Legislative Analysis

Phone: (517) 373-8080
http://www.house.mi.gov/hfa

ELECTRIC ENERGY REVISIONS

Analysis available at
http://www.legislature.mi.gov

House Bills 4298-4302 as introduced
Sponsor: Rep. Aric Nesbitt
Committee: Energy Policy
Complete to 4-10-15

BRIEF SUMMARY:

House Bill 4298 would, among other things, amend the Michigan Public Service Commission Enabling Act to do the following:

- Restore Michigan to a fully regulated electricity market by eliminating "customer choice" provisions, prohibit alternative electric suppliers (AES) from entering into new contracts for the provision of electric generation service to retail customers, and require all retail customers to return to the incumbent electric utility when their existing contracts with an AES expire.
- Eliminate the "file and use" provision that enables a utility to self-implement rate changes if the PSC does not respond to a petition within 180 days, and eliminate the current method for a utility to refund overcharges to customers resulting from self-implementation.
- Revise the manner in which refunds are provided for a gas or electric rate overcharge to a customer.
- Reduce, from 12 months to 10 months, the time period for the PSC to reach a final decision on a rate change request and also for the PSC to consider an amended petition.
- Change the name of the Utility Consumer Participation Board to the Utility Consumer Protection Board (UCPB) and increase the terms of members to four years.
- Eliminate provisions requiring revenue from the Utility Consumer Representation Fund (UCRF) to be shared with the attorney general for advocacy in energy cost recovery proceedings and requiring a report by the AG on how those funds were used for advocacy.
- Allow UCRF funds to be used for advocacy in general rate cases and by the UCPB.
- Require electric utilities (not just a utility filing a certificate of necessity, or CON) to file an integrated resource plan every five years with the plan approved by the PSC after a contested case hearing.
- Expand what must be included in an integrated resource plan.
- Require utilities affected by a new state or federal environmental standard, law, or rule costing at least $500 million to file a proposed capacity needs and environmental regulation compliance plan.
- Revise the act's title to prescribe the power and duties of certain state agencies.
- Repeal several provisions of the act.

House Bills 4299-4302 make complementary technical amendments to various acts to conform statutory references within those acts to provisions within the Michigan Public Service Commission Enabling Act as revised by House Bill 4298. Each of the bills is tie-barred to House Bill 4298 and would take effect 90 days after enactment.

House Bill 4299 amends Public Act 35 of 1951, which authorizes intergovernmental contracts between municipal corporations (MCL 124.4) to revise the statutory references. In addition, the bill defines the term "electric delivery service" as meaning "providing electric transmission or distribution to a retail customer" rather than providing a statutory reference to a provision within the Michigan Public Service Commission Enabling Act; the definitions of the term are identical in the two acts.

House Bill 4300 amends the Home Rule City Act and provides the same definition for "electric delivery service" as House Bill 4299 (MCL 117.4f).

House Bill 4301 amends the Electric Cooperative Member-Regulation Act (MCL 460.39).

House Bill 4302 amends the Clean, Renewable, and Efficient Energy Act (MCL 460.1005 and 460.1033).

DETAILED SUMMARY OF HOUSE BILL 4298:

House Bill 4298 amends the Michigan Public Service Commission Enabling Act, Public Act 35 of 1951 (MCL 460.6a et al.). The bill takes effect 90 days after enactment.

Title

The title of a statute gives a brief summary of the matters with which the statute deals. House Bill 4298 amends the title of the act to eliminate providing "for a restructuring of the manner in which energy is provided in the state" and instead specifies that the act prescribes the power and duties of certain state agencies.

Section 6a–Utility Rate Increase/Self-implementation and Refunds

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. (The PSC does not have jurisdiction over a municipally owned utility.)

