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BILL



ANALYSIS

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House Bill 5807 (Substitute S-1 as passed by the Senate)
House Bill 5808 (Substitute H-1 as passed by the Senate)
Sponsor: Representative Bill McConico (H.B. 5807)
Representative Ken Bradstreet (H.B. 5808)
House Committee: Energy and Technology
Senate Committee: Technology and Energy

Date Completed: 6-30-04

RATIONALE

The Customer Choice and Electricity Reliability Act, Public Act 141 of 2000, was enacted to restructure Michigan's electricity industry. At the time the statute was enacted, electric utilities owned and operated their own electric generation, transmission, and distribution systems. Under the Act, they were required either to join a regional transmission organization or to divest their transmission facilities to an independent transmission company. DTE Energy chose to divest its transmission assets to the International Transmission Company (ITC), while Consumers Energy chose to divest its transmission assets to the Michigan Electric Transmission Company (METC). Other statutes related to eminent domain and the permitting of new transmission lines have not yet been updated to reflect this change. It has been suggested that these provisions be extended to independent transmission companies.

CONTENT

House Bills 5807 (S-1) and 5808 (H-1) would amend Public Act 238 of 1923 (which governs electric and gas corporations) and the Electric Transmission Line Certification Act, respectively, to authorize an independent or affiliated transmission company to condemn property, and include independent and affiliated transmission companies under requirements related to the construction of transmission lines.

The bills would define "independent transmission company" as a person,

partnership, corporation, association, or other legal entity, or its successors or assigns, engaged in this State in the transmission of electricity using facilities it owns that have been divested to the entity by an electric utility that was engaged in the generation, transmission, and distribution of electricity in this State on December 31, 2000, and is independent of an electric utility or an affiliate of the utility, generating or distributing electricity to retail customers in this State.

The bills would define "affiliated transmission company" as a person, partnership, corporation, association, or other legal entity, or its successors or assigns, that has fully satisfied the requirements to join a regional transmission organization as determined by the Federal Energy Regulatory Commission (FERC), is engaged in this State in the transmission of electricity using facilities it owns that were transferred to it by an electric utility that was engaged in the generation, transmission, and distribution of electricity on December 31, 2000, and is not independent of an electric utility or an affiliate of the utility, generating and distributing electricity to retail customers in this State.

The bills are tie-barred to each other. They are described below in further detail.

House Bill 5807 (S-1)

The bill would require a corporation that generated or transmitted electricity to obtain from the Michigan Public Service

Commission (PSC) a certificate of necessity before commencing any condemnation proceedings, if it were required under the Electric Transmission Line Certification Act. Currently, a corporation must obtain a certificate only if required under Public Act 9 of 1929, which governs natural gas utilities, or Public Act 69 of 1929, which requires certain public utilities to secure a certificate of convenience and necessity under particular circumstances.

Subject to the Electric Transmission Line Certification Act and the Uniform Condemnation Procedures Act, the bill would grant an independent transmission company or an affiliated transmission company the power to condemn property that was necessary to transmit electricity for public use. An independent or affiliated transmission company could not, however, circumvent a private agreement that existed on the bill's effective date under which the transmission company leased rights-of-way for its electric transmission facilities from the utility. In addition, an independent or affiliated transmission company could not condemn property owned by an electric or gas utility or municipally owned utility in a manner that unreasonably disrupted the utility's ability to continue to provide service to its customers. If a dispute existed, the condemnation could not proceed until the PSC determined that no unreasonable disruption was involved. The PSC would have to make its determination under the Administrative Procedures Act (APA) within 180 days of the date an application or petition requesting a determination was filed. If the principal parties of record agreed that the complexity of the dispute required additional time, the PSC could take up to 210 days to make a determination.

Except as otherwise provided in the bill, an independent or affiliated transmission company, in condemning property, would be subject to the same procedures and requirements as a corporation formed under Public Act 238. The bill specifies that any procedure or requirement under the Act that was inconsistent with the Electric Transmission Line Certification Act or the Uniform Condemnation Procedures Act would not apply to an independent or affiliated transmission company.

