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**SFA**



**BILL ANALYSIS**

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Senate Bill 937 (as introduced 1-25-00)  
Sponsor: Senator Mat J. Dunaskiss  
Committee: Technology and Energy

Date Completed: 3-14-00

## **CONTENT**

The bill would amend the Public Service Commission (PSC) enabling Act to provide for the restructuring of the electric industry in Michigan, by requiring the separation of generation service from transmission and distribution services, and deregulating rates for electric generation service. The bill would do the following:

- Establish a phase-in schedule for all electricity customers to have the option of choosing an alternate electric supplier by January 1, 2002; and require the PSC to create a bidding mechanism that would give all customers the opportunity to participate in the phase-in.
- Require electric utilities to unbundle their rates (separately identify charges for generation, transmission, distribution, and related functions); and provide that, in general, unbundled rates would remain in effect until December 31, 2002.
- Provide that an electric supplier would not be subject to PSC rate regulation for generation service after 2002 if the provider complied with the bill's requirements for the separation of regulated and unregulated functions, complied with requirements concerning transmission capability (for investor-owned providers), and met the bill's market power test.
- Provide that, for rate deregulation, the sum of generating capacity under the commercial control of a provider's affiliated supplier that was available to serve the relevant market, would have to be less than 30% of the total generating capacity available to serve that market.
- Require an electric utility, by 2002, to accomplish the separation of affiliated business entities providing generation or generation-related marketing services, from the business entity providing regulated service (transmission and distribution).
- Require an electric utility, by 2002, to adopt and comply with a code of conduct governing the relationship between a regulated service provider and an affiliated competitive supplier (an entity marketing electricity on an unregulated basis).
- Require the PSC to establish a code of conduct applicable to a regulated service provider and any of its affiliates to prevent cross-subsidization.
- Require the PSC to allow electric utilities to recover their stranded costs (costs currently paid by customers that might not be available if they chose an alternative supplier) through a transition charge from all customers within a utility's service territory; and specify what would be included in stranded costs.
- Require the PSC to: adopt a true-up process to assure that the amount of stranded costs was the amount collected from customers; establish the transition charge; and establish a separate customer charge that would allow the recovery of implementation costs and carrying charges from 2003 through 2007.
- Allow the use of aggregation for the purchase of electricity and related services from an alternative electric supplier.
- Provide that a regulated service provider would be obligated to connect all retail customers to its facilities that were used for regulated service.
- Require investor-owned regulated service providers serving more than 100,000 retail customers to file a joint plan to expand available transmission capability by at least 2,000 megawatts.
- Require investor-owned regulated service providers to join a multistate regional or independent transmission system organization, or divest their interest in transmission facilities.
- Require the PSC to license electric suppliers.
- Require regulated utilities serving under 100,000 customers to file restructuring plans

with the PSC.

- **Require the governing body of a municipally owned utility to decide whether it would allow its retail customers to choose an alternative supplier; and impose certain conditions on a municipally owned utility that elected to serve as a supplier to customers receiving delivery service from a regulated provider.**
- **Require cooperative electric utilities to file with the PSC a restructuring plan to give their customer members the option of choosing an alternative supplier; and require the deregulation of rates for generation services if the PSC found that competition existed within a cooperative's service territory.**
- **Provide for the hiring of employees upon the transfer of an electric utility.**
- **Prohibit an electric supplier customer from being switched to another supplier without the customer's authorization.**
- **Provide for the disclosure to customers of information about alternative suppliers and environmental characteristics of electricity purchased.**
- **Prohibit electric suppliers from shutting off service to eligible low-income or senior citizen customers under certain circumstances.**

A more detailed description of the bill follows.

#### Phase-In of Customer Choice

The PSC would have to order that all customers of electric service in Michigan have the option of purchasing an alternative electric supplier by January 1, 2002. ("Alternate electric supplier" would mean a person other than a regulated service provider selling electric generation service to retail customers in Michigan. "Electric supplier" would mean a person selling electric generation service to retail customers in Michigan.)

The PSC would have to adopt the following phase-in schedule to allow retail customers to choose an alternative supplier (although an electric utility could elect to accelerate this schedule):

- 15% of each utility's annual peak load, as of January 1, 2000.
- 20% of each utility's annual peak load, as of January 1, 2001.
- All remaining customers as of January 1, 2002.

The bill would require regulated service providers to transmit alternative electric supplier power under reasonable rates, terms, and conditions as approved by the PSC. ("Regulated service" would mean the

transmission and distribution services subject to PSC jurisdiction, provided by an electric utility. "Electric utility" would mean a regulated provider of electric services before January 1, 2000.)

The PSC would have to establish a bidding mechanism to give all customers the opportunity to participate in the phase-in schedule, and could reserve a portion of the 15% and 20% phase-in amounts for specific customer classes. If a customer class did not use all of the open access reserved for it, the PSC would have reallocate it to any oversubscribed class.

The phase-in schedule would not apply to investor-owned electric utilities serving under 200,000 customers in Michigan, which would have to give all customers the option of choosing an alternative supplier by 2002.

A utility would have to allow load profiling instead of time of use meters for customers with demands under 20 kilowatts, until December 31, 2002. After that date, the PSC would have to determine whether load profiling should still be allowed.

The bill specifies that the Act would not prohibit or limit the right of a person to obtain self-service power. ("Self-service power" would mean 1) electricity generated and consumed at a contiguous industrial site or single commercial establishment without the use of a regulated service provider's transmission and distribution system; or 2) electricity generated primarily by use of by-product fuels and consumed as part of a contiguous facility, with the use of a regulated service provider's transmission and distribution system, if the point of receipt were within three miles of the point of generation.)

