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House Bill 5524 (Substitute S-7 as passed by the Senate)
Sponsor: Representative Frank Accavitti, Jr.
House Committee: Energy and Technology
Senate Committee: Energy Policy and Public Utilities

Date Completed: 8-14-08

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 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 the 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.
- Provide for recovery by a merchant plant of the difference between the costs to generate electricity from specified renewable resources and what the plant was paid for that electricity, under certain conditions.
- Prohibit a person from acquiring, controlling, or merging with a jurisdictional regulated utility without PSC approval.
- 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 (CON) from

the PSC, if the construction, investment, or purchase would cost at least \$500.0 million.

- Authorize the PSC to implement separate CON 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 CON would have to file.

The bill also would require the PSC to do the following in regard to electric rates:

- Phase in rates equal to the cost of providing service to industrial and commercial customers over a five-year period, and phase in cost-based rates for residential customers within 10 years, for utilities with at least 1.0 million Michigan retail customers.
- Ensure that the impact on rates due to the phase-in period was not more than 2.5% per year or issue a financing order (approving the issuance of securitization bonds and the creation of securitization charges) allowing a utility to recover qualified costs.
- Establish an eligible low-income and eligible senior citizen customer rate, as well as rate schedules ensuring that educational institutions were

charged rates that reflected the actual cost of service.

- 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:

- 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.
- 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.
- 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.
- Delete provisions requiring the PSC to conduct an annual true-up adjustment for each utility to ensure the recovery of stranded costs.
- Delete provisions that required a 5% reduction in residential rates and the capping of rates for a period of time, and specified the use of securitization savings.
- Delete a sunset on provisions specifying the purposes of the Act.

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 PSC would retain the statutory authority, powers, duties, and functions, including personnel, property, budgeting, records, procurement, and other management-related functions. 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. (Under that section, the Governor must designate one PSC 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 the 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 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. Upon reaching a final decision, the Commission must submit a further report 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. The bill would require the PSC, if requested by a gas utility, 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 (referred to below as a rate-regulated utility). 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.

Merchant Plant Renewable Energy Contracts. Under the bill, if a merchant plant, on or before January 1, 2008, entered into a contract with an initial term of at least 20 years to sell electricity to a rate-regulated utility with at least 1.0 million Michigan retail customers, and if the plant generated electricity under the contract, in whole or in part, from a renewable energy resource, wood, wood waste, or landfill gas, then the plant would have to recover the amount, if any, by which its reasonably and prudently incurred actual fuel and variable operation and maintenance costs exceeded the

amount that the plan was paid under the contract for those costs.

Upon the merchant plant's petition, the PSC would have to issue orders to permit this recovery through the utility's power supply cost recovery process. The merchant plant could not be required to alter or amend the existing contract with the electric utility in order to obtain the authorized recovery. The PSC would have to permit or require the rate-regulated utility to recovery from its ratepayers fuel and variable operation and maintenance costs under the contract as reasonably and prudently incurred costs.

Jurisdictional Regulated Utility Transactions. Under the bill, 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:

- 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 with the PSC comments 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, in evaluating whether to approve a proposed transaction, the PSC would have to consider whether it would do any of the following:

- Have an adverse impact on the rates of the affected customers.
- Have an adverse impact on the provision of safe, reliable, and adequate energy service in Michigan.
- Result in the subsidization of a nonregulated activity of the new entity through the rates paid by the customers of the jurisdictional regulated utility.
- Significantly impair the utility's ability to raise necessary capital or to maintain a reasonable capital structure.

The PSC also would have to consider 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. The 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. Under the bill, if an electric utility proposed to construct an electric generation facility, purchase or make a significant investment in an existing electric generation facility, or enter into a power purchase agreement for the purchase of electric capacity for a period of at least seven years, the electric utility 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 seven years for a singular purpose, such as increasing the capacity of an existing generation plant.

The PSC could implement separate review criteria and approval standards for electric utilities with fewer than 1.0 million retail customers that sought a CON for projects costing less than \$500.0 million. Notwithstanding any other provision, the criteria would have to provide for the issuance of a certificate for environmental upgrades to existing electric generation facilities or for a renewable energy system not included in a renewable energy resource plan. ("Renewable energy system" would mean that term as defined in a proposed "Clean, Renewable, and Efficient Energy Act".)

