to all books, records, and other data and information the PSC considers necessary to assess the impact of the proposed acquisition, transfer, merger, or encumbrance.

Relevant factors in evaluating a proposed transaction. [§6q(7)] The PSC would consider, among other factors, all of the following:

- Would there be an adverse impact on the rates of affected customers?
- Would there be an adverse impact on the provision of safe, reliable, and adequate energy service in Michigan?
- Would the customers of the regulated utility subsidize a nonregulated activity of a new entity through their rates?
- Would the regulated utility's ability to raise necessary capital or maintain a reasonable capital structure be significantly impaired?
- Would the proposed action be otherwise inconsistent with public policy and interest?

Approval with conditions to protect the utility or its customers. [§6q(8)-(9)] In approving an acquisition, transfer, merger, or encumbrance, the PSC could impose reasonable terms and conditions on the proposed deal to protect the jurisdictional regulated utility or its customers, including conditions concerning the division and allocation of the utility's assets. A regulated utility could reject these terms and conditions and abandon the proposed transaction.

Confidentiality. [§6q(10)] Nonpublic information and materials submitted by a regulated utility under this section clearly designated 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 regulated utility as confidential.

Antitrust laws. [§6q(11)] The Attorney General would retain authority to enforce federal and state antitrust laws.

## **Certificates of Necessity**

Certificates of necessity. [§6s(1)-(2)] An electric utility could apply to the PSC for a certificate of necessity when proposing to do any of the following:

- Construct an electric generation facility.
- Make a significant investment in an existing generation facility. (A "significant investment" would include a group of investments reasonably planned to be made over a period of not more than six years for a single purpose, such as expanding capacity.)
- Purchase an existing generation facility.
- Enter into a power purchase contract for six years or more.

In general, to qualify for a certificate, the proposal would have to cost at least \$500 million, with at least a portion of the costs allocable to Michigan retail customers. Projects for environmental upgrades to existing electric generation plant or renewable energy system would not be eligible for certificates. The commission could establish different review and approval standards for electric utilities with less than one million retail customers seeking certificates for projects costing less than \$500 million.

Types of certificates of necessity. [§6s(3)] An electric utility could apply for a certificate of necessity as to one or more of the following:

- That the power to be supplied by the construction, investment, or purchase is needed.
- That the size, fuel type, and other design characteristics of the existing or proposed electric generation facility represent the most reasonable and prudent means of meeting that power need.
- That the terms of a power purchase agreement represent the most reasonable and prudent means of meeting that power need.
- That the price specified in a power purchase agreement will be recovered in customer rates.
- That the estimated purchase price or capital costs and financing for the existing or proposed electric generation facility would be recoverable in the customer rates, if reasonable. Recoverable costs would include, but not be limited to, the costs of siting or licensing a new facility and the estimated costs of power from the new or proposed generation facility.

Procedures. [§6s(4)] The PSC would have to issue an order granting or denying a requested certificate of necessity within 270 days after a filing. A contested case hearing would be held on the application in which interested parties could intervene. Reasonable discovery would be allowed before and during the hearing to allow parties and interested persons to obtain relevant information, including information about the reasonableness and prudence of the construction, investment, or purchase.

Decision-making standard. [§6s(4)(A)-(E)] The PSC would have to grant a requested certificate of necessity if it found all of the following:

- The utility has demonstrated a need for the power to be supplied by the project or agreement in its approved integrated resource plan.
- The information supplied indicates that the existing or proposed facility would comply with all applicable state and federal environmental standards, laws, and rules.
- The estimated cost of the power is reasonable.
- A cost estimate for *construction or investment in a facility* (new or existing) would be considered reasonable if the engineering, procurement, and construction contracts were competitively bid to the extent commercially practicable. (An affiliate of a multi-state electric utility that serves customers in Michigan and at least one other state could submit a bid to provide engineering, procurement, and construction services to that electric utility for a project under this section.)
- The cost estimate of a *power purchase agreement* would be considered reasonable if the applicant conducted a competitive solicitation.
- The facility or proposed agreement represents the most reasonable and prudent means of meeting the power need compared to alternatives such as energy efficiency programs and transmission improvements.
- The construction or investment in a new or existing facility is completed using a workforce composed of Michigan residents to the extent practicable. (The Michigan workforce requirement would not apply to facilities in counties bordering other states.)

