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**SFA****BILL ANALYSIS**

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Senate Bills 1498 and 1499 (as introduced 11-12-02)

Sponsor: Senator Mat J. Dunaskiss

Committee: Technology and Energy

Date Completed: 11-13-02

## **CONTENT**

**Senate Bill 1498 would create the "Terrorism Protection and Cost Recovery Act" to do all of the following:**

- Allow a "covered utility" to recover "enhanced security costs" incurred as a result of State or Federal regulatory requirements issued after September 11, 2001, or determined to be necessary by the Public Service Commission (PSC).
- Specify application, notice, and hearing requirements for PSC approval of a "security recovery factor" (a charge to all retail customers).
- Specify costs that the PSC could include in determining a security recovery factor.
- Provide for the confidentiality of certain utility records supplied to the PSC in the application process.

**Senate Bill 1499 would amend the Customer Choice and Electricity Reliability Act to excuse from the Act's rate reduction and rate freeze provisions any rates or charges authorized by the PSC under the proposed Terrorism Protection and Cost Recovery Act.** The bill is tie-barred to Senate Bill 1498. (Public Act 141 of 2000 enacted the Customer Choice and Electricity Reliability Act to require a 5% reduction in the residential rates that were in effect on May 1, 2000, for an electric utility with 1 million or more retail customers; freeze those rates and the utility's other rates until 2004; and prohibit the utility's rates from increasing until December 31, 2013, or until the utility meets the Act's market power test, which limits the utility's commercial control of the generating capacity available to serve the relevant market.)

A more detailed description of Senate Bill 1498 follows.

### Enhanced Security Cost Recovery

Under the bill, a covered utility would recover the costs of enhanced security measures for an electric generating facility following application to the PSC and the Commission's issuance of an order approving reasonable and prudent costs.

"Covered utility" would mean an electric utility subject to the rate freeze and rate cap provisions of the Customer Choice and Electricity Reliability Act (MCL 460.10d(1) and 460.10d(2)) or the rate freeze provisions of certain PSC orders.

"Enhanced security costs" would mean reasonable and prudent costs of new and enhanced security measures incurred before January 1, 2006, for an electric generating facility by a covered utility that were required by Federal or State regulatory security requirements issued after September 11, 2001, or determined to be necessary by the PSC to provide reasonable security from terrorist attacks. Enhanced security costs would include insurance and the costs of maintaining or restoring electric service following an act of terrorism.

### Application, Notice, & Hearing

Within 60 days of the bill's effective date, the PSC, by order, would have to prescribe the form for the filing of an application for a security recovery factor. If the PSC or its designee determined that a filing was incomplete, it would have to notify the covered utility within 10 days of the filing. ("Security recovery factor" would mean a charge for all retail customers to recover enhanced security costs that had been incurred by a covered utility.)

The PSC would have to require that the covered utility publish notice of an application for a security recovery factor within 30 days of the filing of a complete application. The initial PSC hearing would have to be held within 20 days of publication of the notice in newspapers of general circulation in the covered utility's service territory. Within 120 days of the initial hearing, the PSC would have to issue an order approving, rejecting, or modifying the security recovery factor.

### Determination of Security Recovery Factor

In determining the security recovery factor, the PSC could include only costs that it determined were reasonable and prudent and that were jurisdictionally assigned to retail customers in Michigan. The costs included would have to be net of any proceeds that had been or would be received from another source, including any applicable insurance settlements received by the covered utility or any grants or other emergency relief from Federal, State, or local governmental agencies for the purpose of defraying enhanced security costs. In its order, the PSC would have to designate a period for recovery of enhanced security costs, including a reasonable return on the unamortized balance, over a period of not more than five years.

### Confidentiality of Records

Records or other information supplied by a utility in an application for recovery of security costs that described security measures, including emergency response plans, risk planning documents, threat assessments, domestic preparedness strategies, and other plans for responding to acts of terrorism, would not be subject to the Freedom of Information Act and would have to be treated as confidential by the PSC. The PSC would have to issue protective orders that were necessary to protect the information found by the Commission to be confidential.

MCL 460.10d (S.B. 1499)

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

To the extent that a State agency or local government would be a customer of these affected utilities, utility costs could increase.

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