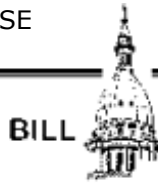




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BILL ANALYSIS

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House Bill 5798 (Substitute H-1 as passed by the House)
Sponsor: Representative Coleman Young
House Committee: Energy and Technology
Senate Committee: Energy Policy and Public Utilities

Date Completed: 4-17-08

CONTENT

The bill would amend Public Act 3 of 1939, the Public Service Commission (PSC) law, to prescribe procedures by which the PSC could incorporate a steam supply cost recovery clause in the steam rates or rate schedule of a utility. Specifically, the bill would do the following:

- Require a utility to file an annual steam supply cost recovery plan that included the utility's evaluation of the reasonableness and prudence of its decisions to provide steam supply.
- Require a utility, in conjunction with a recovery plan, to file a three-year forecast of the steam supply requirement of its customers, its anticipated sources of supply, and projections of steam supply costs.
- Require the PSC to conduct a steam supply and cost review to evaluate the reasonableness and prudence of a utility's recovery plan and establish steam supply cost recovery factors to implement a cost recovery clause.
- Provide for the revision of a cost recovery plan and a reopening of a supply and cost review during the recovery period.
- Require the PSC to conduct a steam supply cost reconciliation proceeding at least once a year.
- Require the PSC to require a utility to refund or credit to customers, or authorize a utility to recover from customers, as applicable, the difference between the amount collected under the cost recovery

factors and the utility's actual costs of steam supply.

- Require the PSC to establish an interest rate to be applied to any refunds, credits, or additional charges.
- Require the Legislature to conduct a five-year review of the bill.

Steam Supply Cost Recovery Clause

Pursuant to its authority under the Act, the PSC could incorporate a steam supply cost recovery clause in the steam rates or rate schedule of a utility (i.e., a steam distribution company regulated by the Commission). An order incorporating such a clause would have to be the result of a hearing solely on the question of the inclusion of the clause in the rates or rate schedule. The hearing would have to be conducted as a contested case under the Administrative Procedures Act (APA).

"Steam supply cost recovery clause" would mean a clause in the rates or rate schedule of a utility that permitted the monthly adjustment of rates for steam supply 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. "Booked cost of steam" would include the following:

- Retail gas purchases consisting of all costs for gas service, including customer charges, distribution charges, and any gas cost recovery factor.

- Wholesale gas purchases, consisting of the contract cost of gas, transportation fuel, pipeline transportation fees, and local transportation or distribution fees.
- Storage gas charges, including the cost of gas, fuel, gas injection fees, withdrawal fees, and associated transportation fees.
- Steam purchases, consisting of all costs for steam purchased, including customer charges, distribution charges, and associated transportation fees.
- Costs for other fuel purchases, including any coal, wood, garbage, tires, fuel oil or other materials used as a fuel for the production of steam, and all customer charges, distribution charges, and associated transportation and storage fees.

Steam Supply Cost Recovery Plan

In order to implement the clause, a utility annually would have to file a complete steam supply cost recovery plan describing the expected sources of steam supply and changes in the cost of steam supply anticipated over a future 12-month period specified by the PSC, and requesting for each of those 12 months a specific cost recovery factor. The utility would have to file the plan at least three months before the beginning of the 12-month period covered by it.

The plan would have to describe all major contracts and steam supply arrangements the utility entered into for providing steam supply during the specified 12-month period, including the price of fuel, the duration of the contract or arrangement, and an explanation or description of any other term or provision of the contract or arrangement as required by the PSC. The plan also would have to include the utility's evaluation of the reasonableness and prudence of its decisions to provide steam supply in the manner described in the plan, in light of its existing sources of steam generation, and an explanation of the actions taken by the utility to minimize its cost of fuel.

Clause Implementation; Supply & Cost Review

In order to implement the recovery clause, a utility would have to file, contemporaneously with the plan, a three-year forecast of the steam supply requirements of its customers, its anticipated sources of supply, and

projections of steam supply costs, in light of its existing sources of steam generation and sources of generation under construction. The forecast would have to include a description of all relevant major contracts and steam supply arrangements entered into or contemplated by the utility, and any other information the PSC required.

If a utility filed a cost recovery plan and a three-year forecast, the PSC would have to conduct a proceeding, to be known as a steam supply and cost review, to evaluate the reasonableness and prudence of the utility's plan, and establish the steam supply cost recovery factors to implement a cost recovery clause incorporated in the utility's rates or rate schedule. The supply and cost review would have to be conducted as a contested case pursuant to the APA.

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

In its final order in a steam supply and cost review, the PSC would have to evaluate the reasonableness and prudence of the decisions underlying the plan filed by the utility, and would have to approve, disapprove, or amend the plan accordingly. In evaluating the decisions underlying the plan, the PSC would have to consider the cost and availability of the steam generation available to the utility, whether the utility had taken all appropriate actions to minimize the cost of fuel, and other relevant factors. The PSC would have to approve, reject, or amend the 12 monthly steam supply cost recovery factors requested by the utility in its plan. The factors ordered would have to be described in fixed dollar amounts per unit of steam, but could include specific amounts contingent on future events.

In its final order in a steam supply and cost review, the PSC would have to evaluate the decisions underlying the three-year forecast filed by the utility. The PSC also could indicate any cost items in the forecast that, on the basis of present evidence, the Commission would be unlikely to permit the utility to recover from its customers in rates,

rate schedules, or steam supply cost recovery factors established in the future.

