

# **ELECTRICITY REGULATION IN MICHIGAN – A HISTORY**

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1

## **Industry Participants Today (and Yesterday)**

- Investor-owned utilities (IOUs)
- Municipal electric utilities
- Rural electric cooperatives
- Applicable economic and service regulation (MPSC, local government, customer-elected boards)
- RTOs, Transmission Providers, PURPA QFs, NUGs and Power Marketers

2

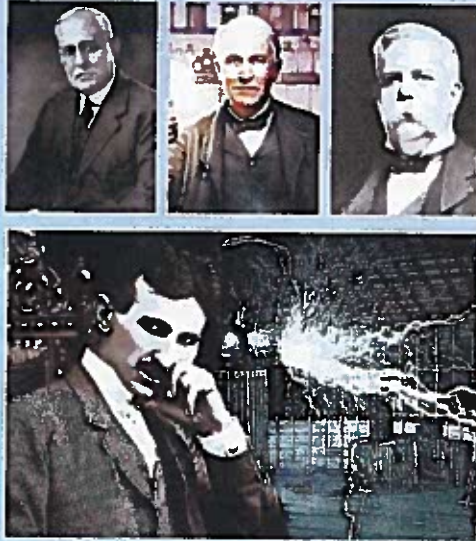
## Federal vs State Regulation Divide

- US Constitution – Art 1, Sec 8: power of Congress to regulate commerce among the several states ('commerce clause')
- US Constitution – Art VI: US law is the supreme law of the land ("supremacy clause")
- Dormant commerce clause: even where Congress has not acted, regulation imposing a direct burden on interstate commerce is beyond the power of a state
- Electricity: federal regulation of wholesale and interstate transactions; state regulation of retail rates for service and matters primarily of state concern

## Traditional Regulatory Principles

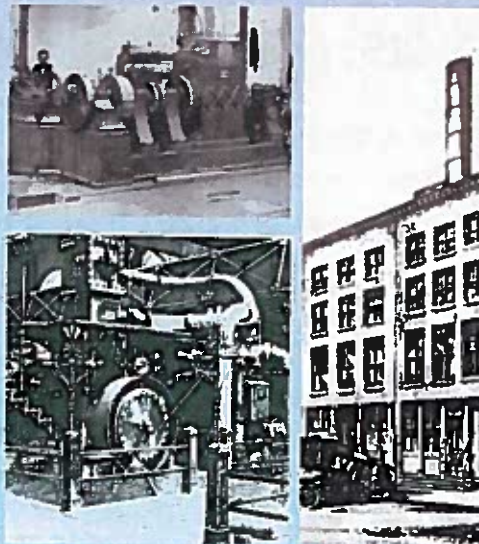
- Just, reasonable and non-discriminatory rates
- Regulatory compact and duty to serve
- Role of Constitutional takings clause – balancing opportunity for return against protecting public from monopoly abuse
- Natural monopoly theory
- Traditional use cost of service ratemaking (70+ years)
- $R = O + (V - D)r$  (revenue requirement = operating expenses + return (on undepreciated rate base))

### "Founding Fathers" of Electric Grid



5

### Early Infrastructure



6

### **Michigan Electric Regulation Begins - 1909**

- Railroad Act, 1909 PA 300; MCL 462.2 – 462.50
- Utility Securities Act, 1909 PA 144; MCL 460.301 – 460.303 (repealed by 1995 PA 246)
- Electric Transmission Through Highways, 1909 PA 106; MCL 460.552 – 460.559

7

### **Public Utilities Commission Act, 1919 PA 419; MCL 460.51-460.52**

- Abolished railroad commission and replaced with MPUC
- 5 members; Governor appoints; 4 year terms (other qualifications gone)
- Control, regulation and fixing rates of all public utilities in Michigan (gas added)
- Sections 5-8 continue in effect regarding MPSC ability to require utility reports, utility books and records and investigating complaints, MCL 460.55 – 460.58
- Legislature transferred previous statutory powers to the new body
- Continuation of the development of state regulatory commissions to regulate the rapidly growing energy industries (steam, gas, lighting, heating)

