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## **ELECTRIC UTILITY DEREGULATION: GUIDELINES AND REQUIREMENTS**

### **House Bill 5992**

**Sponsor: Rep. John Freeman**

### **House Bill 5993**

**Sponsor: Rep. Dennis Olshove**

### **House Bill 5994**

**Sponsor: Rep. Kirk Profit**

### **House Bill 5995**

**Sponsor: Rep. Raymond Murphy**

### **House Bill 5996**

**Sponsor: Rep. Samuel Thomas III**

### **House Bill 6003**

**Sponsor: Rep. Michael Hanley**

### **House Bill 6004**

**Sponsor: Rep. Michael Hanley**

### **House Bill 6005**

**Sponsor: Rep. Paul Baade**

**Committee: Public Utilities**

**Complete to 9-2-98**

## **A SUMMARY OF HOUSE BILLS 5992-5996 AND 6003-6005 AS INTRODUCED 7-2-98**

The electric utility industry has been undergoing a fundamental change throughout the United States, and Michigan is no exception. In much the same manner as telephone long-distance service, the sale of electrical power is changing from a well-regulated monopoly to a more competitive, market-oriented system wherein suppliers of electricity will be allowed to pick and choose customers and customers will be able to pick and choose suppliers. The bills would establish rules under which generators, suppliers, and distributors of electricity would be expected to behave in a more market-oriented system. Among other things, the bills provide for the licensing and registration of electricity suppliers and generators, prohibit certain practices, and require the disclosure of certain information.

Penalties. Each of the bills has identical definitions of the terms used and identical provisions indicating penalties for violations. After a notice, hearing and finding of a violation of one of the various acts, the commission could order remedies and penalties to protect and make whole anyone who suffered an economic loss due to the violation. Such remedies and penalties could include, but would not be limited to one or more of the following: 1) A fine for a first offense of no less than \$1,000 and no more than \$20,000 per day of the violation, or no less than \$2,000 and no more than \$40,000 per day for a second or subsequent offense. 2) A refund to customers of any excessive rates that had been collected. 3) Cease and desist orders. 4) If appropriate, revocation of the certificate or registration.

Generators. House Bill 6004 would require any legal entity within the state with the ability to generate at least one megawatt of electricity to register with the Public Service Commission (PSC) within 30 days of the bill's effective date. The commission would be required to keep a list of all registered generators and make that list available upon request.

A generating entity could register by providing the PSC with the following information: the entity's name, the specific location and rated capacity of each generating facility that it owned or operated in Michigan, the address and phone number of the entity's principal office, and, if that office was not in Michigan, the name and phone number of the generator's registered agent authorized to receive service of process within Michigan. If the information that had been provided changed, a registered generating entity would be required to notify the commission. Registration would be effective immediately upon filing of the information.

Suppliers. House Bill 5994 would require suppliers of electricity to be certified by the PSC in order to do business in this state. The PSC would provide application forms and establish a fee that was no greater than the commission's cost of processing and reviewing the applications. The form would require information detailing the applicant's financial, managerial, and technical capabilities that would allow it to carry out its responsibilities as a supplier, including evidence of financial assurance equal to the cost of providing electrical service to the customers that the supplier proposed to serve.

The application would also have to disclose any civil judgments or pending civil actions involving fraud, misrepresentation, or violation of consumer protection laws, as well as any criminal convictions or pending prosecutions of the applicant, the board of directors, if applicable, the five persons holding the largest shares of equity in or debt liability of the business, and, if known, the three employees of the business who will have the most responsibility for the business' day-to-day operations. If any of the required information changed or needed supplementing, the applicant or other appropriate person would be required to inform the commission within 30 day of the change or addition. A supplier would be required, as a condition of certification, be required to designate an agent authorized to accept service of process in this state and provide written, irrevocable consent for any civil or criminal matters arising out of the supplier's provision of services in this state be placed under the jurisdiction of Michigan courts.

After the commission received an application, it would be required to direct the applicant to publish notice of the application in one or more newspapers of general circulation in the proposed service area. The commission would also be required, at the expense of the applicant, to provide notice to the public through the Internet and directly to any persons who had requested notice of such applications. Any objections to the application would have to be filed with the commission within 30 days after the notice was published.

