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REGULATION OF UTILITIES

Senate Bill 437 (Substitute S-7 as passed by the Senate)
Sponsor: Sen. Mike Nofs
House Committee: Placed directly on Second Reading
Senate Committee: Energy and Technology
Complete to 11-30-16

BRIEF SUMMARY:

Senate Bill 437 amends the Michigan Public Service Commission Enabling Act to address a number of issues, at the forefront of which is electric reliability. The bill amends the act to:

- Require utilities, beginning January 1, 2022, to produce 15 percent of their electricity from renewable resources.
- Maintain the 10 percent cap on retail open access (ROA)—sometimes referred to as customer choice—for electricity service, and preserve the ability for customers to move between an alternative electric supplier (AES) and an electric utility to receive electricity service.
- Reduce the timeframe for deciding rate cases from 12 months to 10 months.
- Eliminate the ability of utilities to self-implement rate changes.
- Establish a grid charge for electric customers in a net metering or distributed generation program.
- Increase funding to the Utility Consumer Representation Fund.
- Lower the threshold of projects triggering a certificate of necessity (CON).
- Enhance standards for integrated resource plans (IRP) to include a 5, 10, and 15-year projection of a utility's load obligations and a plan to meet those obligations.
- Require, depending on the situation, certain mechanisms to be implemented to address resource adequacy.
- Create incentives for energy waste reduction efforts by energy utilities.
- Establish the Northern Michigan Electric Reliability Task Force to identify and address issues affecting the availability, reliability, and affordability of electricity for residents and businesses in the Upper Peninsula and Northern Lower Peninsula.
- Establish a generation capacity charge for new ROA customers, as provided.
- Revise the Code of Conduct and apply the provisions to natural gas utilities.
- Allow utility shut-offs for failure to pay monthly installment payments under a residential energy project program created under Senate Bill 438.
- Provide for additional staffing for state agencies to implement the act.
- Establish an Energy Ombudsman.
- Clarifies that the PSC is to establish rates based on cost-of-service.
- Move the Michigan Renewables Energy Program from the PSC to the Michigan Agency for Energy.
- Repeal or delete obsolete provisions.

DETAILED SUMMARY:

A brief description of some of the bill's more significant revisions follows.

Utility rates

Under the act, a gas or electric utility is prohibited from increasing its rates and charges or altering, changing, or amending any rate or rate schedules which would result in the increase of the cost of its services without first receiving PSC approval as provided in the act. (Municipally owned electric utilities are not subject to PSC regulation with the exception of the filing of a renewable energy plan as required by the Clean, Renewable, and Efficient Energy Act, Public Act 295 of 2008.) The bill:

- Reduces the timeframe for the PSC to decide a rate case from 12 months to 10 months.

- Sunsets the provision allowing utilities to self-implement a rate increase or decrease if the PSC does not issue an order regarding the rate case within 180 days of the utility filing a completed application. *The bill applies the provision to self-implement only to completed applications filed with the PSC before the bill's effective date*.

- Allows a small gas utility, fewer than 1 million customers, to seek partial and immediate rate relief.

- Allows a natural gas or electric utility to request, and requires the PSC to approve, a *revenue decoupling mechanism* to adjust for decreases in lost sales resulting from the implementation of energy waste reduction, conservation, demand-side programs, and other waste reduction measures, if certain conditions are met by the utility. Decoupling can be requested for other reasons, but the PSC will have discretion whether to grant such a request.

- Requires, by December 1, 2017, the PSC to establish a nondiscriminatory, fair, and equitable grid charge for electric customers participating in a net metering or distributed generation program under provisions of Senate Bill 438, which amends the Clean and Renewable Energy and Energy Waste Reduction Act. The grid charge could not be reduced by credits provided to customers under a net metering or distributed generation program. However, customers participating in a net metering program *before* the date the PSC establishes a grid charge and who continue to participate in the program at their current site or facility will be exempt from the grid charge. Thus, the grid charge will apply only to those customers who begin participation in a net metering or distributed generation program *after* the date the PSC establishes the grid charge (December 1, 2017 is the latest date the charge may become effective; the PSC could institute the charge earlier).

- Requires a gas, electric, or steam utility to coordinate with the PSC prior to filing a general rate case application to avoid resource challenges that result when multiple utilities file applications at the same time. For large utilities (more than one million customers in the state), allows the PSC to order a delay to establish a 21-day spacing between filings.