The bill also specifies that the Act would not limit affiliate wheeling. ("Affiliate wheeling" would mean a person's use of direct access service where a regulated service provider delivered electricity generated at a person's industrial site to that person or that person's affiliate at a location within this State that was, for at least 90 days between January 1, 1996, and October 1, 1999, supplied by self-service power, only to the extent of the load served by self-service power during that period. A person engaging in affiliate wheeling would not be an electric supplier, a regulated service provider, or a public utility, or conducting a public utility business. For purposes of affiliate wheeling, an affiliate would be an entity that owned or controlled at least 50% of another entity, or that was at least 50% owned or controlled by another entity.)

#### Unbundling

Within 180 days after bill's effective date, each electric utility would have to apply to the PSC to unbundle its rate schedules and separately identify and charge for the discrete retail services and charges in effect as tariffs on December 31, 1999. For each utility, the total of unbundled rates would have to equal rates in effect on that date (except for adjustments for past undercollections or overcollections). Bundled rates in effect for 2000 would have to equal those in effect as of December 31, 1999 (subject to the same exception). Until January 1, 2003, the PSC could not adjust these rates, except as otherwise provided in bill.

The discrete services and charges unbundled would have to include, at least, distribution services and charges including customer account services, transmission services and charges, generation services and charges, transition charges allowed under bill, and other surcharges and taxes applicable to the sale, delivery, or consumption of electricity. A utility would be permitted to unbundle customer account services, although the PSC could require unbundling if it would be beneficial to customers.

All competitive services offered by a regulated service provider or by an alternative electric supplier would have to be charged separately from noncompetitive services.

The PSC would have to require electric utilities to submit rate unbundling filings, and decide whether unbundled rates would be appropriate. Unbundling could not result in the reallocation of utility cost responsibility between or among different classes of customers.

#### Rates

Unbundled rates would have to remain in effect until December 31, 2002, except as otherwise provided in the bill. Past undercollections or overcollections approved by the PSC resulting from reconciliation proceedings for periods ending before 2000 would have to be collected or refunded, and specific rate adjustments approved before 1999 would have to be implemented.

Until December 31, 2002, a regulated service provider would be obligated to use its best efforts to generate or procure electricity for customers who switched to an alternative electric supplier and then wanted to switch back. The provider could charge retail market prices if the customer required 250 or more kilowatts per year and the customer's alternative supplier were capable of providing the service.

Customers who switched back before January 1, 2002, would have to pay generation charges at

unbundled rates and could not switch to an alternative supplier for 12 months. Customers who switched back after January 1, 2002, but before January 1, 2003, could be charged retail market prices for generation service. A retail customer with peak demands over 250 kilowatts that wanted to switch back would have to give the regulated provider 60 days' notice of its desire to receive service.

The PSC would continue to have jurisdiction and control of the rates for regulated service after December 31, 2002. Upon application of a regulated provider, the PSC could adopt an incentive-based rate making mechanism for establishing rates for regulated service (after notice and a contested case hearing).

After December 31, 2002, a regulated service provider would be obligated to procure standard generation service for its customers who did not switch to an alternative electric supplier. A retail customer with peak demands over 250 kilowatts that elected standard generation service would have to give the regulated provider 60 days' notice of its desire to receive that service. A regulated provider would have to purchase, from an affiliate or any other source, the services necessary to supply the standard generation service. Subject to the PSC's approval, a regulated service provider could contract with a licensed supplier for that supplier to provide service in the regulated provider's territory. The rates charged to customers would have to be determined by one of following:

- If electricity were purchased from an affiliate, rates for standard generation service to retail customers would equal the retail market price.
- If electricity were purchased from an unaffiliated source, the rates would have to allow recovery of actual procurement costs prudently incurred by the regulated provider.
- If the regulated provider contracted with a licensed electric supplier to provide standard generation service, the rates would equal the retail market prices.
- If the regulated provider purchased transmission services from an affiliated or unaffiliated provider, the rates would have to allow recovery of actual transmission costs.

("Affiliate" would mean a person or entity that directly or indirectly controlled, was controlled by, or was under common control with another specified entity. "Control" would mean the possession of power to direct the management or policies of a person or entity or the ownership of at least 10% of an entity, directly or indirectly.)

A regulated service provider would be obligated to

provide standby generation service for open access load on a best efforts basis until December 31, 2001, or the date on which the provider met the bill's market power test, whichever was later. The pricing for standby service would be equal to the retail market price of comparable standby service. Until the regulated provider's affiliated electric suppliers met the market power test, standby service would have to be provided to nonopen access customers under regulated tariffs.

The PSC would have to determine the methodology for identifying the retail market price for generation service to be applied under these provisions based upon market indices commonly relied upon in the electric generation industry, adjusted to reflect retail market prices in the relevant market.

#### Rate Deregulation/Market Power Test

An electric supplier would not be subject to rate regulation of electric generation service by the PSC after December 31, 2002, if the following conditions were met:

- The provider had complied with the bill's requirements for the separation of regulated and unregulated functions.
- The provider had complied with the requirements for joining a multistate transmission system organization or divesting its interest in its transmission facilities.
- The provider had obtained any required approval for a joint plan to expand transmission capability.
- The sum of generating capacity under the commercial control of the provider's affiliated supplier that was available to serve the relevant market (the Upper or Lower Peninsula) was less than 30% of the total generating capacity available to serve that market. (A supplier could apply for an increase in the 30% standard and the PSC could approve the application if the increase would not unduly impede competition.)