Public Act 238 provides that any PSC order may be reviewed, set aside, modified, or

affirmed in the manner provided by law for the review of orders pertaining to steam railroad companies. The bill would delete the reference to orders related to steam railroad companies.

House Bill 5808 (H-1)

The bill would extend provisions that apply to electric utilities related to the construction of transmission lines to independent and affiliated transmission companies. The bill specifies that the Electric Transmission Line Certification Act would control in any conflict between it and any other State law.

Under the Act, if an electric utility with at least 50,000 residential customers in this State plans to construct a major transmission line in the five years after planning commences, it must submit a construction plan to the PSC, and may not begin construction of the line until the PSC issues a certificate of public convenience and necessity. Before applying for a certificate, an electric utility must hold a public meeting in each municipality through which the proposed line would pass. In the 60 days before the public meeting, the utility must offer to meet with the chief elected official of each affected municipality to discuss the utility's desire to construct the line and explore possible routes. Upon applying for a certificate, the electric utility must give public notice of an opportunity to comment on the application. The PSC must conduct a proceeding on the application as a contested case under the APA. The PSC may assess certificate application fees from the utility to cover its administrative costs in processing the application and require the utility to hire consultants to assist it in evaluating the application. The PSC must grant or deny the application for a certificate within one year of the application's filing date. An electric utility also may file an application with the PSC for a certificate for a proposed transmission line other than a major transmission line. ("Major transmission line" means a transmission line at least five miles long wholly or partially owned by an electric utility through which electricity is transferred at system bulk supply voltage of at least 345 kilovolts. The bill would amend the definition to include a line wholly or partially owned by an independent or affiliated transmission company.)

Under the bill, these provisions also would apply to an independent or affiliated transmission company.

The Act also provides that, in a civil action in the circuit court under Section 4 of the Uniform Condemnation Procedures Act, the court may grant a limited license to an electric utility for entry on land to conduct preconstruction activity related to a proposed transmission line if the utility has scheduled or held a public meeting in connection with the certificate and if a written notice of the intent to enter the land has been given to each affected landowner. (Under Section 4 of the Uniform Condemnation Procedures Act, an agency seeking to acquire a parcel of property may enter upon the property before filing an action for the purpose of conducting certain activities, such as making surveys and measurements, or determining whether the property is suitable to take for public purposes. If reasonable efforts to enter have been obstructed or denied, the agency may commence a civil action in the circuit court in the county in which the property is located for an order permitting entry.) Under the bill, the court also could grant a limited license to an independent or affiliated transmission company, under these circumstances.

The bill specifies that, in administering the Act, the PSC would have only those powers and duties granted to it under the Act.

MCL 486.253 et al. (H.B. 5807)
460.562 et al. (H.B. 5808)

ARGUMENTS

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

Supporting Argument

When Public Act 141 was enacted to create choice in the electric industry, the transmission assets were separated from the electric utilities and jurisdiction over them given to independent third parties. The new independent transmission companies, however, were not granted the same critical rights that the utilities have to participate in a uniform process to permit new lines and condemn property. Siting transmission facilities is a complex and difficult task; without the ability to invoke eminent

domain, however, it is virtually impossible. The bills logically would grant to transmission companies the same rights and powers as afforded to the utilities that previously owned transmission capacity, and subject the transmission companies to the same requirements.

The blackout of August 2003 highlighted the necessity of a well-maintained, robust electrical infrastructure. According to a representative of ITC, energy demand is expected to increase by more than 25% over the next decade. The rights and powers granted under the bills would facilitate necessary investment in new lines to ensure adequate, reliable transmission service.

Legislative Analyst: Julie Koval

FISCAL IMPACT

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

Fiscal Analyst: Maria Tyszkiewicz

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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.