Power supply cost recovery

This is an element of the electric service charge that reflects power supply costs incurred by an electric utility and made under a power supply cost recovery clause in the utility's electric rates or rate schedule. The bill makes numerous technical changes of an editorial nature for clarity but largely maintains existing provisions, and also:

- Requires electric utilities, in the annual power supply cost recovery plan, to include whether the contract includes firm oil transportation and if not, how the utility proposes to ensure reliable and reasonably priced gas fuel supply to its generation facilities during the specified 12-month period. "Firm gas transportation" means a binding agreement entered into between the electric utility and a natural gas transmission provider for a set period of time to provide guaranteed delivery of natural gas to an electric generation facility.

- Eliminates a provision requiring the Legislature to review power supply cost recovery factors.

Utility Consumer Participation Board (UCPB)

Sections 6*l* and 6m provide means of ensuring equitable representation of the interests of energy utility customers for the purpose of implementing certain sections of the act. The Utility Consumer Representation Fund (UCRF) receives funds generated by an annual assessment on certain regulated utilities. A portion of the revenue from the Fund is reserved for use by the attorney general to represent consumers in state and federal administrative and judicial proceedings. Revenue is also used to cover the operational costs and expenses of the Utility Consumer Participation Board (UCPB), with the net grant proceeds used to finance a grant program with grants awarded by the UCPB to nonprofit entities and local units of government that advocate on behalf of the interests of the residential consumer groups that they represent.

The bill:

- Revises the provisions under which applicants may receive grants from the UCPB for interventions to include Sections 6a (rate cases, decoupling, grid charge), 6h (gas cost recovery), 6j (power supply cost recovery), 6s (Certificate of Need), and 6t (integrated resource plan). References to Sections 6i (gas cost recovery plans) and 6k (power supply cost recovery plans) were deleted and Sections 6a, 6j, 6s, and 6t added.

- Specifies that disbursements from the Utility Consumer Representation Fund (UCRF) are restricted to advocate the interests of *residential* energy utility customers concerning *energy costs or rates* and not for representation of merely individual interests.

- Increases the base amount upon which a utility's proportional share remitted to the UCRF is determined, requires all regulated energy utilities to participate, and changes the amounts dedicated to the attorney general and the grant program. Currently, the base amount for which a utility's proportional share is determined is established in statute, and is adjusted annually for inflation. Under the bill, the base amount used to determine the share for large energy utilities, which is dedicated to

the attorney general, will increase to $900,000 and the base amount used to determine the share of large utilities serving residential customers, used for grants, will be $650,000.

The bill also requires small energy utilities and small utilities serving residential customers to pay a proportional share of $100,000, respectively, with those funds split between the attorney general and the UCRF. Thus, the new total for the base amount will be $1.75 million, with the attorney general receiving a larger portion of the funds remitted instead of all available funds being split evenly.

- Revises what the UCPB shall consider when making grants to include energy conservation; energy waste reduction; demand response; and rate design options to encourage energy conservation, energy waste reduction, and demand response, as well as maintenance of adequate energy resources. Protection of the environment and the creation of employment and a healthy state economy are removed as elements for the Board to consider.

- Encourages greater collaboration between the UCPB and the attorney general, particularly as it relates to the hiring of expert witnesses and also in determining the use of unexpended money in the Fund. In addition, the bill requires the UCPB to consider the anticipated involvement of the attorney general in a proceeding and whether the activities of a grant applicant will be duplicative or supplemental to those of the attorney general.

- Requires grant applicants to include in an application any additional funds or resources that will be used to participate in the proceeding for which the grant is being requested and how those funds or resources will be utilized.

- Requires grant recipients to prepare for and participate in all discussions among the parties designed to facilitate settlement or narrowing of the contested issues before a hearing in order to minimize litigation costs for all parties.

- Requires a grant recipient to include in its report about how the grant was spent, a detailed list of the regulatory issues raised by the grant recipient and how each issue was determined by the PSC, court, or other tribunal.

- Requires the Board to include in its annual report the reports currently required from grant recipients regarding grant expenditures.

Electric Generation Facility/CON

Under the act, an electric utility that proposes to construct an electric generation facility, purchase or make a significant investment in an existing electric generation facility, or enter into a power purchase agreement for the purchase of electric capacity for a period of at least six years may submit an application to the PSC seeking a certificate of necessity (CON) for that construction, investment, or purchase if the project costs at least $500 million and a portion of the costs would be allocable to retail customers in Michigan. The bill:

- Lowers the threshold of projects triggering application for a certificate of necessity (CON) to those costing $100 million or more; for small electric utilities (fewer than one million retail customers), it lowers the threshold from less than $500 million to less than $100 million.

- If the CON application is for a project that requires an integrated resource plan under the new Section 6t, requires PSC to consolidate the proceedings. If Section 6s provisions regarding CON conflict with Section 6t, Section 6s will prevail.

