

STEAM SUPPLY COST RECOVERY

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House Bill 5798 (Substitute H-1)
Sponsor: Rep. Coleman Young
Committee: Energy and Technology

Complete to 3-4-08

A SUMMARY OF HOUSE BILL 5798 AS REPORTED FROM COMMITTEE

The bill would add a new Section 6r to the Public Service Commission Act (Public Act 3 of 1939, MCL 460.1 *et seq.*) to authorize the PSC to approve the inclusion of a "steam supply cost recovery clause" in a regulated steam distribution company's rates or rate schedules and to establish procedures for PSC review of the implementation of such a clause. [The bill appears to apply mainly to Detroit Thermal, a steam distribution company formerly part of Detroit Edison.] A short summary of the bill's procedures is set forth below, followed by a longer description of the bill:

- First, the PSC would conduct a contested case hearing solely on the issue of including a "steam supply cost recovery clause" in a steam distribution company's rates or rate schedules, and issue an order approving or rejecting the clause. (The bill is silent on how the case would be initiated.)
- To implement an approved clause, a utility would have to file an annual "steam supply cost recovery plan" covering a 12-month period specified by the PSC, containing, among other things, a proposed cost recovery factor for each of the 12 months covered by the plan.
- At the same time that it files its plan, the utility would have to file a 3-year forecast, including, among other things, the expected demand for steam and its anticipated supply costs for the next three years.
- After both the company's plan and forecast were filed, the PSC would issue a temporary or final order in a contested case proceeding called a steam supply and cost review. In its temporary or final PSC order, the PSC would specify the 12 monthly cost recovery factors in fixed dollar amounts per unit of steam, but could include "specific amounts contingent on future events." A temporary or final order would authorize a utility to incorporate in its rates any amount up to the steam supply cost recovery factors in the order. In its final order the PSC would evaluate the three-year forecast and indicate which anticipated costs it would be unlikely to approve based on current evidence.
- If the PSC didn't rule in a steam supply and cost review case within three months, or if a temporary order expired without being replaced by a final order, a steam distribution company could implement its proposed cost recovery factors without the approval of the PSC. The company would have to refund with interest to customers any amount collected later disallowed by the PSC.
- Three months into a plan year, a steam distribution company could ask that the case be reopened and, presumably, that its cost recovery factors be increased. (A

company would not need PSC approval to lower its cost recovery factors.) At least six months into a plan year with at least 60 days left, the PSC (or another party upon a showing of good cause) could also ask for a case to be reopened. Reopened cases would be conducted as contested cases.

- After a utility began implementing its cost recovery factors, it would have to report to the PSC within 45 days after the close of each billing month the amount collected under that month's cost recovery factor (as well as supply costs included in its base rates) and report the cost of that month's supply.
- At least once a year, no more than three months after the end of a plan year, the PSC would initiate a reconciliation case to review whether the utility had collected the appropriate amount for its actual steam supply costs under its cost recovery factors and base rates. If the utility collected too much during the plan year, it would have to issue a refund (or a credit) to its customers with interest. On the other hand, if it collected an insufficient amount, it would be authorized to collect additional amounts plus interest from its customers over a time period set by the PSC.

DETAILED SUMMARY

Steam supply cost recovery clauses. The PSC could issue an order incorporating a "steam supply cost recovery clause" in a utility's steam rates or rate schedule after a contested case hearing under Chapter 4 of the Administrative Procedures Act. The only issue in the hearing would be whether to include a steam supply cost recovery clause in the utility's rates or rate schedules.

Definition of "utility." The bill defines "utility" as "a steam distribution company regulated by the Commission." According to the PSC, the only regulated steam distribution company is currently Detroit Thermal, which was formerly owned by Detroit Edison. The bill would apparently not apply to municipal electric utilities such as Lansing's Board of Water and Light. We are unaware of any cooperative electric utilities that currently provide steam service.

Annual steam supply cost recovery plan. A utility would have to file a complete "steam supply cost recovery plan" each year at least three months before the 12-month period covered by the plan, as determined by the PSC, in order to implement a "steam supply cost recovery clause." The utility's plan would have to propose a "cost recovery factor" for each of the 12 months covered by the plan as well as (1) a description of the utility's expected sources of steam supply and anticipated changes in the cost of steam supply over the 12-month period; (2) a description of all major contracts and steam supply arrangements entered into by the utility during the 12-month period, including all specified information; and (3) the utility's evaluation, meeting specified requirements, of the reasonableness and prudence of its plan.

