

SENATE BILL No. 128

February 26, 1991, Introduced by Senators FAUST, WELBORN, CHERRY, KELLY and BARCIA and referred to the Committee on Technology and Energy.

A bill to establish the procedures concerning the purchase and sale of electricity between certain electric utility companies and private power producers or customers; and to prescribe the powers and duties of certain state agencies and officials.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "private power producers act".

3 Sec. 2. As used in this act:

4 (a) "Avoided costs" means the incremental costs to a public
5 utility of electric energy or capacity, or both, which, but for
6 the purchase from a private power producer, the utility would
7 generate itself or purchase from another source.

8 (b) "Commission" means the Michigan public service
9 commission.

1 (c) "Integrated resource plan" means a plan recommended by a
2 public utility to acquire its resource needs that integrates
3 options to increase power supply with options to reduce customer
4 use of power, including specifically the option described in
5 section 9.

6 (d) "Private power producer" means a corporation that is a
7 qualifying cogeneration facility.

8 (e) "Public utility" means an electric utility subject to
9 the jurisdiction of the commission that provides electric service
10 to 500,000 or more customers in this state as shown by the latest
11 regular federal decennial census.

12 (f) "PURPA" means the public utility regulatory policies act
13 of 1978, Public Law 95-617, 92 Stat. 3117, and implementing fed-
14 eral regulations promulgated under that act, as amended to
15 January 1, 1991.

16 (g) "Resource needs" means the incremental resources that,
17 but for purchases by a public utility from private power produc-
18 ers or purchases by a customer of the public utility pursuant to
19 section 9, the public utility would generate or purchase from
20 another source.

21 (h) "Qualifying cogeneration facility" means that term as
22 defined by PURPA.

23 Sec. 3. (1) If an integrated resource plan filed by a
24 public utility pursuant to a commission order or section 6j of
25 Act No. 3 of the Public Acts of 1939, being section 460.6j of the
26 Michigan Compiled Laws, states or identifies that the public
27 utility requires additional resource needs and the commission has

1 not indicated it would be unlikely to permit recovery of the
2 costs of those resource needs, the public utility, within 30 days
3 following issuance of the commission's decision under section 6j
4 of Act No. 3 of the Public Acts of 1939, or at an earlier date as
5 necessary to ensure adequate electricity supplies, shall file for
6 the commission's approval a request for proposals containing all
7 of the following:

8 (a) The anticipated amount and characteristics of additional
9 resources to be solicited from private power producers or by the
10 public utility's customers pursuant to section 9 and the avoided
11 costs for energy and capacity for the next 10-, 20-, and 30-year
12 periods.

13 (b) Proposed factors to be included in a public utility's
14 request for proposals for resource additions from private power
15 producers needed to meet capacity requirements or by the public
16 utility's customers pursuant to section 9, including, but not
17 limited to, location and size of the proposed facility; fuel
18 type; operational characteristics; date of commercial operation;
19 interruptibility of generation at the public utility's request;
20 pricing, including ratepayer impacts; the total amount of cus-
21 tomer purchases pursuant to section 9 that may be accomplished at
22 a cost to customers not participating in the purchases that is
23 less than the public utility's purchase of capacity at an avoided
24 cost rate; and any other factors the commission considers
25 appropriate.

26 (c) Proposed weighting criteria to be used by the public
27 utility to score proposals from private power producers.

1 (d) Standard contract forms to be used to purchase resource
2 needs.

3 (2) Within 75 days and after comment by interested parties,
4 the commission shall review and approve, disapprove, or modify
5 the request for proposals.

6 Sec. 4. Following commission approval of its request for
7 proposals pursuant to section 3, a public utility shall do all of
8 the following:

9 (a) Within 10 business days after approval, the public util-
10 ity shall issue the request for proposals in a manner reasonably
11 designed to ensure that those interested in responding are noti-
12 fied, including, but not limited to, publication in newspapers of
13 general circulation. A list of published notices shall be filed
14 with the commission within 5 days after the request for proposals
15 is issued. The public utility shall identify the date 70 days
16 from issuance of the request for proposals by which all final
17 responses to the request shall be filed with the commission.

18 (b) Each public utility shall provide all information neces-
19 sary for private power producers and customers acting pursuant to
20 section 9 to develop proposals in a timely manner, including, but
21 not limited to, all of the following:

22 (i) A method by which the private power producer or customer
23 may obtain an estimate of interconnection costs.

24 (ii) A method by which the private power producer or cus-
25 tomer may determine the ratepayer impact of its proposals.

26 (iii) A method by which the private power producer or
27 customer may obtain clarifying and procedural information.

1 (c) A public utility evaluating the responses of private
2 power producers and customers acting pursuant to section 9 to a
3 request for proposals shall do all of the following:

4 (i) Be present at the opening of the proposals and evaluate
5 each proposal for completeness and accuracy of response and con-
6 formity with the request for proposals.

7 (ii) Submit an evaluation of the proposals to the commission
8 within 60 days after the final submission date for proposals.

9 The evaluation shall include a recommendation as to which
10 projects or customer proposals pursuant to section 9 should be
11 awarded contracts. The recommendation for each project and for
12 the aggregate of all recommended projects shall include documen-
13 tation that addresses all of the following:

14 (A) The criteria approved by the commission.

15 (B) The effect on the public utility's revenue
16 requirements.

17 (C) The effect on the safety, reliability, and capability of
18 the public utility's system.

19 (D) Other information the commission requires.