- Allows the PSC to authorize a financial incentive that does not exceed the utility's weighted average cost of capital for power purchase agreements that a utility enters into with an entity that is not affiliated with it after the bill's effective date.

- Revises provisions regarding cost-overruns to specify that the portion of the cost of a plant, facility, or power purchase agreement exceeding the PSC-approved cost is presumed to have been incurred due to a lack of prudence (currently the threshold is the cost exceeding 110 percent of the approved costs).

- Specifies that the PSC standards for an integrated resource plan (IRP) filed by a utility when requesting a CON do not apply to utilities having an approved IRP under the new Section 6t.

- Allows an electric supplier producing at least 200 megawatts of firm electric generation capacity, which is located in the utility's independent system operator's (ISO) zone, to directly submit a proposal as an alternative to the utility's CON project; allows the entity standing to intervene in the CON proceeding; requires the PSC to consider the cost of the alternative proposal as well as the entity's qualifications, competence, reliability, among other things; and specifies that the PSC is not authorized to order or otherwise require an electric utility to adopt any alternative proposal submitted under this provision.

- Requires that the filing of a petition for judicial review of a PSC order issued following a hearing on a CON must be filed in the Court of Appeals within 30 days of the order's issuance and requires the COA to conduct the review as expeditiously as possible with lawful precedence over other matters.

Integrated Resource Plan (IRP)

The bill adds Section 6t, which requires a more robust set of standards for IRPs. These include requiring, not later than two years after the bill's effective date, each PSC-regulated electric utility to file a 5, 10, and 15-year projection of the utility's load obligations to provide generation reliability and a plan to meet those obligations, as detailed in the bill, with reviews of the IRP every 5 years after the effective date of the most recent PSC order approving a plan, an amendment to the plan, or a plan review.

Among other things, Section 6t will:

- Require the PSC, within 120 days of the bill's effective date and every five years thereafter, to commence a proceeding to gather certain information ahead of the IRP process pertaining to relevant state and federal environmental laws,

assessment of the potential for energy waste reduction and demand response programs, and establishment of modeling scenarios and assumptions electric utilities should include in an IRP (in addition to its own scenarios and assumptions), among other requirements.

- Require IRPs to include, among other listed requirements:

  - Projected energy purchased or produced by the utility from a renewable energy resource. Beginning January 1, 2022, this must equal at least **15 percent** (Senate Bill 438 requires utilities to achieve a renewable energy credit portfolio of 15 percent in 2021.)
  - An analysis of how the combined amounts of renewable energy and energy waste reduction achieved under the plan compare to the renewable energy resources and energy waste reduction goal of 35 percent by 2025 under the Clean and Renewable Energy and Energy Waste Reduction Act.
  - Long-term forecast of the electric utility's sales and peak demand under reasonable scenarios.
  - The type of generation technology proposed for a generation facility and the proposed capacity, including projected fuel costs under reasonable scenarios.
  - Plans for meeting current and future capacity needs along with cost estimates for proposed construction and major investments.
  - Details regarding the utility's plan to eliminate energy waste.
  - Projected load management and demand response savings for the electric utility and the projected costs for those programs.

- Require a utility to issue a request for proposals (RFP) for any supply-side generation capacity resources needed to serve its projected electric load. Submitted RFPs must be included with the IRP. Certain existing suppliers of electric generation capacity located in the utility's ISO and which produce at least 200 megawatts could submit a written proposal directly to the PSC as an alternative to any supply-side resources included in the IRP. Those responding to the RFP would have standing to intervene in the IRP case.

- Require the PSC to approve an IRP if it meets all the following:

  - The IRP represents the most reasonable and prudent means of meeting the electric utility's energy and capacity needs. In making a determination, the PSC must consider such things as compliance with applicable state and federal environmental regulations, competitive pricing, reliability, diversity of generation supply, and whether the proposed levels of peak load reduction and energy waste reduction are reasonable and cost effective.
  - To the extent practicable, the construction or investment in a new or existing capacity resource is completed using a workforce composed of Michigan residents, with an exception for border counties.
  - The plan meets the bill's requirements for a completed IRP.

- Consider costs included in an approved IRP that are begun within three years of PSC approval reasonable and prudent for cost recovery purposes.

- Finalize approved costs for a new electric generation facility only after the utility completes several listed requirements and filed the results with the PSC. Requirements include implementing a competitive bidding process for construction of the facility and demonstrating that the finalized costs are not significantly higher than the costs initially approved during the IRP process. If the costs are higher, the PSC must review and approve the costs only if it determines the higher costs are reasonable and prudent.

- Require a utility to apply for a CON if the capacity resource is for construction of an electric generation facility of 225 megawatts or more.