8

### Certificate of Convenience & Necessity for New Gas or Electric Projects, 1929 PA 69; MCL 460.501 – 460.506

- Primary statute protecting IOU and cooperative service territory boundaries; remains in effect today
- Municipals have franchise and ROW local control powers to protect their electric utility service territories
- Act requires prior MPSC certification (CCN) to render service in a municipality where another public utility is already rendering service; MPSC must consider existing service, investment and public benefit

### Depression and Public Projects



## Michigan Public Service Commission Act, 1939 PA 3; MCL 460.1 – 460.11

- This remains the primary statute governing MPSC regulation of public utilities!
- Abolished and replaced Public Utilities Commission – back to 3 members and 6 year terms
- Recitals (since removed) that PUC failed in its duties of regulation
- Includes provisions regarding the MPSC, regulatory process, conducting rate cases, power supply and gas cost adjustment cases, consumer representation, and more
- Major legislative changes in subsequent acts up to today are part of Act 3, including 1982 PA 304, 2000 PA 141-142 and 2016 PA 341-342

## Electric Industry – Decades of Growth



## Michigan Power Plants



13



## Michigan Power Plants



## Energy Crisis and Escalating Costs

### Increasing Efficiency and Falling Prices (EIA data)

- Pearl Street (1882): 24¢/kWh and 138,000 Btu/kWh
- 1900: residential 17¢/kWh; 92,000 Btu/kWh
- 1932: residential 5.6¢/kWh; 20,700 Btu/kWh
- 1945-50: prices drop 3%/year
- 1950s: prices drop 1%/year
- 1960s: prices drop 1.5%/year; 10,500 Btu/kWh

### **Continuous Growth**

- 1901-1932: 12% annual growth (capacity and production)
- 1932-1941: 8% production and 2.5% capacity/year
- 1945-1960: demand growth above 8%/year
- 1960s: 7.5% annual growth (capacity and production)
- Electrification grew from 8% of dwellings in 1907 to 67% by 1932 (forms to 50% by 1945)

### **Administrative Procedures Act, 1969 PA 306; MCL 24.201 – 24.328 (MAPA)**

- Federal APA of 1946
- MAPA replaced and modernized earlier acts governing rulemaking (1943 PA 88)
- MAPA governs agency guidelines, formal rulemaking (JCAR), emergency rules, procedures in contested cases, licensing process and judicial review
- Duly promulgated rules have force and effect of laws (exercise of legislative power)
- Protections: notice, hearing, ORR, JCAR (rules must be within scope of statutory powers)

## **Costs of Regulating Public Utilities, 1972 PA 299; MCL 460.111 – 460.120**

- Provides for annual assessment collected through public utility rates to be utilized solely to finance the costs of regulatory public utilities; mostly apportioned among utilities on a gross revenue basis but some are adjusted based on circumstances
- Sets procedures for challenging assessments
- Funding goes to LARA and is distributed via appropriations among MPSC, MAE, Attorney General and Administrative Law Judges
- 2017: about \$34 million (\$27.7 million MPSC/MAE; \$4.08 million LARA; \$2.077 million Attorney General)

## **Utility Adjustment Clauses, 1982 PA 304; MCL 460.6h - 460.6m**

- Banned automatic rate adjustment clauses that operated without notice and hearing
- Established a framework for adjustments to utility rates to reflect changes in the costs of gas and power supply (GCR and PSCR), with notice and hearing
- Established the utility consumer participation board and fund to assure ratepayer representation in the GCR and PSCR cases (extended to other cases in 2016)
- Major controversy at the time, with competing ballot proposals, resolved by the Supreme Court in Re Proposals D and H, 417 Mich 409 (1983)

**Customer Choice and Electric Reliability Act (CCERA), 2000 PA 141-142; MCL 460.10 – 460.10cc**

- Major change in Michigan law corresponding to the 1990s national movement towards deregulation or “electric restructuring”
- Required electric IOUs to implement full retail choice by 1-1-02 (municipal utilities retained control over decision; cooperatives given more flexibility)
- 5% reduction in residential rates for CE and DTE and all rates frozen until 12-31-03; residential freeze to 1-1-06
- Allowed full recovery of stranded and implementation costs
- Allowed securitization financing by utilities with part of the savings used to fund the 5% rate reduction and a low-income and energy efficiency fund

