Legislative Analysis

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HEMLOCK SEMICONDUCTOR CORPORATION: PRESERVE DISCOUNTED ELECTRIC RATE

House Bill 6407 (Proposed Substitute H-1)
Sponsor: Rep. Douglas Geiss
Committee: Energy and Technology

Complete to 11-8-10

A SUMMARY OF HOUSE BILL 6407 (PROPOSED SUBSTITUTE H-1)

In general, the bill would do the following things:

- Create a new act called the "Energy for Economic Development Act of 2010."
- Prohibit the Public Service Commission (PSC) from taking any action, including issuing an order, that would jeopardize a special electricity rate (economic development tariff rate) received by an industrial electricity customer, if the industrial customer and the electric utility had executed a contract to receive specified amount of electricity at the special rate before October 6, 2008 (the effective date of the so-called *deskewing* provisions in Public Act 286 of 2008).
- Require the PSC, if it determined that the amount paid by the industrial customer for electricity under the contract was below the cost of service, to allow the electric utility to collect the full amount of the difference from other customers in all rate classes (e.g., industrial, commercial, residential).
- Specify that if the bill conflicted with any other state statute, the bill would control.

[Note: The "deskewing" provisions contained in Section 11 of PA 286, MCL 460.11, generally require each electricity customer class to pay rates equal to the utility's cost of providing service to that customer class. PA 286 required the PSC to phase-in cost-based rates for most customer classes of the two largest electric utilities, Consumers Energy and DTE Energy, within five years, or by October 6, 2013, subject to a 2.5 percent limit on the amount residential rates could be increased per year due to deskewing. As enacted, PA 286 has no exception allowing customers with discounted rates under economic development tariffs or contracts to pay below-cost rates.

As drafted, the H-1 Substitute would apply only to a contract between the Hemlock Semiconductor Corporation and Consumers Energy under which Hemlock Semiconductor has a discounted economic development (E-1) tariff rate on a portion of its electric load. The bill would allow Hemlock Semiconductor to keep this rate for the duration of its existing contract, whether or not the tariff or the contract conflicted with any other law, and require the PSC to allow Consumers to spread the cost of Hemlock's discount to all other customers. On November 4, 2010, in Case U-16191, the PSC determined that the discount received by Hemlock Semiconductor under the E-1 tariff is approximately $53.8 million per year.]

FISCAL IMPACT:

The bill would have no material fiscal impact on the Public Service Commission (MPSC) in administering the provisions of the bill. The MPSC's regulatory activities are supported by assessments against the regulated utilities. The MPSC has no GF/GP funding.

The bill would potentially impact the state and local units of government in instances where they are customers of Consumers Energy, to the extent that the MPSC could have, in the future, eliminated or otherwise modified the economic development rate. (Consumers Energy's electricity service area spans 61 counties.)

In prior rate cases (U-15645 and U-16191), the MPSC has passed on the cost of the discount associated with the economic development (E-1) tariff to all other customers based on energy usage. In its November 4, 2010, order in Case Number U-16191, the MPSC noted that the discount was approximately $53.8 million under the MPSC staff's cost of service study (COSS) and represented "the amount the E-1 customer is not paying." (In a separate filing, Consumers Energy noted the Rate E-1 discount was "the calculated difference between the cost-to-serve…and amount collected under the discounted rate.") This recent order also reaffirmed that the amount of the discount is to be "spread to all other customers." Were the amount of the economic development tariff modified by the MPSC in the future, it is possible the amount of the discount would be altered as well, thus altering the amount that would be collected by other customers, including the state and local units of government. The bill, however, takes steps to restrict the MPSC's ability to modify the economic development tariff in the future. In any event, the direction of future action by the MPSC regarding this particular economic development rate is unknown.

DETAILED SUMMARY:

Title. The bill would create a new act called the "Energy for Economic Development Act of 2010.

Prohibited acts. The Public Service Commission (PSC) would be prohibited from taking any action to alter the rates, terms, conditions, duration, or enforceability of an economic development tariff provision approved as of October 6, 2008, if an electric utility had executed a written contract with an industrial customer for an increase in connected load at a single premises of at least 70.2 million kilowatt hours over 12 consecutive months under the tariff provision. Acts prohibited by the bill would include a PSC order affecting the tariff provision in a manner that would allow or require the electric utility to alter any aspect of its contract with the industrial customer. ("Electric utility" would mean that term as defined in Section 2 of the Electric Transmission Line Certification Act, MCL 460.562. In that act, "electric utility" generally refers to any legal entity whose transmission or distribution of electricity is regulated by the PSC under Public Act 106 of 1909 or Public Act 3 of 1939, but not to municipal utilities and certain transmission companies.)

Recovery from other customers. The PSC would have to allow an electric utility that executed a contract described in the bill to recover from the other electric ratepayers in all customer classes the full amount of the difference, if any, between the revenue generated under the tariff and the utility's cost of providing service to that customer, as determined by the PSC. The amount that the utility could recover would be calculated using the cost-allocation method identified in MCL 460.11. (That section calls for the PSC to allocate production-related and transmission costs either using a "50-25-25" method of cost allocation or another method that yielded rates better reflecting the cost of service, unless the other method allocated more costs to primary (industrial) customers.)

Conflict with other law. If there were a conflict between the bill and any other state law, the bill would control.

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