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House Bill 5524 (Substitute H-3 as passed by the House)  
Sponsor: Representative Frank Accavitti, Jr.  
House Committee: Energy and Technology  
Senate Committee: Energy Policy and Public Utilities

Date Completed: 6-4-08

### **CONTENT**

The bill would amend Public Act 3 of 1939, the Public Service Commission (PSC) law, to do the following:

- Revise procedures for the filing, investigation, and hearing of petitions and applications for gas and electric utility rate increases.
- Increase the time period the PSC has to make a determination in a rate filing, and provide that a petition or application would be considered approved if the PSC did not make a determination by that deadline.
- Require the PSC, upon a gas utility's request, to establish load retention transportation rate schedules or approve gas transportation contracts for the purpose of retaining large industrial or commercial customers.
- Require the PSC to adopt standard rate application filing forms and instructions.
- Prohibit a person from acquiring, controlling, or merging with a jurisdictional regulated utility without PSC approval; and prescribe approval application procedures.
- Allow an electric utility that proposed to construct, invest in, or purchase generation facilities or enter into a power purchase agreement for at least seven years to apply for a certificate of necessity from the PSC, if the construction, investment, or purchase would cost at least \$500.0 million.
- Authorize the PSC to implement separate review criteria and approval

standards for utilities with fewer than 1.0 million customers, for projects that cost less than \$500.0 million.

- Require the PSC to establish standards for an integrated resource plan that a utility requesting a certificate would have to file.

The bill also would require the PSC to adopt electric rates for utilities with more than 1.0 million Michigan customers equal to the cost of providing service to each customer class, subject to certain conditions; and require the PSC to approve rates for smaller utilities equal to the cost of providing service.

Additionally, the bill would amend the part of the PSC law known as the "Customer Choice and Electricity Reliability Act" to do the following:

- Delete a sunset on provisions specifying the purposes of the Act.
- Require the PSC to issue orders providing that up to 10% of an electric utility's average retail sales could take service from an alternative electric supplier (AES) at any time.
- Delete provisions requiring the PSC to conduct an annual true-up adjustment for each utility to ensure the recovery of stranded costs.
- Allow an AES customer to receive standard tariff service from an electric utility in accordance with the

utility's procedures in place on January 1, 2008, for the return of an AES customer to utility service; and allow the PSC to amend the procedures as needed.

- **Require the PSC to authorize rates that would ensure that an electric utility that offered retail open access service from 2002 until the bill took effect fully recovered within five years its restructuring costs and any associated accrued regulatory costs.**
- **Delete provisions that required a 5% reduction in residential rates and the capping of rates for a period of time, as well as the use of securitization savings for implementation of the 5% reduction and deposit into the Low Income and Energy Efficiency Fund.**
- **Require the PSC to adopt service quality and reliability standards for generation systems.**
- **Require the PSC to submit to the Legislature and the Governor reports on electricity quality and efficiency, the possibility of separating generation and distribution, and the potential benefit of creating an electric generation purchasing pool.**
- **Require the PSC to review its existing rules and amend them, if necessary, to implement performance standards for generation and distribution facilities.**
- **Require each regulated utility to file with the PSC a plan for using dispatchable customer-owned distributed generation within the context of its integrated planning resource process.**
- **Revise provisions pertaining to the ability of municipally owned utility customers to choose service from an AES.**
- **Appropriate to the PSC \$1.0 million to hire 25.0 full-time equated employees.**

The bill is tie-barred to House Bills 5525, 5548, 5549, and 5972 through 5977. House Bill 5525 (H-6) would create the "Energy Efficient Michigan Act" to establish an energy efficiency program for electric and natural gas utilities. House Bills 5548 (H-4) and 5549 (H-3) would create the "Renewable Energy Portfolio Act" to require retail electric service providers to achieve a renewable energy portfolio. House Bills 5972 (H-1)

through 5976 (H-1) would amend the Michigan Business Tax (MBT) Act to allow one manufacturer of polycrystalline silicon for solar cells and semiconductor microchips that constructed and operated a new facility in Michigan to claim an MBT credit based on electricity costs. House Bill 5977 (H-1) would amend the Michigan Economic Growth Authority Act to allow the Authority to grant the proposed MBT credit and an MBT credit under Public Acts 88 and 92 of 2008.

House Bill 5524 (H-3) is described below in further detail.

#### General PSC Law Revisions

PSC Organization & Funding. The bill provides that, except as otherwise provided, the PSC would be subject to Executive Reorganization Order No. 2003-1 (MCL 445.2011) (which renamed the Department of Consumer and Industry Services, which included the PSC, the Department of Labor and Economic Growth).

Funding for the PSC would be as provided under Public Act 299 of 1972 (which governs the costs of regulating public utilities) and as otherwise provided by law.

The bill specifies that the PSC would be an autonomous entity within the Department of Labor and Economic Growth. The statutory authority, powers, duties, and functions, including personnel, property, budgeting, records, procurement, and other management-related functions, would be retained by the Commission. The Department would have to provide support and coordinated services as requested by the Commission and would have to be reimbursed for that service as provided in the bill.

The PSC chairperson would have to be appointed as provided under Section 2 and would have to report directly to the Governor. (Under Section 2, PSC members qualify by taking and subscribing to the constitutional oath of office, and hold office until the appointment and qualification of their successors. The Governor must designate one member to serve as the chairperson.)

