

MIRS Capitol Capsule

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Six Burning Questions On P.A. 141

The House leadership's plans to bake limits on the state's electric choice law into new alternative energy mandates and energy efficiency programs have sparked significant debate over Michigan's energy policy in recent months.

House Speaker Andy [DILLON](#) (D-Redford Twp.) has made the issue his top priority of 2008, and it's shown. His shop has coordinated several meetings, hearings and workshops on the issue over the last several weeks.

Movement may be coming soon with the Michigan Chamber of Commerce allegedly coming close to signing off on the package, which makes Republican support for the package more likely.

This year, *MIRS* has featured Question and Answer sessions with Consumers Energy CEO David **JOOS** (See "[Consumers CEO Makes Case For Energy Bills](#)," 4/4/08) and LS Power executive Lynne **MACKEY** (See "[Power Plant Company Defends P.A. 141](#)," 2/1/08).

Today, *MIRS* asked the same six questions regarding this energy package to DTE Government Affairs Director Nancy [MOODY](#) (N.M.), the Customer Choice Coalition's (CCC) Eric **SCHNEIDEWIND** (E.S.) and Terry **HARVILL** (T.H.), Constellation Energy Vice President of Retail Energy Policy.

The following are their responses:

Q. With DTE Energy projecting a 1.2 percent rise in energy needs by 2016, it would appear any new generation would be replacing aging plants that are slated to be taken off line. Why does the Legislature need to get involved?

N.M. — This isn't a debate about when new power will be needed; it's a debate about how we best meet that need. Michigan must establish policy that will provide financial markets enough certainty to attract large-scale energy infrastructure investment to our state.

The House is developing policy that would include a Certificate of Need process, regulatory reforms, a cap on the Retail Open Access market, and a Generation Reliability Charge for new power plant construction. This legislation would provide the level of assurance Michigan needs to attract the investment inside our borders to keep electricity safe, reliable and affordable far into our future.

E.S. — Under current legislation, the utility takes the risk of building or buying needed power plant capacity. However, DTE and Consumers say it is too risky to build power plants unless 1) their monopoly is restored, 2) customers are forced to pay interest costs of power plants during construction (about 20 percent of the total cost) and 3) the utilities are allowed to claim and collect cost overruns.

The utility proposal shifts risk to customers while continuing current utility profits. If customers are going to bear more risk, lower-cost options should be allowed to compete to build needed power plants through a bid process that doesn't allow cost overruns and produces the lowest price for customers.

These competitive benefits can be achieved through the plan proposed by the CCC. Under our plan, the Michigan Public Service Commission (MPSC) would identify need for new base-load power and conduct an all-source bid process where utilities, non-utilities, renewables and efficiency providers would compete to serve the identified need. If the new power supply was not fully utilized due to customers leaving for Choice, the Choice customers would pay their share of any stranded costs. This result guarantees power plant financing, preserves Choice without limit and results in the lowest cost for customers.

T.H. — Given the potential need for new generation in Michigan over the next several years, the Legislature should work to develop a long-term energy plan that incorporates demand response, energy efficiency, renewable energy, transmission enhancements and new, traditional forms of generation. The means to address Michigan's growing energy needs should emanate from every possible source to assure businesses and consumers that the best options are available at the lowest possible cost.

To the extent that additional generating capacity is needed in Michigan, consumers would be well served if new capacity is obtained through a competitive procurement process that guarantees that customers are paying the least amount of money with a guarantee of efficient operation and performance. Under this structure, all potential resources are placed on an equal footing whether the resources are demand response, energy efficiency, renewable resources, transmission enhancements, new capacity in Michigan or capacity from other entities in the Midwest. Michigan consumers and, by default, Michigan legislators should demand that if customers have to pay for new sources of supply, that all options are available and that Michigan businesses and consumers pay the lowest cost possible.

Q. Michigan businesses pay a little bit more on their electric bills so homeowners aren't forced to pay as much. Legislation the House is considering would get rid of this dynamic, known as de-skewing.