Consideration of information supplied by intervenors. [§6s(5)] The PSC could consider cost or related information supplied by intervenors about the proposal or alternatives to the proposal.

Certificates to include approved costs. [§6s(6)] In a certificate of necessity, the commission would be required to specify approved costs.

Annual progress report. [§6s(7)] A utility would have to file a progress report with PSC at least once a year (more often if requested) that includes cost and schedule information about projects for which a certificate of necessity has been issued.

Effect of denial. [§6s(9)] If the PSC denies any of the relief requested by an electric utility, the utility could withdraw its application for a certificate of necessity or proceed with its proposal without a certificate and its assurances.

Mandatory inclusion of approved costs in rates. [§6s(9)] Once the electric generation facility or power purchase agreement is considered "used and useful" or as otherwise provided in Subsection 6s(12) (authorizing recovery of interest costs relating to construction work in progress in base rates), the PSC would have to include in the utility's retail rates all reasonable and prudent costs for the facility or power purchase agreement for which a certificate of necessity has been granted. The PSC could not disallow costs for which a certificate of necessity has been granted so long as the costs do not exceed the costs approved in the certificate.

Inclusion of cost overruns in rates. [§6s(9)] If actual costs do exceed the approved costs, the PSC would also have to include the additional costs in retail rates if it found them to be reasonable and prudent. When actual costs exceed approved costs, the utility would have the burden of proving by a preponderance of the evidence that the costs were reasonable and prudent. Costs that are more than ten percent greater than approved costs are presumed to be incurred due to a lack of prudence but could still be approved if the utility proved that the costs were prudently incurred.

Adoption of standard forms and instructions. [§6s(10)] Within 90 days of the bill's effective date, the PSC would have to adopt standard filing forms and instructions for use in all requests for a certificate of necessity, and the PSC would have the authority to modify the forms and instructions.

Integrated resource plans. [§6s(11)] The PSC would establish standards for an integrated resource plan (IRP) that would be required of any electric utility requesting a certificate of necessity. An IRP would have to include all of the following:

- A long-term forecast of load growth under various reasonable scenarios.
- The type of generation technology and capacity proposed for the generation facility, including projected fuel and regulatory costs under various reasonable scenarios.
- The projected energy and capacity purchased or produced by the utility under any renewable portfolio standard.
- The projected savings and costs associated with energy efficiency programs.
- The projected savings and costs associated with load management and demand response programs.
- An analysis of the availability and costs of other electric resources that could defer or displace, in whole or part, the proposed generation facility or power purchase agreement, including additional renewable energy, energy efficiency, load management, and demand response programs beyond amounts already included.
- Electric transmission options.

Base rate treatment of financing interest costs during construction phase. [§6s(12)] The PSC would have to allow an electric utility to recover its financing interest costs in its base rates for construction work in progress for capital improvements certified under this section before the assets were considered "used and useful." Whether or not the PSC allowed this recovery, an electric utility could recognize, accrue, and defer an allowance for funds used during construction related to equity capital.

### **Customer Choice and Electricity Reliability Act**

Modify electricity choice program. [§10(1)-(20)] The bill would amend the section of the act formally called the "Customer Choice and Electricity Reliability Act," and informally referred to as the customer choice program or simply the "choice program." T

Purposes. [§10(2)(f)] The bill would add a new purpose to the act: "To maintain, foster, and encourage robust, reliable, and economic generation, distribution, and transmission

systems to provide this state's electric suppliers and generators an opportunity to access regional sources of generation and wholesale power markets and to ensure a reliable supply of electricity in this state." An existing provision that made the purposes section expire on December 31, 2003 would be deleted, with the apparent effect of reviving the former purposes section and adding in the new language previously quoted.