Currently, if the PSC fails to issue an order within 180 days of a utility filing a complete application requesting a rate change, the utility may implement up to the amount of the proposed annual rate request through equal percentage increases or decreases applied to all base rates. If the utility's self-implemented rate or charge increase is more than which the PSC approves in its final order, the utility must refund the amount that exceeds the approved amount, with interest, as provided in the act. *The bill* eliminates this ability of gas and electric utilities to self-implement rate increases, and also deletes the current method used to refund to customers any excess revenue collected by a utility that self-implemented a rate higher than the PSC final approved amount.

Instead, *the bill* requires that the PSC use a refund process for electric and gas rate overcharges under Section 6a (whatever the cause of the overcharge) that returns to customers a refund of the amount the customer was overcharged. The refund would have to include fair and reasonable interest for the period the customer was overcharged. This refund requirement would not apply to an energy utility organized as a cooperative corporation under Sections 98 to 109 of the Michigan General Corporation Statute (Public Act 109 of 1931).

Currently, if the PSC fails to reach a final decision with respect to a completed petition or application by a utility to increase or decrease its rate schedule within a 12-month period, the petition or application is considered approved. If a utility makes any significant amendment to its filing, the PSC has an additional 12 months from the date of the amendment to reach a final decision. If the utility files for an extension, the PSC must extend the 12-month period by the amount of additional time requested. *The bill* reduces each of these time periods from 12 months to 10 months.

Section 6b–Gas Utility Rates Based Upon Cost of Purchased Natural Gas/Refunds

The rates of a gas utility may be based, at least in part, on the cost of gas that is regulated by the Federal Energy Regulatory Commission (FERC). If the cost of gas payable by the utility is reduced by a final order of FERC, or as a result of a court order regarding a FERC order that had been appealed, the utility must refund to its customers any refund it receives from the reduced costs of the gas.

The bill requires any gas refund to be returned to each customer in the manner and amount that the sums were charged to the customer so as to accurately refund to that customer the amount that customer was overcharged, plus fair and reasonable interest for the period the customer was overcharged.

Sections 6*l* & 6m: Utility Consumer Protection Board & Utility Consumer Representation Fund

Sections 6*l* and 6m provide means of ensuring equitable representation of the interests of energy utility customers for the purpose of implementing Sections 6h and 6i, which pertain to gas cost recovery and gas cost recovery plans, and Sections 6j and 6k, which pertain to power supply cost recovery and power supply cost recovery plans.

The bill will rename the Utility Consumer Participation Board as the Utility Consumer *Protection* Board. The board is created within the Department of Licensing and Regulatory Affairs but operates independently of the department.

Under the bill, beginning January 1, 2017, members of the board would be appointed for four-year terms (instead of two-year terms, as is done currently) beginning with the first day of a legislative session in an odd-numbered year. Other revisions of Section 6*l* proposed by the bill are of a technical nature.

Currently, the Utility Consumer Representation Fund (UCRF) receives funds collected by certain utilities in their rates. The funds are split between the attorney general and the

Utility Consumer Participation Board (UCPB). The attorney general uses the funding to advocate on behalf of the interests of utility customers in gas cost and power supply cost recovery cases under Sections 6h, 6i, 6j, and 6k. Revenue from the fund is also used to cover the operational costs and expenses of the UCPB, with the net grant proceeds used to finance a grant program with grants awarded 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 makes several significant changes to Section 6m as follows:

- The reference to funds being made available to the attorney general for advocating on behalf of utility customers in energy cost recovery proceedings, and a provision that certain funds will be transferred to the attorney general for that purpose, would be eliminated.
- The allowable use of the annual receipts and interest earned in the UCRF would be expanded to allow revenue to be used in administrative and judicial proceedings pertaining to annual general rate cases (currently this is restricted to energy cost recovery proceedings).
- In making grants from the UCRF, the board would be allowed to consider lower costs for residential customers (this is in addition to other stated considerations).
- The annual report required of the attorney general to the Senate and House appropriations committees regarding an account of expenditures made with the funds from the UCRF would be eliminated.

(Note: The elimination of references to the attorney general implies that the board will assume those responsibilities. However, the act currently prohibits the board from acting directly to represent the interests of residential utility consumers except through administration of the Utility Consumer Representation Fund and grant program.)