Utility Rate Increase. Currently, when a gas or electric utility seeks a finding or order to increase its rates and charges or to alter,

change, or amend any rate or rate schedules, the effect of which will be to increase the cost of services to its customers, notice must be given within the service area to be affected. The bill, instead, would prohibit a gas or electric utility from increasing its rates and charges or altering, changing, or amending any rate or rate schedules, the effect of which would be to increase the cost of services, without first receiving PSC approval as provided in the bill.

The bill would retain a requirement that the utility place in evidence facts relied upon to support its petition or application to increase rates and charges, or to alter, change, or amend any rate or rate schedules.

Currently, after giving notice to the interested parties within the service area to be affected and affording interested parties a reasonable opportunity for a full and complete hearing, the PSC, after submission of all proofs by an interested party, may in its discretion and upon written motion by the utility, make a finding and enter an order granting partial and immediate relief. A finding or order may not be authorized or approved ex parte (without notice to or the appearance of other parties), or until the PSC's technical staff has made an investigation and report. The bill would delete these provisions.

Instead, the PSC would have to require notice to be given to all interested parties within the affected service area, and all interested parties would have to have a reasonable opportunity for a full and complete hearing. A utility could use projected costs and revenue for a future consecutive 12-month period in developing its requested rates and charges. The PSC would have to notify the utility within 30 days of filing whether its application or petition was complete. A petition or application would have to be considered complete if it complied with the rate application filing forms and instructions adopted as prescribed in the bill. A petition or application pending before the PSC before the adoption of filing forms and instructions would have to be evaluated based upon the filing requirements in effect at that time.

If the application were not complete, the PSC would have to notify the utility of all information necessary to make that filing

complete. If the PSC did not notify the utility within 30 days, the application would have to be considered complete. If the PSC did not issue an order within 180 days of the filing of a complete application, the utility could implement up to the amount of the proposed annual rate request through equal percentage increases or decreases applied to all base rates. For a petition or application pending before the PSC before the bill's effective date, the 180-day period would commence on that date. If the utility used projected costs and revenue for a future period in developing its requested rates and charges, it could not implement the equal percentage increases or decreases before the calendar date corresponding to the start of the projected 12-month period.

For good cause, the PSC could issue a temporary order preventing or delaying a utility from implementing its proposed rates or charges. If a utility implemented increased rates or charges before the PSC issued a final order, it would have to refund to customers, with interest, any portion of the total revenue collected through application of the equal percentage increase that exceeded the total that would have been produced by the rates or charges ordered subsequently by the Commission in its final order. The PSC would have to allocate any required refund among primary customers based upon their pro rata share of the total revenue collected through the applicable increase, and among secondary and residential customers in a manner to be determined by the Commission. The rate of interest for refunds would have to equal 5% plus the London Interbank Offered Rate (LIBOR) for the appropriate time period. For any portion of the refund that, excluding interest, exceeded 25% of the annual revenue increase awarded by the PSC in its final order, the interest rate would have to be the authorized rate of return on the common stock of the utility during the appropriate period. Any refund or interest awarded could not be included, in whole or in part, in any application for a rate increase by a utility. Nothing in these provisions would impair the PSC's ability to issue a show cause order as part of its rate-making authority.

The Act requires the PSC to adopt rules and procedures for the filing, investigation, and hearing of petitions or applications to increase or decrease utility rates and

charges as it finds necessary or appropriate to enable it to reach a final decision with respect to petitions or applications within nine months from their filing. The bill would increase the time period to 12 months, and refer to *complete* petitions and applications.

The bill would delete a provision requiring the PSC to give priority to a case and take other necessary or appropriate action to expedite a final decision if it does not reach a final decision within the nine-month period.

Currently, if the PSC fails to reach a final decision with respect to a petition or application to increase or decrease rates within the nine-month period following the filing, within 15 days, it must submit a written report to the Governor, the President of the Senate, and the Speaker of the House stating the reasons a decision was not reached by the deadline and the actions being taken to expedite the decision. The Commission must submit a further report upon reaching a final decision providing full details with respect to the conduct of the case, including the time required for issuance of the Commission's decision following the conclusion of hearings. The bill would delete these provisions.

Under the bill, except as otherwise provided, if the PSC failed to reach a final decision with respect to a completed petition or application within the 12-month period, the petition or application would be considered approved. If a utility made any significant amendment to its filing, the PSC would have an additional 12 months from the date of the amendment to reach a final decision. If the utility filed for an extension, the PSC would have to extend the 12-month period by the amount of additional time requested.

A utility could not file a general rate case application for an increase in rates earlier than 12 months after the date of the filing of a complete prior general rate case application. A utility could not file a new general rate case application until the PSC had issued a final order on a prior general rate case or until the rates were approved without a final decision.

Gas Utility Transportation Schedules & Contracts. If requested by a gas utility, the PSC would have to establish load retention transportation rate schedules or approve gas

transportation contracts as required for the purpose of retaining industrial or commercial customers whose individual annual transportation volumes exceeded 500,000 decatherms on the gas utility's system. The PSC would have to approve these rate schedules or approve transportation contracts entered into by the utility in good faith if the industrial or commercial customer had the installed capability to use an alternative fuel or otherwise had a viable alternative to receiving natural gas transportation service from the utility, could obtain the alternative fuel or gas transportation from an alternative source at a price that would cause the customer to cease using the gas utility's system, and the customer, as a result of its use of the system and receipt of transportation service, made a significant contribution to the utility's fixed costs. The PSC would have to adopt accounting and rate-making policies to ensure that the discounts associated with the transportation rate schedules and contracts were recovered by the gas utility through charges applicable to other customers if the incremental costs related to the discounts were not greater than the costs that would be passed on to those customers as the result of a loss of the industrial or commercial customer's contribution to a utility's fixed costs.

