



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 437 (Substitute S-4 as reported)
Senate Bill 438 (Substitute S-4 as reported)
Sponsor: Senator Mike Nofs (S.B. 437)
 Senator John Proos (S.B. 438)
Committee: Energy and Technology

Date Completed: 5-31-16

CONTENT

Senate Bill 437 (S-4) would amend Public Act 3 of 1939, the Public Service Commission law, to do the following:

- **Extend to a steam utility a requirement that applies to gas and electric utilities to obtain approval from the Public Service Commission (PSC) before increasing rates or charges or amending any rate or rate schedules in a way that increases the cost of services to its customers.**
- **Allow a gas utility serving fewer than 1.0 million customers, concurrently with its complete application to the Public Service Commission (PSC) to change its rates, to seek partial and immediate rate relief; require the PSC to enter an order granting or denying the motion within 180 days after it was submitted; and require the PSC to issue a final order in the case within 12 months.**
- **Specify that provisions allowing a gas, electric, or steam utility to implement a proposed rate increase if the PSC has not issued an order within 180 days after the utility filed its application for the increase, and requiring the utility to refund to customers the difference between the increased rate and the rate ultimately approved by the Commission, would apply only to completed applications filed before the bill's effective date.**
- **Provide that a gas or electric utility's petition or application to alter its rates would be considered approved if the PSC did not make a final decision within 10 months, rather than 12 months, after the petition or application was filed; and also refer to a steam utility in this provision.**
- **Require the PSC to approve a revenue decoupling mechanism or rate design for a natural gas or electric utility that adjusted for changes in actual sales compared to the projected levels used in the utility's rate case, if the utility demonstrated that its projected sales forecast was reasonable and the utility achieved specified energy savings goals as a result of energy waste reduction measures.**
- **Allow the PSC to approve a revenue decoupling mechanism or rate design if utility sales decreased for other reasons and the utility demonstrated that its projected sales forecast was reasonable and met the energy savings goals.**
- **Require the PSC, in determining an electric utility's rates, to establish a fair and equitable grid charge to apply to customers who participated in a net metering or distributed generation program after the bill's effective date; and provide that the grid charge would not apply to customers participating in such a program on that date who continued to participate.**

- Allow the PSC to order a delay in filing an application to establish a 21-day spacing between filings of electric utilities serving more than 1.0 million customers in Michigan.
- Require a utility to coordinate with PSC staff before filing its general rate case application to avoid resource challenges with applications being filed at the same time as applications filed by other utilities.
- Delete a requirement that a utility file a five-year forecast in order to implement a power supply recovery cost.
- Delete a requirement that the PSC disallow unapproved capacity charges associated with power purchased for periods longer than six months in a power supply cost reconciliation order for an electric utility.
- Revise the amount that a regulated natural gas or electric utility must remit to the Utility Consumer Representation Fund, and extend the remittance requirement to utilities serving a maximum of 100,000 Michigan customers and a maximum of 100,000 residential Michigan customers.
- Require the Utility Consumer Participation Board, in determining whether to award a grant to an applicant, to consider whether the applicant's activities in a proceeding would duplicate the anticipated involvement of the Attorney General.
- Provide that disbursements from the Fund could be used only to advocate the interests of residential customers.

The bill also would establish a sunset of December 31, 2018, on provisions allowing an electric utility to apply to the PSC for a certificate of necessity (CON) for increased generation capacity and requiring each utility applying for a CON to file an integrated resource plan (IRP). Before the sunset, the bill would reduce from \$500.0 million to \$100.0 million the minimum cost threshold for a CON application. Instead of a CON application, each electric utility whose rates are regulated by the PSC would have to file an IRP within two years after the bill took effect. Specifically, the bill would do the following:

- In a CON, for power purchase agreements that an electric utility entered into with an unaffiliated entity after the bill's effective date, allow the PSC to authorize a rate of return that did not exceed the utility's weighted average cost of capital.
- Provide that any portion of an electric utility's cost that exceeded the cost approved by the PSC in a CON, rather than the portion that exceeded 110% of the approved cost, would be presumed to have been incurred due to a lack of prudence.
- Require the PSC to commence a proceeding every three years to assess the potential for energy waste reduction and demand response programs in Michigan and establish the modeling scenarios and assumptions to be used in IRPs, among other requirements.
- Require an IRP to include projected energy and capacity purchased or produced by the electric utility from renewable energy resources, and require the projected amount to equal at least the amount of renewable energy required under Michigan's current renewable portfolio standard.
- Require an IRP to include an analysis of how the combined amounts of renewable energy and energy waste reduction achieved under the plan compared to the renewable energy resources and waste reduction goal proposed by Senate Bill 438 (S-4), as well as projected energy and capacity purchased or produced by the utility from a cogeneration resource.
- Require each regulated electric utility, before filing an IRP, to issue a request for proposals (RFP) to provide any new supply-side generation capacity resources needed to serve the utility's projected local, applicable planning reserve margin, and local clearing requirement (LCR) for the utility's customers in Michigan and other states during the initial three-year planning period to be considered in each IRP.

- Require a utility that issued an RFP to use the resulting proposals to inform its IRP and include all of the submitted proposals as attachments to its IRP filing, regardless of whether they met the utility's RFP criteria.
- Provide that the utility would not have to adopt any proposals submitted in response to its RFP.
- Require the PSC, within 300 days after an IRP was filed, to recommend changes to the plan or issue a final, appealable order approving it or denying it.
- Prescribe procedures by which a utility could consider any changes recommended by the PSC and submit a revised IRP, and require the PSC to issue a final, appealable order within 360 days after an IRP was filed.
- Require the PSC to hold a hearing on an IRP.
- Prescribe conditions under which the PSC would have to approve an IRP.
- Require an electric utility to file periodic reports on the status of the projects contained in its IRP.
- Authorize an electric utility to withdraw its IRP or proceed with a proposed generation construction, investment, or power purchase if the PSC denied any of the relief requested by the utility.
- Provide that an IRP denied by the PSC would be considered approved if the utility modified it to be consistent with the Commission's recommendations.
- Allow a utility that did not accept the PSC's recommendations to submit a revised IRP for approval, and require the Commission to commence a contested case hearing and issue a final order on the plan within 90 days if the revisions were not substantial or inconsistent with the original IRP, or 150 days if the revisions were substantial or inconsistent with the original IRP.
- Provide for review of a PSC order approving an IRP by the Court of Appeals and prescribe the scope of the review.
- Require the PSC to include in an electric utility's retail rates all reasonable and prudent costs for a generation facility or power purchase agreement included in an approved IRP.
- Revise the information that must be included in an IRP.
- Allow an electric utility to seek amendments to or review of its IRP.
- Authorize the PSC, on its own motion or at the request of an electric utility, to order the utility to file an IRP review, and allow the Department of Environmental Quality to request the PSC to issue such an order to address changes in environmental regulations and requirements.
- Require the PSC, within 90 days after the bill's effective date, to commence a study regarding performance-based regulation, under which a utility's authorized rate of return would depend on the utility's achieving targeted policy outcomes.
- Require the PSC, within one year after the bill took effect, to make written recommendations to the Legislature and the Governor based on the study's results.
- Require the PSC to conduct a proceeding at least every five years to reevaluate the procedures and rate schedules, including avoided cost rates, established in the Commission's order in case no. U-6798.
- Require each regulated electric utility, municipally owned or cooperative electric utility, and alternative electric supplier (AES) to demonstrate annually that it had sufficient dedicated and firm electric generation capacity to meet a prescribed share of the LCR.
- Allow an AES or municipally owned or cooperative utility to meet its generation capacity requirements by using a capacity auction operated by an independent system operator, under certain circumstances.
- Authorize the PSC to limit the amount of electricity provided by an AES that failed to demonstrate that it could meet the prescribed capacity requirements.
- Require the PSC to report annually to the Governor and the Legislature a minimum five-year forecast of capacity resource adequacy, and include in the

- forecast a planning reserve margin requirement, LCR for each local resource zone, and proportional share of the LCRs for each electric provider in the State.
- Allow the Attorney General or a customer of a municipally owned or cooperative electric utility to commence a civil action against the utility if it failed to meet the resource capacity requirements.
 - Require the PSC to monitor whether any entity engaged in market manipulation related to the LCRs, and authorize the Commission to disallow cost recovery for any excess capacity withheld unreasonably.
 - Require the PSC, by January 1, 2021, to authorize a shared savings mechanism for certain utilities in order to ensure equivalent consideration of energy waste reduction resources within the integrated resource planning process.

