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## BILL ANALYSIS

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Senate Bill 797 (as introduced 9-20-07)  
Sponsor: Senator Tupac A. Hunter  
Committee: Energy Policy and Public Utilities

Date Completed: 9-26-07

**CONTENT**

**The bill would create the "Electric Integrated Resources Planning and Power Plant Certification Act" to do the following:**

- Allow an electric utility to apply to the Public Service Commission (PSC) for a certificate of need to construct an electric generation facility.**
- Require a utility requesting a certificate to file an integrated resource plan.**
- Require the PSC to establish standards for an integrated resource plan.**
- Require the PSC to issue a certificate upon making specified determinations.**
- Provide that customers who received electric generation service from a utility either when or after a certificate was issued would be assessed the cost of the new plant.**
- Provide that a certificate would take precedence over a conflicting local law, policy, or practice.**
- Authorize the PSC to promulgate rules to implement the proposed Act.**

("Construction" would mean any substantial action taken on an electric generation facility constituting placement or erection of the foundations or structures supporting the facility. The term would not include preconstruction activity or routine maintenance of an existing facility. "Preconstruction activity" would mean any activity on a proposed electric generation facility conducted before construction began, including surveys, measurements, examinations, soundings, borings, sample-taking, or other testing procedures, photography, appraisal, or tests of soil, groundwater, structures, or other materials in or on the real property for contamination.

"Electric utility" would mean a person, partnership, corporation, association, or other legal entity whose generation or transmission of electricity the PSC regulates under Public Act 3 of 1939, the Public Service Commission law. The term would not include a municipal utility.)

An electric utility that sought to construct an electric generation facility to serve its customers could apply to the PSC for a certificate of need. The PSC could not issue a certificate unless the utility filed an integrated resource plan and demonstrated a need for the facility. If the PSC issued a certificate, the need for the facility could not be used as the basis for challenging the cost recovery of the facility in subsequent rate proceedings.

The PSC would have to establish standards for an integrated resource plan. A plan would have to include all of the following:

- A long-term forecast of the utility's load growth.
- The type of generation technology proposed for the facility and the facility's proposed capacity.
- Energy purchased or produced by the utility pursuant to any renewable portfolio standard.
- Energy efficiency savings, load management savings, and demand response savings for the utility.
- The utility's electric transmission options.

Before applying for a certificate, a utility would have to schedule and hold a public meeting in the municipality (city, township, or village) in which the generation facility had been proposed. A public meeting held in a township would satisfy the requirement that a meeting be held in each affected village located within the township.

Upon applying for a certificate, a utility would have to give public notice, in the manner and form prescribed by the PSC, of an opportunity to comment on the application. Notice would have to be published in a newspaper of general circulation in the utility's service area within a reasonable time period after the application was given to the PSC, and would have to be sent to each affected municipality and each affected landowner within 1,000 feet of the proposed facility. The notice would have to be written in plain, nontechnical, and easily understood terms, and include the name of the utility and the words "NOTICE OF INTENT TO CONSTRUCT AN ELECTRIC GENERATION FACILITY".

The PSC would have to conduct a proceeding on the application as a contested case under the Administrative Procedures Act (APA). Upon receiving an application, each affected municipality and landowner would have to be granted full intervenor status as of right in PSC proceedings concerning the proposed facility.

The PSC would have to grant or deny the application within 270 days after it was filed. The PSC could condition its approval upon the applicant's taking additional action to ensure the public convenience, health, and safety and reliability of the proposed generation facility.

The PSC would have to grant the application and issue a certificate if it determined all of the following:

- The electric utility had demonstrated a need for the facility through its integrated resource plan filing.
- The proposed location was feasible and reasonable.
- The proposed facility did not present an unreasonable threat to public health or safety.
- The utility could finance the facility on reasonable terms.

A certificate would have to identify the facility's proposed location and contain its estimated cost.

If construction of a proposed facility did not begin within five years after a certificate was granted, the certificate would be invalid and a new one would be required for the proposed facility.

A utility that received a certificate would have to bid competitively the engineering, procurement, and construction portion of the facility.

A certificate granted by the PSC would take precedence over a conflicting local ordinance, law, rule, regulation, policy, or practice that prohibited or regulated the location or construction of the facility.

Customers who received electric generation service from an electric utility when a certificate was issued but subsequently received generation service from an alternative electric supplier (AES) would have to be assessed a prorated share of the fixed cost of the new plant through a distribution charge established by the PSC. ("Alternative electric supplier" would mean that term as it is defined under the PSC law, i.e., a person selling electric generation service to retail customers in Michigan. The term does not include a person who physically delivers electricity directly to retail customers in Michigan.)

Customers who received generation service from an AES when a certificate was issued but subsequently received generation service from an electric utility that received a certificate would have to be assessed the cost of the new plant in their base rates. If such a customer subsequently received service from an AES, the customer would have to be assessed a prorated share of the fixed cost of the new plant through a distribution charge established by the PSC.

Customers who received generation service from an AES when a certificate was issued could not be assessed the cost of the facility that received a certificate as long as they did not receive generation service from a utility that received a certificate.

Except as follows, information obtained by the PSC under the proposed Act would be a public record as provided in the Freedom of Information Act (FOIA). An electric utility could designate information received by a third party that the utility submitted to the PSC in an application for a certificate or in other documents required for purposes of certification, as being only for the confidential use of the Commission. The PSC would have to notify the utility of a request for public records under FOIA if the scope of the request included information designated as confidential. The utility would have 10 days after receiving the notice to demonstrate to the PSC that the information should not be disclosed because it was a trade secret or secret process or was production, commercial, or financial information whose disclosure would jeopardize the competitive position of the utility or the person from whom the information was obtained. The PSC could not grant the request for the information if the utility demonstrated to the Commission's satisfaction that it should not be disclosed for a reason authorized in these provisions. If the PSC decided to grant a request, the information could not be released until three days after notice of the decision was given to the utility.

The PSC could promulgate rules to implement the proposed Act pursuant to the APA. The rules could contain standards to determine a proposed electric generation facility's health and safety aspects. Until rules were promulgated, the PSC would have to consider and determine any health or safety issue a party raised in a proceeding concerning a certificate application.

Legislative Analyst: Julie Cassidy

### **FISCAL IMPACT**

The bill would increase the regulatory responsibilities of the Public Service Commission. Any costs incurred would be covered with existing revenue sources from public utility assessments as no fund source is identified in the bill.

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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.