Standard Forms & Instructions. Within 90 days of the bill's effective date, the PSC would have to adopt standard rate application filing forms and instructions for use in all general rate cases filed by utilities whose rates were regulated by the PSC. For a cooperative electric utility whose rates were regulated by the Commission, in addition to rate applications filed under the general rate case provisions, the PSC would have to continue to allow for rate filings based on the cooperative's times interest earned ratio. In its discretion, the PSC could modify the adopted standard rate application forms and instructions.

Jurisdictional Regulated Utility Transactions. A person could not acquire, control, or merge, directly or indirectly, in whole or in part, with a jurisdictional regulated utility, nor could a jurisdictional regulated utility sell, assign, transfer, or encumber its assets to another person without first applying to and receiving the approval of the PSC.

("Jurisdictional regulated utility" would mean a utility whose rates are regulated by the PSC. The term would not include a telecommunication provider or a motor carrier.)

After notice and hearing, the PSC would have to issue an order stating what constituted acquisition, transfer of control, merger activities, or encumbrance of assets that were subject to these provisions. These provisions would not apply to the encumbrance, assignment, acquisition, or transfer of assets that were encumbered, assigned, acquired, transferred, or sold in the normal course of business or to the issuance of securities or other financing transactions not directly or indirectly involved in an acquisition, merger, encumbrance, or transfer of control that was governed by these provisions.

The PSC would have to promulgate rules creating procedures for the required application process. The application would have to include all of the following information:

- A concise summary of the terms and conditions of the proposed acquisition, transfer, merger, or encumbrance.
- Copies of the material acquisition, transfer, merger, or encumbrance documents, if available.
- A summary of the projected impacts of the transaction on rates and electric service in Michigan.
- Pro forma financial statements that were relevant to the transaction.
- Copies of the parties' public filings with other State or Federal regulatory agencies regarding the same transaction, including any regulatory orders issued.

Within 60 days from the date an application was filed, interested parties, including the Attorney General, could file comments with the PSC on the proposed transaction. After notice and hearing and within 180 days from the filing date, the PSC would have to issue an order approving or rejecting the proposed transaction.

All parties to an acquisition, transfer, merger, or encumbrance subject to these provisions would have to give the PSC and the Attorney General access to all books, records, accounts, documents, and any other data and information the PSC

considered necessary to assess effectively the impact of the proposed transaction.

Among other factors, the PSC would have to consider all of the following in its evaluation of whether to approve a proposed transaction:

- Whether the proposed action would have an adverse impact on the rates of the affected customers.
- Whether the proposed action would have an adverse impact on the provision of safe, reliable, and adequate energy service in Michigan.
- Whether the action would result in the subsidization of a nonregulated activity of the new entity through the rates paid by the customers of the jurisdictional regulated utility.
- Whether the action significantly would impair the jurisdictional regulated utility's ability to raise necessary capital or to maintain a reasonable capital structure.
- Whether the action was otherwise inconsistent with public policy and interest.

In approving a proposed acquisition, transfer, merger, or encumbrance, the PSC could impose reasonable terms and conditions on the transaction to protect the jurisdictional regulated utility, including the division and allocation of the utility's assets, or to protect the utility's customers. A jurisdictional regulated utility could reject the terms and conditions imposed by the PSC and not proceed with the transaction.

Nonpublic information and materials submitted by a jurisdictional regulated utility that it designated clearly as confidential would be exempt from the Freedom of Information Act. The PSC would have to issue orders as necessary to protect information designated confidential.

Nothing in these provisions would alter the authority of the Attorney General to enforce Federal and State antitrust laws.

Certificate of Necessity. An electric utility that proposed to construct an electric generation facility, make a significant investment in an existing electric generation facility, purchase an existing electric generation facility, or enter into a power purchase agreement for the purchase of electric capacity for a period of at least

seven years could submit an application to the PSC seeking a certificate of necessity for that construction, investment, or purchase if it would cost at least \$500.0 million and a portion of the costs would be allocable to retail customers in Michigan. A significant investment in an electric generation facility would include a group of investments reasonably planned to be made over a multiple-year period of up to five years for a singular purpose, such as increasing the capacity of an existing generation plant. The PSC could not issue a certificate for any environmental upgrades to existing facilities or for a renewable energy system.

("Renewable energy system" would mean that term as defined in the proposed Renewable Energy Portfolio Act, i.e., a facility, electricity generation system, or integrated set of electricity generation systems that use one or more renewable energy sources to generate electricity.)

The PSC could implement separate review criteria and approval standards for electric utilities with fewer than 1.0 million retail customers that sought a certificate of necessity for projects costing less than \$500.0 million.

An electric utility submitting a request for a certificate could request one or more of the following:

- A certificate of necessity that the power to be supplied as a result of the proposed construction, investment, or purchase was needed.
- A certificate of necessity that the size, fuel type, and other design characteristics of the existing or proposed facility or the terms of the power purchase agreement represented the most reasonable and prudent means of meeting that power need.
- A certificate of necessity that the price specified in the power purchase agreement would be recovered in rates from the electric utility's customers.
- A certificate of necessity that the estimated purchase or capital costs of the existing or proposed electric generation facility, including the costs of siting and licensing a new facility and the estimated cost of power from the new or proposed facility, would be recoverable in rates from the electric utility's customers as specified.

