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BILL ANALYSIS

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Senate Bill 1022

Sponsor: Senator Connie Binsfeld

Committee: Commerce and Technology

Date Completed: 10-7-88

SUMMARY OF SENATE BILL 1022 as introduced 9-28-88:

The bill would amend the Public Service Commission (PSC) Act to require public utilities serving over 1 million customers to maintain at least a 25% reserve margin, and to purchase power and energy from qualifying cogeneration facilities and small power production facilities if additions to existing capacity between 1988 and 1990 were necessary to reach or maintain that margin. The bill also would:

- Require the capacity and energy charges that had to be paid by a public utility to be established according to methodology approved in certain PSC orders.
- Require public utilities to negotiate in good faith and enter into power purchase agreements on a first come, first serve basis.
- Require power purchase agreements to be approved by the PSC.
- Authorize the PSC to conduct hearings if a public utility needed capacity in excess of the capacity provided by qualified facilities.
- State a legislative finding of the need to encourage the development of qualifying cogeneration and small power production facilities.

"Qualifying cogeneration facility" and "qualifying small power production facility" would be defined as they are in the Federal Public Utilities Regulatory Policies Act (PURPA). Under Federal law, a cogeneration facility is a facility that produces "electric energy, and steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating, or cooling purposes". A small power production facility is a facility that produces electric energy solely by the use, as a primary energy source, of biomass, waste, renewable resources, and/or geothermal resources, and has a power production capacity that, together with any other facilities at the same site, is not over 80 megawatts. A qualifying facility is one that meets Federal Power Commission requirements respecting fuel use, fuel efficiency, and reliability, and that is owned by a person who is not primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities).

Under the bill, the PSC would have to require that all public utilities with over 1 million customers maintain at least a 25% reserve margin, or a higher reserve margin that the Commission considered appropriate. In determining a utility's need for capacity, the PSC would have to determine that an appropriate estimate of peak demand for the forecast period of 1988 to 1998 would be the utility's 1987

actual peak demand escalated by a 2% growth rate for each year of the period. All additions to the existing capacity of a public utility from 1988 to 1998 necessary for the utility to reach or maintain a 25% reserve margin would have to be provided by the purchase of power and energy from qualifying cogeneration facilities and small power production facilities located within the utility's service territory. Hydro facilities and small power production facilities fueled primarily by municipal solid waste would be excluded for all purposes from the calculation of a public utility's capacity or reserve margin.

The capacity and energy charges to be paid by a public utility would have to be established according to the methodology approved by the PSC's order in case number U-6798, dated August 27, 1982, and the applicable settlement agreement (which described a methodology for calculating average avoided energy cost for facilities of 100 kilowatts or less, and a methodology for calculating energy and capacity rates for qualifying facilities over 100 kilowatts), as well as its order of February 19, 1987, in case number U-8562 (which applied the methodology described in U-6798 to a coal-fired power plant). A facility fueled primarily by municipal solid waste could apply for approval for capacity and energy charges based upon charges approved by the PSC in case number U-8639, of February 19, 1987 (which applied the U-6798 methodology to a municipal solid waste incinerator). A public utility's avoided cost would have to equal the charges approved by the Commission in case number U-8562 or U-8639.

Public utilities would be required to negotiate in good faith and enter into agreements for the purchase of power and energy from qualifying facilities on a first come, first serve basis. All such agreements and amendments that were filed with the PSC by March 22, 1988, would have to be amended if necessary and filed with the PSC. The PSC would have until July 22, 1988, to approve or disapprove the agreements and amendments, and their capacity and energy charges.

All power purchase agreements between a public utility and a developer of a qualifying facility would have to contain dates for obtaining financing and permits and for the commencement of construction and commercial operation, as well as a provision that if the dates were not met, the agreement would be void.

To the extent that a public utility needed more capacity than would be provided by the qualifying facilities that had filed executed power purchase agreements, the PSC

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could conduct hearings to determine future implementation of PURPA in Michigan. The PSC could not retroactively apply any Federal regulations implementing PURPA that were proposed by the Federal Energy Regulatory Commission on or after March 16, 1988, to developers of a qualifying facility who had filed executed power purchase agreements. All agreements resulting from the implementation of this process governing future capacity additions would have to be filed with the PSC, which would have six months to approve or disapprove the agreements and capacity and energy charges.

Any approval or order of approval resulting from these provisions would constitute prior approval of the capacity and energy charges and the power purchase agreements for purposes of Section 6j(13) of the Act (which requires prior PSC approval of capacity charges associated with power purchased for more than six months, in a power supply cost reconciliation). A PSC order of approval would be considered to be the result of a contested case proceeding conducted pursuant to the Administrative Procedures Act.

The bill states that, "it is necessary to encourage the development of qualifying cogeneration facilities and small power production facilities", "in order to promote the efficient and orderly development of new sources of electric energy in the state, and to maintain the economic vitality of the state through the continuing production of goods and the employment of its people by making available necessary sources of energy[,] the retention and expansion of existing industry and commerce, and the attraction of new industry and commerce".

Proposed MCL 460.6p

Legislative Analyst: S. Margules

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government.

The bill would require the Michigan Public Service Commission to conduct an expedited review of power purchase agreements between utility companies and waste-to-energy incinerators. The number of reviews required, the cost of those reviews, and the additional cost of the expedited process (if any) cannot be determined.

The number of municipalities that would establish waste-to-energy incinerators cannot be determined. The amount of revenue these facilities would generate for the municipality would depend on whether the municipality paid a private developer a flat fee to run the facility or whether the municipality received a percentage of the profits.

Both State and local governments would receive additional tax revenues due to the creation of jobs, the increase in property tax base, and the generation of Single Business Tax revenues. The amount of these revenues and whether they would be higher than they would have been if the public utility had provided the additional power cannot be determined.

Note: The bill could cause utilities to increase their rates to consumers to absorb the cost of paying for the excess energy generated by the new sources of energy if that cost were higher than the utility's current cost. In addition, the avoided cost rates the bill would establish could have an impact on the cost of power to the consumer since the PSC would not be looking at each individual case on its own cost merits.

Fiscal Analyst: J. Schultz

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.