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

- A CON that the power to be supplied as a result of the proposed construction, investment, or purchase was needed.

- A CON 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 CON that the price specified in the power purchase agreement would be recovered in rates from the electric utility's customers.
- A CON 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 it, would be recoverable in rates from the electric utility's customers, subject to requirements that costs be reasonable.

Within 270 days after an application was filed, the PSC would have to issue an order granting or denying the requested CON. The PSC would have to hold a contested case hearing on the application pursuant to the Administrative Procedures Act. 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 CON was requested. The PSC would have to grant the request 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 (except in regard to a facility located in a county bordering another state).

The PSC also would have to determine that 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. 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.

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 cost estimates would not extend the period for the PSC to issue an order granting or denying a CON.

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 CON 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 CON 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 (for construction work in progress), 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 CON 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 CON had been granted, if the costs did not exceed those approved by the PSC. 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 110% of the approved cost 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 110% 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 CON. 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 CON 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

Except as provided below for utilities with fewer than 1.0 million customers, the following provisions would apply only to an electric utility with at least 1.0 million Michigan retail customers.

Cost-of-Service Rates. Beginning January 1, 2009, the bill would require the PSC to phase in electric rates equal to the cost of providing service to industrial and commercial customers over a period of five

years from the bill's effective date. The cost of providing service to each customer class would have to be based on the production-related and transmission costs to each customer class based on the 50-25-25 method of cost allocation. The PSC could modify this 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. The Commission would have to phase in cost-based rates for residential customers within 10 years from the bill's effective date.

Maximum Rate Impact; Financing Order.

The PSC would have to ensure that the impact on rates due to the phase-in period was no more than 2.5% per year or issue a financing order to allow a utility to recover qualified costs. In determining whether to issue a financing order, the PSC would have to review the following:

- Whether the financing order was in the best interests of residential customers.
- The total cost to residential customers of the issuance of securitization bonds.
- The effect on residential customers of any additional costs because of the issuance of a certificate of necessity.
- Any other factors affecting residential rates.

("Financing order" would mean a PSC order approving the issuance of securitization bonds and the creation of securitization charges. "Securitization bonds" would mean bonds, debentures, notes, certificates of participation, certificates of a beneficial interest, certificates of ownership, or other evidences of indebtedness that were issued by an electric utility, its successors, or an assignee under a financing order, with a maturity that did not exceed 10 years from the date of issuance, and that were secured by or payable from securitization property (described below). If certificates of participation, beneficial interest, or ownership were issued, references in the Act to principal, interest, or premium would refer to comparable amounts under those certificates. "Securitization charges" would mean nonbypassable amounts to be charged for the use or availability of electric services, approved by the PSC under a financing order to recover fully qualified costs, that would have to be collected by an electric utility, its successors, an assignee, or other collection

agents as provided for in the financing order.)

In a financing order, the PSC would have to ensure all of the following:

- That the proceeds of the securitization bonds were used solely to pay for the costs due to the phase-in period.
- That the expected structuring and expected pricing of the securitization bonds would result in the lowest securitization charges consistent with market conditions and the terms of the financing order.
- That the amount securitized did not exceed the net present value of the revenue requirement over the life of the proposed securitization bonds associated with the qualified costs sought to be securitized.
- That the period over which the securitization charges were to be recovered did not exceed 10 years after the bill's effective date, or up to 18 years after the bill took effect if the PSC determined that this was in the best interests of residential ratepayers.

The financing order would have to detail the amount of qualified costs to be recovered and the period over which the securitization charges were to be recovered.

A financing order would be effective in accordance with its terms, and, together with the authorized securitization charges, would be irrevocable and not subject to reduction, impairment, or adjustment by further PSC action, except as provided in the bill for annual review and correction.

After an expedited contested case proceeding, the PSC would have to issue a financing order or an order rejecting the application for a financing order within 90 days after the electric utility filed the application.

A financing order would be subject to rehearing by the PSC only on the motion of the applicant for securitization.