Choice program order. [§10a] The bill would amend the Section 10a of the act in which the PSC is instructed to issue an order establishing an electric choice program. The PSC would be directed to issue orders to do the following:

- Cap the amount of electricity allowed to be provided by alternative energy suppliers in an electric utility's distribution service territory to no more than 10 percent of the utility's average weather-adjusted retail sales for the preceding calendar year.
- Adopt procedures to administer the 10 percent limit through the use of annual energy allotments awarded on a calendar-year basis and to define the term "facility" for purpose of the allotments.
- Give customers priority for an annual allotment in the following order. (Note that "customer" here as well as in the next subsection concerning returning to utility service means the building or facilities served through a single existing electric billing meter and not the owner or occupant of the building or facilities.)

(1) Current "choice" customers for service at a facility served by an AES on the effective date of the bill would receive an allotment for service at that facility.

(2) Current "choice" customers who wish to expand usage at a facility served by an AES.

(3) The remaining load, if any, on a first-come, first served basis.

- Disallow the allocation of any additional annual energy allotments whenever the total annual energy allotments for the utility's distribution service territory is greater than 10 percent of the utility's weather-adjusted retail sales for the preceding calendar year.
- Specify that customers receiving service from an AES would not be forced to purchase electricity from a utility if the sales of a utility go down or if the energy usage of a customer exceeds its annual allotment. (Such customers could purchase electricity from an AES for that facility during that calendar year.)
- Allow customers seeking to expand usage at a facility that has been continuously served through an AES since April 1, 2008 to purchase electricity from an AES for (1) the existing or expanded load at that facility or (2) any new facility built or acquired after the effective date of the bill that is "similar in nature" to the existing facility and is more than 50 percent owned by the customer, notwithstanding any other provisions.
- Allow iron ore mining or processing facilities in the Upper Peninsula to purchase all or part of its electricity from an AES without regard to the 10 percent cap.
- Delete language found in current Section 10a(1) saying that the PSC orders must "provide for full recovery of a utility's net stranded costs and implementation costs as

determined by the commission" and delete current Section 10a(12) concerning restructuring plans and net stranded costs.

- Delete existing Sections 10a(16)-(19), relating to net stranded cost "true-ups."

Returning to utility service. [§10a(15)] A customer who elects to receive from an AES may later notify the electric utility that it wants to receive standard tariff service from the utility. The bill would ratify each electric utility's procedures in effect on January 1, 2008 that set the terms under which a customer may return to full service from the electric utility and also authorize the commission to amend the procedures as needed. If no procedures were in place on the date, the PSC would provide them. Existing Section 10(a)(19) dealing with returning retail customers would be deleted. "Standard tariff service" would mean, under Section 10a(17)(b), the approved retail rates, terms, and conditions of service that apply to customers who do not receive generation service from an AES for each regulated electric utility. ["Customer" means the building or facilities served by a single electric billing meter and not the owner or occupant of the building.]

Recovery of restructuring costs and accrued regulatory assets, including stranded costs, through surcharges for up to five years. [§10a(16)] The PSC would have to authorize rates that would ensure that an electric utility that offered retail open access service from 2002 to the effective date of the bill fully recovers its restructuring costs and any associated accrued regulatory assets, including implementation costs, stranded costs, and costs under Section 10d(4) (as it existed before the bill's effective date) that the PSC authorized for recovery before the bill's effective date. Any previously authorized charges would be recovered through surcharges that would ensure recovery of all such costs within five years of the bill's effective date.

Additional deleted sections. The bill would delete Sections 10d(1) through (8).

Definitions. [§10g] The bill would amend current definitions and add new ones to the "choice" law, including defining "independent transmission owner" as "an independent transmission company as that term is defined in Section 2 of the Electric Transmission Line Certification Act, 1995 PA 30, MCL 460.562."

Industry worker transition programs. [§10p] Under existing Section 10p(1), which would be retained, each electric utility operating in Michigan must have an industry worker transition program to provide skills upgrades, apprenticeship training, voluntary separation packages, and job placement assistance in consultation with employees or employee representatives. Under the bill, these costs would no longer be categorized as "stranded costs."