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

Utility Rates

If the PSC had made a final or temporary order in a review, the utility could incorporate in its rates each month for the period covered by the order any amount up to the steam supply cost recovery factors permitted in that order. If the PSC had not made a final or temporary order within three months of the submission of a complete cost recovery plan, or by the beginning of the period covered in the plan, whichever came later, or if a temporary order had expired without being extended or replaced, pending an order that determined the recovery factors, a utility could adjust its rates each month to incorporate all or part of the cost recovery factors requested in its plan.

Any amount collected under the cost recovery factors before the Commission made its final order would be subject to prompt refund with interest to the extent that the total amount collected exceeded the total amount determined in the Commission's final order to be reasonable and prudent for the same period of time.

Revised Steam Supply Cost Recovery Plan

At least three months before the beginning of the third quarter of the 12-month period, a utility could file a revised steam supply cost recovery plan that covered the remainder of that period. Upon receiving a revised plan, the PSC would have to reopen the steam supply and cost review. Additionally, the Commission could reopen the review on its own motion or on the showing of good cause by any party if at least six months had elapsed since the utility submitted its complete filing and if there were at least 60 days remaining in the 12-month period under consideration. A

reopened review would have to be conducted as a contested case pursuant to the APA, and in accordance with the bill's provisions pertaining to an original cost recovery plan (except those pertaining to the three-year forecast and the supply and cost review).

Utility Detailed Statement

Within 45 days following the last day of each billing month in which a steam supply cost recovery factor had been applied to customers' bills, a utility would have to file with the PSC a detailed statement for that month of the revenue recorded pursuant to the cost recovery factor and the allowance for cost of steam supply included in the base rates established in the latest Commission order for the utility, as well as the cost of steam supply. The statement would have to be in the manner and form prescribed by the PSC. The Commission would have to establish procedures for ensuring that the detailed statement was verified and corrected promptly if necessary.

Steam Supply Cost Reconciliation

At least once a year, within three months after the end of the 12-month period covered by a utility's cost recovery plan, the PSC would have to commence a proceeding, to be known as a steam supply cost reconciliation, as a contested case pursuant to the APA. Reasonable discovery would have to be permitted before and during the reconciliation proceeding in order to assist parties and interested people in obtaining evidence concerning reconciliation issues, including the reasonableness and prudence of expenditures and the amounts collected pursuant to the clause. At the reconciliation, the PSC would have to reconcile the revenue recorded pursuant to the cost recovery factors and the allowance for cost of steam supply included in the base rates established in the latest Commission order for the utility, with the amounts actually expensed and included in the cost of steam supply by the utility. The PSC would have to consider any issue regarding the reasonableness and prudence of expenses for which customers were charged if the issue were not considered adequately at a supply and cost review conducted previously.

In its order in a cost reconciliation, the PSC would have to require a utility to refund to customers or credit to customers' bills any net amount determined to have been recovered over the period covered in excess of the amounts determined to have been actually expensed by the utility for steam supply, and to have been incurred through reasonable and prudent actions not precluded by the PSC order in the supply and cost review. The refunds or credits would have to be apportioned among the customers of the utility using procedures that the PSC determined were reasonable. The PSC could adopt different procedures with respect to customers served under the various rate schedules of the utility and, in appropriate circumstances, could order refunds or credits in proportion to the excess amounts actually collected from each customer during the covered period.

In its order in a cost reconciliation, the PSC would have to authorize a utility to recover from customers any net amount by which the amount determined to have been recovered over the covered period was less than the amount determined to have been actually expensed by the utility for steam supply, and to have been incurred through reasonable and prudent actions not precluded by the PSC order in the supply and cost review. For excess costs incurred through management actions contrary to the PSC's steam supply and cost review order, the Commission would have to authorize a utility to recover costs incurred for steam supply in the reconciliation period in excess of the amount recovered over the period only if the utility demonstrated by clear and convincing evidence that the excess expenses were beyond the utility's ability to control through reasonable and prudent actions. For excess costs incurred through management actions consistent with the PSC's steam supply and cost review order, the PSC would have to authorize a utility to recover costs incurred for steam supply in the reconciliation period in excess of the amount recovered over the period only if the utility demonstrated that the level of the expenses resulted from reasonable and prudent management actions. The amounts in excess of the amounts actually recovered by the utility would have to be apportioned among and charged to the utility's customers using procedures that the PSC determined were reasonable. The PSC could adopt different procedures with respect to

customers served under the various rate schedules of the utility and, in appropriate circumstances, could order charges to be made in proportion to the amounts that those customers would have paid if the amounts in excess of the amounts actually recovered by the utility for cost of steam supply had been included in the cost recovery factors with respect to those customers during the covered period. Charges for the excess amounts would have to be spread over a period that the PSC determined was appropriate.

Interest Rate on Refunds, Credits, & Additional Charges

If the PSC ordered refunds or credits, or additional charges to customers, in its final order in a steam supply cost reconciliation, they would have to include interest. In determining the interest included in a refund, credit, or additional charge, the PSC would have to consider, to the extent material and practicable, the time at which the excess and/or insufficient recoveries occurred. The PSC would have to determine a rate of interest for excess recoveries, refunds, and credits equal to 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 the same period. Costs incurred by the utility for refunds and interest on refunds could not be charged to customers. The PSC would have to determine an interest rate for insufficient recoveries and additional charges equal to the average short-term borrowing rate available to the utility during the appropriate period.

Legislative Review

Five years after the bill took effect, and every five years after that, the standing committees of the House and Senate that deal with public utilities would have to review the bill.

Proposed MCL 460.6r

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The fiscal impact of the bill would be minimal as the PSC currently has a process in place for supply cost recovery cases. The

bill simply would formalize those procedures
for steam distribution companies.

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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.