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BILL ANALYSIS

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Senate Bill 504 (as passed by the Senate)
Sponsor: Senator Kristen McDonald Rivet
Committee: Energy and Environment

Date Completed: 5-14-24

RATIONALE

According to testimony before the Senate Committee on Energy and Environment, long-term industrial load rates (LTILRs) incentivize the State's largest energy users to agree to long-term contracts with utilities and remain on the State's grid. Reportedly, their unexpected departure from the grid would cause significant disruption and increase rates for other users. The State also is trying to incentivize clean energy, which has led to utilities retiring coal-fired power plants. Upon approval by the Michigan Public Service Commission (MPSC), a utility that retires a coal plant may securitize that asset to free up capital and charge ratepayers securitization charges to recover the qualified costs of the retirement. Currently, these securitization charges apply to LTILRs even if the MPSC approves the charge after an LTILR has taken effect. Some have argued that applying new securitization charges to already-effective LTILRs defeats the original purpose of the LTILR.

CONTENT

The bill would amend the public service commission Act to provide that a LTILR would not be subject to any securitization charges approved by the MPSC if the customer were taking service under an LTILR on the effective date of the finance order.

Among other things, the Act allows the MPSC to establish LTILRs for industrial customers. An electric utility may propose an LTILR in a general rate case filing or in a stand-alone proceeding. The MPSC must approve any contract for a term proposed by an electric utility under an LTILR if there is a net benefit to the electric utility's customers resulting from participation in the LTILR compared to the industrial customer not purchasing standard tariff service from the electric utility, among other requirements. Generally, under the Act, a utility may dedicate a specific power supply source, such as a power plant, to a customer, through an agreement which would last for a minimum of 15 years.

The Act also authorizes the use of securitization. Generally, a utility may apply to the MPSC for a financing order that allows it to replace existing debt and equity with lower-cost debt in the form of securitization bonds, which have lower interest rates. Ratepayers must pay a securitization charge; however, the savings that result from lower interest rates are returned to ratepayers in the form of a bill credit.

Under the bill, an LTILR would not be subject to any securitization charges approved by the MPSC under a financing order issued after the bill's effective date if the customer took service under an LTILR on the effective date of the financing order.

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BACKGROUND

In 2019, Consumers Energy reached a settlement agreement to retire two coal plants, D.E. Karn units 1 and 2, by 2023. The company also agreed to seek recovery of the unrecovered book balance of these units. In 2020, to retire this debt, Consumers Energy applied to the MPSC for a financing order approving the securitization of $702.8 million in bonds. Ultimately, the MPSC ordered $677.7 million for the value of the bonds.

Consumers Energy sold these bonds to five underwriters (see below) and settled its unrecovered book balance; however, the company is responsible for billing ratepayers, collecting securitization charges, and submitting them to these underwriters. These charges vary by class (i.e., industrial, commercial, and residential) but are, within each class, a uniform per kilowatt-hour charge.

Principal Amount of Bonds Purchased[1]

Underwriter	Tranche A-1	Tranche A-2	Total
Citigroup Global Market Inc.	$126.5 million	$257.4 million	$419.9 million
RBC Capital Markets, LLC	31.25 million	49.5 million	80.75 million
SMBC Nikko Securities America, Inc.	31.25 million	49.5 million	80.75 million
Drexel Hamilton, LLC	12.5 million	19.8 million	32.3 million
Samuel A. Ramirez & Company, Inc.	12.5 million	19.8 million	32.3 million
Total	$250.0 million	$393.0 million	$646.0 million

Tranche A-1 is scheduled to be paid off by March 2027.[2] Tranche A-2 is scheduled to be paid off by March 2030. The first payment cycle is scheduled to begin on September 1, 2024.

On January 15, 2021, Hemlock Semiconductor Operations, a large manufacturer of polycrystalline silicon used in solar panels, filed an appeal of the MPSC's order with the Michigan Court of Appeals. The company claimed that it was Consumers Energy's largest single ratepayer and argued that, because it had a Long-Term Industrial Load Retention Rate contract with Consumers Energy established before the financing order, the securitization charge from the bonds should not apply to it.[3] Ultimately, Hemlock Semiconductor's Operations' appeal was rejected.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bill would clarify the original intention of the LTILR legislation. According to testimony before the Senate Committee on Energy and Environment, Public Act 348 of 2018 was

[1] Consumers Energy, Thirty (30) Day Securitization Report, p. II-1, January 11, 2024.
[2] Tranche means any one of the groupings of Securitization Bonds differentiated by payment date schedule, amortization schedule, sinking fund schedule, maturity date or interest rate, as specified in the Series Supplement.
[3] *Hemlock Semiconductor Operations v. Michigan Public Service Commission*, 339 Mich App 346 (2021).

intended to ensure that the State's largest energy users remained in Michigan while operating and retiring their assets. The MPSC ruled against Hemlock Semiconductor Operations' appeal and held that LTILR customers must pay securitization charges, which runs counter to the original legislation's intent by discouraging industrial customers from pursuing LTILR agreements. For example, Hemlock Semiconductor Operations is contracted to solely pay the costs associated with operating and retiring Consumer Energy's Zeeland generating plant through 2041, removing the utility burden from other ratepayers; however, due to the MPSC's decision, it also is required to pay for the costs of retiring the two Karn plants, from which it does not draw power.[4] In effect, Hemlock Semiconductor Operations is required to pay for its own assets and for other ratepayers', who do not contribute in turn. The law should be amended to strengthen the intention of Public Act 348 of 2018 going forward.

Opposing Argument

The bill would increase securitization costs for non-exempted ratepayers. By removing industrial customers taking service under an LTILR from the pool of ratepayers ordered to pay certain securitization charges, the cost-burden would shift onto other, smaller utility customers, including residential ratepayers already paying high utility rates. In 2021, Michigan ranked ninth in the nation in highest average residential utility rates, with an average rate of 17.61 cents per kilowatt-hour.[5] According to testimony before the Senate Committee on Energy and Environment, industrial rates are more competitive. Instead of exempting large industrial ratepayers from securitization charges, efforts should be made to lower utility rates for all customers.

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Analyst: Nathan Leaman

[4] Senate Bill 504 would not apply retroactively. If passed, Hemlock Semiconductor Operations would still be required to pay the securitization charges ordered.

[5] Citizens Utility Board, *Utility Performance Report*, 2023 edition, p. 2, 2023.