Three-year forecast. At the same time that it files its cost recovery plan, a utility would also have to file a "three-year forecast" that contains specified information in order to implement a "steam supply cost recovery clause." The forecast would have to include (1)

a projection of its customers' steam needs for the three-year period; (2) the utility's sources of supply; (3) projected steam supply costs (taking into account both existing sources of steam generation and those under construction); (4) a description of all relevant major contracts and steam supply arrangements entered into or contemplated by the utility; and (5), any other information required by the PSC.

Steam supply and cost review case. After a utility filed both its steam supply cost recovery plan and its three-year forecast, the PSC would have to conduct a proceeding called a "steam supply and cost review" to evaluate the reasonableness and prudence of the plan and to establish steam supply cost recovery factors for the utility. The steam supply and cost review would be conducted as a contested case.

Final orders. In its final order, the PSC would approve, disapprove, or amend the utility's steam supply cost recovery plan and its 12 proposed monthly steam supply cost recovery factors. The final order would also evaluate the decisions underlying the utility's three-year forecast and indicate any cost items that the PSC would be unlikely to allow the utility to recover in the future, based on present evidence.

Cost recovery factors in fixed dollar amounts per unit of steam with possible contingencies. In the PSC order, the 12 monthly cost recovery factors would be described in fixed dollar amounts per unit of steam, but could include "specific amounts contingent on future events."

Relevant factors in PSC review of a cost recovery plan. In reviewing a steam supply cost recovery plan for reasonableness and prudence, relevant factors would include (1) the cost and availability of steam generation; (2) the cost of available short-term firm purchases; and (3) whether the utility has taken all appropriate actions to minimize its fuel costs.

Temporary orders. On its own motion or the motion of any party, the PSC could make a finding and enter a temporary order granting partial or full approval of a steam supply cost recovery plan after first having given notice to the parties to the review and giving those parties a reasonable opportunity for a full and complete hearing. The temporary order would be considered a final order for purposes of judicial review.

Implementation of cost recovery factors under a temporary or final order. A temporary or final order would authorize a utility to incorporate in its rates any amount up to the steam supply cost recovery factors in the order.

Implementation of cost recovery factors without a PSC order. If the PSC does not issue an order within three months from the submission of a complete steam supply cost recovery plan (or by the beginning of the period covered in the plan, whichever is later) or if a temporary order has expired without being extended or replaced, a utility could adjust its rates on a monthly basis in an amount up to the cost recovery factor it proposed in its plan for that month, pending a subsequent PSC order. The utility would later have

to issue its customers a "prompt refund with interest" if it collects more than the amount later determined by the PSC to be reasonable and prudent in its final order.

Reopening of a steam cases during a plan year. A utility could file a revised steam supply cost recovery plan covering the plan year "not less than three months before the beginning of the third quarter of the 12-month period." In other words, after three months of a 12-month plan year have passed, a utility could file a revised plan. Upon receipt of a revised plan, the PSC would have to reopen the steam supply and cost review. A case could also be reopened on the PSC's own motion or on a showing of good cause by any party if at least six months have passed since the utility submitted its complete filing and if there are at least 60 days left in the 12-month period under consideration. A reopened steam case would be conducted as a contested case under Chapter 4 of the Administrative Procedures Act, and in accordance with specified subsections of the bill: subsections (3) [requirements for a complete steam supply cost recovery plan], (6)[PSC review of plans], (8)[issuance of temporary orders], and (9)[interim implementation of proposed cost recovery factors].

Utility's monthly reporting obligation. Within 45 days after the last day of each billing month in which a steam supply cost recovery factor has been applied to customer bills, a utility would have to file with the PSC a detailed statement for that month of (1) the revenues recorded under that month's steam supply cost recovery factor and the allowance for the cost of steam supply included in the base rates established in the latest commission order for the utility, and (2) the cost of the steam supply. The detailed statement would have to be made in a manner and form prescribed by the PSC. The PSC would have to establish procedures for assuring that the detailed statement is promptly verified and corrected, if necessary.

Steam supply cost reconciliation proceedings. At last once a year, and no later than three months after the end of the 12-month period covered by a utility's steam supply cost recovery plan, the PSC would commence a steam supply cost reconciliation proceeding as a contested case under Chapter 4 of the Administrative Procedures Act.

Discovery in reconciliation cases. Reasonable discovery would be permitted before and during the reconciliation proceeding to assist parties and interested persons in obtaining evidence concerning reconciliation issues, including, but not limited to, the reasonableness and prudence of the utility's expenditures and the amounts collected under to the cost recovery clause.

