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SFA BILL ANALYSIS

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Senate Bill 937 (Substitute S-4 as reported by the Committee of the Whole)
Sponsor: Senator Mat J. Dunaskiss
Committee: Technology and Energy

CONTENT

The bill would amend the Public Service Commission (PSC) enabling Act to require the PSC, by January 1, 2002, to issue orders establishing rates, terms, and conditions of service that would allow retail customers of an electric utility or provider to choose an alternative electric supplier. Orders previously issued by the PSC allowing customers to choose an electric supplier, including orders authorizing recovery of net stranded costs and implementation costs and confirming voluntary commitments of electric utilities, would be enforceable by the Commission. The PSC also would have to issue orders establishing a licensing procedure for all alternative electric suppliers, until December 31, 2003. ("Alternative electric supplier" would mean a person selling electric generation service to retail customers in this State; it would not include a person who physically delivered electricity directly to retail customers.)

The PSC would have to establish the residential rates for each electric utility with 1 million or more retail customers in this State that would result in a 5% rate reduction from the rates that were authorized or in effect on May 1, 2000. The reduced rates would take effect on the bill's effective date and remain in effect until December 31, 2003. Residential rates then could not be increased until December 31, 2013, or until the PSC determined that the utility had met the bill's market power test and completed the transmission expansion required by the bill. Residential rates could not be increased before 2006 in any event. If the PSC authorized an electric utility to use securitization financing (as proposed by Senate Bill 1253), any savings resulting from securitization would have to be used to reduce retail rates from those in effect on May 1, 2000. A rate reduction could not be less than 5%. All other electricity retail rates of an electric utility with 1 million or more retail customers in effect on May 1, 2000, would have to remain in effect until through 2003.

If an electric utility had commercial control over more than 30% of the generating capacity available to serve a relevant market, after subtracting the average demand for each retail customer under contract that exceeded 15% of the utility's retail load in that market, the utility would have to do one or more of the following with respect to any generation in excess of that required to serve its firm retail sales load, including a reasonable reserve margin: divest a portion of its generating capacity; sell generating capacity under a contract with a nonretail purchaser for a term of at least five years; or transfer generating capacity to an independent brokering trustee for a term of at least five years.

By January 1, 2001, electric utilities serving more than 100,000 retail customers in Michigan would have to file with the PSC a joint plan detailing measures to expand permanently, within two years of the bill's effective date, the available transmission capability by at least 2,000 megawatts over the available transmission capability in place on January 1, 2000. Each investor-owned electric utility would have to 1) join a multistate regional transmission system organization, or other multistate independent transmission organization, approved by the Federal Energy Regulatory Commission; or 2) divest its interest in its transmission facilities to an independent transmission owner.

The PSC would have to establish rates, terms, and conditions of electric service that would promote and enhance the development of new generation, transmission, and distribution technology. An electric utility would be obligated, with PSC oversight, to provide standby generation service for open access load on a best efforts basis until December 31, 2001, or until the utility met the bill's market power test and expanded transmission as required.

Electric utilities would have to take all necessary steps to ensure that licensed merchant plants were connected to the transmission and distribution systems within their operational control.

The bill specifies that the Act would not prohibit or limit the right of a person to obtain self-service power, or to engage in affiliate wheeling, or impose a transition, implementation, or exit fee, or any similar charge on self-service power or a person engaged in affiliate wheeling.

Within 180 days after the bill took effect, the PSC would have to establish a code of conduct applicable to all electric utilities to prevent cross-subsidization between regulated and unregulated services. The code of conduct also would apply to alternative electric suppliers. In addition, the PSC would have to issue orders ensuring that customers were not switched to another supplier or billed for any services without their consent.

Proposed MCL 460.10 et al. Legislative Analyst: S. Lowe

FISCAL IMPACT

This bill would make significant changes in the structure of Michigan's electric industry, which would affect such things as the price of electricity, industry profits, and generating and transmission capacity. Some of these changes would occur in the short term, but many would not occur for several years. These changes would have repercussions on three major taxes - the sales, single business, and property taxes; however, given the fundamental and significant changes that would potentially occur under this bill, it is not possible to make reasonable estimates of how many of these changes, particularly the long-term changes, would affect tax revenues. The major ways electric industry restructuring, as proposed in this bill, would affect tax revenue are summarized below.

Sales Tax

Price Changes. The 5% reduction in residential electric rates required immediately in this bill would reduce sales tax collections. This rate reduction would be required for electric utilities with 1 million or more retail customers, which therefore would apply to rates charged by Detroit Edison and Consumers Energy. Assuming that this rate reduction would be in effect July 1, 2000, sales tax collections would be reduced an estimated $1.8 million in FY 1999-2000 and $4.6 million in FY 2000-01. This loss in sales tax revenue would be distributed as follows: 60% would be lost by the School Aid Fund, 36% would be lost by revenue sharing, and the remaining 4% would be lost by General Fund/General Purpose revenue. Other provisions in this bill also would have potential effects on the price of electricity, and therefore sales tax collections. Future price declines beyond the 5% residential rate cuts, also would be possible under this bill due to the increased competition that would occur in the electric utility industry and the use of securitization bonds, which would help spread some financial burdens that these changes would place on existing electric companies over a long period of time. It is also possible that electric rates would increase once the rate cuts and caps expired, but residential rates would not be allowed to increase before January 1, 2006. There is not enough information available at this time to make reasonable estimates of the effects these other potential price changes would have on sales tax collections.

Nexus Issues. Under this bill, retail customers would have more choice in where to purchase their electricity, including out-of-state companies, and as a result, nexus issues would likely develop, which would hinder the collection of sales and use taxes. While this bill would require anyone selling electric generation service to customers in Michigan to maintain an office in Michigan, and therefore have a physical presence in Michigan, this would not necessarily eliminate collection problems related to nexus. In addition, as more customers chose to purchase their electricity from a company other than their current regulated electric utility, the resulting unbundled price of electricity also could present sales tax collection problems. Because current sales tax law does not define the price of electricity as the price of generation, transmission, distribution, and other related charges, it might not be possible to assess the sales tax on separate billings for the nongeneration of electricity under current law, and this would have potentially large impacts on sales tax collections. There is no way to quantify the effects these nexus and unbundling issues would have on sales tax collections at this time.

Other Taxes

The changes that would occur in the electric industry under this bill also would have revenue implications for other taxes. This bill would probably reduce the size of some existing electric companies, while new generating and distribution companies would emerge, and new electric generating facilities would be constructed, while the value of some of the older less efficient generating facilities would decline, and the transmission infrastructure would be expanded. All of these changes would have potential positive and negative effects on the single business and property taxes, but there are too many unknowns to quantify the net impact these changes would have on tax collections.

Date Completed: 5-18-00 Fiscal Analyst: J. Wortley

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