Notwithstanding any other provision of law, a financing order could be reviewed by the Court of Appeals upon a filing by a party to the PSC proceeding within 30 days after the order was issued. All appeals would have to be heard and determined as expeditiously as

possible with lawful precedence over other matters. Review on appeal would have to be based solely on the record before the PSC and briefs to the Court and would be limited to whether the order conformed to the Constitution and laws of Michigan and the United States and was within the PSC's authority under the Act.

At the electric utility's request, the PSC could adopt a financing order providing for retiring and refunding securitization bonds if the Commission found that the future securitization charges required to serve the new securitization bonds, including transaction costs, would be less than the future securitization charges required to service the bonds being refunded. On the retirement of the refunded bonds, the PSC would have to adjust the related securitization charges accordingly.

The PSC would have to authority to retain financial or legal services to assist in issuance of a financing order and to require the electric utility to pay the cost of the services. The payments would have to be included as qualified costs.

Securitization Property & Charges.

Securitization property would consist of the rights and interests of an electric utility, or its successor, under a financing order, including, without limitation, all of the following:

- The right to impose, collect, and receive securitization charges authorized in the financing order in an amount necessary to provide the full recovery of all qualified costs.
- The right under the financing order to obtain periodic adjustments of securitization charges as provided in the bill.
- All revenue, collections, payments, money, and proceeds arising out of these rights and interests.

Securitization property would constitute a present property right even though the imposition and collection of securitization charges would depend on the further acts of the electric utility or others that had not yet occurred. An electric utility's rights to securitization property before its sale to any assignee would have to be considered a property interest in a contract. The financing order would remain in effect and

the securitization property would continue to exist until the PSC approved securitization bonds and expenses related to the bonds had been paid in full.

The interest of an assignee or pledge in securitization property and in the revenue and collections arising from that property would not be subject to setoff, counterclaim, surcharge, or defense by the electric utility or any other person or in connection with the bankruptcy of the utility or any other entity. A financing order would remain in effect and unabated notwithstanding the bankruptcy of the utility, its successors, or assignees.

A financing order would have to include terms ensuring that the imposition and collection of securitization charges authorized in it were a nonbypassable charge.

A financing order would have to include a mechanism requiring that securitization charges be reviewed and adjusted by the PSC at least annually, within 45 days of the anniversary date of the issuance of the securitization bonds, to correct any overcollections or undercollections of the preceding 12 months and to ensure the expected recovery of amounts sufficient to provide timely all payments of debt service and other required amounts and charges in connection with the bonds.

An agreement by an electric utility or assignee to transfer securitization property that stated expressly that the transfer was a sale or other absolute transfer would signify that the transaction was a true sale and was not a secured transaction and that title, legal and equitable, had passed to the entity to which the securitization property was transferred.

A true sale would apply regardless of whether the purchaser had any recourse against the seller, or any other term of the parties' agreement, including the seller's retention of an equity interest in the securitization property, the fact that the utility acted as a collector of securitization charges relating to the securitization property, or the treatment of the transfer as a financing for tax, financial reporting, or other purposes.

A valid and enforceable lien and security interest in securitization property could be created only by a financing order and the execution and delivery of a security agreement with a financing party in connection with the issuance of securitization bonds.

The lien and security interest would attach automatically from the time that value was received for the bonds and would be a continuously perfected lien and security interest in the securitization property and all proceeds of the property, whether accrued or not, would have priority in the order of filing when a financing statement was filed with respect to the security interest in accordance with the Uniform Commercial Code (UCC), and would take precedence over any subsequent judicial and other lien creditor. In addition to the rights and remedies provided by the Act, all rights and remedies with respect to a security interest provided by the UCC would apply to the securitization property.

Transfer of an interest in securitization property to an assignee would be perfected against all third parties, including subsequent judicial and other lien creditors, when a financing statement had been filed with respect to the transfer in accordance with the UCC.

The priority of a lien and security interest would not be impaired by any later modification of the financing order or by the commingling of funds arising from securitization charges with other funds, and any other security interest that could apply to those funds would be terminated when they were transferred to a segregated account for the assignee or a financing party. If securitization property had been transferred to an assignee, any proceeds of that property would have to be held in trust for the assignee.

In the event of default by the utility or its successors, in payment of revenue arising with respect to securitization property, the PSC or a court of appropriate jurisdiction, upon the application of the financing party, and without limiting any other remedies available to that party, would have to order the sequestration and payment to the financing party of revenue arising with respect to the securitization property. An order would remain in full force and effect

notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the debtor, pledgor, or transferor of the property.