Section 6s–Electric Generation Facility/CON/Integrated Resource Plan

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 it costs at least $500 million and a portion of the costs would be allocable to retail customers in Michigan. A CON is not issued for any environmental upgrades to existing electric generation facilities or for a renewable energy system. The act provides for review criteria and approval standards, among other things.

The PSC is required as part of the CON process to establish standards for an integrated resource plan that must be filed by an electric utility requesting a certificate of necessity under Section 6s. *The bill* would delete the underlined passage and instead require the PSC to establish standards for an integrated resource plan that would be filed by an electric utility every five years and approved by the PSC after a contested case hearing pursuant to Chapter 4 of the Administrative Procedures Act.

In addition to current requirements that must be included in an integrated resource plan, the bill would require the following:

- Notice to each regional transmission organization serving any portion of the utility's service area that the organization has standing to intervene in the integrated resource plan proceeding and a request that the organization participate.
- Notice to electric customers and potential resource suppliers of the utility's proposed integrated resource plan and their standing to participate in the proceeding.
- The projected annual load for all customers and customer classes connected to the utility's distribution system for at least the next 10 years.
- The electric utility's projected wholesale sales and purchases of electricity.
- The electric generating capacity located within the electric utility's service area, including electric generating facilities not owned by that electric utility.
- The available transmission capacity and the cost of additional transmission capacity that could be used to serve customers within the utility's distribution service area.
- The cost and reliability of resources located outside the electric utility's distribution service area that could be used to serve customers within the service area.
- An analysis of the projected market prices for power purchased under the rules of the Midcontinent Independent System Operator (MISO), as compared to the costs of new electric generation facilities and new electric transmission facilities.
- The need for additional generating or transmission capacity to maintain electric reliability or secure economic advantages to the utility's full-service customers.
- A regional and statewide evaluation of electric supply and demand to identify sources outside of the electric utility service area where power may be available.
- The quantity and type of resources, including reserves, required by the open access transmission and energy markets tariffs of the regional transmission organization or the tariff of any successor organization in which the electric utility participates. This would also include resources required by reliability standards or other requirements imposed under the authority of an electric reliability organization to which the electric utility is subject.

Section 6t–(New)–Capacity Needs and Environmental Regulation Compliance Plan

The bill adds a new section that requires the PSC—if it determines that compliance with a new state or federal environmental standard, law, or rule or the need for additional generation capacity will cost electric utilities in the state at least $500 million in total—to commence on its own initiative a proceeding for each affected electric utility to adopt a capacity needs and environmental regulation compliance plan for that utility and require each affected electric utility to file a proposed plan as specified in the bill. A plan would have to include the following:

- Any expected need for additional generation capacity for that electric utility.
- Proposed supply-side and demand-side resources to address any need for additional generation capacity. This would include, but not be limited to, the type of generation technology for any proposed facility, projected energy efficiency savings, and projected load management and demand response savings.

- ❖ An analysis of the impact of any existing or proposed state and federal environmental standards, laws, or rules on that utility and how the plan will meet those requirements.

The bill would also require the Department of Environmental Quality to file a statement that includes the following:

- Any new or proposed state or federal environmental standard, law, or rule and how it would affect the electric utility.
- Whether the utility's proposed plan would reasonably be expected to achieve compliance with the new or proposed environmental standards, laws, or rules.
- Any alternative methods the electric utility could use to achieve compliance with the new or proposed environmental standards, laws, or rules.

The PSC would have to issue an order granting, modifying, or denying the requested plan within 270 days of the plan being filed. A hearing conducted as a contested case hearing would have to be held in compliance with the Administrative Procedures Act. Intervention by interested parties would be allowed and reasonable discovery would be permitted by the PSC before and during the hearing in order to assist parties and interested persons in obtaining evidence concerning the plan. The PSC would have to approve the plan if the commission determined that the plan:

- ❖ Maintained or increased electric reliability in the state.
- ❖ Complies with all applicable state and federal environmental standards, laws, and rules.
- ❖ Represents the most reasonable and prudent means of meeting the need for additional generation capacity or meeting the state and federal standards, laws, and rules.