- Offer a financial incentive to a utility that enters into a new power purchase agreement with an entity with which it is not affiliated.

- Include all reasonable and prudent costs for an approved IRP in the utility's retail rates. If the actual costs exceed the approved amount, the utility must prove, by a preponderance of the evidence, that the costs are reasonable and prudent, otherwise excess costs will be deemed to have been incurred due to a lack of prudence. Costs incurred as a result of fraud, concealment, gross mismanagement will be disallowed.

- Allow the PSC to modify or cancel approval of a project if the assumptions underlying an approved IRP change materially and the PSC finds that completion of the project is no longer reasonable and prudent.

Performance-based Regulation Study

The bill adds Section 6u to do the following:

- Require the PSC (within 90 days of the bill's effective date and in collaboration with representatives of each customer class, regulated utilities, and other interested parties) to study performance-based regulation systems under which a utility's authorized rate of return would depend on the utility achieving targeted policy outcomes.
- Within one year of the bill's effective date, require the PSC to submit recommendations based on the study's results to the governor and Legislature.

Public Utility Regulatory Policies Act (PURPA)/Qualifying Facilities

Under state and federal law, electric utilities are obligated to purchase energy and capacity from "qualifying facilities." The bill adds Section 6v to:

- Define "qualifying facility" as qualifying cogeneration facilities or qualifying small power production facilities from which an electric utility in the state has an obligation to purchase energy and capacity within the meaning of Sections 201 and 210 of PURPA and associated federal regulations and orders.
- Require the PSC to, at least every five years, conduct a contested case proceeding to reevaluate the procedures and rate schedules, including avoided cost rates to implement provisions of PURPA as it relates to QFs.
- Allow, for small utilities (less than 1 million electric customers), the PSC to conduct periodic reevaluations using notice and comment procedures instead of a full contested case.

- Specify the requirements of an order issued by the PSC under these provisions.
- Require, within one year of the bill's effective date and every two years thereafter, the PSC to issue a report to the Michigan Agency for Energy and legislative committees with primary responsibility for energy and environmental issues. The report must include a description and status of qualifying facilities in the state, current status of power purchase agreements of each QF, and the PSC's efforts to comply with PURPA requirements.

Resource Adequacy

The bill adds Section 6w to provide the following:

- Require the PSC to implement the prevailing state compensation mechanism (an option for a state to elect a prevailing compensation rate for capacity consistent with the requirements of the appropriate ISO's resource adequacy tariff) if the Federal Energy Regulatory Commission (FERC) approves a resource adequacy tariff proposed by the appropriate ISO.

- Require the charge to be assessed under the prevailing state compensation mechanism (PSCM) to be determined in the same manner as the capacity charge under Section 10a(1)(i) and include it in the customer's retail rates.

- Require, if the ISO determines there will be insufficient capacity at any point within the next four-year planning period to meet the local clearing requirement *or* that the resource adequacy tariff does not include a PSCM, the PSC hold a contested case hearing to determine if the resource adequacy tariff will result in sufficient capacity to meet the local clearing requirement. In determining whether a resource adequacy tariff without a PSCM will result in sufficient capacity, the PSC must find that the tariff will result in at least the same capacity as that which must be achieved under reliability requirements specified in the bill.

  "Local clearing requirement" (LCR) means the amount of capacity resources required to be in the local resource zone in which the provider's demand is served to ensure reliability in that zone as determined by the appropriate ISO for the local resource zone in which the electric provider's demand is served and by the PSC as provided in the act.

- If, by October 1, 2017 FERC has not put into effect a resource adequacy tariff for the appropriate ISO that includes a PSCM or the PSC has not determined that the tariff will result in sufficient capacity to meet the LCR, all the following apply:

  - Beginning *October 1, 2017*, an electric utility must demonstrate, for the planning year beginning the following June 1 and the subsequent planning year, that the utility has enough owned or contracted capacity to meet **90 percent** of its proportional share of the LCR. This can be met through any resource the ISO allows, including a three-year capacity auction.

  - Beginning *October 1, 2017*, an alternative electric supplier (AES), cooperative electric utility, or municipally owned electric utility must demonstrate, for the planning year beginning *June 1, 2018*, that the entity

has owned or contracted capacity to meet the equivalent of **50 percent** of its proportional share of the LCR.

The AES may meet this by demonstrating its customers will pay a generation capacity charge determined, assessed, and applied in the same manner as under Section 10a(1)(i). The entities may meet the requirement through any resource allowed by the ISO, including a three-year capacity auction. By *October 1, 2018,* and each October 1 thereafter, the proportional share that must be demonstrated will increase to **90 percent**.

