Legislative Analysis

LONG-TERM INDUSTRIAL LOAD RATES

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House Bill 5902 as enacted
Public Act 348 of 2018
Sponsor: Rep. Dan Lauwers
House Committee: Energy Policy
Senate Committee: Energy and Technology
Complete to 2-15-19

BRIEF SUMMARY: House Bill 5902 amends Public Act 3 of 1939, the Michigan Public Service Commission (PSC) enabling act, to allow the PSC to establish long-term industrial load rates for industrial customers, as long as certain conditions are met and certain contractual parameters are followed.

FISCAL IMPACT: House Bill 5902 would not have a significant fiscal impact on any unit of state or local government. The Department of Licensing and Regulatory Affairs (LARA) anticipates that there will be costs associated with conducting rate cases or stand-alone proceedings due to the provisions of the bill, but these costs would be sufficiently covered by existing funding mechanisms.

THE APPARENT PROBLEM:

According to background information provided by Consumers Energy, the utility has been serving Hemlock Semiconductor since Hemlock first opened in 1961. Located in Hemlock, Michigan, Hemlock Semiconductor is among the world's largest makers of polycrystalline silicon, which is a man-made substance used in solar cells and semiconductor devices. The process of making the polysilicon uses large amounts of electricity—so large that Hemlock consumes more electricity than any other single site in Michigan, using up to 400 megawatts (MW) during full production. For scale, a grocery store uses around 1 MW and an auto assembly plant uses around 10 to 20 MW.

Public Act 110 of 2008 created a Michigan Economic Growth Authority tax credit, which, according to committee testimony, saved Hemlock $30.0 to $40.0 million each year in energy costs.[1] However, these credits are set to expire in the near future. The bill was offered to establish unique rates for unique customers, which would allow Hemlock to continue paying reasonable electrical rates to Consumers Energy for its energy usage.

THE CONTENT OF THE BILL:

House Bill 5902 adds Section 10gg to Public Act 3 of 1939 to allow the PSC to establish long-term industrial load rates for industrial customers, as long as certain conditions are met and certain contractual parameters are followed.

[1] http://legislature.mi.gov/doc.aspx?2008-SB-1189

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 that 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 and Renewable Energy and Energy Waste Reduction Act. The PSC also does not regulate the retail rates of electric cooperatives whose rates are member-regulated.)

Proposal of a long-term industrial load rate

Under the bill, an electric utility may propose a long-term industrial load rate in a general rate case filing or in a stand-alone proceeding. The PSC must approve the rate proposed by the utility if the PSC finds *all* of the following:

- The cost of service for the capacity needed to serve the customer under the proposed rate is based on one or more designated power supply resources.
- The proposed rate requires the customer to enter into a contract for a term equal to either of the following:
  - The term of the electric utility power purchase agreement or agreements for one or more designated power supply resources if the resources are an agreement executed between an electric utility and an electric generation facility not owned by the electric utility. The agreement could not be less than 15 years.
  - The expected remaining life of one or more designated power supply resources if the resources are utility-owned resources.
- The rate requires that the customer have an annual average electric demand of at least 200 megawatts at one ***site***[2] at the time the contract is entered into, must have an ***annual load factor***[3] of at least 75% at the time the contract is entered into, and must demonstrate that the customer would not purchase ***standard tariff service***[4] from the utility except under the rate. The customer demonstrates that it would not purchase standard tariff service from the utility except under the rate if *any* of the following conditions exist:
  - The customer has available ***self-service power***[5] in a quantity equal to the contract demand level.
  - The customer, or an entity acting on the customer's behalf, has entered the applicable regional transmission organization's generation interconnection queue for a new generation resource that, if constructed, would qualify as self-service power in a quantity equal to the contract demand level.

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[2] ***Site***: An industrial site or contiguous industrial site or single commercial establishment. A site that is divided by an inland body of water or by a public highway, road, or street but that otherwise meets this definition meets the contiguous requirement.

[3] ***Annual load factor***: A load factor calculated as an average of the prior 12 monthly load factors. Each monthly load factor must be determined by dividing the customer's actual monthly kilowatt hours consumption by the product of the customer's monthly maximum on peak demand and the number of hours in the month.