Securitization property would constitute an account as that term is defined under the UCC.

For purposes of the Act and the UCC, securitization property would be in existence whether or not the revenue or proceeds in respect to the property had accrued and whether or not the value of the property right depended on the customers of an electric utility receiving service.

Changes in the financing order or in the customers' securitization charges would not affect the validity, perfection, or priority of the security interest in the securitization property.

The description of securitization property in a security agreement or other agreement or a financing statement would be sufficient if it referred to the Act and the financing order establishing the securitization property.

The Act would control in any conflict between it and any other law of Michigan regarding the attachment and perfection and the effect of perfection and priority of any security interest in securitization property. Also, notwithstanding the provisions of the UCC, the law of Michigan would govern the perfection and the effect of perfection and priority of any security interest in the securitization property.

Securitization bonds would not be a debt or obligation of the State, and would not be a charge on its full faith and credit or taxing power.

The acquisition, ownership, and disposition of any direct interest in any securitization bond could not be taken into account in determining whether a person was subject to any income tax, franchise tax, business activities tax, intangible property tax, excise tax, stamp tax, or any other tax imposed by the State or any agency or political subdivision of the State.

Any successor to an electric utility, whether pursuant to any bankruptcy, reorganization, or other insolvency proceeding or pursuant to any merger or acquisition, sale or

transfer, by operation of law, as a result of electric utility restructuring or otherwise, would have to perform and satisfy all obligations of the utility under the bill in the same manner and to the same extent as the utility, including collecting and paying to the person entitled to revenue with respect to the securitization property.

An assignee or financing party could not be considered to be a public utility or person providing electric service solely by virtue of these transactions.

Effective on the date the first securitization bonds were issued, if any of the bill's provisions regarding the adoption and approval of electric rates were held to be invalid or were invalidated, superseded, replaced, repealed, or expired for any reason, that occurrence would not affect the validity or continuation of the bill, or any part of those provisions, or any other provision that was relevant to the issuance, administration, payment, retirement, or refunding of securitization bonds or to any action of the electric utility, its successors, an assignee, a collection agent, or a financing party, which would remain in full force and effect.

Low-Income & Senior Citizen Customers.

The bill would require the PSC, notwithstanding any other provision of the Act, to establish an eligible low-income customer and eligible senior citizen customer rate. Upon filing a rate increase request, a utility would have to include a proposed eligible low-income and senior citizen rate and a method to allocate the revenue shortfall attributed to the implementation of the rate upon all customer classes.

("Eligible low-income customer" and "eligible senior citizen customer" would mean those terms as defined in Section 10t. Under that section, "eligible low-income customer" means a customer whose household income does not exceed 150% of the poverty level, as published by the U.S. Department of Health and Human Services, or who receives assistance from a State emergency relief program, food stamps, or Medicaid. "Eligible senior citizen customer" means a utility or supplier customer who is at least 65 years old and who advises the utility of his or her eligibility.)

Educational Institutions. 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.

Utilities with Fewer than 1.0 Million Customers. Beginning January 1, 2009, 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, imposing cost of service rates on customers would have a material impact, the PSC could approve an order that implemented those rates over a suitable number of years. The PSC would have to ensure that any impact on rates was not more than 2.5% per year.

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; AES Service. 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 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 AESs would be allowed to serve, 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, and 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 were 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, as well as any new facility constructed after the bill's

effective date that was similar in nature and under common ownership with the existing facility.

A customer electing 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 remain in effect and could be amended by the PSC as needed. If a utility did not have the procedures in place as of that date, 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.)

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 specified methods to determine net stranded costs.

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.

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 that section, 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 before 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.

The bill would delete these provisions, as well as related provisions concerning securitization savings.

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, 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 after 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 part 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. 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 bills that are tie-barred to House Bill 5524 (House Bills 5525, 5548, and 5549), these utilities would become subject to PSC regulation for certain alternative energy programs. To meet the expanded responsibilities, House Bill 5524 (S-7) 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 (S-7) alone would require 34.0 FTEs, at a cost of \$3.3 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.