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SFA BILL ANALYSIS

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Senate Bill 1263 (as introduced 5-11-00)
Sponsor: Senator Christopher D. Dingell
Committee: Technology and Energy

Date Completed: 5-16-00

CONTENT

The bill would amend the Public Service Commission (PSC) enabling Act to provide for the employment of nonsupervisory workers upon the sale or transfer of a Michigan division or unit, or generating station or unit, of an electric utility; require the utility to offer a transition plan to employees who were not hired; require the PSC to adopt service quality and reliability standards, including benchmarks for staff levels, for electric utilities' transmission and distribution systems and other entities subject to the PSC's jurisdiction; and require electric suppliers to be licensed.

Employment & Transition Plans

The PSC would have to require that each electric utility operating in this State establish an industry worker transition plan that, in consultation with employees or applicable collective bargaining representatives, would provide skills upgrades, apprenticeship and training programs, voluntary separation packages consistent with reasonable business practices, and job banks to coordinate and assist placement of employees into comparable employment at no less than the wage rates and substantially equivalent fringe benefits received before the transition.

In the event of a sale, purchase, or other transfer of ownership 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 safely and reliably the station, division, or unit, by initially making offers of employment to the nonsupervisory employees. The acquiring entity or persons would have to offer employment 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, benefits, and terms and conditions of employment would have to continue for at least 30 months from the time of the transfer unless the employees (or, where applicable, the collective bargaining representative) and the new employer mutually agreed to different terms and conditions of employment within that 30-month period. If there were litigation concerning the sale or other transfer of ownership, the 30-month period would begin on the date the acquiring entity or persons took control or management of the divisions, business units, generating stations, or generating units of the electric utility.

The contract also would have to prohibit the acquiring entity or persons from employing nonsupervisory employees from outside the electric utility's workforce, unless offers of employment had been made to all qualified nonsupervisory employees of the utility. In addition, the acquiring entity or persons would have to have a dispute resolution mechanism culminating in a final and binding decision by a neutral third party for resolving employee complaints or disputes over wages, fringe benefits, and working conditions.
The bill also would require the electric utility to offer a transition plan to employees not offered jobs by the acquiring entity because it needed fewer workers.

The bill specifies that stranded costs would include audited and verified employee-related restructuring costs that were incurred as a result of the bill, including employee severance costs, employee retraining programs, early retirement programs, outplacement programs, and similar costs and programs, that had been approved and found to be prudently incurred by the PSC.

Service Quality & Reliability Standards

The PSC would be required to adopt generally applicable service quality and reliability standards for the transmission and distribution systems of electric utilities and other entities subject to its jurisdiction and in conjunction with any performance rate making plan implemented, including standards for customer satisfaction, service outages, distribution facilities upgrades, repairs and maintenance, telephone service, billing service, and public and worker safety. In setting service quality and reliability standards, the PSC would have to consider safety, costs, local geography and weather, applicable codes, national electric industry practices, sound engineering judgment, and experience. The PSC also would have to adopt standards for operational reliability and safety during periods of emergency operations. In connection with any performance-based rate making plan, the service quality and reliability standards would have to include benchmarks for employee staff levels and employee training programs.

In complying with the service quality and reliability standards and employee benchmarks, a jurisdictional entity that made a performance-based rate filing after the bill's effective date could not engage in labor displacement or reductions below staffing levels in existence on January 1, 2000, unless allowed by a collective bargaining agreement between the entity and the applicable organization representing the workers, or with the PSC's approval following notice and hearing, at which the burden would be on the entity to demonstrate that the staffing reductions would not adversely disrupt service quality and reliability standards. The bill specifies that this provision would not prevent reduction of forces below the January 1, 2000, level through early retirement and severances negotiated with labor organizations.

Annually, each jurisdictional utility or entity would have to file with the PSC its plan detailing the inspection, maintenance, repair, and replacement actions to be taken to comply with the service quality and reliability standards during the next calendar year. Each jurisdictional entity also would have to file with the PSC a report detailing its performance in relation to the standards during the prior calendar year. The annual reports would have to contain outage data based on a standard outage reporting methodology, the time of outages, outage severity, the impact of weather conditions on outages, and year-to-year comparisons.

The PSC would have to analyze the data to determine whether the jurisdictional entities were properly reporting and maintaining their systems, assess the impact of deregulation on reliability, and take corrective action if necessary.

The PSC could levy a penalty against any jurisdictional entity that failed to meet the service quality and reliability standards, in an amount up to the equivalent of 2% of its transmission and distribution service revenues for the preceding calendar year.

Supplier Licensing

A person could not engage in the business of an electric supplier in Michigan without a license issued under Act. An application for a license would have to be on a form approved by the PSC, be verified by oath or affirmation, and contain all of the information the PSC required. In addition to any other information required, the applicant would be required to disclose whether it, any member of its board of directors, or any of its officers or managing agents had been or presently were the subject of any Federal, state, or local government investigation, license revocation proceeding or lawsuit, or any violations or pending charges concerning any Federal, state, or local laws, codes, rules, or regulations, within the last 10 years. The applicant also would have to provide information, including information about its safety record and history of service quality and reliability, as to the applicant's technical ability, as defined under PSC regulations, safely and reliably to generate or otherwise obtain and deliver electricity and provide any other proposed services.

Before issuing a license, the PSC would have to require proof of financial integrity; require a licensee or applicant to post a bond or similar instrument (if the PSC believed that a bond or similar instrument was necessary to insure a supplier's financial integrity); and require a licensee or applicant to do all of the following: provide proof that it had properly registered to do business in this State, agree to be subject to all applicable taxes, and collect and remit to local units of government all applicable use tax. The PSC also would have to require the licensee or applicant to adopt any other requirements the PSC found to be in the public interest, which could include different requirements for suppliers that served only large customers.

In addition, each electric supplier would have to demonstrate to the PSC the competence of its employees to work in the electric industry. The knowledge, skill, and competence levels would have to be consistent with those generally required of or by the electric utilities in this State with respect to their employees. Adequate demonstration of necessary knowledge, skill, and competence would require a showing of factors including the employee's completion of an accredited or otherwise recognized apprenticeship program for the particular craft, trade, or skill, or specified years of employment with an electric utility performing a particular work function.

The PSC also would have to require that the applicant demonstrate that its employees who would be installing, operating, and maintaining generation, transmission, or distribution facilities within the State, or any entity with which the applicant had contracted to perform those functions within the State, had the requisite knowledge, skills, and competence to perform those functions in a safe and responsible manner in order to provide safe and reliable service.

The PSC would have to issue a license if an applicant complied with these requirements. A license would not be transferrable without prior PSC approval.

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

In addition to any other penalties provided by the Act or law, if the PSC found, after notice and hearing, that there had been a violation of these licensing provisions, 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. Before that date, 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 the bill's effective date, would be allowed to do so under previously existing procedures and statutes.

Proposed MCL 460.10p & 460.10q Legislative Analyst: S. Lowe

FISCAL IMPACT

The bill would require the PSC to license all electric suppliers and would establish the licensing criteria. Any supplier not in compliance with these regulations could be subject to a fine of not less than $10,000 or more than $50,000 per day that the supplier was in violation. The amount of revenue that would be generated from these fines is indeterminate as it is difficult to predict the number or length of these violations.

Fiscal Analyst: M. Tyszkiewicz

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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.