Reconciliation. The PSC would have to reconcile the revenues recorded under the steam supply cost recovery factors and the allowance for cost of steam supply included in the company's base rates with the amounts actually expensed and included in the cost of steam supply by the utility.

Additional reasonableness and prudence review. In the reconciliation proceeding, the PSC would also have to consider any issue concerning the reasonableness and prudence of expenses for which customers were charged if the issue was not considered adequately during the steam supply and cost review.

Reconciliation order awarding refunds or credits to customers. If the utility has collected too much during the plan year, the PSC reconciliation case order would require a utility to refund with interest to customers (or credit to customers' bills) any net amount recovered in excess of amounts that were (1) actually expensed by the utility, (2) reasonable and prudent, and (3) not precluded by the PSC steam supply and cost review order. The PSC would determine procedures for apportioning the refunds or credits.

Reconciliation order authorizing additional recovery from customers. If the utility's steam supply costs that were (1) actually expensed, (2) reasonable and prudent, and (3) not precluded by the PSC steam supply and cost review order totaled more than the amount it actually recovered during the relevant period, the PSC's reconciliation case order would allow the utility to recover the difference from its customers with interest. The utility would have to demonstrate that its excess expenses resulted from reasonable and prudent management actions.

Recovery of excess expenses contrary to PSC steam supply and cost review order. A utility could only recover excess costs incurred through management actions contrary to the PSC's steam supply and cost review order if it demonstrated through clear and convincing evidence that the excess expenses were beyond the ability of the utility to control through reasonable and prudent actions.

Apportionment of additional charges. The PSC would determine procedures for apportioning and charging customers additional amounts and would determine the time period over which the additional charges would be spread.

Interest on refunds or additional customer charges. If the PSC's reconciliation order authorizes refunds or credits to customers or additional charges to customers, the refund, credit, or additional charge would include interest. That is, the utility would issue refunds or credits to customers with interest if it collected too much, but would also be allowed to add interest charges to additional customer charges if it collected too little. The PSC would have to consider, to the extent material and practicable, the time at which the excess or insufficient recoveries, or both, occurred.

Interest rate on refunds paid to customers. The applicable interest rate on refunds *paid* to customers would be the greater of the average short-term borrowing rate available to the utility during the appropriate period, or the authorized rate of return on the common stock of the utility during that same period. The utility could not charge to its customers costs incurred by the utility for refunds and interest on refunds.

Interest rate on additional charges assessed on customers. The interest rate *charged* to customers in addition to additional charges would be equal to the average short-term borrowing rate available to the utility during the appropriate period.

Legislative review. Beginning five years after the effective date of the bill, and every five years thereafter, the standing committees of the House and Senate that deal with public utilities would review steam supply cost recovery under Section 6r.

"Booked cost of steam" would include (1) retail gas purchases including all costs for gas service (including customer, distribution, gas cost recovery factor charges); (2) wholesale gas purchases (contract cost of gas, transportation fuel, pipeline or local transportation fees, and any local distribution fee); (3) storage gas charges (including the cost of gas, fuel, gas injection fees, withdrawal fees, and associated transportation fees), (4) the costs of approved financial hedging instruments such as futures and options, including premiums, settlement gains and losses, and commodity exchange and administration fees; (5) all steam purchase costs (including customer charges, distribution fees, and associated transportation fees; and (6) other fuel purchase costs (including any coal, wood, garbage, tires, waste oil, fuel oil or other materials used as a fuel for the production of steam and all customer, distribution, transportation, and storage fees). [Note: the definitions of "booked cost of steam" and "steam supply cost recovery clause" use the term "booked," whereas the body of the bill uses the term "expensed."]

"Steam supply cost recovery clause" would mean a clause in a utility's rates or rate schedule which permits monthly rate adjustments to allow the utility "to recover the booked costs of fuel burned by the utility for steam generation and the booked costs of purchased steam transactions by the utility incurred under reasonable and prudent policies and practices."

"Steam supply cost recovery factor" would mean "that element of the rates to be charged for steam service to reflect steam supply costs incurred by a utility and made pursuant to a steam supply cost recovery clause incorporated in the rates or rate schedule of a utility."

FISCAL IMPACT:

The bill would have no significant budgetary impact on the Public Service Commission. The PSC currently addresses steam cost recovery factors through its traditional contested case hearings process. The utility costs of local units and other governmental entities, to the extent they receive steam service, would be affected by any steam cost recovery factor imposed.

POSITIONS:

The Public Service Commission supports the bill. (2-27-08)

Detroit Thermal supports the bill. (2-27-08)

DTE Energy supports the bill. (2-27-08)

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■ 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.