In approving a capacity needs and environmental regulation compliance plan, the PSC must specify the costs approved for the investments needed to comply with the plan. An electric company whose plan was approved would have to file, at least annually, reports to the PSC regarding the status of any investments, including an update concerning the cost and schedule of those investments.

Once the investment is considered used and useful, or as otherwise provided, the PSC must include in an electric utility's retail rates all reasonable and prudent costs for an investment for which a plan has been approved. Recovery of costs incurred by a utility in investments for which a plan was approved could not be disallowed as long as the costs do not exceed costs approved by the PSC in the plan. The PSC must include in the electric utility's retail rates, costs actually incurred by the utility that exceed the approved costs only if the PSC finds that the additional costs are reasonable and prudent. The utility would bear the burden of proving by a preponderance of the evidence that the costs are reasonable and prudent. The portion of the investment cost exceeding 110 percent of the PSC-approved cost is presumed to have been incurred due to a lack of prudence. The PSC could include any or

all of the portion of the cost in excess of the 110 percent of the approved cost if the PSC finds by a preponderance of the evidence that the costs were prudently incurred.

The PSC must allow financing interest cost recovery in an electric utility's base rates on construction work in progress for investments approved under this new provision prior to the assets being considered used and useful.

Section 10–Elimination of Customer Choice

Currently, Sections 10 through 10bb are known as the Customer Choice and Electricity Reliability Act. Section 10 prescribes the purposes of the act. The existing provisions would be deleted, as would the title of the act.

Instead, Section 10 would specify that, beginning on the bill's effective date, customers purchasing electricity from an electric utility must continue to receive electric service from that electric utility.

In addition, except as otherwise provided, alternative electric suppliers (AES) will be prohibited from providing retail customers with electric generation service or enter into agreements to do so. Retail customers purchasing electric generation service from an AES at that time will be required to return to receiving electric service from the incumbent electric utility when the primary term of their existing agreement with the AES expires. An AES would be prohibited from providing electric generation service under an agreement entered into before the bill's effective date beyond the primary term of the agreement.

Section 10a–Eliminate Authority for PSC to Establish Rates for Customer Choice

The bill would delete provisions requiring the PSC to issue orders establishing rates, terms, and conditions of service that allow retail customers of an electric utility or provider to choose an AES. Also deleted would be the 10 percent cap on the number of customers of a utility that could receive service from an AES, the procedure to license an AES, the prohibition on cramming and slamming (the practice by which a customer is switched to other suppliers or services billed for which the customer did not provide consent), and a provision allowing a customer to switch from an AES back to the incumbent utility.

The bill would retain the requirement that the PSC establish a code of conduct but eliminates a provision applying the code of conduct to electric utilities and AES consistent with Section 10, Section 10a, and Sections 10b-10cc.

The bill also retains provisions pertaining to a utility offering its customers an appliance service program, the right to obtain self-service power, the right to engage in affiliate wheeling, and the rights of parties to certain contracts between electric utilities and qualifying facilities. Also retained is a provision ensuring that an electric utility that offered retail open access service from 2002-October 6, 2008 be able to fully recover restructuring costs.

Section 10c–Eliminate Provisions re: Penalties for Slamming/Cramming

Currently, the act prohibits switching a customer to another supplier or billing the customer for services without the customer's consent; these practices are known as "slamming" and "cramming", respectively. Section 10c contains the penalties for engaging in the prohibited practices; *the bill* eliminates these penalty provisions.

Section 10e–Merchant Plants: Eliminate Authority to Sell Capacity to AES, Utilities

A merchant plant is defined in the act as "electric generating equipment and associated facilities with a capacity of more than 100 kilowatts located in this state that are not owned and operated by an electric utility." In general, merchant plants are investor-funded entities that sell electricity in the competitive wholesale market. Unlike regulated utilities, they are not required to serve specific retail customers, for example, in a specific geographic region.