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 the Act's title.
- Revise the Act's purposes.
- For fiscal year 2016-17, appropriate money to several State departments and agencies to hire a number of full-time equated positions to implement the bill's provisions.
- Create several exceptions to a provision limiting to 10% the amount of an electric utility's average retail sales that may take service from an AES.
- Provide that a customer on an enrollment queue for retail open access service as of December 31, 2015, would remain on the queue unless the customer's prospective AES submitted an enrollment request to the customer's utility or the customer notified the utility of the desire to be removed from the queue.
- Require each electric utility annually to file with the PSC a rank-ordered queue of all customers awaiting retail open access service, including the estimated amount of electricity used by each customer.
- Prescribe the conditions under which a customer on the queue could take service from an AES, and require the AES to notify the utility within five business days after being notified that the customer would take AES service.
- Require the PSC, within 180 days after the bill took effect, to determine the appropriate generation capacity service costs for each electric utility to be assessed as a nonbypassable surcharge to any customer for the next 10 planning years after the customer elected to receive AES service.
- Require an AES to meet the bill's requirements regarding firm and dedicated generation capacity as a condition of licensure.
- Authorize an electric utility to offer other value-added programs and services to its customers, in addition to an appliance service program, without violating a utility code of conduct, as long as certain conditions were met.
- Allow an electric utility or AES to shut off service to a customer who did not make a required payment for an energy project financed under the electric provider's residential energy projects program.
- Require the PSC, in establishing cost of service rates, to ensure that each customer class or sub-class was assessed for its fair and equitable use of the electric grid.
- Eliminate a 2.5% per year limitation on the residential and industrial metal melting rate impact resulting from the adoption of cost of service rates.

Senate Bill 438 (S-4) would repeal provisions of the Clean, Renewable, and Efficient Energy Act that establish a renewable energy standard, consisting of a renewable energy capacity portfolio and a renewable energy credit portfolio, under which 10% of an electric provider's energy must come from renewable sources by 2015; and would amend the Act with respect to energy optimization programs, net metering, renewable energy credits, and other matters.

In regard to energy optimization, the bill would provide for the transition of energy optimization programs to energy waste reduction programs and generally would repeal energy waste reduction requirements on or by January 1, 2021, except that natural gas providers would be subject to revised or additional requirements beginning on that date. In particular, the bill would do the following:

- Establish a goal of meeting at least 35% of the State's electric needs through energy waste reduction and renewable energy by 2025.**
- Provide that established energy optimization programs intended to reduce the future costs of providing service to customers would continue in effect as energy waste reduction programs.**
- Refer to "energy waste reduction" rather than "energy efficiency" and "energy optimization" throughout the Act.**
- Provide for the termination of an energy waste reduction standard by January 1, 2021.**
- Increase the amount of the incentive a rate-regulated provider may obtain by exceeding the energy waste reduction standard.**
- Authorize a natural gas provider that could not achieve the waste reduction standard in a cost-effective manner over a two-year period to petition the PSC to establish alternative standards.**
- Repeal provisions related to energy waste reduction credits on January 1, 2021.**
- Revise provisions allowing a utility to recover costs associated with the implementation of an energy waste reduction plan, and provide that the charges could be itemized on utility bills.**
- Eliminate a provision limiting to 2% the amount of a gas or electric provider's total annual sales revenue that the provider may spend to comply with energy waste reduction requirements.**
- Require a natural gas provider to submit to the PSC an annual report on its actions taken to comply with energy waste reduction standards.**
- Provide for redress of violations of the waste reduction provisions by a member-regulated cooperative electric utility or a municipally owned electric utility, until January 1, 2021.**
- Specify that load management could include a voluntary program under which an electric provider could remotely shut down energy intensive systems of participating customers.**
- Delete requirements that the PSC engage in certain activities related to energy efficiency and conservation.**
- Include among the PSC's responsibilities related to the promotion of load management, demand response programs that use time of day and dynamic rate pricing and similar programs for utility customers with advanced metering infrastructure; and allow the programs to provide incentives for customer participation.**
- Require the PSC to submit an annual report to the Legislature on whether the energy waste provisions were cost-effective.**

In regard to net metering, the bill would replace the net metering program with a distributed generation program under which an electric customer could generate up to 100% of the customer's electricity consumption for the previous 12 months. An electric utility or alternative electric supplier would not have to allow for distributed generation that was greater than 1% of its average in-State peak load for the preceding five years, allocated as provided in the bill. The PSC would have to establish a grid use charge for all distributed generation customers that ensured that costs for use of the grid were fair and equitable and conformed to cost of service principles under the PSC law. A customer participating in a net metering program approved by the PSC before the bill took effect could elect to continue to receive service under the terms and conditions of that program for up to 10 years from the date of enrollment.