20 Sec. 5. The commission retains the power to order modifica-
21 tion of proposals, to reject any proposal, to direct the public
22 utility to solicit again for proposals, or to suspend the ranking
23 and selection process for private power producers.

24 Sec. 6. (1) A private power producer who intends to respond
25 to the request for proposals shall do all of the following:

1 (a) Within 30 days of the issuance of a request for
2 proposals by a public utility, file with the commission a
3 statement of intent to file a proposal.

4 (b) Submit to the commission 5 copies of the response to the
5 request for proposals. The proposals shall remain sealed until
6 the first business day following the date on which all final
7 responses are due.

8 (2) Each proposal must include sufficient information and
9 documentation to permit evaluation of the proposal according to
10 the criteria required by this section, including, but not limited
11 to, the following:

12 (a) A pricing proposal, including initial price, payment
13 escalation mechanism, and proposed payment stream over the con-
14 tract term.

15 (b) The proposed project structure, including the thermal
16 user, ownership, relationship among project participants, and
17 documentation of corporate and financial status of participants.

18 (c) The proposed fuel and documentation of the fuel supply
19 and source.

20 (d) The proposed project location and documentation of site
21 control.

22 (e) Preliminary engineering data and technical
23 specifications.

24 (f) A proposed capitalization plan and documentation of
25 financial viability.

26 (g) Environmental permit requirements and a preliminary
27 construction milestone schedule.

1 (h) Other information the commission requires.

2 Sec. 7. (1) The commission shall conduct a public hearing
3 to review the evaluation of proposals performed by a public util-
4 ity to ensure that it is consistent with the approved request for
5 proposals and, within 60 days after the public utility submits
6 its evaluation of proposals, the commission shall issue a deci-
7 sion determining which proposed projects or proposals are consis-
8 tent with the requirements of this act.

9 (2) Within 10 days after the commission's decision pursuant
10 to subsection (1), the commission shall notify successful private
11 power producers of their eligibility to enter long-term contracts
12 with a public utility and shall specify any conditions or limita-
13 tions to this eligibility. A copy of the notice shall be sent to
14 each affected public utility.

15 (3) Within 60 days after the notification pursuant to
16 subsection (2), a public utility shall file with the commission
17 any executed contracts with eligible private power producers
18 incorporating the terms and conditions included in the private
19 power producer's response to the request for proposals and any
20 modifications or additions included in the commission's
21 notifications.

22 (4) The commission shall approve a contract meeting the
23 requirements of this act. Approval pursuant to this section con-
24 stitutes prior approval under section 6j(13)(b) or 6o of Act
25 No. 3 of the Public Acts of 1939, being sections 460.6j and
26 460.6o of the Michigan Compiled Laws.

1 Sec. 8. A proceeding before the commission for an approval
2 under this act shall be conducted as a contested case pursuant to
3 chapter 4 of the administrative procedures act of 1969, Act
4 No. 306 of the Public Acts of 1969, being sections 24.271 to
5 24.287 of the Michigan Compiled Laws.

6 Sec. 9. (1) Upon the request of a customer of a public
7 utility in the form of a proposal responding to a request for
8 proposals issued pursuant to section 4, a public utility shall
9 purchase electric capacity, energy, or standby power at terms
10 negotiated by the customer from a qualified facility, independent
11 power producer, or electric utility and the public utility shall
12 resell the capacity, energy, or standby power to the customer at
13 no increase in price. All of the following apply:

14 (a) The total electric capacity of the requests granted
15 shall not exceed the total amount of public utility customer pur-
16 chases approved for solicitation in the request for proposals
17 issued pursuant to section 4.

18 (b) The amount of capacity purchased and resold shall be not
19 less than 500 kilowatts of demand and the contract terms shall be
20 a minimum of 15 years.

21 (c) The public utility shall charge the customer a fee for
22 purchasing and reselling electric capacity equal to the fee
23 charged for transmitting the power generated by an affiliated
24 qualified facility or independent power producer, but in no event
25 shall the fee exceed the bulk power transmission rate approved
26 for the public utility by the federal energy regulatory
27 commission plus applicable facilities charges.

1 (d) Standby service shall be made available at rates
2 approved by the commission to customers requesting to purchase
3 capacity and energy pursuant to this section.

4 (e) The public utility shall not purchase capacity and
5 energy for resale to its customer pursuant to this section from
6 an electric utility that does not provide comparable purchase and
7 resale service to its own retail customers.

8 (2) If the total amount of the requests pursuant to subsec-
9 tion (1) exceeds the total amount of public utility customer pur-
10 chases approved by the commission in the request for proposals
11 issued pursuant to section 4, the commission shall hold a drawing
12 to select the requests to be granted. No request exceeding 20%
13 of needed capacity shall be granted unless the total requests do
14 not exceed the total amount of capacity requirements described in
15 the request for proposals.

16 (3) If the total amount of the requests pursuant to
17 subsection (1) is less than the total amount of public utility
18 customer purchases approved by the commission in the request for
19 proposals issued pursuant to section 4, the balance shall be
20 awarded to private power producers on the basis of the bids sub-
21 mitted in response to the request for proposals.

22 (4) Within 10 days of filing, the public utility shall
23 notify customers whose requests have been honored and shall
24 require that a deposit of \$5.00 per kilowatt of capacity be paid
25 to the public utility within 20 days after the notice. If a cus-
26 tomer does not make the required deposit, the capacity shall be
27 made available to other requesting customers. The deposits

1 collected pursuant to this section shall be refunded to the
2 customer in the form of a credit toward the purchase and resale
3 fees authorized in subsection (1).