If no objections were received within the 30 days following the publication of the notice and the commission, having reviewed the application and any supporting materials, determined that the applicant has demonstrated the current and ongoing financial, managerial, and technical capabilities to carry out the responsibilities and obligations that the bill would impose on suppliers, the certification would be granted.

If one or more objections were received within the 30 days, the commission would be required to hold a public hearing on the matter within 60 days of the publication of the notice. The hearing would be held in the same manner as contested case hearings are held under the Administrative Procedures Act. If, based upon evidence provided at the hearing, the commission determined that the applicant met the requirements to carry out the responsibilities and obligations imposed upon suppliers, the commission would be required to issue a certificate to the supplier within 30 days after the public hearing.

A certified electricity supplier would be required to notify the commission of any changes that occurred regarding the information it had submitted in order to receive its certification.

A certified supplier would be prohibited from providing electrical service to a customer without that customer's direct consent and authorization.

If the commission determined that a supplier no longer possessed the capability to provide service as required under the bill or had otherwise violated or failed to comply with the bill's provisions, the commission could, after notice and a hearing, revoke the supplier's certificate. If a supplier had intentionally failed to meet its energy commitments, the commission could, after notice and an opportunity for a hearing, order any appropriate penalties.

The commission would be required to determine the manner and extent to which the information contained in an application and other materials filed with the commission were entitled to confidential treatment.

House Bill 6003 would provide requirements for billing and environmental disclosure.

Suppliers. Every electricity supplier would be required to provide information to its customers, on an annual basis, regarding the known sources of electricity (i.e., natural gas, coal, solar, wind, etc.) supplied to the customer, by percentage and in the form of a pie chart graphically depicting the percentage of the sources of electricity supplied. The supplier would also have to provide potential customers the same information at no charge as part of the solicitation for the customer's business. Every electricity supplier and alternative retail electricity supplier would also be required to annually provide their customers a standardized chart indicating

the amounts of carbon dioxide, nitrous oxide, and sulfur dioxide emissions and nuclear waste attributable to known sources of electricity supplied. In addition, suppliers could provide their customers with any other information that the supplier considered relevant. Knowingly providing false or inaccurate information would be prohibited.

Distributors. Distributors would be responsible for metering. Each bill sent out by a distributor would have to have the name of the customer's electricity supplier and the supplier's address and telephone number. A customer would be entitled to all data and information relating to his or her billing history and energy usage over the last 24 months and the distributor would be required to provide such information to a customer upon request within five business days. The distributor would be allowed to charge a fee of no more than the actual cost of providing the information. The distributor would be required to include this fee in the tariffs on file and approved by the commission.

Customer information. A customer's usage information could be released to a third party by either the supplier or distributor unless the customer had withheld consent for the release of the information. Each bill sent to a customer by a supplier or distributor would have to provide a check-off notification for the customer to specify that he or she was withholding consent for the release of information.

Service areas. House Bill 6005 would provide rules for assigning and establishing the boundaries of service areas for electricity distributors. Boundaries for distribution would be set either by agreement of the distributors with approval of the commission or by order of the commission if no agreement could be reached.

By January 1, 1999 all distributors within each municipality would be required to exchange maps with each other showing their existing electric distribution lines. They would also be required to exchange any other information that they considered useful in determining the boundaries of an assigned service area. A distributor would be required to negotiate with other adjacent distributors to set up agreed upon boundaries. If no agreement could be reached and until such time as the commission ordered different boundaries, the boundaries of an assigned service area would be a line equidistant from the existing electricity distributor's lines and the nearest distribution lines of any other distributor. Each distributor would be assigned the service area closest to its own distribution lines from the boundary established in this fashion. If the distribution lines of two or more distributors intersected or paralleled in a way that prevented an equidistant line from being set, the distributors would be required to negotiate a boundary, or, if they were unable to reach an agreement, the commission would be required to assign service areas.