Within 270 days of the filing of an application, the PSC would have to issue an order granting or denying the requested certificate. The PSC would have to hold a hearing on the application. The hearing would have to be conducted as a contested case pursuant to the Administrative Procedures Act (APA). The PSC would have to allow intervention by interested people. Reasonable discovery would have to be permitted before and during the hearing in order to assist parties and interested people in obtaining evidence concerning the application, including the reasonableness and prudence of the construction, investment, or purchase for which the certificate was requested. The PSC would have to grant the certificate if it determined all of the following:

- That the electric utility had demonstrated a need for the power that would be supplied by the existing or proposed facility or pursuant to the proposed power purchase agreement through its approved integrated resource plan that complied with certain provisions (described below).
- The information supplied indicated that the existing or proposed facility would comply with all applicable State and Federal environmental standards, laws, and rules.
- The existing or proposed facility or purchase agreement represented the most reasonable and prudent means of meeting the power need relative to other resource options for meeting power demand, including energy efficiency programs and electric transmission efficiencies.
- To the extent practicable, the construction or investment in a new or existing facility in Michigan was completed using a workforce composed of Michigan residents, as determined by the PSC.
- The estimated cost of power from the existing or proposed facility or the price of power specified in the proposed purchase agreement was reasonable if, in the construction or investment in a new or existing facility, to the extent it was commercially practicable, the estimated costs were the result of competitively bid engineering, procurement, and construction contracts, or in a power purchase agreement, the cost were the result of competitive solicitation.

Up to 150 days after an electric utility made its initial filing, it could file to update its cost estimates if they had materially changed. No other aspect of the initial filing could be modified unless the application were withdrawn and refiled. A utility's filing updating its costs estimates would not extend the period for the PSC to issue an order granting or denying a certificate. An affiliate of a utility that served customers in Michigan and at least one other state could participate in the competitive bidding to provide engineering, procurement, and construction services to that utility for a covered project.

The PSC could consider any other costs or information related to the costs associated with the power that would be supplied by the existing or proposed facility or pursuant to the proposed purchase agreement or alternatives to the proposal raised by intervening parties.

In a certificate of necessity, the PSC would have to specify the costs approved for the construction of or significant investment in the facility, the price approved for the purchase of the existing facility, or the price approved for the purchase of power pursuant to the terms of the power purchase agreement.

The utility would have to file annually, or more frequently if required by the PSC, reports to the PSC regarding the status of any project for which a certificate had been granted, including an update concerning the cost and schedule of the project.

If the PSC denied any of the relief requested by an electric utility, the utility could withdraw its application or proceed with the proposed construction, purchase, investment, or power purchase agreement without a certificate and the assurances granted under the bill.

Once the electric generation facility or power purchase agreement was considered used and useful or as otherwise provided, the PSC would have to include in a utility's retail rates all reasonable and prudent costs for a facility or agreement for which a certificate had been granted. The PSC could not disallow recovery of costs a utility incurred in constructing, investing in, or purchasing a generation facility or in purchasing power pursuant to an agreement for which a

certificate had been granted, if the costs did not exceed those approved by the PSC in the certificate. Once the facility or agreement was considered used and useful or as otherwise provided, the PSC would have to include in the utility's retail rates costs actually incurred by the utility that exceeded the approved costs only if the PSC found that the additional costs were reasonable and prudent. If the actual incurred costs exceeded the approved costs, the utility would have the burden of proving by a preponderance of the evidence that the costs were reasonable and prudent. The portion of the cost of a plant, facility, or power purchase agreement that exceeded 125% of the cost approved by the PSC would be 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 125% of the approved cost if it found by a preponderance of the evidence that the costs were incurred prudently.

Within 90 days of the bill's effective date, the PSC would have to adopt standard application filing forms and instructions for use in all requests for a certificate. In its discretion, the PSC could modify the adopted standard application filing forms and instructions.

The PSC would have to establish standards for an integrated resource plan that a utility requesting a certificate would have to file. An integrated resource plan would have to include all of the following:

- A long-term forecast of the utility's load growth under various reasonable scenarios.
- The type of generation technology proposed for the facility and its proposed capacity, including projected fuel and regulatory costs under various reasonable scenarios.
- Projected energy and capacity purchased or produced by the utility pursuant to any renewable portfolio standard (RPS).
- Projected energy efficiency program savings under any energy efficiency program requirements and the projected costs for that program.
- Projected load management and demand response savings for the utility and the projected costs for those programs.
- Electric transmission options for the electric utility.

An integrated resource plan also would have to include an analysis of the availability and costs of other electric resources that could defer, displace, or partially displace the proposed facility or agreement, including additional renewable energy, energy efficiency programs, load management, and demand response, beyond those amounts included in projected RPS purchases, projected energy efficiency program savings, and projected load management and demand response savings.

The PSC would have to allow financing interest cost recovery in a utility's base rates on construction work in progress for certified capital improvements before the assets were considered used and useful. Regardless of whether the PSC authorized base rate treatment for construction work in progress financing interest expense, a utility would have to be allowed to recognize, accrue, and defer the allowance for funds used during construction related to equity capital.