A supplier would have to file a petition with the PSC for a determination that these requirements had been satisfied. The PSC would have to issue an order granting or denying the petition, after providing an opportunity for public comment.

The PSC would have to determine the total generating capacity available to serve the relevant market, which would have to equal the sum of the firm available transmission capability into the relevant market plus the aggregate generating capacity located within the relevant market minus any of the following:

- Generating capacity owned by municipal utilities needed to serve their retail native load, if the

municipal utilities did not allow retail customers to select an alternative provider.

- Self-service power generating capacity dedicated to serving on-site load and smaller than 50 kilowatts or in operation before January 1, 2000.
- The generating capacity of any multistate investor-owned utility jurisdictionally assigned to customers of other states.

An electric supplier would not be considered to have commercial control of generating capacity that it or its affiliate had sold under a contract with a nonretail purchaser for term of at least five years, or had transferred to an independent brokering trustee for at least five years. ("Independent brokering trustee" would mean an entity that had been assigned the responsibility of marketing the output of generating capacity transferred in blocks of at least 500 megawatts, 24 hours per day. The trustee could have no affiliation with, and would have to be completely independent from the electric supplier. The terms of the transfer would have to ensure that the trustee had complete control over the marketing, pricing, and terms of the transferred capacity for at least five years.)

For an electric supplier that did not meet the applicable percentage standard for generating capacity after December 31, 2002, the PSC would have to revoke or refuse to grant an electric supplier license, subject the supplier to rate regulation, and require a refund of certain money that had been distributed (pursuant to the allocation of the differential between the valuation of generation assets, and netbook value after the netting of generation-related assets).

The PSC would have to require deregulated suppliers annually to file sufficient information demonstrating compliance with these provisions. The PSC also would have to issue an annual public report detailing the state of competition in the electric generation service market within the service territory of each regulated service provider in the State.

#### Stranded Costs

The PSC would have to allow each electric utility to collect all stranded costs through a transition charge recoverable from all customers within the utility's service territory except as otherwise provided in the bill. Stranded costs would include the following:

- The net book balance of a utility's generation-related regulatory assets (except that those representing recovery of nuclear power plant capital costs would have to be included in next category).
- The difference between net book value of a utility's generation assets and their market value.

- The difference between future purchased power contract payments and the market value of a utility's purchased power contracts, determined on a net present value basis over the entire remaining term of the contract.
- All transaction costs and other costs prudently incurred as a result of the valuation, sale, or transfer of generating assets or purchased power contracts approved by the PSC. (These costs would not include income taxes or capital gains taxes.)
- Actual lost generation-related revenues net of the wholesale market value of the displaced retail sales and of the transition charge revenues collected from the commencement of customer choice through 2002, adjusted to reflect the sale of assets or purchased power contracts occurring before 2003.

From the start of customer choice through 2001, the bidding process established in the bill (allowing customers to participate in the phase-in schedule) would have to determine the transition charge. During 2002, the PSC would have to establish a transition charge that took into account the amount of bids submitted in 2000 and 2001. After January 1, 2003, the transition charge would have to be determined using the valuation process described in this section, adjusted to reflect the difference between transition charge revenue collected before 2003 and actual lost generation revenues from the start of choice through 2002, as well as the timing of the sale of generating assets or purchased power contracts before 2003.

By December 31, 2002, the PSC would have to determine the market value of generation assets and purchased power contracts by one or more of following valuation methods:

- Divestiture of a generation asset or the assignment or equivalent transfer of a purchased power contract.
- The sale of all or part of the capacity and energy of a generating asset or purchased power contract.
- An appraisal of a generating asset or purchased power contract by a qualified independent third party.
- The transfer of generating assets or purchased power contracts to a separate affiliate whose assets were composed primarily of the generating assets or purchased power contracts and that had at least 19% of its common stock publicly traded for at least two years.

If a generating plant were transferred to an affiliate instead of being sold to an unaffiliated party, the PSC contested case proceeding and use a separate valuation method (described in the bill).

An advisory committee would have to be established to advise the PSC on the creation of standards and detailed procedures for how each of the valuation methods identified above would be administered. If the committee could not agree, the PSC would have to commence a contested case to resolve any disputes concerning the standards and procedures.

An electric utility would have to elect which valuation method to follow, and file a plan with the PSC by December 31, 2002. The PSC would have to provide notice and conduct a contested case hearing, and issue an order approving the plan or directing modifications.

Affiliates of the utility could not submit bids for the purchase or transfer of generating assets or purchased power contracts under this section of the bill.

A utility that had conducted a valuation process consistent with this section could transfer a generating asset or purchased power contract to an affiliate, subject to the bill's market power test provisions.

After netting the generation-related assets as provided in the bill, any differential between the valuation and the netbook value would have to be allocated through one of the following:

- In calculating the transition charge (described below), the amount would be allocated over the remaining useful life of the plant. The allocation would have to be front-loaded to meet two conditions specified in the bill.
- The amount would be allocated by a securitization method not to exceed a 15-year period from the date the securities were first offered.

For generating assets sold or transferred for an amount in excess of net book value to a person unaffiliated with the utility, only 90% of the amount in excess would be treated as an offset to stranded cost. The utility would have to retain remaining 10%, which would have to be placed in escrow until the utility met the bill's market power test.

Subject to the preceding provisions regarding the transfer of generating assets or purchased power contracts, the results of the application of a valuation method, sale, assignment, or transfer of such an asset or contract conducted under this section would be final and binding for purposes of determining stranded cost recovery under Act.

