

ALLOW AN ELECTRIC OR GAS UTILITY TO REFUSE TO PROVIDE SERVICE IF ENERGY THEFT HAS OCCURRED TWICE IN TWO YEARS; RECONNECTION FEES

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Senate Bill 1310 (Substitute S-2)
Sponsor: Sen. Tupac A. Hunter
House Committee: Energy and Technology
Senate Committee: Judiciary

First Analysis (7-1-10)

BRIEF SUMMARY: The bill would add Section 9d to the Public Service Commission law to allow a regulated electric or natural gas utility to refuse to provide electric or natural gas service at a location where electric or gas service was shut off at least twice during the previous two years due to unauthorized use. This would be allowed *notwithstanding any other administrative rules or statutes*. The bill would also specify the documentation and payments needed to reestablish service, and require an owner to notify a utility when surrendering or abandoning property to avoid liability for subsequent unauthorized service use. (MCL 460.9d)

FISCAL IMPACT: The bill would have no fiscal impact on the state or local units of government.

THE APPARENT PROBLEM:

Energy theft has become a serious and widespread problem in Michigan. For example, Consumers Energy says that it investigates almost 10,000 incidents of energy theft every year. In recent years it has billed between six and eight million dollars for energy theft, but has been able to collect only about half of that amount. Following a shut-off for non-payment, some people reportedly reconnect their service using jumper cables or other makeshift methods. Some unscrupulous landlords have apparently created unauthorized connections and then advertised free utilities to attract tenants. In the underground economy, some people have gone so far as to make a business out of illegally reestablishing service for others after a shut-off. Utility companies say that some industrial and commercial customers have tampered with meters to reduce their bills.

Unauthorized connections and meter tampering can cause serious safety problems as well as increase costs that are passed on to all utility customers. Tampering with meters or making illegal connections can result in fires, explosions, electrocution injuries, or even deaths. The person making the wrongful connection, other persons in the home or business, nearby persons, and utility workers may all be placed at risk. When some customers tamper with their service connections or meters to avoid paying their fair share, every customer's cost of service increases to cover the losses.

It has been suggested that regulated natural gas and electric utilities should be allowed to deny service at a location where at least two instances of unauthorized use of natural gas or electricity has occurred within 24 months, that a customer should be required to provide property ownership or residence information and pay certain fees and charges to have service reconnected, and that an owner should have to notify a utility when surrendering or abandoning property to avoid liability for unauthorized service use.

THE CONTENT OF THE BILL:

The bill would add Section 9d to the Public Service Commission (PSC) Law (Public Act 3 of 1939) to do the following things:

- Require a regulated electric or natural gas utility to take steps "consistent with good utility practice" to cure or address an unsafe connection caused by the unauthorized use of electric or natural gas service, and to allow it to take steps to deter future unauthorized use, including installing additional utility facilities.
- Allow a utility to refuse to provide electric or natural gas service at any customer location where electric or natural gas service has been shut off at least twice during the previous 24 months because of unauthorized use of electricity or natural gas, if the utility determined that refusing to provide service at that location would prevent a recurrence of the unauthorized use. (This would apply notwithstanding any other administrative rules or statutes.)
- Require a utility to reestablish electric or natural gas service if either (1) the person requesting service can prove legal ownership of the property and agrees to pay, before service is reestablished, all repair costs, required fees and deposits, and all charges due for the previous unauthorized use occurring while the person owned the property; or (2) the person can prove legal ownership of the property and provide a lease agreement establishing the identity of the tenant responsible for the prior unauthorized use.
- Allow, but not require, a utility to reestablish electric or natural gas service if the person can prove legal ownership and pays the additional fee for reestablishing electric or natural gas service at a location with multiple prior occurrences of unauthorized use included in the utility's rate and tariff schedule.
- Allow, but not require, a utility to reestablish service if the person requesting service cannot prove ownership but can provide specified residency information, provide documentation and pay fees and deposits required by specified administrative rules, and pay the additional fee for reestablishing service at a location with multiple prior occurrences of unauthorized service under the utility's rate and tariff schedule.
- Make a property owner jointly and severally liable for any unauthorized use occurring at property abandoned or surrendered by the owner unless the owner notified the utility within 30 days after abandoning or surrendering it.
- Require large utilities (those serving one million or more customers) to establish and maintain a service allowing landlords of rental properties in the utility's service territory who register for the service to be notified of locations where electric and natural gas services have been shutoff because of unauthorized use.