Each distributor would be required to prepare maps depicting the boundaries of the proposed service area assignments for each municipality where the distributor provided service. The maps would be required to be filed with a petition requesting approval and assignment of the service areas with the commission on or before March 1, 1999, or at a later date as allowed by the commission but in any event no later than June 1, 1999.

The commission would be required to hold public hearings regarding the proposed service areas. The commission would have to provide public notice of the hearing in the municipalities where those service areas would be located at least 10 days before the hearing. If the commission determined that the proposed service areas complied with the rules set forth in the bill, then an order would have to be issued approving and assigning the service areas as designated on the maps within 90 days of the filing of the petition and maps.

If two or more adjacent distributors could not agree on a boundary line by March 1, 1999, or at a later date as allowed by the commission but in any event no later than June 1, 1999, the commission would be required to hold a public hearing regarding the boundary lines, either at the request of any of the distributors or on its own motion. The commission would have to provide public notice at least 10 days prior to the hearing in the municipalities where the lines would be located. The commission's decision on placing the boundary lines would be based as nearly as possible on a line equidistant from the existing distribution lines of the distributors, consistent with good utility practice and public convenience and necessity. The commission would issue an order determining the boundary and assigning the service areas and would be required to direct the parties to file maps reflecting the assigned service areas. If the maps complied with the commission's order, the commission would then issue an order approving the assigned service areas as designated by the maps.

Once a boundary of an assigned service area was set, the boundaries could not be changed except under the following circumstances:

- Where the affected distributors mutually agreed and the commission approved of the change.
- Where a landowner owned a premise that was located on the intersection of the boundary lines of two or more assigned service areas and the service could best be provided by one of the distributors, or the distributors are unable to agree which should furnish electric distribution service for the particular premises. (In such cases the distributors or the landowner could submit the matter to the commission for a determination. If, after notice and a hearing, the commission determined that the boundaries should be changed, the assigned service area maps would have to be changed to reflect the new boundaries.)
- The commission could, based on public convenience and necessity, assign another distributor to provide service, where the current distributor's failure to obtain or maintain the consent of the county, township, city, or village affected that distributor's ability to extend service to any part of the assigned area. Except where the failure to obtain or maintain the consent of the local unit of government affected the distributor's ability to extend service, after January 1, 1999, if any part of a service area were merged incorporated, annexed or consolidated, it would not impair the rights of the distributor assigned to provide service in that area.

Rights and obligations of distributors. Under House Bill 6005, as long as a distributor provided adequate service and complied with all other legal requirements, that distributor would have the sole right to be the distributor for all present and future customers within the boundaries of its assigned service area. Distributors would be prohibited from extending their distribution service into another distributor's assigned area unless the other distributor had waived its right to serve the geographic area or a customer or group of customers within that area.

A distributor that was assigned a service area would be required to connect all customers who requested electric distribution service within that area. A distributor's sole right to provide service to all customers within its area would not prevent any customer from having the right to choose his or her electricity supplier. All distributors would be required to procure power and energy for any customer who did not elect to take service from another supplier. Distributors would be required to serve all customers without discrimination and the commission would have the authority to receive and process complaints regarding such discrimination whether brought by a customer or an electricity supplier, or by the PSC. If a distributor were found to have engaged in discrimination, the commission would be required to issue such orders as it deemed necessary to alleviate the discrimination.

If a distributor provided or extended service within the assigned service area of another distributor, the distributor whose service area had been infringed upon would have one year from the date of the offense to file a complaint with the commission. In the case of such an offense, in addition to the other penalties provided, the commission would have the authority to enjoin the offending distributor from extending or rendering the electric distribution service.

Under House Bill 5992 electricity distributors would be required to provide regulated distribution service to all customers within that distributor's assigned service area at rates and on terms and conditions authorized by the commission. In addition, a distributor could be required to provide electricity, directly or through an affiliate, to retail customers who did not elect direct access from another electricity supplier or to those customers with a demand of less than one megawatt of electricity who elected to continue to receive electric service from the distributor. The distributor's obligation to provide electricity and the commission's authority would continue until terminated by the commission. The obligation to provide electricity would be limited to procuring electric generation services at market prices, to the extent such services are available, for those customers who did not make alternative arrangements for service with another supplier or those customers who asked the distributor to procure service for them. In addition, a distributor would also be required to provide standby electric generation service for those residential customers who chose to have their electricity provided by a separate supplier.