- Starting with the planning year beginning *June 1, 2018*, if the appropriate ISO determines that the applicable resource zone does not meet the LCR, *all electric providers* must demonstrate that they meet **100 percent** of their proportional share of the LCR for the next three planning years through ownership or contractual rights to any resource the ISO allows to qualify for meeting the requirement; this may include a resource acquired through a three-year capacity auction.
  - If the resource zone still does not meet the LCR, the PSC could require entities to demonstrate they meet their proportional share under this provision for an additional three planning years.
  - An AES may demonstrate it meets its proportional share by having its customers pay a generation capacity charge.

- Paying an auction price related to a capacity deficiency as part of an auction conducted by the appropriate ISO does not by itself satisfy the resource adequacy requirements of Section 6w unless the ISO can directly tie the payment to a capacity resource that meets the stated capacity requirements. [The Cost of New Entry (CONE) is a term used in the industry to indicate the current, annualized, capital cost of constructing a power plant, according to MISO (Midcontinent Independent System Operator). MISO uses "CONE" primarily as the maximum offer and maximum clearing price in the Planning Resource Auctions.]

- One or more municipally owned electric utilities, or one or more cooperative electric utilities, could aggregate their respective members' capacity resources that are located in the same local resource zone to meet their proportional share of the LCR.

- If an AES cannot demonstrate it can meet the capacity requirements of the act, the PSC must commence a show cause proceeding, as a contested case, to limit the AES to providing only the amount of capacity it has obtained. If not remedied by the following March 15, the PSC must limit—for the planning years under review—the electricity the AES may provide to the amount of capacity the AES has obtained.
  - Contracts with an AES after the bill's effective date must allow customers to withdraw from the contract without penalty if the PSC order of capacity limitation results in the AES being unable to supply the customer with the capacity required under the bill.

        - The AES could not serve more load than the prorated load supported by the capacity demonstrated.
        - The AES could demonstrate sufficient capacity by having its customers pay a generation capacity charge or through any resource that the appropriate ISO allows to qualify.
    - The listed dates above must be adjusted by the PSC if needed to ensure alignment with the appropriate ISO's procedures and requirements, though any change must ensure that providers still meet the reliability requirements for the subsequent two planning years.

- By July 1 of each year, the PSC must report a forecast of the capacity resource adequacy for the next five years to the governor and the Legislature. The bill specifies what must be included in the report, such as a determination by the PSC of the local clearing requirement for each local resource zone and the proportional share of the LCR for each electric provider and a projection of the planning reserve margin requirement for each local resource zone.
    - The PSC could adjust the proportional share of the LCR for an AES as part of a show cause hearing for failing to demonstrate capacity.
    - The PSC must specifically determine whether 100 percent of the capacity resources needed to meet the LCR for each resource zone is forecasted to be met for each zone in the five-year forecast period.
    - All electric providers and unregulated generation providers must submit required data necessary for the report to the PSC; the information and materials submitted will be exempt from disclosure under the Freedom of Information Act.

- The attorney general or a customer of a cooperative or municipally owned electric utility could bring a civil action for injunctive relief in the circuit court against the utility if it fails to meet applicable reliability requirements, as provided in the bill.

- An alternative electric supplier (AES) or customer of an AES could file a complaint with the PSC if it believes that available capacity has been withheld from the LCR by an electric utility or unregulated generation provider based in the state. Evidence of such conduct by an unregulated generation provider would be forwarded to the attorney general, the market monitor for the appropriate ISO, and federal regulators for enforcement. If it is determined that a utility unreasonably withheld excess capacity, the PSC could disallow cost recovery for the utility-owned capacity that was in excess of the utility's capacity requirements.

- The PSC must monitor whether any entity has engaged in market manipulations related to the LCR of Section 6w.

Energy Waste Reduction Incentives

The bill adds Section 6x to ensure equivalent consideration of energy waste reduction (EWR) resources within the IRP process and will require, by January 1, 2021, the PSC to authorize a shared savings mechanism for an electric utility to the extent the utility has not otherwise capitalized the costs of the EWR, conservation, demand reduction, and other waste reduction measures as follows:

- A savings of 1 percent to 1.25 percent of the utility's total annual weather-adjusted retail sales in megawatt hours in the previous calendar year equals a shared savings incentive of 15 percent of the net benefits validated as a result of the programs implemented by the electric utility related to EWR, conservation, demand reduction, and other waste reduction, but not to exceed 20 percent of the utility's expenditures associated with implementing EWR programs for the calendar year in which the shared savings mechanism was authorized. The bill details how the PSC is to determine the net benefits.