The PSC would have to adopt a true-up process for assuring that the dollar amount of stranded costs, plus carrying charges, was the amount actually collected from customers. The process would be limited to annual adjustments of the transition charge to reflect differences between the kilowatt-hour estimates used to develop the transition charge and the actual kilowatt-hour levels.

The PSC also would have to establish a transition charge that applied to all customers except as provided for self-service power and affiliate wheeling. The charge could never be less than the amount necessary to allow full recovery of all generation-related regulatory assets plus associated carrying charges, or the sum of the amounts determined above (regarding the composition of stranded costs) plus associated carrying costs, whichever was greater. The PSC would have to determine the period over which the charge would be applied to customers' bills.

In addition, the PSC would have to establish a separate customer charge that would allow the recovery of all implementation costs and associated carrying charges, to the extent they had not been previously reflected in rates. This charge would be applied between January 1, 2003, and December 31, 2007. Implementation costs would be those

prudently incurred to implement customer choice, including costs associated with the start-up of a regional transmission system organization that were not included by the Federal Energy Regulatory Commission (FERC) in transmission rates, creation of new or modified billing and metering systems to facilitate direct access, power dispatching and scheduling systems, and employee-related costs. Implementation costs would not include costs incurred by competitive suppliers that were affiliates of the regulated service provider.

#### Separation of Functions

By January 1, 2002, an electric utility would have to accomplish the legal, physical, and operational separation of affiliated business entities providing electric generation or electric generation-related marketing services from the business entity providing regulated service. ("Regulated service" would mean transmission and distribution services subject to PSC jurisdiction provided by an electric utility.) A regulated service provider could no longer own generation and could not engage in competitive activities. By January 1, 2002, an electric utility would have to adopt and comply with a code of conduct governing the relationship between a regulated service provider and an affiliated competitive supplier. ("Competitive supplier" would mean an entity that marketed electricity or energy consumption-related services at retail or wholesale on an unregulated basis. Energy consumption-related services would not include services related to the delivery of electricity, including construction, testing, or repair services.)

If financial restructuring to accommodate the separation caused a utility to incur fees, penalties, or other costs associated with debt covenants, it could apply to the PSC by January 1, 2002, for recovery of the costs.

### Code of Conduct

The PSC would have to establish a code of conduct applicable to a regulated service provider and any of its affiliates to prevent cross-subsidization. The code of conduct would have to prohibit a regulated service provider from doing any of the following:

- Giving any affiliated competitive supplier or its customers preference over nonaffiliated suppliers or their customers in matters relating to any regulated product or service.
- Selling or otherwise providing regulated products or services to any affiliated competitive supplier on terms different from those specified by tariff, without posting the offering electronically on a publicly available source and making the terms generally available to similarly situated nonaffiliated suppliers.
- Conditioning or tying the provision of a regulated product or service to any product or service by an affiliated competitive supplier.
- Releasing any proprietary customer information to a third party unless the customer had consented.
- Allowing an affiliated competitive supplier preferential access to any nonpublic information regarding the transmission or distribution system or any other regulated service.
- Providing any affiliated competitive supplier with access to market information acquired from nonaffiliated suppliers unless it were made equally available to all suppliers.
- Using regulated service rates to subsidize competitive services. Expenses incurred in connection with competitive services could not be included in regulated service rates.
- Promoting an affiliated competitive supplier.
- Representing that any advantages would accrue to a customer in the use of any regulated service as a result of that customer dealing with the affiliated competitive supplier.

The code of conduct would have to require a regulated service provider to do all of the following:

- Process all similar requests for a regulated product or service in a comparable manner and within a comparable period of time.
- Refrain from giving the appearance of speaking on behalf of any affiliated competitive supplier.
- Provide a copy of the current PSC-compiled list of all suppliers, if a customer requested information about alternative competitive suppliers.
- Maintain books and records separate from those of any affiliated competitive supplier.

The code of conduct also would have to require that all regulated products and services be available to all customers and suppliers without undue or unreasonable discrimination; and that employees

involved in the provision of regulated service on behalf of a regulated provider function independently of employees of all affiliated competitive suppliers.

### Obligation to Connect and Deliver

A regulated service provider would be obligated to connect all retail customers, including those using self-service power, to the provider's facilities used for regulated service. Also, a regulated service provider or its designate would have to implement procedures to require all electric suppliers to deliver to the provider at locations and in amounts adequate to meet each supplier's obligations to its customers.

### Slamming

An electric supplier's customer could not be switched to another supplier without the customer's authorization. The PSC would have to issue orders to ensure that customers were not switched without oral authorization, written confirmation, confirmation through an independent third party, or other verification procedures subject to PSC approval. The PSC also would have to establish a reasonable period within which a retail customer could cancel, without penalty or cost, a contract entered into with an electric supplier.

### Information Disclosure/Educational Program/Renewable Energy

The PSC would have to establish minimum standards for the form and content of all disclosures, explanations, or sales information disseminated by a person selling electric service to ensure that the person provided adequate, accurate, and understandable information about the service that enabled a customer to make an informed decision relating to the source and type of electric service purchased.

Before January 1, 2002, the PSC would have to establish a funding mechanism for electric suppliers and alternative electric suppliers to carry out an educational program to:

- Inform customers of the changes in the provision of electric service, including the availability of alternative electric suppliers.
- Inform customers of requirements relating to disclosures, explanations, or sales information for alternative suppliers.
- Provide assistance to customers in understanding and using the information to make reasonable informed choices about which service to purchase and from whom.