Consumer protection. House Bill 5992 would set guidelines for consumer protection. Before direct access to electric services began, the PSC would be required to carry out an educational program for customers. The program would be required to inform customers of the upcoming changes in how electrical service is provided, including, but not limited to, the availability of alternative suppliers of electricity and of the requirements for disclosures, explanations, and/or sales information that would apply to the sellers of these services. In addition, the program would have to assist customers in understanding and using the information

to make reasonably informed choices about their electric service, including how to determine the best rate plan available.

The PSC would also have to set minimum standards for the form and content of all disclosures, explanations, or sales information provided by those selling competitive electric services. The standards would have to ensure that all customers were provided with adequate, accurate, and understandable information to enable them to make informed decisions relating to the source and type of electric service purchased.

In addition, the commission would be required to establish procedures to ensure that a customer of one electric supplier was not switched to another supplier without the customer's consent. In addition to the other penalties provided, a violator could be required to pay an unlawfully switched customer an amount equal to three times the amount the customer paid or owes to that person.

House Bill 5993 would define and prohibit certain unfair, unconscionable, or deceptive methods, acts or practices in the provision of electric services by distributors, generators, or suppliers. The following would be specifically listed as prohibited methods, acts or practices. However, the list would not be exhaustive:

- Causing a probability of confusion or misunderstanding as to the source, sponsorship, approval or certification of electric services.
- Using deceptive representations or deceptive designations of geographic origin.
- Claiming that electric services have sponsorship, approval, characteristics, uses, benefits, or quantities that they do not have or representing that a person has sponsorship, approval, status, affiliation, or connections that he or she does not have.
- Misrepresenting the standard, quality, or grade of the electric services.
- Disparaging the electric services, business, or reputation of another by false or misleading representations of fact.
- Advertising or representing electrical services without intending to provide those services as advertised or represented.
- Advertising electric services without intending to supply reasonably expectable customer demand.
- Falsely claiming that services are the result of a request by or on behalf of the person receiving the service.

- Causing a probability of confusion or misunderstanding as to legal rights, obligations, or remedies of a person to a transaction.
- Failing to reveal a material fact that would tend to mislead or deceive a consumer and that could not reasonably be known by the consumer.
- Entering into a consumer transaction where the consumer waives or purports to waive a right, benefit, or immunity provided by law, unless the waiver is clearly stated and the consumer specifically consents.
- Taking advantage of a consumer who is unable to protect his or her interests due to disability, illiteracy, or inability to understand the language of the agreement presented, where the party taking advantage knows or reasonably should have known of the consumer's inability.
- Gross discrepancies between the provider's oral representations and the written agreement covering the same transaction.
- The failure to provide electrical services.
- Causing coercion and duress due to the time and nature of the transaction.
- Making a representation or statement of fact that is material to the transaction and leads the other person to reasonably believe that the represented or suggested state of affairs is other than it actually is.

Low-income and senior citizen winter shut-off protection. House Bill 5996 would require the PSC to establish programs to support continued utility service to low-income consumers. Such programs would include, but not be limited to, payment assistance, weatherization, energy conservation, and customer education. The commission would be required to hold a contested case hearing and set a charge to be assessed to all customers on a per-kilowatt-hour basis within a distributor's service area. The amount of the charge would be determined by taking into account the availability of other funding and the specific needs of low-income customers in the distributor's service area. The charges collected for one distributor could only be used for the programs of that distributor. Any program offered on the effective date of the bill would be required to continue at least at the level offered on that date, unless otherwise approved by the commission.

If a customer was either an eligible senior citizen or had paid the supplier a monthly amount equal to seven percent of the estimated annual bill and demonstrated that he or she had applied for state or federal heating assistance within 14 days of requesting shutoff protection, an electricity supplier would be prohibited from shutting off that customer's service during the heating season for nonpayment of a delinquent account. If an arrearage existed at the time an eligible customer applied for protection from shutoff, the supplier would have to permit the customer to pay the arrearage in equal monthly installments between the date of application and the start of the subsequent space heating season.