The MPSC is moving ahead with de-skewing in Consumers' rate case. Does that take the de-skewing issue off the table when we're talking about legislation?

T.H. — Fundamental to an efficient and properly functioning competitive energy market, the rates customers pay should properly reflect the underlying costs of the supply with as few distortions as possible. In addition, and just as important, is the need for customers to see the cost of the electricity they are consuming so that they can control their overall energy costs by adjusting their consumption accordingly.

That being said, it is important to understand that if the Legislature requires rates to be de-skewed, residential rates will be legislatively mandated to increase. While there are a number of mechanisms

that could soften the impact of the rate increases, the legislation as drafted would require some fairly substantial rate increases for residential consumers over the next several years on top of any new charges for new power plants, renewable portfolio standards or energy efficiency requirements.

The MPSC's Administrative Law Judge in the Consumers Energy proceeding has proposed a phase-out of the subsidies over a five-year period. Assuming the Commission adopts the judge's recommendation and a similar conclusion is reached in the Detroit Edison rate proceeding, the issue is largely moot for the Legislature.

E.S. — The House legislation creates a no-win situation for legislators and business customers. To give business a break, legislators must approve nine percent increases for Consumers' residential customers and 15 percent for DTE's residential customers. To get a "skewing" decrease, businesses must support House legislation that allows automatic rate increases of 30 to 40 percent, discourages cost containment and eliminates competition. Faced with this choice, many of the State's largest businesses have concluded that they are better off letting the MPSC deal with skewing this summer, supporting a renewable portfolio standard (EPS) and opposing [HB 5524](#) as long as it kills Choice and mandates automatic rate increases.

N.M. — Not at all. The legislation is necessary to establish a process and a timeline that apply to all of Michigan's regulated electric utilities and all their customers. With Michigan's lagging economy, the de-skewing of electric rates will bring welcome relief to Michigan businesses, which will in turn help Michigan retain and attract more businesses to grow our economy.

Q. The Governor is pushing that 10 percent of the state's energy come from renewable sources by 2015. At what cost to the consumer could this be accomplished?

N.M. — We believe the 10 percent Renewable Portfolio Standard goals are aggressive, but achievable within the financing formula identified in the legislation. The funding mechanism also serves as a safety valve to ensure the cost of building renewables cannot become excessive.

T.H. — The Governor's 21st Century Energy Plan showed that Michigan's electric supply portfolio could achieve seven to 10 percent renewable energy by the end of 2015. What the Plan failed to mention was the cost. In the Governor's State of the State speech in January, she called for goals that produce 10 percent of Michigan's electrical energy from renewable sources by the year 2015 and a full 25 percent by the year 2025. She then went on to state that Consumers Energy and DTE will begin to jointly invest up to \$6 billion. What she failed to mention was that the \$6 billion will come mainly from the customers of DTE Energy and Consumers Energy through the rates they pay for electricity. With a legislatively mandated renewable portfolio standard in hand, the utilities will be granted rate increase after rate increase to fund the \$6 billion in new investment. Coupled with the elimination of P.A. 141, customers will be unable to avoid these charges.

A better solution is for Michigan to adopt a RPS that is applicable to all electricity suppliers with flexible

mechanisms to achieve the standards. These include allowing a diversity of eligible technologies and flexible compliance tools such as renewable energy certificates, spot market purchases and short-term contracts; regional in-state deliverability requirements; and reasonable alternative compliance payments. By structuring an RPS in this manner customers will be assured that the renewable resources procured on their behalf are the least cost options available.

E.S. — Current House RPS legislation ([HB 5548](#) and 5549) would add more than \$250 million of costs to customer bills each year but might produce no significant renewable energy for four years in the case of DTE and almost six or seven years in the case of Consumers. The House legislation gives utilities monopoly control over renewable energy and contains no cost control measures to keep the price of renewable energy at reasonable or even market levels.