The PSC would have to require all electric suppliers to disclose in a standardized, uniform format on a

customer's bill, with a bill insert, or on customer contracts, information about environmental characteristics of electricity purchased by the customer, including:

- Average fuel mix.
- Average emissions of sulfur dioxide, carbon dioxide, and oxides of nitrogen.
- The regional average fuel mix and emissions profile as referenced above.

The PSC would have to establish the "Michigan Renewables Energy Program", to inform customers about the availability and value of using renewable energy generation and the potential of reduced pollution. The PSC also would have to establish the rates, terms, and conditions of service that would allow customers to purchase renewable energy.

For each megawatt generated by an electric utility using a renewable energy source, the utility could take a credit of three megawatts to reduce its share of market power under the bill's market power test.

#### Shut-Off Protection

An electric utility or alternative electric supplier could not shut off service to an eligible customer during the heating season for nonpayment of a delinquent account if the customer were an eligible senior citizen customer or paid a monthly amount equal to 7% of the estimated annual bill and demonstrated that he or she applied for State or Federal heating assistance. If an arrearage existed at the time the customer applied for shut-off protection during the heating season, the utility or 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 heating season.

An electric utility or alternative supplier could shut off service to an eligible low-income customer who did not pay the monthly amounts, after giving notice as required by rules. The utility or supplier would not be required to offer a settlement agreement to an eligible low-income customer who failed to make monthly payments.

If customer failed to comply with these provisions, an electric utility could shut off service on its own behalf or on behalf of an alternative supplier after giving the customer a notice that contained information described in the bill. A regulated service provider would not be required to shut off service to an eligible customer for nonpayment to a competitive electric supplier.

("Eligible customer" would mean an eligible low-income or eligible senior citizen customer. "Eligible low-income customer" would mean a customer

whose household income did not exceed 150% of the Federal poverty level, or who received assistance from a State emergency relief program, food stamps, or Medicaid. "Eligible senior citizen customer" would mean a utility or supplier customer who was 65 years old or older and who advised the utility of his or her eligibility.)

#### Investor-Owned Regulated Providers

Investor-owned regulated service providers serving more than 100,000 retail customers in State would have to file a joint plan detailing measures proposed to expand permanently by January 1, 2002, the available transmission capability by at least 2,000 megawatts over available capability in place on January 1, 2000. The joint plan would have to detail all actions including additional facilities required, the proposed schedule, the cost of the action, and the proposed rate-making treatment for the costs; as well as identify actions and facilities required of other transmission owners to accommodate actions described in plan.

The PSC would have to issue an order approving the plan and associated rate-making treatment. If the providers could not agree on a plan, the PSC would have to conduct a hearing.

The PSC would have to authorize the recovery from all customers of all reasonable and prudent costs incurred by transmission owners for authorized actions taken and facilities installed to meet requirements of this section that were not included by FERC in transmission rates.

Each investor-owned regulated service provider also would have to join a FERC-approved multistate regional transmission system organization or another FERC-approved multistate independent transmission organization, or divest its interest in its transmission facilities to an independent transmission owner. If a provider had not complied by December 31, 2001, the PSC would have to direct it to join a FERC-approved organization selected by the PSC.

#### Worker Protections

In the event of a sale, purchase, or other transfer of any Michigan divisions or business units, or generating stations or generating units, of an electric utility to a third party or a utility affiliate, the electric utility's contract with the acquiring entity would have to require that it hire a sufficient number of nonsupervisory employees to operate and maintain the station, division, or unit, by initially making offers of employment to the nonsupervisory employees at no less than the wage rates, and substantially equivalent fringe benefits and terms and conditions of employment that were in effect at the time of the



transfer. The wage rates and substantially equivalent benefits would have to continue for at least 30 months from the time of the transfer unless the employees and the new employer mutually agreed to different terms and conditions of employment within that 30-month period.

The utility would have to offer a transition plan to employees not offered jobs by the acquiring entity because it needed fewer workers.

#### Regulated Utilities Serving Under 100,000

Regulated electric utilities serving fewer than 100,000 customers in the State would have to file, within 180 days after bill took effect, restructuring plans for PSC review and approval. A plan would have to include proposals to classify facilities according to FERC criteria.

Before offering its customers a choice of alternative electric suppliers, an electric utility with under 100,000 customers could adjust its rates and charges in a contested case if it were filed before bill's effective date.

For utilities serving fewer than 100,000 customers, proposed tariffs for customers choosing an alternative supplier would have to be filed within 180 days after approval of retail access tariffs for utilities with over 1 million customers in the State or June 30, 2000, whichever was later.

#### Licensing

A person could not engage in the business of an electric supplier in Michigan without a license issued under Act. Before issuing a license, the PSC could require proof of financial integrity; require a bond or similar instrument; require proof that the applicant was properly registered in this State and require the applicant to agree to be subject to all applicable taxes; and/or adopt any other requirements in the public interest. The PSC would have to issue a license if a person complied with these requirements. A license would not be transferrable without PSC approval.

An alternative electric supplier would not be required to obtain any certificate, license, or authorization other than as required by this section of the bill. A licensed alternative supplier would not be a public utility.

The PSC could not require reciprocity as a condition of granting a license to an out-of-state utility or its affiliates.

If the PSC found, after notice and hearing, that there had been a violation of this section, the PSC could

do any of the following:

- Issue a cease and desist order.
- Issue a preliminary cease and desist order.
- Impose a fine of not less than \$10,000 or more than \$50,000 per day of violation.
- Order that the license be revoked.