- At least 1.25 percent to 1.5 percent savings equals a shared savings incentive of 17.5 percent of the net benefits, with a cap of at 22.5 percent of expenditures.
- Greater than 1.5 percent savings equals a shared savings incentive of 20 percent of the net benefits, with a cap of 25 percent of expenditures.

Northern Michigan Electric Reliability Task Force

The bill adds Section 6y, which requires, within 150 days of the bill's effective date, the Michigan Agency for Energy, in coordination with the PSC, to form the Northern Michigan Electric Reliability Task Force to, among other things, do the following:

- Create a comprehensive public report identifying existing and potential issues affecting the availability, reliability, and affordability of electricity for residents and businesses in the affected area as well as potential options and cost estimates to resolve the issues; the report must contain the information required by the bill. Within one year of the bill's effective date, the report must be delivered to the governor, the Legislature, House and Senate committees with jurisdiction over energy issues, and the PSC. The report must also be available to the public on the PSC's and Michigan Agency for Energy's websites.
- Define "affected area" as Michigan's Upper Peninsula and Northern Lower Peninsula.
- Require Task Force members to have the relevant experience and expertise to properly evaluate the issues required to be addressed.
- Require the Task Force to consult with the PSC, the North American Electric Reliability Corporation, the appropriate ISO, and bodies maintaining electric reliability in the affected area regarding available data, plans, studies, and information related to electric reliability in the affected area.
- Allow the Task Force to request an ISO to initiate a review and conduct modeling for any option where a more in-depth analysis is warranted, and require information and feedback from all relevant load serving entities and transmission companies operating in the affected area regarding issues and recommendations affecting the availability, reliability, and affordability of electricity.
- Require meetings and deliberations of the Task Force to be subject to the Open Meetings Act.
- Protect privileged or proprietary information submitted by a load serving entity or transmission company designated as confidential from disclosure under the Freedom of Information Act.

Revision of purpose of Customer Choice Act

Currently, Sections 10 through 10bb are known as the Customer Choice and Electricity Reliability Act; this title will be eliminated. Several of the stated purposes of the act will

also be deleted: to ensure all retail customers of electric power have a choice of suppliers; to allow and encourage the MPSC to foster competition in the provision of electric supply and maintain regulation of electric supply for customers who continue to choose supply from incumbent electric utilities; and to encourage the development and construction of merchant plants which will diversify the ownership of electric generation.

Retail Open Access (ROA)

The bill amends Section 10a (electric choice) to do, among other things, the following:

- Retain the provision allowing retail customers of an electric utility or provider to take service from an alternative electric supplier (AES) and keep the current 10 percent cap of an electric utility's average weather-adjusted retail sales that may take service from an AES at any time.

- Allow both current and future facilities receiving 100 percent of its electric service from an AES on the bill's effective date to continue to purchase electricity from an AES, even if the sale exceeds the 10 percent cap, for the facility's existing electric choice load, any expanded load that arises after the bill's effective date, and for any new facility similar in nature to the existing facility that is constructed or acquired by the customer on a contiguous site (includes a site separated by a public right-of-way) if the customer owns more than 50 percent of that facility. This provision does not authorize or permit an existing facility served by an electric utility on standard tariff on the bill's effective date to be served by an alternative electric supplier.

- Accommodate the settlement agreement with Cliffs Natural Resources, operator of the Tilden Mining Company, for the WEC Energy Group, Inc. to build power plants in the Upper Peninsula and exempt customers and the AES providing electric service to them from the bill's requirements.

- Keep all customers on an enrollment queue waiting to take retail open access (ROA) as of December 31, 2015, on the queue and allow prospective ROA customers to be added; a customer may be removed from the queue by notifying the utility. A customer who elects service from an AES when available will be subject to any assessed generation capacity service costs.

- Require the PSC to determine the appropriate generation capacity service costs after the bill's effective date assessed to new ROA customers for the next 10 planning years as prescribed in the bill.

- If the appropriate ISO does not implement a resource adequacy tariff that meets the requirements of Section 6w, then apply a generation capacity charge under that section to retail customers for 10 years if the utility has to make a significant investment in generation capacity resources, or four years if it doesn't.

- Place responsibility for the customer's share of the generation capacity requirements under Section 6w for the 10-year period the generation capacity charge is assessed with the electric utility and not the customer's AES. The generation capacity charge must be the same for AES customers as for customers on standard tariff service. A generation capacity charge implemented under Case

No. U-17032 remains in effect until the PSC authorizes the utility to collect a generation capacity service costs charge under the bill and that charge goes into effect.

- Provide that a customer subject to a capacity charge under Section 10a is not also subject to a charge based on a prevailing state compensation mechanism.