#### Electric Rates Adoption & Approval

Adoption of Rates. The following provisions would apply to electric utilities with at least 1.0 million Michigan retail customers.

The bill would require the PSC to adopt electric rates equal to the cost of providing service to each customer class, subject to certain conditions. The cost of providing service to each class would have to be determined using a method that allocated costs among customer classes as follows:

- Fixed costs based upon the demand of each customer class.
- Costs that varied with the number of customers based upon the level of electricity consumption in each class.
- Costs that varied with electricity usage based upon the level of electricity consumption in each class.
- Production-related and transmission costs to each customer class based on the 50-25-25 method of cost allocation.

The PSC could modify the last method to ensure that rates were equal to the cost of service if that method did not result in a greater amount of production-related and transmission costs allocated to primary customers.

("Customer class" would mean groupings of customers determined by the PSC based upon the voltage level at which each customer received electric service. "Primary customers" would mean customers receiving service at a nominal voltage level of at least 2,400 volts. "Secondary customers" would mean nonresidential customers receiving service at a nominal voltage level of less than 2,400 volts.)

"Fixed costs" would mean those nonproduction-related and nontransmission costs that did not vary directly with the number of customers or the level of electricity use.

"50-25-25 method of cost allocation" would mean a cost allocation method that allocated 50% of production-related and transmission costs based upon the demand of each customer class, 25% of production-related and transmission costs based upon the level of electricity consumption during the on-peak rate period of the independent system operator, and 25% of production-related and transmission costs based upon the level of electricity consumption of each customer class.)

Notwithstanding other provisions, the PSC would have to establish rate schedules that ensured that public and private schools, universities, and community colleges were charged retail electric rates that reflected the actual cost of providing service to them. Within 90 days after the bill took effect, regulated electric utilities would have to file with the PSC tariffs to ensure that those institutions were charged electric rates that fully reflected their unique load characteristics.

For the purposes of these provisions, the demand of each customer class would have to be based upon the contribution of each customer class to the average of the utility's 12 monthly system peak demands for the relevant 12-month period.

The PSC would have to allow rates that took into account cost differences based upon the time of day and season of year, the ability of a customer to shift usage from peak to off-peak periods, and the cost of interruptible service. Within 90 days after the bill took effect, each electric utility regulated by the Commission would have to file with the PSC a plan for evaluating whether its



interruptible tariffs were appropriate and properly valued given current electricity market dynamics, including recent changes to the relevant multistate regional transmission system organization market.

The PSC would have to retain an independent consultant annually to verify that these requirements were being satisfied for each utility, and the costs of this service would have to be recoverable in the utility's electric rates. This provision would not apply after December 31, 2015.

If the PSC determined that it was necessary to minimize impact on customers, the Commission could phase in cost-based rates over a period that did not exceed five years from the bill's effective date.

Utilities with Fewer than 1.0 Million Customers. The PSC would have to approve rates equal to the cost of providing service to customers of electric utilities serving fewer than 1.0 million retail customers in Michigan. The rates would have to be approved by the PSC in each utility's first general rate case filed after passage of the bill. If, in the Commission's judgment, the impact of imposing cost of service rates on customers would have a material impact, it could approve an order that implemented those rates over a suitable number of years.

#### Customer Choice & Electricity Reliability Act Revisions

Purposes. Sections 10 through 10bb of the PSC law are known as the "Customer Choice and Electricity Reliability Act". Section 10 prescribes the purposes of the Act. The bill would add to those purposes the maintenance, fostering, and encouragement of robust, reliable, and economic generation, distribution, and transmission systems to give Michigan's electric suppliers and generators an opportunity to gain access to regional sources of generation and wholesale power markets and to ensure a reliable supply of electricity in this State.

The bill would delete a provision under which the statement of purposes does not apply after December 31, 2003.

PSC Orders. The Act requires the PSC to issue orders establishing the rates, terms and conditions of services that allow all retail customers of an electric utility or provider to

choose an AES. The bill would delete the reference to *all* retail customers. Additionally, the bill would delete a requirement that the orders provide for full recovery of a utility's net stranded costs and implementation costs as determined by the PSC. Under the bill, the orders would have to provide that not more than 10% of an electric utility's average weather-adjusted retail sales for the preceding calendar year could take service from an AES at any time.

(As used in these provisions, "customer" would mean the building or facilities serviced through a single existing electric billing meter. The term would not mean the person, corporation, partnership, association, governmental body, or other entity owning or having possession of the building or facilities.)

The orders also would have to set forth procedures necessary to administer and allocate the amount of load that would be allowed to be served by AESs, through the use of annual energy allotments awarded on a calendar-year basis, and would have to provide, among other things, that existing customers that were taking electric service from an AES at a facility on the bill's effective date would have to be given an allocated annual energy allotment for that service at that facility, that customers seeking to expand usage at a facility served through an AES would be given next priority, with the remaining available load, if any, allocated on a first-come first-served basis. The procedures also would have to provide how customer facilities would be defined for the purpose of assigning the energy allotments. The PSC could not allocate additional allotments at any time when the total allotments for the utility's distribution service territory was greater than 10% of the utility's weather-adjusted retail sales in the calendar year preceding the allocation date. If a utility's sales were less in a subsequent year or if the energy usage of an AES customer exceeded its annual energy allotment for that facility, that customer could not be forced to purchase electricity from a utility, but could purchase electricity from an AES for that facility during that calendar year.