Service quality and reliability. [§10p(5)-(7)] Under current law, the PSC must adopt generally applicable service quality and reliability standards for the transmission and distribution systems of electric utilities; the bill would also require standards for the generation of electricity.

Each year, a jurisdictional utility or entity must file an annual report on what it needs to do in the coming year and what it accomplished in the previous year as to service quality and reliability. The bill would require the estimated costs of improving service under the standards to be included in the report.

PSC service and reliability report. [§10p(8)] The bill would require the PSC to submit a report to the Governor and Legislature by September 1, 2009, after a review of existing customer surveys and what other states have done. The report would have to include:

- An assessment of major types of end-use customer power quality disturbances caused by both distribution and transmission systems in Michigan (including voltage sags, overvoltages, oscillatory transients, voltage swells, distortion, power frequency variations, and interruptions) caused by Michigan distribution and transmissions systems.
- An assessment of utility power plant generating cost efficiency (including operational efficiency, economic generating cost efficiency, and schedules for planned and unplanned outages).
- Current PSC efforts to enforce standards as to end-use power quality disturbances and utility power plant generating cost efficiency (whether through practice, statute, policy, or rule).
- Recommendations for use of methods to monitor power quality disturbances and power plant operating generating cost efficiency.
- Recommendations for statutory changes needed to enable the PSC to properly monitor and enforce standards to obtain optimal and cost-effective end-use power quality to attract economic development and investments in Michigan.

Rule review. [§10p(9)] Subsequently, by December 31, 2009, the PSC would have to review its existing rules for any amendments needed to implement performance standards for generation facilities and for distribution facilities to protect end-use customers from power quality disturbances.

Purpose of new rules. [§10p(10)] Any new standards or rules would be designed to do the following, as applicable:

- Establish different requirements for each customer class, if appropriate.
- Consider the availability and associated cost of equipment and labor required to maintain or upgrade distribution and generating facilities.
- Ensure that the most cost-effective means of addressing power quality disturbances are promoted for each utility, including considering new equipment or operating practices at the end-user's location.
- Weigh the costs and benefits of achieving standards or improvements.
- Consider appropriate time frames for achieving standards.

Benchmarks. [§10p(11)] The PSC would create benchmarks for individual jurisdictional entities within ratemaking to reduce power quality disturbances and to promote cost efficient generation.

Industrial customers. [§10p(12)] The PSC would collect data from industrial customers to monitor power quality and reliability standards relating to industrial customers.

Customer education. [§10r(2)] The bill would delete existing Section 10r(2) which concerning programs to educate the public about alternative energy suppliers.

Require PSC to study and report on the advisability of separating electric distribution and generation within utilities. [§10r(6)] Within two years of the bill's effective date, the PSC would study and report to the Governor and to appropriate legislative standing committees on the advisability of separating electric distribution and generation within electric utilities, taking into account specified issues.

Require PSC to study and report on the possible creation of a statewide electricity purchasing pool. [§10r(7)] Within two years of the bill's effective date, the PSC would study and report to the Governor and legislative standing committees with oversight over public utility issues on whether Michigan would benefit from the creation of a purchasing pool in which electric generation in Michigan is purchased and then resold, including an examination of specified issues.

Require electricity utilities to file plan for using dispatchable customer-owned generation. [§10r(8)] Within 270 days after the effective date of the bill, each regulated electric utility would have to file a plan with the PSC for using dispatchable customer-owned distributed generation within the context of its integrated resource planning process. The utility's filing would have to include proposals for enrolling and compensating customers for the utility's right to dispatch at-will the customer's distributed assets and for provisions requiring customers to maintain these assets in a dispatchable condition. A utility could refer to and get credit for plans that it already has in place.

Application of electric choice program to cooperative electric utilities. [§10x] Under the bill, large retail customers of an electric cooperative (those with a peak load of one megawatt or greater) would remain able to obtain electricity from an alternative energy supplier subject to the provisions in Section 10a. The provisions of Section 10a, described above, include a ten percent cap on the amount of electricity in a utility's service area that could be obtained from an alternative supplier. A reference to requiring cooperative utilities to fund education programs about the choice program, which would no longer be required, would be deleted.