The PSC would have to establish procedures governing the application and the granting of licenses within 60 days of the bill's effective date. Until then, electric suppliers that were providing electric generation service to retail customers in Michigan or were eligible to do so under PSC-approved direct access programs in effect before that date, would be allowed to provide generation service under previously existing procedures and statutes.

#### Municipally Owned Utilities

The governing body of a municipally owned utility would have to determine whether it would permit retail customers receiving delivery service from the utility the opportunity to choose an alternative electric supplier, subject to the implementation of rates, charges, terms, and conditions referred to below. ("Delivery service" would mean the provision of electric transmission or distribution to a retail customer.)

Except with the written consent of the municipally owned utility, a person could not provide delivery service or customer account service to a retail customer that was receiving service from the municipally owned utility as of bill's effective date, or was receiving the service from a municipally owned utility and had the opportunity to choose an alternative supplier. ("Customer" would mean the building or facilities served, not an individual or any other entity taking service.) After December 31, 2007, this written consent requirement would not apply if the governing body of the municipally owned utility did not permit all of its retail customers located outside the boundaries of the municipality to choose an alternative supplier.

If a municipally owned utility elected to serve as an electric supplier to retail customers receiving delivery service from a regulated service provider, the following conditions would apply:

- The municipality would have to give all of its retail customers located outside the boundaries of the municipality the opportunity to choose an alternative electric supplier.
- If a municipally owned utility and a regulated service provider both provided delivery service to retail customers located outside of the municipal boundaries, the municipally owned utility would

have to make a filing as provided below (regarding compliance with R 460.3411); or enter into an agreement as provided below (regarding territorial boundaries).

- The municipally owned utility would have to comply with sections of the bill governing slamming, customer information, shut-off protection, and a complaint procedure, with respect to customers located outside of the municipal boundaries.
- The municipally owned utility could serve as an electric supplier to retail customers receiving delivery service from a regulated provider up to an amount equal to the municipally owned utility's retail customer load that had the opportunity of choosing an alternative supplier.
- The municipally owned utility would have to obtain a license under the bill. The PSC would have to issue a license unless it determined that the utility had adopted rates, charges, terms, and conditions for delivery service that were unduly discriminatory or reflected recovery of stranded costs in an unjust and unreasonable amount. (The bill specifies that this provision would not grant the PSC authority to set rates for the municipally owned utility.)

With respect to any regulated service provider regarding delivery service to customers located outside of the boundaries of the municipality that owned the utility, the utility's governing body could elect to operate in compliance with R 460.3411, as in effect on the bill's effective date, but compliance with subrule 13 would not be required. (Rule 460.3411 governs the provision of electric service in areas served by two or more utilities. Subrule (13) requires compliance with Public Act 69 of 1929, which requires a public utility to get a certificate of public convenience and necessity from the PSC before operating in a municipality where another utility is providing the same service.)

A municipally owned utility and a regulated service provider that provided direct service in the same municipality could enter into agreement to define the territorial boundaries of each utility's delivery service area and any other conditions as necessary to provide delivery service. The agreement would have to be approved by the municipal governing body and the PSC.

If a municipal governing body established a program to give any of its customers the opportunity to choose an alternative electric supplier, the governing body would have exclusive jurisdiction to set delivery service rates; determine the amount and types of, and the recovery mechanism for, stranded and transition costs; and establish rules, terms of access, and conditions appropriate for implementation of the program.

The bill specifies that this section could not be construed to prevent or limit a municipally owned utility from selling electricity wholesale. A municipally owned utility selling wholesale would not be an alternative electric supplier or subject to PSC regulation.

#### Cooperative Electric Utilities

Within 180 days of bill's effective date, a cooperative electric utility would have to file a restructuring plan for PSC review and approval. The plan would have to give all customer members of the cooperative the option of choosing an alternative electric supplier by January 1, 2002, or another date approved by the PSC, whichever was later. The plan also could provide for the phase-in of electric capacity available for retail open access.

If applicable, a plan would have to classify the facilities owned by the cooperative according to criteria established by FERC for classification of transmission and distribution facilities. A cooperative electric utility would not be required to separate its facilities or operations used to provide competitive and noncompetitive services, or divest transmission assets to a FERC-approved regional transmission system organization, unless required by Federal law.

A cooperative electric utility serving under 15,000 customer members on December 31, 1999, would have to file a restructuring plan as described above, unless its board of directors elected by a two-thirds vote not to file a plan. If the board elected not to file a plan, the cooperative would be exempt from Act and could not provide competitive electric service outside its service territory; the PSC would continue to regulate the cooperative's retail rates; and the cooperative would have to allow any customer member with a peak load of one megawatt or more the option to select an alternative electric provider. The board of a cooperative electric utility that elected not to file a plan could subsequently elect by a two-thirds vote to file a plan.

A customer member using self-service power or engaged in affiliate wheeling on or before December 31, 1999, would be exempt from the imposition of transition, implementation, or exit fees, or any other similar charge imposed by the cooperative electric utility.

A customer member of a cooperative electric utility with a peak demand over 500 kilowatts that elected to take power from an alternative power supplier, take self-service power, or engage in affiliate wheeling, would have to give the cooperative electric utility 60 days' written notice of a desire to purchase electric generation service again from the cooperative. The rate would be the cooperative's

rate on file with the PSC or the cost incurred by the cooperative to purchase or otherwise provide the generation service requested, whichever was higher.