Notwithstanding any other provision, the orders also would have to provide that customers seeking to expand usage at a facility that had been served continuously

through an AES since April 1, 2008, would have to be permitted to purchase electricity from an AES for both the existing and any expanded load at that facility.

Stranded Costs & Securitization. The Act requires the PSC, after a contested case proceeding, to issue annually an order approving for each electric utility a true-up adjustment to reconcile any overcollections or undercollections of the preceding 12 months to ensure the recovery of all amounts of net stranded costs. The rates for customers remaining with an incumbent electric utility are not affected by the true-up process. The PSC must review the utility's stranded cost recovery charges and securitization charges implemented for the preceding 12 months, and adjust the stranded cost recovery charge, by way of supplemental surcharges or credits, to allow the netting of stranded costs.

The PSC must consider the reasonableness and appropriateness of various methods to determine net stranded costs, including all of the following:

- Evaluating the relationship of market value to the net book value of generation assets and purchased power contracts.
- Evaluating net stranded costs based on the market price of power in relation to prices assumed by the PSC in prior orders.
- Any other method the PSC considers appropriate.

The true-up adjustment may not result in a modification to the securitization charge. The PSC may not adjust or change in any manner securitization charges authorized in a financing order issued to allow a utility to recover qualified costs as a result of its review and any action taken under an order issued following the true-up adjustment.

After the date established under Section 10d(2) (i.e., the earlier of December 31, 2013, or the PSC's determination that a utility meets a market test and has completed required transmission expansion), the rates for retail customers that remain with or leave and later return to the incumbent electric utility must be determined in the same manner as the rates were determined before June 5, 2000.

The bill would delete all of these provisions.

AES/Utility Service. Under the bill, a customer who elected to receive service from an AES subsequently could provide notice to the electric utility of the customer's desire to receive standard tariff service from that utility. The procedures in place for each utility as of January 1, 2008, that set forth the terms pursuant to which an AES customer could return to full service from the utility would be ratified and would have to remain in effect and could be amended by the PSC as needed. If a utility did not have the procedures in place as of January 1, 2008, the PSC would have to adopt them.

("Standard tariff service", for each regulated electric utility, would mean the retail rates, terms, and conditions of service approved by the PSC for service to customer who did not elect to receive generation service from AESs.)

Recovery of Costs. The PSC would have to authorize rates that would ensure that an electric utility that offered retail open access service from 2002 through the bill's effective date fully recovered its restructuring costs and any associated accrued regulatory assets. This would include implementation costs, stranded costs, and other costs authorized under existing provisions, that the PSC had authorized for recovery in orders issued before the bill's effective date. The PSC would have to approve surcharges that would ensure full recovery of all such costs within five years after the bill took effect.

Standby Generation Service. Under the Act, an electric utility, with PSC oversight, is obligated to provide standby generation service for open access load on a best efforts basis until December 31, 2001, or the date established under Section 10d(2), whichever is later. Until the date established under Section 10d(2), standby generation service must continue to be provided to nonopen access customers under regulated tariffs. The bill would refer to Section 10d(2) as it existed prior to the bill's effective date.

Established Rates. The Act required the PSC to establish residential rates for each utility with at least 1.0 million customers in Michigan as of May 1, 2000, that resulted in a 5% rate reduction from the rates that were authorized or in effect on that date. Those rates became effective on June 5,

2000, and remained in effect until December 31, 2003. All other retail rates of a utility with at least 1.0 million customers authorized or in effect on May 1, 2000, remained in effect until December 31, 2003.

Effective on and after December 31, 2003, the Act prohibits rates for a utility with more than 1.0 million Michigan customers from being increased until the earlier of December 31, 2013, or until the PSC determines that the utility meets a specified market test and has completed required transmission expansion. The rates for commercial or manufacturing customers of the applicable utilities with annual peak demands of less than 15 kilowatts could not be increased before January 1, 2005. The Act prohibited cost shifting from customers with capped rates to customers without capped rates as a result of this section. The Act also prohibited residential rates from being increased before January 1, 2006, above the established rates.

Annual return of and on capital expenditures in excess of depreciation levels incurred during and before the time period described in Section 10d(2), and expenses incurred as a result of changes in taxes, laws, or other State or Federal governmental actions incurred by electric utilities during that time period, must be accrued and deferred for recovery. After notice and hearing, the PSC must determine the amount of reasonable and prudent costs, if any, to be recovered and the recovery period, which may not exceed five years or begin until after the expiration of the specified time period.

If the PSC authorizes a utility to use securitization financing, any savings resulting from it must be used to reduce retail electric rates from those authorized or in effect as of May 1, 2000, as required. A rate reduction must be at least 5% as required under the Act. The financing order may allow a utility to issue securitization bonds in an amount equal to or less than the utility requested, but the PSC may not preclude the issuances of an amount of bonds sufficient to fund the rate reduction.

Except for savings assigned to the Low Income and Energy Efficiency Fund (LIEEF, described below), securitization savings greater than those used to achieve the 5% rate reduction must be allocated by the PSC to further rate reductions or to reduce the

level of any charges to recover a utility's stranded costs. The PSC must allocate approved securitization, transition, stranded, and other related charges and credits in a manner that does not result in a reallocation of cost responsibility among the different customer classes.