The bill also would do the following:

- **Revise provisions related to renewable energy credits.**
- **Require an electric provider to offer to its customers the opportunity to participate in a voluntary green pricing program, under which the customer could specify that a certain amount of the electricity attributable to that customer be renewable energy.**
- **With regard to the recovery of incremental costs of compliance with the renewable energy standard by a rate-regulated electric utility, eliminate a limit on the impact of the recovery on retail rates.**
- **Allow an electric provider to establish a residential energy projects program under which property owners could finance energy projects through an itemized charge on their utility bills.**

In addition, the bill would repeal a requirement that the PSC report annually to the Governor and the Legislature on the impact of establishing wind energy resource zones, expedited transmission line siting applications, estimates for future wind generation within wind zones, and recommendations for program enhancements or expansion. The bill also would change the name of the Act to the "Clean and Renewable Energy and Energy Waste Reduction Act".

The bills are tie-barred. Each bill would take effect 90 days after it was enacted.

MCL 460.6a et al. (S.B. 437)
460.1001 et al. (S.B. 438)

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

Senate Bill 437 (S-4) would require the Public Service Commission to promulgate rules, make rulings, issue orders, and take other administrative actions to implement a number of proposed or amended sections of the Act, which would introduce new administrative costs. The PSC's regulation of public utilities is primarily funded through assessments on utilities that reflect the PSC's costs, so increased costs would presumably be mitigated by increased assessments. Any cases in which amendments to the Act served to reduce the amount of work required of the PSC presumably would lower assessments accordingly. To provide some perspective, in fiscal year (FY) 2014-15, the PSC collected a total of about \$29.1 million in public utility assessments.

The bill would increase revenue received by the Utility Consumer Representation Fund by about \$550,000 annually. In FY 2014-15, approximately \$1.2 million was deposited into the Fund; the bill would increase that amount to \$1,750,000, which would be adjusted annually for inflation. Money in the Fund is currently split evenly between the Utility Consumer Representation Board and Attorney General for grants. The bill would change this allocation to \$1.0 million for the Board and \$750,000 for the Attorney General. In addition, the bill would allow unspent amounts allocated to either the Board or the Attorney General to be retained by the entity originally allocated those amounts for use in a subsequent fiscal year, rather than lapsing back to the Fund.

The bill also would appropriate \$1,950,000 to the PSC, \$150,000 to the Attorney General, \$600,000 to the Michigan Administrative Hearing System, \$150,000 to the Department of Environmental Quality, and \$260,000 to the Michigan Agency for Energy, to implement the proposed requirements regarding integrated resource plan. The appropriations would be effective for FY 2016-17 and, while the bill does not specify a fund source, the appropriations are assumed to be from the State General Fund.

The bill would have no fiscal impact on local units of government.

Senate Bill 438 (S-4) would have an indeterminate fiscal impact on the Public Service Commission within the Department of Licensing and Regulatory Affairs, and no fiscal impact on local units of government. The bill would require the PSC to approve energy waste reduction plans for natural gas providers initially, and then every two years. This would result in some increased costs for the PSC, which in the long term would be counteracted to an unknown extent by the sunset of energy waste reduction plans for electricity providers in 2019. The bill also would require the PSC to review annual reports from natural gas providers regarding actions taken to comply with energy waste reduction standards, which would create some new costs for the PSC. It should be noted that the PSC's regulation of public utilities is primarily funded through assessments on utilities that reflect the PSC's costs, so increased costs would presumably be mitigated by increased assessments. Any cases in which amendments to the Act served to reduce the amount of work required of the PSC presumably would lower assessments accordingly. To provide some perspective, in fiscal year (FY) 2014-15, the PSC collected a total of about \$29.1 million in public utility assessments.

The bill also would require the PSC to promulgate rules related to the distributed generation program, which would result in some likely minor costs for the PSC.

Finally, the bill would require the PSC to review residential energy project program plans, review those plans every four years, and establish rules regarding the establishment of the programs. These requirements would result in some new, likely minor costs for the PSC.

Fiscal Analyst: Josh Sefton

Floor\sb437

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.