- Specify that the bill applies only to the unauthorized use of electric or natural gas service, not to the use of telecommunication or cable services or telecommunication or cable facilities attached to equipment owned or controlled by electric or natural gas utilities, and specify that the bill supersedes any existing law regarding the use of poles, ducts, conduits, and trenches.

("Utility" would mean an electric or natural gas utility regulated by the PSC. "Unauthorized use of electric or natural gas service" would mean theft, fraud, interference, or diversion of service, including meter tampering, bypassing, and service restoration by anyone other than the utility or its representative. "Meter tampering" would mean any act that affected the proper registration of service through a meter and affected the flow of energy. "Bypassing" would mean unmetered service that flows through a device connected between a service line and customer-owned facilities.)

A more detailed summary of the bill is available at:

<http://www.legislature.mi.gov/documents/2009-2010/billanalysis/House/pdf/2009-HLA-1310-5.pdf>.

ARGUMENTS:

For:

The bill requires utility companies to take steps "consistent with good utility practice" to cure or address unsafe unauthorized connections and allows them to install equipment to deter future unauthorized use. Given the serious and growing problem of energy theft in Michigan, it is appropriate to give utilities the authority they need to address the problem.

The bill aims at making the person responsible for the unauthorized connection also responsible for paying the fees associated with reestablishing service. A utility is able hold a landlord responsible for previous unauthorized use unless the landlord can identify the responsible tenant. The utility must reconnect service if certain documentation is provided and charges paid by owners or tenants. In addition, the bill requires that a property owner notify utility companies within 30 days after abandoning or surrendering property to avoid liability for subsequent use. The bill's requirement that utility companies with at least million customers establish a system for notifying registered landlords of unauthorized service use on their property will also help protect landowners from responsibility for the wrongdoing of tenants.

By reducing the number of illegal connections and meter tampering, the bill will help protect residential and business utility customers from the risk of fire, explosion, or electrocution, and will help protect customers from charges resulting from energy theft by those unwilling to pay for service.

Against:

While most people agree that energy theft is a serious problem that needs to be addressed, some people suggest that the bill goes too far in giving utility companies authority to

decide that it will no longer provide service at a particular location due to energy theft, *notwithstanding any other administrative rules or statutes*. Should a utility company be able to refuse gas or electricity to an apartment building in the middle of winter even where the landlord, not a tenant, was the wrongdoer, even if young children or elderly people are living in the building, or even if the utility knows that a tenant in the building is using electric-powered life support equipment? Should the utility at least have to provide advance notice to tenants in this situation? The bill appears to give utilities the right to refuse service where two previous thefts have occurred without regard to *any* consumer protection provision currently found in Michigan law or administrative rules. Some people say that it is even unclear what right, if any, a tenant or owner would have to challenge a utility's allegedly wrongful refusal to provide service because of the bill's "notwithstanding any other administrative rules or statutes" language.

In addition, as written, the bill allows an *electric* utility to refuse service to a given location because of *natural gas* theft at that location, and vice versa. Assuming that one utility learns about theft of a service provided by a separate utility company, should the company whose service has not been stolen be allowed to shutoff or refuse service at that location (and then require the owner or tenant to provide documentation of ownership or residency and pay fees to have service reestablished)? Or should a utility only be allowed to refuse service (and charge reconnection fees) if its own service (natural gas or electricity) has been stolen twice in the past 24 months? Even if a single utility company provides both natural gas and electricity, as is the case in some parts of Michigan, should it be able refuse to provide both gas and electricity (and charge separate fees for reestablishing each service), if only one type of service was stolen?

POSITIONS:

Representatives of Consumers Energy and DTE Energy testified in support of Senate Bills 1310-1314 (6-29-10).

The following organizations indicated support for Senate Bills 1310-1314 (6-29-10):

ABATE (Association of Businesses Advocating Tariff Equity), Indiana Michigan Power, Integrys Energy Group, Michigan State Police, SEMCO, Utility Workers Union of America.

The Rental Property Owners Association of Michigan indicated a neutral position on the bills. (6-29-10)

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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.