House
Legislative
Analysis
Section

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MUNICIPAL ELECTRIC UTILITIES: ELECTRIC FACILITIES

House Bill 5457 as introduced
Sponsor: Rep. Ken Bradstreet

House Bill 5458 (Substitute H-1)
Sponsor: Rep. Joseph Rivet

House Bill 5459 as introduced
Sponsor: Rep. Barb Vander Veen

First Analysis (12-11-01)
Committee: Energy and Technology

THE APPARENT PROBLEM:

The "restructuring" of Michigan's retail electric utility industry began in January of 1998 when the Public Service Commission (PSC) adopted a phase-in schedule to introduce competition into the state's retail electricity market. Although the Michigan Supreme Court ruled in 1999 that the PSC did not have the authority to mandate the retail access required under the phase-in schedule, Consumers Energy and Detroit Edison, investor-owned utilities that served ninety percent of the consumers in the state between them, voluntarily followed the PSC's plan. The "Customer Choice and Electricity Reliability Act", Public Act 141 of 2000, statutorily mandated restructuring, requiring the PSC to establish rates, terms, and conditions of service to allow retail electric utility customers to choose an alternative electric supplier before January 1, 2002. As specified in the act, the act's purpose was to accomplish all of the following:

- ensure that all of the state's electric power retail customers have a choice of electric suppliers;

- allow and encourage the PSC to foster competition in the provision of electric supply and maintain regulation of that supply for customers who choose to continue to receive power from incumbent electric utilities;

- encourage the development and construction of merchant plants to diversify the ownership of electric generation within the state;

- ensure that all persons in the state are afforded safe, reliable electric power at a reasonable rate; and

- improve the opportunities for economic development and promote financially healthy and competitive utilities in the state.

As both the purposes and the title of the act make clear, the issues of competition and reliability of service are intimately connected. Under "vertical integration" the utilities owned and were responsible for maintaining all three of the elements necessary for supplying electricity to consumers—i.e., the generation sources and facilities, the transmission infrastructure, and the distribution system. Moreover, they were required to offer to provide electricity to all customers in a given geographic area. In short, a guarantee of no competition was exchanged for a promise of reliable electricity service. With the introduction of competition, however, the investor-owned utilities expressed concern about "stranded cost recovery", i.e., their ability to pay off debts incurred through investments that they had made on the basis of their exclusive responsibility for all elements of retail electricity supply and their protected market. With respect to the transmission infrastructure, however, there was general consensus that the issue was not merely how the utilities would recover stranded costs. Whatever the benefits of competition between generators of electricity, no one wanted (or wants) to see a proliferation of transmission lines. In addition to the issue of stranded cost recovery, regulators, utilities, and the new marketers of electricity had to address the issue of how access to transmission facilities could be kept open and reasonably priced without making ownership of the transmission system so unprofitable that no one wanted to be responsible for it.

This issue was hardly new; it had arisen over the years as federal regulators opened the wholesale electricity market to competition by requiring utilities to allow alternative electricity generators to access their transmission facilities. In two rules adopted in 1996, Orders 888 and 889, the Federal Energy Regulatory Commission (FERC) "found that unduly discriminatory and anticompetitive practices existed in the electric industry, and that transmission-owning utilities had discriminated against others seeking transmission access. The Commission stated that its goal was to ensure that customers have the benefits of competitively priced generation, and determined that non-discriminatory open access transmission services (including access to transmission information) and stranded cost recovery were the most critical components of a successful transition to competitive wholesale electricity markets". To achieve this goal, the FERC proposed that all transmission-owning electric utilities place their transmission facilities under the control of a regional transmission organization (RTO). A RTO is a voluntary organization of transmission owners, users, and other entities that is responsible for maintaining transmission system reliability and ensuring non-discriminatory access to the transmission grid to all electricity generators in a given geographical area. Rather than have the utilities continue to be independent owners and operators of transmission facilities to which alternative electric generators must negotiate access, RTOs (theoretically) ensure independent control of the transmission infrastructure so that all generators of electricity have equal access to that infrastructure.

Public Act 141 required *investor-owned* electric utilities to take one of the following three steps with regards to their transmission facilities: (1) join a multi-state regional transmission system organization approved by the Federal Energy Regulatory Commission (FERC); (2) join another FERC approved multi-state independent transmission organization; or (3) divest its interest in its transmission facilities to an independent transmission owner. Public Act 141 did not address the issue of whether municipal electric utilities, including "joint agencies," had the authority to make similar arrangements with respect to the new transmission developments and entities. However, the two joint agencies currently operating in Michigan—the Michigan Public Power Agency and the Michigan South Central Power Agency—own interests in the transmission capacity of the investor-owned electric utilities. Legislation has been introduced that would authorize these joint agencies to participate in various transmission entities and would recognize their rights of ownership in transmission facilities.