Application of electric choice program as to municipal utilities. [§10y] The bill would amend provisions governing the application of the choice program to municipally-owned electric utilities. As is currently the case, the governing body of a municipally-owned utility would determine whether to permit its retail customers to obtain service from an alternative supplier. (To date, no municipally-owned utility has allowed its customers to do so.) Further, no company could provide service to a retail customer receiving service from a municipally-owned utility without receiving the written consent of the utility.

Under current Section 10y(3), the requirement that an AES get the written permission of

a municipally-owned utility before providing service to one of its retail customers expired on December 31, 2007 for utilities that do not allow all of its retail customers to participate in the electric choice program. The bill would delete Section 10y(3) and retain the requirement of written permission.

In addition, the bill would delete subsection (4) in its entirety. That subsection sets forth rules for municipally-owned utilities that elect to provide electric generation service to retail customers receiving delivery service from an electric utility that is not municipally-owned and deal with territorial disputes between municipally-owned and other utilities. Likewise, the bill would delete a corresponding provision (the second sentence of subsection (8)) giving the PSC jurisdiction over complaints arising under subsection (4).

Municipally-owned utilities would remain eligible to sell electricity at wholesale but a provision (subsection (10)) concerning sales of electricity by a joint agency of which a municipally-owned utility may be member would be deleted.

Currently, Sections 6l, 10 through 10x and 10z through 10bb do not apply to municipally-owned utilities except as otherwise provided in subsections 10(4)(c), (4)(e), and (10). Under the bill, the exceptions would be deleted and Sections 6l, 10 through 10x and 10z through 10bb would simply not apply to municipally-owned utilities with no stated exceptions.

### **PSC Appropriation for 25 FTEs**

PSC appropriation for staff. [§10dd] For the fiscal year ending September 30, 2009, 2.5 million dollars would be appropriated to the PSC from specified assessments on utilities to hire 25 full-time equated positions to implement the provisions of the bill.

### **Cost-based Rates/"Deskewing"**

Cost-based rates or "deskewing." [§11(1)] Beginning January 1, 2009, the PSC would have to phase in cost-based electric rates for industrial and commercial customers over a period of five years from the bill's effective date, with a possible longer phase-in for industrial metal melting customers. The PSC would have to phase-in cost-based rates for residential customers within 10 years from the effective date of the bill. The deskewing, low-income customer rate, and school rate provisions described below apply only to utilities with one million or more customers.

The PSC would be required to adopt the 50-25-25 method of allocating production-related and transmission costs to each customer class, but could modify this method to better ensure that rates reflect the cost of service if this method does not result in a greater amount of production-related and transmission costs allocated to primary customers.

Rate increase cap. [§11(2)] The PSC would have to ensure that the impact on residential and industrial metal melting rates due to the phase in of cost-based rates is not more than 2.5 percent per year.

## **Low-Income and Senior Citizen Customer Rates**

Low-income and senior citizen rates. [§11(3)] Notwithstanding any other provision of the act, the PSC could establish an eligible low-income customer or eligible senior citizen rates.

## **School Rates**

School rates. [§10(37)] Notwithstanding any other provision, the PSC would be required to establish rate schedules to ensure that public and private schools, universities, and community colleges are charged retail electric rates that reflect the actual costs of providing service to them. Utilities would have to file new school tariffs within 90 days of the bill's effective date to ensure that schools, universities, and community colleges, are charged appropriate electric rates under this provision.

Cost-based rates for smaller electric utilities. [§10(39)] Beginning January 1, 2009, the PSC would also have to approve cost-based rates for utilities with less than one million Michigan retail customers in each utility's first general rate case filed after the bill's effective date. If the new cost-based rates would have a material impact, the PSC could, but would not be required to, phase in the new rates over a "suitable number of years." The PSC would have to ensure that the impact on rates due to cost-based rates did not exceed 2.5 percent per year.

Tie-bars. The bill is tie-barred to Senate Bill 213, which would create the Clean, Renewable, and Efficient Energy Act.

Legislative Analyst: Shannan Kane

---

■ 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.