A supplier would be allowed to shut off an eligible low-income customer's service if the customer did not pay the required monthly amounts after giving the required notice. The supplier would not be required to offer a settlement agreement to such customers. If a customer failed to comply with the conditions required by the bill, a supplier could shut off service after providing notice, by personal service or first-class mail. The notice would have to inform the customer of all of the following: that he or she had defaulted on the winter protection plan, the nature of the default, and that unless the past due payments required under the bill were made within 10 days the supplier could shut off service; the telephone number and address of the supplier where the customer could make an inquiry, enter a settlement agreement, or file a complaint; that the customer should contact a social services agency immediately if the customer believed he or she might be eligible for emergency economic assistance; that the supplier would postpone shutoff of service if a medical condition existed at the customer's residence; that the supplier could require a deposit and restoration charge if the service were shut off for nonpayment of a delinquent account. In addition, the notice would have to explain that the customer had the right to file a complaint disputing the claim of the supplier before the date of the proposed shutoff; that the customer had the right to request a hearing before a supplier hearing officer if the complaint was not otherwise resolved; that the customer had the right to represent himself or herself, to be represented by counsel, or to be assisted by other persons of his or her choice; that the customer would be required to pay the supplier the portion of the bill that was not in dispute within three days of the date that the customer requested a hearing; that the supplier would not shut off service pending the resolution of the complaint.

When the heating season ended, the supplier would be required to reconcile the accounts of eligible customers and permit those customers to pay any amounts owing in equal monthly installments between April 1 and December 1. A supplier could shut off service to eligible customers who fail to make installment payments on a timely basis in the manner required. Between April 1 and November 1, the customer would have the option of choosing to pay nine percent of the estimated annual bill each month together with the monthly installment for any pre-enrollment arrearage or pay the amount otherwise owed for the actual and reconciled past due amounts. After November 30, the supplier would be required to reconcile any customer's account who had chosen and fulfilled the nine percent payment option by refunding any net overcollection to the customer's arrearage for the upcoming heating season.

If a customer failed to make all the payments required under the nine percent option, the supplier could immediately reconcile his or her account by refunding or adding the appropriate amounts to the customer's current bill. An eligible low-income customer whose service was turned off prior to his or her application for protection under the bill's provisions could not be required to pay a restoration fee or a security deposit during the heating season. A supplier could not require the payment of an amount greater than one-twelfth of an arrearage owed for restoration of service or to initiate participation in the winter protection plan. The seven percent payment would be required to be billed according to the supplier's normal billing procedures.

An eligible low-income customer could pre-enroll in the winter protection plan between November 15 and November 30 by paying the current usage plus one-twelfth of any arrearage and agreeing to the terms of the plan for the upcoming heating season.

An eligible senior citizen customer could pre-enroll by advising the supplier of his or her eligibility. A pre-enrolled customer could not have his or her service terminated before the commencement of the winter protection plan. A customer whose service is off as of November 15 would be eligible to pre-enroll in the winter protection plan and, after fulfilling the obligation of pre-enrollment, could have his or her service restored immediately. In addition, a low-income customer who was without service and applied during the pre-enrollment period would be entitled to have all deposits and reconnection fees waived.

Fee for employee-related restructuring costs. House Bill 5995 would require the PSC to establish a charge for customers who choose direct access for supply of electricity. The charge would be used to pay for any employee-related restructuring costs approved by the commission and incurred by an electric utility as a result of any of the commission's orders or other laws that relate to restructuring of electric utilities. Employee-related restructuring costs would mean those costs incurred by an electric utility as part of restructuring under a PSC order or other law that are associated with, but not limited to, employee severance, retraining an employee for a position with the comparable skill and compensation, early retirement, outplacement, or similar activities. Any costs related to corporate officers would not be included. The bill would only apply to employees hired before January 1, 1998.

Analyst: W. Flory

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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.