The utilities could pay twice market rate to their own affiliates, exhaust mandated funds and end up with a five percent RPS instead of 10 percent. RPS legislation must include two critical cost control elements: First, the RPS should use competitive bidding for all renewables to ensure the lowest price. Second, a price cap for each unit of renewable power mandated by the RPS should be set at a level no greater than 103 percent of new, conventional power sources. These two steps will ensure that we achieve the 10 percent RPS at a price that will be competitive with new conventional power sources.

Q. Currently, electric choice only makes up 3 percent of the market, very little of which is in residential market. This is down from 20 percent only a few years ago. Is this declining trend proof that electric choice is a nice philosophical argument to kick around a think tank but not practical in the real world?

E.S. — It is true that Choice has ranged between three and almost 20 percent of utility load depending on market prices. However, the threat of Choice has given Michigan customers the lowest price increases in the region since 2000. The most heavily regulated state (Wisconsin) with a system like that contained in [HB 5524](#) had the highest increases, at 55 percent.

Existence of a Choice option will force DTE and Consumers to pick the lowest cost power supply for their future needs, with the threat that they will lose business if they experience the horrific cost overruns of the '70s and '80s that led to the \$5 billion Fermi nuclear plant and about \$3 billion of wasted investment in the failed Consumers Midland nuclear plant. Continued Electric Choice will either prevent these fiascos or give customers an option to escape poor utility management decisions.

N.M. — It is proof that customers make rational economic decisions. When wholesale market prices were significantly lower and when Detroit Edison was paying credits to commercial and industrial customers to purchase their power from alternative suppliers, those customers took advantage of the savings opportunity. When wholesale prices increased and the credits ran out, many customers discovered that Choice wasn't as good a deal. They have since returned to the safe haven that regulated rates provide. No other state in the nation offers this free option to buy power from regulated, cost-based utilities or from competitive retail markets, whichever is cheaper. But Michigan's unique hybrid is now threatening our electric energy future.

Financial markets view Michigan as just too risky for billion-dollar investments precisely because no one can predict when that 20 percent of customers might leave for alternative energy suppliers. Why build a new power plant if it is not clear it will be needed when construction is complete?

Electric Choice sounds good in theory, but not in practice. That's why even free-market think tanks like the Cato Institute and The Progress & Freedom Foundation are now calling for re-regulation of the electric industry.

T.H. — Currently, 100 percent of the customers are participating in the electric choice market in Michigan. Three percent have decided that alternative electricity suppliers provide the best products and services for them, while the remaining customers have remained or returned to utility service. The migration back to utility service can be attributed to a variety of factors. These include the imposition of non-bypassable stranded cost charges and securitization charges on customers leaving the utility for an alternative electric supplier. Also, the increase in prices for wholesale power across the United States has contributed to the decline in the number of customers choosing an alternative supplier.

For residential customers in Michigan, there have been few options to date other than the incumbent electric utilities. This stems from the fact that residential rates have been subsidized by other classes of customers, thereby eliminating any opportunity for an alternative electricity supplier to offer economic savings to those customers. With the elimination of the subsidies, more opportunities will be available for residential customers.

It is important to note that 17 states, two Canadian provinces, and numerous countries around the world have well-functioning competitive wholesale and retail energy markets. Without question, competition can work, assuming there is a commitment to the market by policymakers and an underlying structure is constructed to allow the market to function efficiently and effectively. To say otherwise simply ignores the facts.

Q. If electric reform legislation is not passed and P.A. 141 stays as is, what is your prediction on who will be the first to build a power plant in Michigan — an incumbent utility, a privately owned competitor or neither.

T.H. — Both DTE Energy and Consumers Energy are currently spending hundreds of millions of dollars to upgrade their existing power plants or purchase existing power plants in Michigan. To argue that banks will not lend them money to build new power plants in Michigan is simply false. In fact, neither DTE Energy nor Consumers Energy has provided a single document or witness to testify under oath that they have tried and failed to receive the financing necessary to build new power plants. Instead, they utilities have offered their self-interested opinion and relied on general industry publications to support their assertions.