- If an AES notifies a customer that it cannot provide service, allow the customer 60 days to acquire service from a different AES (and 180 days if the customer is a public entity).

- As a condition of licensure, require an AES to meet all of the requirements of the act.

- Preserve the right of persons to obtain self-service power or to engage in affiliate wheeling.

- Preserve the ability of customers to switch from receiving service from an AES to receiving service from the electric utility under PSC-approved procedures.

Penalties for non-compliance

Section 10c authorizes the PSC to impose fines and order other remedies for violations of the act by an electric utility or alternative electric supplier (AES); the bill applies the penalties and remedies to natural gas utilities that have not complied with a provision or order issued under Section 10ee of the act (Section 10ee is added by the bill to require the PSC to establish a code of conduct that applies to all utilities.)

Shut-off Protections

The bill allows utilities to shut off service, after proper notice, to customers who failed to pay the monthly installment payments under a residential energy projects program by including references to provisions added by Senate Bill 438 to the Clean and Renewable Energy and Energy Waste Reduction Act.

Fiscal Year 2017 Appropriations

For the fiscal year ending September 30, 2017, the bill makes the following appropriations from the assessments imposed against public utilities under Public Act 299 of 1972 to implement provisions of the bill:

- $1,950,000 to the PSC for 13.0 full-time equated (FTE) positions.
- $150,000 to the attorney general for 1.0 FTE.
- $600,000 to the Michigan Administrative Hearing System for 4.0 FTEs.
- $150,000 to the Department of Environmental Quality for 1.0 FTE.
- $260,000 to the Michigan Agency for Energy for 2.0 FTEs.

Utility Code of Conduct

The bill adds Section 10ee which replaces and modifies current provisions in Section 10a requiring the PSC to establish a code of conduct for all electric utilities and AES. The purpose of the Code remains the same except for some modifications. Among the changes, the new Section 10ee does the following:

- Applies the Code of Conduct also to a natural gas utility.
- Allows utilities to offer value-added programs and services if the public interest is not harmed by unduly restraining trade or competition in an unregulated market.
- Defines "value-added programs and services" to mean programs and services that are utility or energy related; included are home comfort and protection, appliance service, building energy performance, alternative energy options, or engineering and construction services. The term does not include energy optimization or energy waste reduction programs paid for by utility customers as part of their regulated rates.
- Allows assets of a utility to be used in the operation of an unregulated value-added program or service if the utility is compensated for the proportional use of the utility's assets.
- Requires notification by a utility to the PSC of its intent to offer value-added programs and services before offering them to customers, as well as a description of the program or services.
- Requires the utility to maintain separate books, records, and office space for the program or service and provide an annual report to the PSC that includes the extent the utility's rates were affected by the allocations from the utility to the program or service. The report may be included in a request for rate relief.
- Prohibits the program or service from being marketed or promoted on a customer's utility bill or as an insert with the bill. However, a utility could include charges for the program or service on monthly utility bills if it complies with requirements as specified in the bill.
- Requires utilities marketing programs or services to the public to adhere to requirements listed in the bill; these include allowing competitors to request and receive lists of customers receiving regulated service in the same manner as for value-added programs or services and also information that must be provided to potential customers (e.g., that the program or service is not regulated by the PSC).
- Requires PSC approval to use revenue received from value-added programs or services to offset a utility's base rates.
- Requires a utility to pay all reasonable costs to a prevailing party, in addition to allowable penalties, for violations of the Code of Conduct.
- Requires a utility offering value-added programs or services to file an annual report with the PSC. The report must provide a list of offered programs and services, estimated market share of each program or service, and a detailed accounting of how the costs for the programs or services were apportioned between the utility and the programs and services. The PSC may conduct an audit of the books and records of the utility and programs and services to ensure compliance with the Code of Conduct.

<u>Energy Ombudsman</u>

Section 10ff is added to establish, as of January 1, 2017, an Energy Ombudsman within the Michigan Agency for Energy. The bill:

- Establishes requirements for the office.
- Requires the Ombudsman to:
    - Serve as liaison for businesses and individuals by guiding energy issues, problems, and disputes to the appropriate entity, agency, or venue for resolution.

- Monitor activities of the PSC, Michigan Agency for Energy, and other state regulatory entities and communicate those entities' decisions, policy changes, and developments to businesses and individuals. Issues to be monitored include renewable sources of energy, energy efficiency, and net metering, among others.
- Convene regular meetings to share information and developments pertaining to energy issues, policies, and administrative processes affecting businesses and individuals in the state.
- Monitor implementation of the Code of Conduct and compile and annually publish statistics on unregulated services provided by utilities and their affiliates.

