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BILL ANALYSIS

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Senate Bill 864 (as enacted)
House Bill 5190 (as enacted)
Sponsor: Senator Howard C. Walker (S.B. 864)
Representative Ken Horn (H.B. 5190)
Senate Committee: Energy and Technology
House Committee: Energy and Technology

PUBLIC ACT 274 of 2011
PUBLIC ACT 276 of 2011

Date Completed: 9-5-12

CONTENT

House Bill 5190 amended Public Act 3 of 1939, the Public Service Commission (PSC) law, to do the following:

-- Prohibit an electric or natural gas utility from charging a customer to help fund the Low-Income and Energy Efficiency Fund (LIEEF).
-- Prohibit the PSC from including the low-income and energy efficiency charge in an affected utility's base rates.
-- Require the PSC to commence a proceeding to a determine how to refund LIEEF money to customers.

Senate Bill 864 amended the PSC law to do the following:

-- Create the "Vulnerable Household Warmth Fund" within the State Treasury, and require money from the Fund, upon appropriation, to be used to pay heating bills for a vulnerable customer's primary residence during the 2011-2012 heating season.
-- Restrict the amount that may be accumulated in the Fund to $48.0 million.
-- Provide for amounts that the PSC had previously authorized to be collected in retail rates from certain utilities to fund grants, to be authorized from the bill's effective date through September 30, 2012, or until $48.0 million is accumulated in the Fund, whichever occurs first.
-- Require the PSC, by September 30, 2012, to issue orders reducing the retail rates of a utility that collected money for the Fund by the annualized amount authorized and included in the utility's retail rates as established by the most recently completed rate case before the bill's effective date.
-- Require money in the Fund at the close of the fiscal year to be refunded among each rate schedule proportional to the amount it paid.
-- Require the PSC to post on its internet website and disseminate by other means its annual report on the status of competition for supplying electricity.

The bills took effect on December 20, 2011.

House Bill 5190

The bill prohibits an electric or natural gas utility from charging a customer to help fund the LIEEF, and prohibits the PSC from including the low-income and energy efficiency charge in an affected utility's base rates.

The bill required the PSC, by February 1, 2012, to commence on its own motion a proceeding for each affected utility to determine the manner in which all money in the LIEEF, including any unspent funds returned by grantees, and all money being held in escrow for the LIEEF, would be refunded to customers.

The refund had to be allocated among each rate schedule proportional to the amount paid by each rate schedule, except that the refund to customers using at least 10 megawatts had to be within at least 6.5% of the actual amount paid and escrowed by that customer.

The bill defines "affected utility" as a regulated electric or natural gas utility that was authorized by the PSC to collect in retail rates an amount that was designated to be contributed to the LIEEF, and that since July 21, 2011, had been holding the collected amount in escrow.

Senate Bill 864

Vulnerable Household Warmth Fund

The bill created the Vulnerable Household Warmth Fund within the State Treasury. Money in the Fund at the close of the fiscal year must be refunded among each rate schedule, based on the rate schedules in effect when the money was collected, proportional to the amount paid by each rate schedule. The PSC must ensure that each utility refunds those amounts to its customers.

The amount that accumulates in the Fund may not exceed $48.0 million. Upon appropriation, money in the Fund had to be used to provide payment of bills for electricity, natural gas, propane, heating oil, or any other fuel used to heat the primary residence of a vulnerable customer during the 2011-2012 heating season. A payment had to be in the form of a voucher or direct payment to the utility, provider (i.e., a municipally owned electric or natural gas utility), cooperative, or distributor of fuel. (The bill defines "heating season" as that term is defined in Section 9r. Under that section, the term means November 1 through March 31.)

The bill defines "vulnerable customer" as a customer who has a household income that does not exceed 60% of the State median income, or who receives assistance from a State emergency relief program, food stamps, or Medicaid. A customer of an electric utility, provider, cooperative, or natural gas utility also must have received a shut-off notice from the energy provider. A customer who uses a fuel other than electricity or natural gas to heat his or her residence also must have received notice from his or her fuel distributor that no further deliveries will be made to the residence due to nonpayment of prior bills.

In distributing money from the Fund, the Department of Human Services and the PSC had to ensure that first priority was given to households that contained at least one of the following:

-- A minor child.
-- An eligible senior citizen.
-- A paraplegic, hemiplegic, quadriplegic, or totally and permanently disabled individual.

The bill defines "eligible senior citizen" as an individual who is at least 65 years old. "Totally and permanently disabled" means a disability as defined in 42 USC 416. (Under that section, "disability" means either blindness or inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of at least 12 months.)

Previously Authorized Grants

Under the bill, amounts that the PSC authorized before December 20, 2011, to be collected in retail rates from the customers of an electric or natural gas utility with more than 1.0 million Michigan customers for contribution by the utility to fund grants authorized by the Commission in the June 28, 2011, order awarding low-income energy assistance grants in Docket No. U-13129, were authorized beginning on that date and continuing through September 30, 2012, or until $48.0 million is accumulated in the Fund from retail rates or appropriated funds, whichever occurs first. (In Docket No. U-13129, the Commission approved $62.0 million in low-income energy assistance grants to a number of nonprofit organizations and the Department of Human Services for fiscal year 2011-12.)

A utility that collects money under these provisions must remit it to the State Treasurer for deposit in the Fund on a monthly basis within 30 days after the last day in each calendar month. By September 30, 2012, the PSC must issue orders reducing the utility's retail rates by the annualized amount authorized for collection under these provisions and included in the utility's retail rates as established by the most recently completed rate case before the bill's effective date.

