



Testimony on Senate Bill 437 (S-1)

October 1st, 2015

Byrd – Good morning lady and gentlemen of the committee.

My name is Brindley Byrd, today here on behalf of the Michigan Air Conditioning Contractors Association (MIACCA) that represents Michigan licensed mechanical contractors. I would like to thank you for this opportunity to talk with you today. As a change in pace, we will not be talking about the typical energy topics discussed in these hearings. We will instead be wading into issues relating to utility code of conduct and expansion of regulated monopolies into the free market. We are here, under the direction of our board of directors, to voice our strong opposition to SB437 (S-1).

Joining me today is our association treasurer, Phil Forner. Mr. Forner is a third-generation mechanical contractor based in Allendale, MI just west of Grand Rapids. I would personally like to thank Mr. Forner for his time to travel here today and for his years of dedication to Michigan's mechanical industry.

He has amassed over 20-years of intimate knowledge relating to utility code of conduct and the administration and regulation of what are called appliance service programs or ASP's. As a leader in what was known as the Michigan Alliance for Fair Competition (MACF), Mr. Forner has the distinction of successfully litigating claims of unfair business practices perpetrated by one of Michigan's investor owned utilities. He has personally intervened in utility rate-cases where proper allocation of costs and revenues were in question obtaining more than \$470,000 of relief for Michigan electric ratepayers. He has most recently taken other concerns relating to ASP's to the Michigan Supreme Court having as yet unsuccessfully found resolution to those concerns.

Forner – Good afternoon members of the committee. As Brindley said, yeah, I've been at this for a while; as a resident electric ratepayer who understands how business costs should be allocated and as a small business person who supports fair competition and free market principles. When Rep. Aric Nesbitt introduced House Bill 4298, he opened sections of Public Act 3 relating to ASP's. I had just recently completed an MPSC complaint case U-16273 I filed because in previous Consumers Energy general electric rate cases (U-15245 and U-15645) where I intervened, the MPSC would not address the allocation of MPSC determined cost of \$0.104 for each ASP charge included on the monthly bills of Consumers Energy's electric customers. Imagine being able to send out a monthly billing that costs you only ten cents? The electric utility is cross-subsidizing the full cost of this billing to the tune of millions of dollars when you start doing the math of each ASP customer, each month for every year an ASP runs. The MPSC and Michigan Supreme Court failed to require allocation of all ASP costs as stipulated in Public Act 88 of 2004, which allowed for ASP's. Electric ratepayers are not seeing relief for all costs incurred by the regulated utility for non-regulated activity.

MIACCA drafted and offered language to the representative, which should address many of our lingering concerns. However, our suggested language was not included in the substitute bill for HB4298.

When SB437 was introduced, MIACCA's board and the former members of the MAFC took great exception to the bill. Specifically, we interpret language inserted into the subsection relating to electric code of conduct as restricting the applicability of the code. That the code of conduct will apply only "...between an electric utility's regulated electric service and unregulated retail open access services..." Essentially meaning the code of conduct is lifted from any other transaction a regulated monopoly does.

Additionally, we took issue with the insertion of new language in the same subsection relating to other value added programs and services or OVAPS. On July 14th, 2015 MIACCA sent a letter to all of you expressing our concerns and recommending striking



all existing and proposed language relating to ASP's. We also expressed concern about the curtailment of the code of conduct.

Last week, Rick Coy said you would be hearing from small businesses concerned about proposed language doing what his testimony indicates as eliminating the code of conduct. Well, here we are to do it in person.

Byrd – The objectionable language Mr. Forner just referred to can still be found in the substitute bill before this committee. For some reason, you legislators are not hearing our concerns regarding non-regulated utility activity.

If you subscribe to Thomas Jefferson's assertion that one of our inalienable rights is protection against monopolies and that governments should regulate them, you then agree that part of the legislature's responsibility is to protect the public interest from even the potential of large-scale market corruption by monopolies. The language as proposed in Sec. 10(a) parts 10 through 16 of SB437 (S-1) allows for that potential.

We are fully aware there are many concerns held and expressed about the code of conduct and activity of regulated monopolies in the free market. Finding solutions to those concerns presents a true dilemma.

On one hand, our utilities have made the case that their future revenue streams are trending slightly downward. Their load forecast is flat. Energy efficiency is up. The Clean Power Plan has changed their traditional method of yielding guaranteed returns by large investments into electric generation assets – specifically coal. For sure, we see the utilities cheese has been moved. We do acknowledge utilities would like to look to different revenue streams to be more attractive to Wall Street and continue providing reliable energy at affordable rates.

One the other hand, Public Act 3 entrusted the utilities to provide us that reliable power and energy we need as Michiganders to subsist in the modern world. With that



responsibility came a deal: don't leverage your monopoly assets in the free market. Or to say it another way, keep the regulated utility activities completely separate from any unregulated activities.

A final facet of this issue is that eight of Michigan's fifty-nine electric utilities are for profit corporations. The principles of fair competition that apply to small enterprises also apply to investor owned utilities, with the caveat that IOU's get heavily regulated – here following Jefferson's assertion.

Our job during these debates is to strike a balance between something you, Senator Nofs said back in July when you introduced this bill, that being finding ways for the utilities to make more money and balancing that with not forgetting the lessons learned during the Gilded Age when large corporations ran unfettered in the market.

Forner – We knew that our first proposal removing the ability of utilities to offer ASP's was not politically viable at that time. We also know that the other solution we see of eliminating the unfair competition from protected monopolies is to rescind their protected monopoly status. This can be done by moving to a 100% electric choice market. This option has been shown to also not be politically viable or prudent.

MIACCA has drafted amendments for consideration to the bill that in our opinion provides a better balance that may work. A copy of that language has been provided to you all.

Highlights of the our proposed amendments include the following:

First, reinstatement of the original language relating to the code of conduct for any activity not specifically covered. This means the code of conduct would remain unaltered and preserves the overall guiding principle of prohibiting cross-subsidization of unregulated utility activities with the regulated utility paid for assets, unless specifically authorized and monitored.



Second, defined protection of Michigan small businesses and consumers from uncontrolled business practices of a regulated electric utility venturing into the private sector.

Third, ensuring financial benefit goes to the electric utility ratepayers when electric utility ratepayer paid for assets are used to compete in the private sector.

Fourth, provide for protection of ratepayer benefits with insertion of language allowing for greater transparency and accounting of OVAPS costs and revenues.

Lastly, recognize and allow for expansion of programs and services offered by Michigan electric utility companies within a more defined framework of what OVAPS they intend to offer.

If this Legislature is going to let this powerful genie out of the bottle, please carefully consider the ramifications on the free markets and what it will take to properly regulate the effects of doing so.

Byrd - We know we do not have a perfect solution. We have concern within our organization with our proposals. Other observers and participants in these proceedings most certainly do. Some feel the utilities companies' claim of decreased revenue can be addressed through other legislative means – regulating them to be more efficient in their business practices and keep them in their regulated box. Some see that allowing for exceptions to the code of conduct for any type of OVAPS is allowing cross-subsidization (we don't disagree with this). Yet others are extremely concerned about the long-term financial viability of utility companies in this time of change impacting their core business model and ability to deliver on the PA3 deal.

As far as MIACCA is concerned, should all of our proposals be accepted, we will support Senate Bill 437 in its final version.



With that, we again would like to thank you for this chance to have an open discussion about these issues.

We'd be happy to take any questions.

Respectfully submitted,

Phil Forner
Treasurer

Brindley Byrd
Executive Director