Cost of Service Rates

The bill amends the act to require the PSC to ensure the establishment of electric rates equal to the cost of providing service to each customer class. To that end, the PSC must ensure that each class or sub-class is assessed for its fair and equitable use of the electric grid. If doing so would have a material impact on customer rates, the PSC could approve an order implementing those rates over a suitable number of years.

The cost of providing service to each class must be based on the allocation of production-related costs using the 75-0-25 method of cost allocation and transmission costs and using the 100 percent demand method (instead of the 50-25-25 method) of cost allocation. (These costs allocation formulas were approved by the PSC in implementing provisions of Public Act 169 of 2014.) The PSC could modify this method if it does not ensure that rates are equal to the cost of service.

Further, the bill deletes provisions of Public Act 169 of 2014, as well as other provisions made obsolete by the proposed amendments.

Repealers

The following sections of the act will be repealed:

- Section 6c, which pertained to a now-defunct energy conservation program, and energy conservation loan program, for residential customers of electric and gas utilities.
- Section 6e, which required a report be submitted by March 25, 1983.

Miscellaneous

- Moves the Michigan Renewables Energy Program from the jurisdiction of the PSC to the Michigan Agency for Energy.
- Deletes numerous obsolete provisions; for example, dates by which a report was to be submitted.

The bill takes effect 90 days after enactment. Senate Bill 437 and Senate Bill 438 are tie-barred to each other.

MCL 460.6a et al.

FISCAL IMPACT:

LARA/AG

Senate Bill 437 (S-7) would have a significant fiscal impact on the Department of Licensing and Regulatory Affairs and a minimal fiscal impact to the Attorney General. The bill would create a variety of additional responsibilities for the Public Service Commission (PSC), increasing administrative costs for the Department of Licensing and Regulatory Affairs. The PSC would need to promulgate rules and make administrative changes in order to comply with new requirements created by the bill. These additional responsibilities are likely to result in an indeterminate fiscal impact, since fees collected by the department are likely to be adjusted in order to cover the expenditures necessary to fund the PSC's activities. The activities of the PSC are funded mainly through public utility assessments, so the increased administrative costs would ostensibly be covered by increases in public utility assessments.

The bill would also create some responsibilities for the Michigan Agency for Energy; namely, their oversight of the Michigan Renewables Energy Program and the establishment of the energy ombudsman within the agency. The fiscal impact of these changes on the LARA is indeterminate.

The bill would provide an estimated $500,000 increase in revenue to the Utility Consumer Representation Fund. The fund is used by the Utility Consumer Representation Board (UCRB) and the Attorney General for issuing grants to support rate payer advocacy cases. Revenue from the fund is currently split evenly between the UCRB and the Attorney General, with each receiving approximately $600,000 for FY 2016-17. The bill would increase the fund and change the allocation with $1 million to the Attorney General and $750,000 to the UCPB as a new base adjusted annually according to the fund's current method of using the Consumer Price Index (CPI) of the metro Detroit area. The bill allows unspent funds to be carried over into following years as the current law similarly allows.

According to the Attorney General, the bill's expansion of the statutory scope of the fund's use for general consumer rate cases would permit it to use the restricted revenue from the Utility Consumer Representation Fund instead of using approximately $400,000 annually from GF/GP revenue. Due to the rising costs of expert testimony, the increasing number of cases, the transfer of the use of GF/GP revenue to the Utility Consumer Representation Fund, and diminishing representation funds retained from earlier lower-cost years, the increased funding from the bill will enable the Attorney General to maintain a comparable level of rate-payer services as before.

The bill would appropriate $1,950,000 to the Public Service Commission for the hiring of 13.0 FTEs; $150,000 to the Department of Attorney General for the hiring of 1.0 FTE; $600,000 to the Michigan Administrative Hearing System for the hiring of 4.0 FTEs; $150,000 to the Department of Environmental Quality for the hiring of 1.0 FTE; and $260,000 to the Michigan Agency for Energy for the hiring of 2.0 FTEs, all to implement the provisions of the amendatory act that added Section 6T. These funds are appropriated from public utility assessments imposed under 1972 PA 299, MCL 460.111 to 460.120.

DEQ

Senate Bill 437 would have a neutral fiscal impact on the Department of Environmental Quality (DEQ). The bill includes a provision that would require DEQ to collaborate with the Public Service Commission to implement an integrated resource plan within four months of passing into law and every five years thereafter. The bill appropriates $150,000 to DEQ for FY 2016-17 from an unspecified fund source to hire 1.0 FTE to facilitate this implementation on behalf of DEQ. It is unclear whether this appropriation would fully cover costs incurred by the department during plan implementation.

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