If securitization savings exceed the amount needed to achieve a 5% rate reduction for all customers, then, for a period of six years, 100% of the excess savings, up to 2% of the utility's commercial and industrial revenue, must be allocated to LIEEF. The PSC must establish standards for the use of LIEEF to provide shut off and other protection for low income customers and to promote energy efficiency by all customer classes. Every two years, the PSC must issue to the Legislature and the Governor a report regarding the LIEEF's effectiveness.

Except as otherwise provided, until the end of the specified period, the PSC may not authorize any fees or charges that will cause the residential rate reduction to be less than 5%.

The bill would delete all of these provisions.

Service Quality & Reliability Standards. The Act requires the PSC to adopt generally applicable service quality and reliability standards for the transmission and distribution systems of electric utilities and other entities subject to its jurisdiction, including standards for service outages, distribution facility upgrades, repairs and maintenance, telephone service, billing service, operational reliability, and public and worker safety. The bill would require the PSC also to adopt standards for generation systems.

Under the Act, each jurisdictional utility or entity must file with the PSC an annual report detailing actions to be taken to comply with the service quality and reliability standards during the next calendar year and its performance in relation to the standards during the previous year. The annual reports must contain data required by the PSC. Under the bill, the required data would include the estimated cost of achieving improvements in the jurisdictional utility's or entity's performance with respect to the standards.

Currently, the PSC must analyze the data to determine whether the jurisdictional entities are operating and maintaining their systems properly, assess the impact of deregulation on reliability, and take corrective action if needed. Under the bill, the Commission would not have to assess the impact of deregulation on reliability.

Quality & Efficiency Report. The bill would require the PSC, by September 1, 2009, to submit a report to the Governor and the Legislature. In preparing the report, the Commission would have to review and consider relevant existing customer surveys and examine what other states had done. The report would have to include all of the following:

- An assessment of the major types of end-use customer power quality disturbances, including voltage sags, overvoltages, oscillatory transients, voltage swells, distortion, power frequency variations, and interruptions, caused by both the distribution and transmission systems within Michigan.
- An assessment of utility power plant generating cost efficiency, including operational efficiency, economic generating cost efficiency, and schedules for planned and unplanned outages.
- Current efforts employed by the PSC to monitor or enforce standards pertaining to end-use customer power quality disturbances and utility power plant generating cost efficiency through current practice, statute, policy, or rule.
- Recommendations for use of common characteristics, measures, and indices to monitor power quality disturbances and power plant generating cost efficiency, such as expert customer service assessments, frequency of disturbance occurrence, duration of disturbance, and voltage magnitude.

The report also would have to contain recommendations for statutory changes that would be necessary to enable the PSC properly to monitor and enforce standards to optimize power plant generating cost efficiency and minimize power quality disturbances, including recommendations to provide methods to ensure that Michigan could obtain optimal and cost-effective end-use customer power quality to attract economic development and investment into the State.

Review & Revision of PSC Rules. Under the bill, by December 31, 2009, based on its findings in the required report, the PSC would have to review its existing rules and amend them, if needed, under the APA to implement performance standards for generation facilities and for distribution facilities to protect end-use customers from power quality disturbances.

Any standards or rules developed under this provision would have to be designed to do the following, as applicable:

- Establish different requirements for each customer class, whenever those different requirements were appropriate to carry out applicable provisions, and to reflect different load and service characteristics of each customer class.
- Consider the availability and associated cost of necessary equipment and labor required to maintain or upgrade distribution and generating facilities.
- Ensure that the most cost-effective means of addressing power quality disturbances were promoted for each utility, including consideration of the installation of equipment or adoption of operating practices at the end-user's location.
- Take into account the extent to which the benefits associated with achieving a specified standard or improvement were offset by the incremental capital, fuel, and operation and maintenance expenses associated with meeting the specified standard or improvement.
- Carefully consider the time frame for achieving a specified standard, taking into account the time required to implement needed investments or modify operating practices.

The PSC also would have to create benchmarks for individual jurisdictional entities within their rate-making process in order to accomplish the prescribed goals to alleviate end-use customer power quality disturbances and promote power plant generating cost efficiency.

The PSC would have to establish a method for gathering data from the industrial customer class to assist in monitoring power quality and reliability standards related to service characteristics of that customer class.

Separation of Generation & Distribution Report. Within two years of the bill's effective date, the PSC would have to conduct a study and report to the Governor and the House and Senate standing committees with oversight of public utilities issues on the advisability of separating electric distribution and generation within electric utilities, taking into account the costs, benefits, efficiencies to be gained or lost, effects on customers, effects on the reliability or quality of service, and other factors that the Commission determined were important. The report would have to include the advisability of locating within separate departments of the utility the personnel responsible for the day-to-day management of electric distribution and generation and maintaining separate books and records for distribution and generation.

Purchasing Pool Report. Two years of the bill's effective date, the PSC would have to conduct a study and report to the Governor and the applicable House and Senate standing committees on whether the State would benefit from the creation of a purchasing pool in which electric generation in Michigan was purchased and then resold. The report would have to include whether the purchasing pool should be a separate entity from electric utilities, the impact of such a pool on utilities' management of their electrical generating assets, and whether ratepayers would benefit from spreading the cost of new electric generation across all or a portion of Michigan.