The rates for generation services for a cooperative electric utility would have to be deregulated on a finding by the PSC that competition existed within the cooperative's service territory. If the rates were deregulated, the utility would not be prohibited or restricted from continuing to offer generation service to any customer or class of customers.

After January 1, 2002, a cooperative electric utility required to give its customer members the option of choosing an alternative supplier would have to provide nondiscriminatory access to its distribution and transmission system to all customers and qualified alternative power suppliers. A cooperative electric utility would be obligated to connect all retail customers located within its service territory, including those using self-service power, to those facilities of the cooperative that were used for delivery of retail electric service at charges and rates established by the PSC.

The PSC would have to allow each cooperative electric utility to recover all stranded costs through a transition charge recoverable from all customers within the utility's service territory. The PSC would have to adopt a methodology to determine the amount of stranded costs that could be recovered. Stranded costs of a cooperative electric utility serving primarily at wholesale would have to be established by the PSC in a contested case upon the application by its member cooperatives in this State. The PSC also would have to determine an implementation charge applicable to retail customers of a cooperative electric utility. Stranded costs and the implementation charge could be subject to annual adjustment in a true-up proceeding, pursuant to the bill.

A cooperative electric utility could divest generating assets or purchase power contracts without PSC approval or review.

By the starting date for customer choice, each cooperative electric utility would have to apply with the PSC to unbundle its rates. The discrete services and charges would have to include, at least, customer account services and charges, distribution services and charges, transmission services and charges, generation services and charges, and transition charges. Residential rate schedules, once unbundled, could be separately stated or combined for residential billing purposes for customers who continued to take bundled services from a cooperative electric utility. The tariffs would have to continue listing all charges separately. All competitive services offered by a cooperative electric utility would have to be charged separately from noncompetitive services.

The PSC would have to require cooperative electric utilities to submit rate unbundling filings. The PSC would have to review the filings and, after notice and hearing, determine whether the unbundled rates were consistent with the Act. A cooperative could apply to adjust its rates in conjunction with the rate unbundling filing.

A cooperative electric utility would have to use best efforts to provide standby service to its customer members who chose an alternative supplier. Rates for standby service would be the top incremental cost incurred by the utility to purchase or otherwise provide the service. Tariffs for standby service would have to detail the appropriate charges and fees. For good cause shown, the PSC could exempt a cooperative from the requirement to provide standby service.

The PSC could issue orders or adopt rules to implement the bill's code of conduct requirements as they pertained to cooperative electric utilities. A

cooperative would not be required to separate its facilities or personnel or be precluded from providing competitive electric service to its members. The PSC would have to exempt a cooperative from one or more of the code of conduct provisions if it would not unduly harm the competitive market. For purposes of the bill's code of conduct section, a cooperative electric utility serving primarily at wholesale could not be considered an affiliated competitive provider of its member cooperative utilities.

#### Right-of-Way

A local unit of government would have to grant a permit for access to and ongoing use of all rights-of-way, easements, and public places under its control and jurisdiction to electric distributors and suppliers. A distributor or supplier could not gain access to or use a right-of-way, easement, or public place without a permit.

A local unit would have to approve or deny access within 90 days from the date a distributor or supplier filed an application for a permit. A local unit could require that a bond be posted to ensure that the right-of-way, easement, or public place was returned to its original condition during and after the access and use.

All fees and assessments made in the granting of a permit would have to be on a nondiscriminatory basis and could not exceed the fixed and variable costs to the local unit in granting the permit and maintaining the right-of-way, easement, or public place.

The bill specifies that these provisions would not limit a local unit's right to review and approve a distributor's or supplier's access to and ongoing use of a right-of-way, easement, or public place, or limit a local unit's authority to ensure and protect public health, safety, and welfare.

#### Other Provisions

The bill provides that, in addition to the provisions of the Michigan Consumer Protection Act, the PSC could issue cease and desist orders and adopt rules to protect retail customers from fraud and other unfair and deceptive business practices.

The PSC would have to establish a complaint procedure to allow persons (or the PSC on its own motion) to file claims of violations of the bill or a related rule or order. Upon the filing of a claim, the PSC would have to investigate and make findings. The PSC could issue a cease and desist order, in addition to other penalties under the Act or law, if it found, after notice and a hearing, a violation of the bill concerning the code of conduct, slamming,

customer information and education, or licensing. The PSC could issue a preliminary cease and desist order if a violation warranted immediate action. The PSC also could order a person to pay fine of up to \$50,000 per day if the person violated a cease and desist order, and to make an injured party whole.

By December 31 each year, the PSC would have to file with the Governor and the Legislature a report including actions taken to protect customers, and information regarding customer education programs.

The bill specifies that nothing in the Act would impair the contractual rights of electric utilities or customers under an existing contract approved by the PSC under Section 11 of Public Act 300 of 1909 (which concerns special contract rates for railroad shippers).

The bill provides that contracts entered into by regulated service providers and customers or alternative electric suppliers under PSC-approved direct access programs in effect before the bill's effective date would remain in effect for the term of the contracts.

Proposed MCL 460.10a-460.10z

Legislative Analyst: S. Lowe

#### **FISCAL IMPACT**

It appears that this bill would most likely have a negative impact on sales tax, single business tax, and property tax revenues, although there are too many unknowns at this time to be able to quantify all of the potential fiscal impacts or pinpoint their exact timing. This analysis is based in part on the Michigan Public Service Commission's projections that under this bill, consumers in Consumers Energy's territory would be assessed a transition charge for 25 years at an initial rate of 6 to 7 mills, and consumers in Detroit Edison's territory would be assessed a transition charge for 15 years at an initial rate of 3.5 mills. The major potential ways in which electric deregulation, as proposed in this bill, would affect the revenue collected from these three taxes are discussed below.