[4] ***Standard tariff service***: The retail rates, terms, and conditions of service approved by the commission for service to customers.

[5] ***Self-service power***: Electricity generated and consumed at an industrial site or contiguous industrial site without the use of an electric utility's transmission and distribution system. Section 10a of the act includes other conditions under which power would qualify as self-service power.

- The rate is only available to the customer for service at a site where the customer's annual average electric demand is at least 200 megawatts at the time the contract for a term is entered into, and the contract must be for at least 100 megawatts of firm contracted capacity.
- If the resource designated in a contract is a utility-owned resource, the rate is based on *all* of the following:
  - The utility's levelized cost of capacity, including fixed operation and maintenance expense, associated with the designated power supply resource at the time the contract is executed.
  - The utility's actual variable fuel and actual variable operation and maintenance expense based on the customer's actual energy consumption and associated with the designated power supply resource.
  - The utility's actual energy and capacity market purchases, if any, based on the customer's actual consumption.
- If the designated resource associated with a contract executed under the rate is an agreement executed between an electric utility and an electric generation facility not owned by the electric utility, the proposed rate is based on recovering all costs associated with the designated agreement.
- As approved by the PSC, the proposed long-term industrial load rate ensures that the electric utility recovers its direct cost to provide transmission and distribution service to the industrial customer based on the dedicated distribution service costs and transmission service costs incurred specifically to serve the customer.

A rate may contain other terms and conditions proposed by the utility, but the PSC must find at least all of the above in the proposal.

<u>Contract of a proposed long-term industrial load rate</u>

The PSC must approve any contract proposed by a utility under a long-term industrial load rate authorized under this new section *if* there is a net benefit to the utility's customers resulting from the industrial customer's taking service under the rate compared to the industrial customer's not purchasing standard tariff service from the utility. In determining whether a net benefit exists, the PSC may consider any benefit, including benefits to customers as a result of the following:

- System peak demand reduction due to ability to curtail, engage in demand response, or participate in federal load management programs.
- Avoidance of new production capacity costs and risks for other ratepayers.
- Ability to reduce system costs, such as by contributing to volt/VAR control.

The bill requires that, if the customer's taking service under a long-term industrial rate will contribute to the utility's fixed distribution or transmission costs that otherwise would be recovered from the utility's other customers, the PSC must determine that a net benefit exists.

A contract executed under a rate approved under the bill is considered reasonable and prudent for the contract's entire term.

Other provisions
A utility may submit a proposal for a rate and a proposed contract for a term under the rate in the same proceeding.

If a utility proposes a rate in a stand-alone proceeding, the proceeding must be conducted as a contested case under the Administrative Procedures Act. The case must be supported by a complete cost of service study, rate design, and proposed tariffs reflecting the impact of the rate on other customer rates. A stand-alone proceeding may not be expanded to result in any changes to the utility's overall revenue requirement. Additionally, the PSC must issue a final order in a stand-alone proceeding no later than 270 days after a utility files an application requesting approval of a rate.

A designated power supply resource that is an electric utility power purchase agreement may be a power purchase agreement or agreements with an affiliate of the utility.

Multiple customers may not aggregate load, not may a single customer aggregate load from multiple sites, to meet the requirements of this section.

MCL 460.10gg

The bill took effect October 24, 2018.

ARGUMENTS:

For:

Supporters of the bill argued that this legislation is necessary to keep rates down for current and future Consumers Energy customers. According to background information provided from Consumers Energy, electricity makes up about 40% of Hemlock's costs. Hemlock's large electricity usage helps keeps electric rates down for other Consumers Energy customers. Supporters argued that if Hemlock left Consumers Energy to build their own electric plant, then Consumers would spread the cost of the loss to its other customers, increasing their electricity rates. This scenario would hurt Michigan citizens and businesses, and ultimately Michigan's economy.

Against:

Critics of the bill raised concerns that cutting rates for certain customers, no matter their usage, would still result in increased rates for household ratepayers. Opponents argued that electric rates should be the same for all customers, no matter the usage or facility size, and that Michigan should not create special deals for one particular entity.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.