Currently, two new baseload coal facilities are under development in Michigan. One is being developed

by an independent power producer, LS Power, and the other is being developed by Wolverine Power Cooperative. These plants are being developed under the current PA 141 structure. Neither entity is asking for any changes to PA 141 to proceed with these projects.

The simple fact is that in the past 20 years, independent power producers have been the primary entities to build new power plants in Michigan all the while bearing the risk of those investments directly rather than tying them to a captive customer base.

N.M. — Neither. Both Michigan's regulated utilities and independent power producers want the same thing - a reasonable degree of certainty. Regulated utilities want certainty around market size. Independent power producers want the certainty provided by their own legislative proposal, which would require Michigan utilities to sign long-term contracts to purchase the power they produce.

Without legislation, there is no certainty. Without certainty, there will be no investment. Without investment, there'll be no new plants, no new jobs, no spin-off economic development in Michigan.

E.S. — Today there are at least four credible Michigan base load power supply options in addition to the DTE and Consumers proposals. The Wolverine Rogers City plant and LS Midland coal plants are proceeding through environmental permitting at a pace at least as fast (some say faster) as Consumers' proposed Bay City, and are projected to cost less.

Developer Joe **TONDU** claims that a large expansion of his existing coal-fired Manistee power plant can be brought on line earlier and at a lower cost than Consumers' Bay City plant. AEP is reported to be planning a 400 MW expansion to its Michigan Cook nuclear plant. Under proposed House legislation, none of these options would be considered when approving the Consumers proposal. Under the CCC plan described above, these lower cost sources of power could compete to serve Michigan's electric needs.

Q. What is your best estimate on the cost to consumers of the P.A. 141 reform plan currently being considered by House leadership? Is it anywhere near the figure put out by Attorney General Mike [COX](#) or ABATE?

E.S. — The ABATE rate increase estimates of 28 percent by 2010 and 79 percent by 2021, and the AG estimate of about 40 percent, appear to be significantly understated. Both estimates assume that Edison will build a 1000 MW nuclear plant costing \$6 billion.

In fact, Edison plans filed with the MPSC state the nuclear plant capacity will be 1560 MW, which would cost more than \$9 billion, adding about 10 percent to both ABATE and AG estimates. Note that Edison's proposed new nuclear plant would raise DTE industrial rates about 50 percent if it is used to replace existing capacity. The last time something like this happened was Edison's Fermi 2 nuclear plant, when estimated costs escalated ten-fold.

T.H. — Over time, electricity prices are going to increase. The question for legislators and the Governor is whether the State will act to protect consumers by ensuring that the widest array of options are made available to meet these increasing costs via customer choice and a competitive procurement process for new capacity. As the package of energy legislation is currently drafted, there is very little, if anything, in it that will benefit the consumers or businesses in Michigan. In fact, almost every component of the current drafts directly benefits DTE Energy and Consumers Energy, to the detriment of everyone who pays an electric bill in the State of Michigan.

Attorney General Cox has done an admirable job in estimating the cost of the House leadership's plan to eliminate customer choice and force customers to once again purchase their energy from the State's two monopolies. He has correctly noted that the package of bills will increase rates annually, and the compounding effect of these rate increases will be fairly dramatic for consumers in Michigan at a time when Michigan businesses and residential customers can least afford it. The increases coupled with the elimination or severe restriction of customer choice will eliminate any opportunity for customers to escape these ever-increasing rates.

N.M. — ABATE's projected costs were grossly exaggerated. Nevertheless, we are entering into an era of new power capacity need, and therefore capital spending will occur across the nation. New power will have a cost associated with it, but those costs will accrue even if do not reform P.A. 141.

In fact, if Michigan is unable to attract investment to build new power plants, we will become more and more dependent on the volatile Midwest Power Market. We estimate that customers will spend billions of dollars more through the year 2030 if we have to buy power from the market instead of building power to serve our needs. So the real issue is whether Michigan buys or builds to meet its future power needs. Building is not only less expensive for electric customers, it also creates jobs and tax revenues, as well as spin-off economic development opportunities for Michigan.