#### Sales Tax

Michigan's sales tax on electricity is assessed at rates of 4.0% for residential customers and 6.0% for all other customers; however, there are a number of exemptions, including electricity used by industrial customers to directly produce their final products and electricity used by the State, local governments, and schools. The revenue generated from the sales tax on electricity is distributed as follows: approximately 67% to the School Aid Fund, 30% to revenue sharing, and 3% to the General Fund. In FY 2000-

01, the sales tax will generate an estimated \$245 million from the sale of electricity, under the current regulated structure. Deregulating electricity would potentially reduce sales tax revenue by: 1) unbundling the price of electricity, 2) reducing the price of electricity, and 3) allowing customers to purchase electricity directly from out-of-State companies.

Unbundling Price of Electricity. Under Michigan's current regulated electric industry, the price charged for electricity reflects the costs incurred to generate, transmit, and distribute the electricity, and the sales tax is assessed on this total price. If the electric industry in Michigan were deregulated as proposed in this bill, at a minimum the generation, transmission, and distribution aspects of providing electricity, plus the new transition charges, would be unbundled and appear as separate items on customers' bills. Under current sales tax law, an unbundled structure would allow the sales tax to be assessed only on the charge for purchasing electricity, a tangible product, from an in-State company. The sales tax could not presently be assessed on electricity purchased from an out-of-State company or on the prices charged for the services of transmitting and distributing the electricity, or on the transition charge. Assuming a scenario was in place in FY 2000-01 that included, 1) unbundled electricity prices (at current levels), 2) the current sales tax law, and 3) that all electricity is purchased from in-State companies, then sales tax revenue would be reduced an estimated \$131 million, which would reduce School Aid Fund revenue \$87 million, revenue sharing \$40 million, and General Fund/General Purpose revenue \$4 million. To avoid this loss in revenue, the Sales Tax Act would have to be amended to assess the sales tax specifically on these nongeneration components of the total price of electricity.

Price Changes. The sales tax is assessed on the total amount charged to electric customers, which is determined based on the unit price of electricity and the amount of electricity consumed. Under electric deregulation, increased competition presumably would help reduce the price of generating electricity, which would reduce sales tax collections; however, assuming that the new transition charges would be included in the taxable price of electricity, then these transition charges would offset some, all, or more of the potential decrease in the retail price of generating electricity. While it is unclear what the change in the total price of electricity would be under this bill for residential, commercial, and industrial consumers, to help put into perspective the potential impact a price change would have on sales tax collections, each 1% decrease (increase) in the price of electricity would decrease (increase) sales tax collections an estimated \$2.5 million in FY 2000-01, assuming that

the price change did not change the amount of electricity consumed and that the sales tax would be applied on the total price of electricity.

Out-of-State Purchases. Sales tax revenue, under a deregulated environment, also would be negatively affected by purchases of electricity from out-of-State companies. The sales tax applies to retail sales of electricity made by in-State companies. The companion use tax applies to goods purchased from out-of-State companies and subsequently brought into the State; however, there is currently no provision in the Use Tax Act to tax electricity, but even if there were, it would be difficult actually to collect the tax. Similar to the current problem being encountered with mail order and Internet purchases, out-of-State electric companies could not be forced to collect the tax for the State, as long as they had no physical presence in Michigan. Although the customer would still be liable for the tax, if under deregulation consumers chose to purchase electricity from an out-of-State company that had no nexus in Michigan, it could be very difficult to collect the tax on these purchases, under existing law. As a result, tax collections would be lower compared with what they otherwise would be. The loss in tax revenue from out-of-State purchases of electricity would probably be minimal due to the present capacity constraint on the amount of electricity that can be transmitted into Michigan from companies located in other states.

#### Single Business Tax

The two large investor-owned electric companies in Michigan are subject to the single business tax, as are Michigan's electric cooperatives, but the municipally owned electric companies are not. It is not known at this time, how much single business tax is paid by these companies on their electricity business only, but the amount is estimated to be around \$50 million. Under deregulation, single business tax revenues would potentially be adversely affected due to the restructuring of the electric industry. To the extent that the level of business activity would be transferred from in-State electric suppliers to out-of-State electric companies without nexus in Michigan, single business tax revenues would be negatively affected. Due, however, to the current capacity constraints on the amount of electricity that can be transmitted into Michigan from other states, it is estimated that any shift to out-of-State electricity companies would be minimal, and therefore the impact on the single business tax would be small. Any change in single business tax revenue would affect General Fund/General Purpose revenue.

#### Property Tax

The value of an electric generating facility is primarily derived from the income the facility earns, which in turn is driven in large part by the price that can be charged for its electricity. Under deregulation, existing electric generating plants that are relatively more costly to operate, would become less profitable because increased competition would drive down the price of electricity. As a result, the value of these facilities also would decrease. The problem would become most severe if for financial reasons it became necessary to shut down a plant completely. As the value of electric generating plants decreased, property taxes also would decline. On the other hand, deregulation would potentially stimulate investment in new and more efficient electric generating facilities, which would create additional property taxes. Therefore, on a statewide basis, there would potentially be property tax losses and gains. However, the relatively high transition charges that the Public Service Commission estimates would result under this bill, would probably have the effect of diminishing any net change in property tax revenue, because there would be less new competition, and therefore, less change in the value of existing facilities.

#### Public Service Commission

The bill would have no fiscal impact on the Public Service Commission.

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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.