**Customer Choice and Electric Reliability Act (CCERA), 2000 PA 141-142; MCL 460.10 – 460.10cc**

- Required unbundling of rates into components of power supply, transmission and distribution services (G, T and D)
- MPSC licensing of alternative energy providers
- Require IOUs to join a multi-state transmission system or divest their interest in transmission (control by MISO, PJM; ownership by ITC and ATC)
- Require 2,000 MW expansion plan for transmission import capability
- Merchant plant connection to T&D systems
- Market power review and potential mitigation
- Others: employee protection, environmental disclosures, customer choice education, code of conduct, shutoff protection, quality of service

**Clean, Renewable and Efficient Energy Act (CREEA), 2008 PA 295;  
MCL 460.1001 – 460.1211**

- First renewable energy (RE) requirement in Michigan law: IOUs and co-ops (not municipals) must have 10% of energy supply from renewables by 2015 with interim steps; largest utilities must meet a capacity portfolio of 500 MW (CE) and 600 MW (DTE)
- Territorial limit on source of renewable energy (MI + nearby areas)
- Provisions on cost recovery, approval of RE plans, use and tracking of RE credits (RECs), incentive RECs for in-state equipment and workforce, reporting and civil enforcement for member-regulated co-operatives
- First energy optimization (EO) requirement in Michigan law: IOUs, co-ops and municipal providers must file plans to meet savings targets of 1% of electric sales and 0.75% of gas sales by 2015, with interim steps

**Clean, Renewable and Efficient Energy Act (CREEA), 2008 PA 295;  
MCL 460.1001 – 460.1211**

- Provisions for cost recovery, option to use a state administrator, large customer self-directed plans, authorized incentives and MPSC oversight and reporting
- Provisions for the state to reduce grid-based energy purchases 25% by 2015 and implement conservation and efficiency programs for state buildings
- Set up wind energy advisory board to establish geographic zones that are favorable to wind energy development
- Authorize expedited transmission siting certification by MPSC for wind projects
- Require MPSC to establish a statewide net metering program applicable to all rate-regulated electric utilities and AESs, with provisions for interconnection, applications, metering and enforcement, MCL 460.1171 – 460.1185

### **Michigan – 8 Investor-Owned Electric Utilities** **(MPSC regulates)**

Company	# Customers	Location
DTE Electric	2.1 million +	SE Michigan
Consumers Energy	1.8 million +	Lower Peninsula
Alpena Power Company	17,700	NE Lower MI
Indiana Michigan Power (AEP)	128,000	SW Lower MI
Upper Peninsula Power Company	52,000	Central U.P.
UMERC (former WPS, We Energies)	36,500	W-Central U.P.
Xcel Energy (NSP-W)	9,000	Western U.P.
We Energies	1	Central U.P.

### **Michigan – 9 Rural Electric LDC Cooperatives**

- Alger Delta, Cherryland, Cloverland, Great Lakes, Midwest, Ontonagon, Presque Isle, Thumb, Tri-County (LDCs)
- Wolverine Power Cooperative is a Generating/Transmission entity serving the co-op LDCs
- Wolverine Power Marketing Cooperative
- Total electric customers – 322,000
- All are member-regulated for rates

### **Michigan – Municipal Electric Utilities**

- 40 members of Michigan Municipal Electric Association
- 8% of Michigan electric customers
- Largest are Lansing BWL, Holland, Traverse City and Marquette
- Wholesale suppliers include Michigan Public Power Agency, Michigan South Central Power Agency, WPPI Energy

### **Michigan – Other Electricity Producers**

- 26 Alternative Electric Suppliers (AES) Licensed (MPSC Website)
- AES providers offer retail choice (subject to 10% choice cap)
- ITC Michigan – high voltage electric transmission (120kV+) in lower peninsula (includes former DTE and Consumers lines)
- ATC – American Transmission Company (high voltage transmission in the U.P., Wisconsin and elsewhere)
- Independent Power Producers/PURPA Facilities (QFs including hydro, biomass, waste-to-energy and land)
- Industrial Sites/Cogeneration and gas generators)

## Michigan – Grid Operational Control

- Midcontinent Independent System Operator (MISO)
- MISO controls most of the state grid
- Lower Michigan is MISO Zone 7; Upper Peninsula is in MISO Zone 2 (Xcel Zone 1)
- PJM controls the SW Lower Michigan area served by Indiana Michigan Power Company/AEP

## QUESTIONS??