Section 10e requires an electric utility to ensure that merchant plants are connected to the utility's transmission and distribution systems; *the bill* would retain this provision.

The bill would, however, delete a provision allowing a merchant plant to sell its capacity to electric utilities, municipal electric utilities, alternative electric suppliers (AES), retail customers, or other persons. Also deleted is a requirement for a merchant plant to obtain a license as an AES if it sells to retail customers.

Section 10g–Aggregation by School Districts

The bill would delete a provision made obsolete by the elimination of alternative electric suppliers that states that a school district aggregating electricity for school properties or an exclusive aggregator for public or private school properties is not an electric utility or a public utility for the purpose of that aggregation.

Section 10q–AES License/Bond Requirements

Currently, an alternative electric supplier must obtain and maintain a license and also post a bond or other financial guarantee of not less than $40,000. *The bill* would retain these and other provisions in Section 10q, but would strike a reference to an AES license being issued under Section 10a (the bill strikes provisions in Section 10a authorizing the PSC to establish and enforce a license system and provide penalties for noncompliance).

Section 10t–Shut-off for Nonpayment of Services

Currently, the act provides for when and how a utility or AES may or may not shut off service for nonpayment of a delinquent account. *The bill* strikes all references to an AES in this section.

Section 10y–Municipally Owned Utilities

The bill would eliminate provisions pertaining to the ability of a municipally owned utility to determine whether to permit its retail customers to choose to receive delivery service from an AES.

Repealers

The bill repeals the following sections:

- ❖ Section 10f – which deals with the generation capacity in excess of a utility's retail sales load, market power mitigation plan, requirements of an independent brokering trustee, and a report by the commission to the governor and legislature regarding market power in the Upper Peninsula.

- ❖ Section 10u – requires the commission to compile an annual report regarding the status of competition for supplying electricity in the state, legislative recommendations, actions taken by the commission to protect consumers from unfair or deceptive business practices by market participants, and information about consumer education programs.

- ❖ Section 10x – allows retail customers of certain cooperatives to choose an AES.

- ❖ Section 10bb – defines "aggregation" and provides for its use by local units of government, schools, universities, and community colleges to purchase electricity from an AES for themselves or customers within their boundaries, with some restrictions.

FISCAL IMPACT:

House Bill 4298, and its companion bills HB 4299 through HB 4302, would have multiple and varying fiscal impacts on the Public Service Commission (PSC) within the Department of Licensing and Regulatory Affairs (LARA). However, due to a lack of detailed accounting information pertaining to the costs associated with various types of proceedings before the PSC and the relative lack of consistency in the cost associated with any particular proceeding, the fiscal impacts are indeterminate both in amount and magnitude. The direction and a brief description of the likely major fiscal impacts is summarized below and will be updated as more information becomes available.

Before discussing the fiscal impacts under HB 4298, it is important to note that Section 2 of the Costs of Regulating Public Utilities act of 1972 stipulates that LARA "shall ascertain the amount of the appropriation attributable to the regulation of public utilities…[which] shall be assessed against the public utilities" according to a statutory formula. Consequently, irrespective of the short-term and long-run fiscal impacts of HB 4298, LARA would assess all privately-owned public utilities the amounts sufficient to administer the PSC's regulatory responsibilities. The average annual amount assessed between FY 2011-12 and FY 2013-14 was $25.8 million.

Removing "Electric Choice" Provisions

The amendments to the Customer Choice and Electricity Reliability Act within HB 4298, generally prohibiting the competitive retail sale of electricity by alternative electric supplies (AESs), would have a significant, yet indeterminate, fiscal impact on the PSC to the extent that the PSC would no longer be required to expend resources to foster and regulate the competitive retail electricity market within the state nor to license and enforce statutory provisions concerning AESs (there were 26 as of 12/2014, of which 13 were active). As noted above, the current expenditures made by the PSC to oversee the

competitive retail electricity market is not distinctly classified for within the state's accounting system; however, the PSC did indicate that approximately three FTEs are currently engaged in regulatory duties related to the competitive retail electricity market.