Distributed Generation. Within 270 days after the bill took effect, each regulated utility would have to file with the PSC a plan for using dispatchable customer-owned distributed generation within the context of its integrated resource planning process. The filing would have to include proposals for enrolling and compensating customers for the utility's right to dispatch at-will the distributed generation assets owned by those customers and provisions requiring the customers to maintain these assets in dispatchable condition. If a utility already had programs addressing the subject of the required filing, it could refer to and take credit for those existing programs in its proposed plan.

Cooperative Suppliers. Under the Act, any retail customer of a cooperative with a peak load of at least one megawatt had to be

given the opportunity to choose an AES by January 1, 2002. The bill would delete the reference to that date and instead require that the customer be given this opportunity subject to provisions in the Act concerning PSC orders and the election to receive service from an AES.

Municipally Owned Utilities & AESs. Under the Act, the governing body of a municipally owned utility must determine whether it will permit its retail customers to choose an AES, subject to the implementation of rates, charges, terms, and conditions. Except with the written consent of the municipally owned utility, a person may not provide delivery service or customer account service to a retail customer that was receiving that service from a municipally owned utility as of June 5, 2000, or is receiving the service from a municipally owned utility and has the opportunity to choose the AES under terms consistent with the Act. The bill would eliminate the reference to the customer's opportunity to choose the AES under terms consistent with the Act.

The Act states that these provisions do not apply after December 31, 2007, if the governing body of the municipally owned utility does not permit all of its retail customers receiving delivery service from that utility located outside the boundaries of the municipality that owns the utility the opportunity to choose an AES. The bill would delete this provision.

Municipally Owned Utilities & Electric Utilities. Currently, if a municipally owned utility elects to provide electric generation service to retail customers receiving delivery service from an electric utility, the municipally owned utility must give all of its retail customers receiving delivery service from that utility located outside of the boundaries of the municipality the opportunity of choosing an AES. The rates, charges, terms, and conditions of delivery service for customers choosing an AES must be established by the governing body of the municipally owned utility. If a municipally owned utility and an electric utility both provide delivery service to retail customers in the same municipality located outside of the boundaries of the municipality that owns the municipal utility, the municipally owned utility must either make a filing or enter into a written agreement as provided in the Act.

Additionally, the municipally owned utility must comply with certain orders issued pursuant to the Act with respect to customers located outside of the municipality that owns the utility. Upon a complaint or on the PSC's own motion, if the Commission finds, after notice and hearing, that the municipally owned utility has not complied with a provision or order, the Commission must order the remedies and penalties necessary to make whole a customer or other person who has suffered damages as a result of the violation, including one or more of the following:

- Ordering the utility to pay a fine of not less than \$1,000 or more than \$20,000 for the first offense and not less than \$40,000 for a second and any subsequent offense.
- Ordering a refund to the customer of any excess charges.
- Ordering any other remedies that would make whole a person harmed, including payment of reasonable attorney fees.
- Revoking the utility's license if the PSC finds a pattern of violation.
- Issuing cease and desist orders.

The municipally owned utility may provide electric generation service to serve retail customers receiving delivery service from an electric utility up to an amount equal to the municipally owned utility's retail customer load that has the opportunity of choosing from an AES.

The municipally owned utility must obtain a license as prescribed in the Act. The PSC must issue a license unless it determines that the utility has adopted rates, charges, terms, and conditions for delivery service that are unduly discriminatory or reflect recovery of stranded costs in an amount considered unjust and unreasonable by the Commission. A municipally owned utility operating under a license must notify the PSC before modifying rates, charges, terms, and conditions for delivery service. This provision does not grant the PSC authority to set rates for a municipally owned utility. The PSC, after notice and opportunity for a hearing, may revoke a license if it determines that the utility is not in compliance with these provisions.

The bill would delete all of these provisions, as well as references to these provisions elsewhere in the Act.

FTE Appropriation. For the fiscal year ending September 30, 2008, the bill would

appropriate to the PSC from the assessments imposed under Public Act 299 of 1979 the amount of \$1.0 million to hire 25.0 full-time equated (FTE) positions to implement the provisions of the bill.

MCL 460.6a et al.

Legislative Analyst: Julie Cassidy

### **FISCAL IMPACT**

The bill would increase the responsibilities of the Public Service Commission. Additional staff would be required to implement the new programs that the bill would establish, including an optional program for certification of need for facilities changes, review of mergers, time lines for decisions, and changes to the electric choice program. The bill also would require the PSC to conduct several studies and report findings to the Governor and the Legislature. The administrative costs of the PSC are appropriated in the budget for the Department of Labor and Economic Growth and are funded by assessments paid by public utilities regulated by the Commission. Municipally owned utilities under current law are not regulated by the PSC and are specifically excluded from paying public utility assessments; however, under tie-barred bills (House Bills 5525, 5548, and 5549), they would become subject to PSC regulation for certain alternative energy programs. To meet the expanded responsibilities, House Bill 5524 (H-3) would provide the PSC with an additional 25.0 full-time equivalent employees (FTEs) and a supplemental appropriation of \$1.0 million in FY 2007-08 from public utility assessments. The cost of 25.0 FTEs on an annual basis is approximately \$2.4 million. The Department, however, estimates that implementation of House Bill 5524 (H-3) alone would require 34.0 FTEs, and that the combined staffing requirements for House Bills 5524 (H-3), 5525 (H-6), 5548 (H-4), and 5549 (H-3) would be 50.0 FTEs. On an annual basis, 50.0 FTEs would cost approximately \$4.8 million.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.