THE CONTENT OF THE BILLS:

The Michigan Energy Employment Act of 1976 prescribes the powers and duties of municipalities to acquire, finance, maintain, and operate generating, transmission, and distribution facilities of electric power and energy, fuel and energy sources and reserves and all necessary related properties, equipment and facilities. Among other things, the act permits municipalities that generate, transmit, or distribute electricity to enter "joint agency" agreements. A "joint agency" is a public body formed by the governing bodies of two or more municipalities that have agreed that it is in the municipalities' best interests to jointly operate a "project" to supply electric power and energy. A "project" is a system or facility for the generation, transmission, or transformation of electricity by a municipal electric utility system by any means, including but not limited to, any one or more electric generating units.

House Bill 5458 would amend the act (MCL 860.844) to allow a joint agency to transfer all or part of its interest in transmission facilities to either a multistate regional transmission system organization approved by the federal government and operating in the state or to one or more of the organization's transmission-owning members. The bill would also permit a joint agency to buy, acquire, sell or otherwise transfer stock, membership units or any other interest in either a federally-approved multistate regional transmission system organization operating in the state or in one or more of the organization's transmission-owning members.

House Bill 5459 would amend the act (MCL 860.840) to specify that before undertaking a project *for the construction or acquisition of facilities for the transmission or generation of electric power and energy*, a joint agency must determine that the project is required to provide for the projected power and energy needs of its members. Currently, the act states that before undertaking a project,—i.e., any project—a joint agency must determine that the project is required to provide for the projected power and energy needs of its members.

House Bill 5457 would amend the act (MCL 860.805) to revise the definition of "project". The bill would essentially retain the core of the current definition of project as a system or facility for the generation, transmission, *or transformation* of electricity by a municipal electric utility system by any means. The bill would, however, expand this definition to include stock, membership units, or any

other interest in either a multistate regional transmission system organization approved by the federal government and operating in this state or in a transmission-owning entity which is a member of such an organization. (The bill would eliminate the original definition's specification that a project includes any one or more electric generating units.) Finally, the bill would make some changes to the definition of "project cost" that appear to be technical.

BACKGROUND INFORMATION:

In 1929, in order to prevent duplication of transmission and distribution infrastructure, certain utilities were granted what was essentially monopoly status in the production and supply of electricity. The government granted such monopolies in exchange for the utilities' agreement to be regulated by state utility commissions and to provide reliable electrical service to all of the customers within a specified area. In 1935, the Public Utilities Holding Company Act required electric utilities to be vertically integrated, and each electric utility was limited to a specific geographical area. In 1978, the federal Public Utilities Regulatory Policy Act was enacted to encourage new supplies of electrical power generation. The act required regulated utilities to meet increases in energy demand by purchasing electrical power from outside sources when it was cheaper to do so than it would be to construct new generation facilities. Although one utility could purchase power generated, or purchased from an independent generator, by another utility, and then "wheel" the bulk electricity into its own system when additional power was needed, independent generators were frequently denied independent access to the utilities' transmission lines. In 1992, the federal Energy Policy Act expanded access to the wholesale electricity market for independent electricity generators. The act allowed independent electricity generators to sell their electrical power at wholesale to one utility, through the transmission lines of another utility, which charged a fee for "wheeling" the electricity between the generator and the purchasing utility. The law also directed FERC to adopt rules requiring utilities to open their transmission lines to all sellers of electricity.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bills would have no fiscal impact on the state. For local units of government, the bills would have the effect of both increasing the price at which municipalities could sell excess electric capacity, thus increasing revenue, and decreasing the price at which the affected municipalities could purchase electricity when needed, thus decreasing costs. (12-10-01)

ARGUMENTS:

For:

Since the enactment of Public Act 141, the ownership of much of the state's transmission infrastructure has been transferred from investor-owned utilities to affiliated companies. Eventually ownership or control of this infrastructure will be transferred to independent entities, such as RTO's. Joint agencies are largely "transmission dependent"; in other words, they depend on access to transmission that they do not (entirely) own or control. Without full rights to hold (and divest themselves of) interest in transmission companies and to be members in RTO's, joint agencies may become "second-class citizens" with regards to access to, as well as the opportunity to be heard in decisions affecting, the transmission system. Such second class citizenship would hinder a joint agency's ability to act in the best interests of its member municipalities. While joint agencies believe that nothing in current law prohibits a joint agency from making arrangements that the bill would allow, they are hesitant to act without express legal authority.

Response:

The FERC's objective is "for all transmission-owning entities in the Nation . . . to place their transmission facilities under the control of appropriate RTOs in a timely manner". It is not clear whether legislation is needed to authorize a joint agency to do what the bills would allow it to do, since the law is silent on the issue. However, if it is agreed that legislation is appropriate, then perhaps the bills do not go far enough. Perhaps *any* municipal electric utility—not just joint agencies—or for that matter, any cooperative electric utility, that owns transmission facilities should be given similar express authority.

POSITIONS:

The Michigan Municipal Electric Association supports the bills. (12-6-01)

The Public Service Commission does not have a position on the bills. (12-6-01)

Analyst: J. Caver

■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.