Requiring Additional Regulatory Plans and Proceedings

Increasing the frequency when Integrated Resource Plans would be required for submission and consideration via contested case hearings from whenever certificates of necessity were requested to every five years, and including the requirement that utilities submit Capacity Needs and Environmental Regulation Compliance (CNERC) Plans for consideration via a contested case hearing whenever compliance with environmental standards or additions to generation capacity exceeds $500 million in cost, would engender additional, yet indeterminate, costs for the PSC.

HB 4298 would also have an indeterminate fiscal impact on the Department of Environmental Quality (DEQ). It is unclear how many CNERC Plans would be submitted to DEQ for review. It is also unclear whether plan review would create a substantial additional administrative burden on DEQ's existing administrative and compliance structure. DEQ routinely reviews environmental compliance plans, but the projected volume and complexity of the CNERC Plans is unknown. Therefore the fiscal impact on DEQ is uncertain at this time.

Revising Rate Case and Refund Procedures

Eliminating the ability of utilities to self-implement proposed rates prior to the PSC issuing a final order on approved rates could result in nominal costs savings for the PSC because it would avoid proceedings to review self-implemented rates or to refund overcharges if the self-implemented rates exceed the rates approved by the PSC in a final order. Conversely, the requirement that the refund process return to each customer the amount that that customer was overcharged could create administrative costs for the PSC as the new process was established via trial and error. Lastly, the PSC anticipates that it would be able to comply with the shift from a 12-month to a 10-month timeliness standard for rate case proceedings by reducing time periods for interested parties to submit motions and evidence and prepare for hearings; however, if multiple proceedings occurred simultaneously, the PSC could require additional resources to comply.

Reforming the Utility Consumer Participation Board

Modifying the purposes of, and funding for, the Utility Consumer Participation Board (UCPB) would have a significant fiscal impact on both LARA and the Department of the Attorney General (AG) to the extent that money currently transferred to the AG would be retained by the UCPB and would be available for additional purposes described below.

Under current law revenue generated by two assessments on investor-owned electric and gas utilities initiating energy cost recover proceedings, determined by statutory formulae, are deposited into the Utility Consumer Representation Fund (UCRF) each of which is restricted for a specified purpose:

1) Assessment on utilities serving at least 100,000 customers in Michigan to be made available for the AG to participate in energy cost recovery proceedings and proceedings directly affecting energy costs, and;

2) Assessment on utilities serving at least 100,000 residential customers in Michigan to be expended for grants awarded by the UCPB to nonprofit entities and local units of government to participate in energy cost recovery proceedings and proceedings directly affecting energy costs on behalf of residential customers.

The UCPB is also authorized to expend up to 5.0% of the total revenue generated by the assessments on its operating expenses.

HB 4298 would eliminate the UCPB's transfer of money from the UCRF to the AG and would stipulate that the UCPB retain those funds to participate in energy cost recovery proceedings and proceedings directly affecting energy costs, as the AG does now under current law, but would also include participation in general rate cases. Furthermore, the UCPB would be permitted to consider lowering residential utility costs in awarding grants to nonprofit entities and local units of government, who would also be permitted to participate in general rate cases on behalf of residential customers.

According to LARA, during FY 2013-14, the amount generated by the annual assessment statutorily made available to the AG was $572,257. However, as of 09/30/14 there was $1.5 million in reserves associated with the AG within the UCRF, which LARA is steadily disbursing to the AG. Accordingly, the amount actually transferred to the AG during FY 2013-14 exceeded the annual assessment and was $743,900. If HB 4298 was enacted, the annual assessments and, presumably, the remaining reserves associated with the AG, would be retained by the UCPB and expended for participation in energy cost recovery proceedings, proceedings affecting energy costs, and general rate cases.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Paul Holland
Austin Scott
Perry Zielak