PSC Report

The law requires the PSC to compile an annual report and provide a copy to the Governor and the Legislature. The report must include all of the following information:

- The status of competition for supplying electricity in Michigan.
- Recommendations for legislation, if any.
- Actions taken by the PSC to implement measures necessary to protect consumers from unfair or deceptive business practices by utilities, alternative electric suppliers (AESs), and other market participants.
- Information regarding consumer education programs to inform consumers of all relevant information regarding the purchase of electricity and related services from AESs.

The bill requires the PSC also to post the report on its internet website and disseminate it by any other means that the Commission determines will properly notify Michigan citizens.

MCL 460.6e et al. (S.B. 864)
460.10d (H.B. 5190)

BACKGROUND

The Customer Choice and Electricity Reliability Act, enacted in 2000, created the Low-Income and Energy Efficiency Fund "to provide shut-off and other protection for low-income customers and to promote energy efficiency by all customer classes". The Act required utilities to use securitization savings to reduce retail rates for all customers by 5%, and direct any remaining savings to the LIEEF for six years. Utilities continued to contribute to the Fund after the six-year period through an additional charge included on ratepayers' bills. This charge was approved by the PSC through the rate case process prescribed in statute.

Public Act 286 of 2008 made a number of revisions to the Act, including the elimination of all references to the LIEEF. Subsequent legislation, however, enacted to provide shut-off protection for certain utility customers and prescribe the conditions under which a utility may discontinue service, referred to the Fund. This legislation included Public Act 172 of 2009, which prescribes civil fines for a municipally owned electric or natural gas utility that does not comply with the shut-off requirements, and requires that revenue to be deposited in the LIEEF. In addition, Public Act 130 of 2009 appropriated money to the LIEEF and low-income energy efficiency assistance, and referred to a State low-income energy efficiency grant program.

The 2008 deletion of the LIEEF's enabling language raised questions as to whether electric and natural gas utilities were obligated to continue collecting Fund contributions from their customers and whether the PSC had the statutory authority to administer it. Some claimed that the Legislature's deliberate inclusion of references to the LIEEF in later legislation indicated that the 2008 amendments should not be viewed as a desire to end utility contributions to the Fund or stop the PSC from administering it. Others believed that the elimination of statutory language specifically authorizing the Fund trumped any perceived legislative intent, and the PSC could not legally continue to require utilities to fund the low-income energy assistance program.

The Michigan Court of Appeals considered the question upon an appeal by the Association of Businesses Advocating Tariff Equity (ABATE) and the Attorney General regarding the PSC's approval in a rate case of over $5.0 million in LIEEF funding to be collected from customers of the Michigan Consolidated Gas Company (Mich Con).

On July 21, 2011, the Court of Appeals reversed the PSC's order approving the LIEEF funding (293 Mich App 360). The Court stated, "If this recent legislative activity indicates the Legislature's intention that the LIEEF continue to exist, and that the PSC retain some role in managing it, the deletion of all references to the LIEEF from the Customer Choice and Electricity Reliability Act, whose now-deleted provisions were recognized as the fund's enabling legislation in the first instance…nonetheless indicates a legislative intention to withdraw any obligation, or prerogative, on the part of

PSC-regulated utilities to raise money for that fund." The Court pointed out that the specific authority granted to the PSC under the Act included the establishment of procedures for considering and deciding petitions from regulated utilities, and to allow a utility to recover its reasonably and prudently incurred costs; the LIEEF funding mechanism, however, was not related to utility regulation, but to helping the poor and promoting environmentalism and conservation. In conclusion, the Court stated, "For these reasons, we hold that administration of a LIEEF does not fall within the scope of the PSC's general statutory powers, but depends in every instance on specific statutory authorization."

The PSC appealed to the Michigan Supreme Court and held the LIEEF money in escrow pending the Court's decision, until Public Acts 274 and 276 of 2011 required the money to be refunded to customers. (The application for leave to appeal to the Supreme Court was dismissed in March 2012.) In April 2012, the Commission ordered Detroit Edison, Mich Con, and Consumers Energy to refund $56.3 million to ratepayers.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

Senate Bill 864 and House Bill 5190 will have a neutral fiscal impact on the State. In previous home heating seasons, the Low-Income Energy Efficiency Fund was used to assist low-income residents in paying their heating bills and for energy efficiency grants. The LIEEF received revenue from surcharges added to the bills of utility customers of the three largest electricity and natural gas providers in the State. A July 21, 2011, decision from the Michigan Court of Appeals caused the Public Service Commission to escrow funds coming into the LIEEF, as the Court decision called into question the PSC's statutory authority to conduct the program. Under the bills, money held in escrow had to be refunded to the utility companies from which it came, which were then required to refund the money to consumers. An October 28, 2011, PSC report on the LIEEF showed revenue of approximately $88.9 million for FY 2010-11. It is unknown at this time how much of this remained in escrow to be refunded.

The bills also replaced the LIEEF with the Vulnerable Household Warmth Fund (VHWF), which was funded in a similar manner to the way LIEEF was funded. Utility companies with more than 1.0 million customers are to continue charging their customers a surcharge for contribution to the Fund, until it reaches a balance of $48.0 million, or until September 30, 2012, whichever comes first. As of September 5, 2012, approximately $47.7 million has been deposited into the VHWF. For residential customers, these surcharges, charged on a per-kilowatt/hour basis, come out to approximately $1 per month. The bill requires the PSC to issue an order reducing the retail rates of the companies that contributed to the VHWF by the amount contributed by September 30, 2012.

The bills required the VHWF to be spent on assisting low-income residents with their heating costs during the 2011-12 heating season, according to criteria set forth in the bill.

Fiscal Analyst: Josh Sefton

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