

SENATE BILL No. 797

September 20, 2007, Introduced by Senators HUNTER and GLEASON and referred to the Committee on Energy Policy and Public Utilities.

A bill to regulate the construction of certain electric generation facilities; to provide for the powers and duties of certain state and local governmental officers and entities; and to require the promulgation of rules.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "electric integrated resources planning and power plant
3 certification act".

4 Sec. 2. As used in this act:

5 (a) "Alternative electric supplier" means that term as defined
6 in section 10g of 1939 PA 3, MCL 460.10g.

7 (b) "Certificate" means a certificate of need issued for an
8 electric generation facility under this act.

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

1 (d) "Construction" means any substantial action taken on an
2 electric generation facility constituting placement or erection of
3 the foundations or structures supporting an electric generation
4 facility. Construction does not include preconstruction activity or
5 routine maintenance of an existing electric generation facility.

6 (e) "Electric utility" means a person, partnership,
7 corporation, association, or other legal entity whose generation or
8 transmission of electricity the commission regulates under 1939 PA
9 3, MCL 460.1 to 460.10cc. Electric utility does not include a
10 municipal utility.

11 (f) "Municipality" means a city, township, or village.

12 (g) "Preconstruction activity" means any activity on a
13 proposed electric generation facility conducted before construction
14 begins. Preconstruction activity includes surveys, measurements,
15 examinations, soundings, borings, sample-taking, or other testing
16 procedures, photography, appraisal, or tests of soil, groundwater,
17 structures, or other materials in or on the real property for
18 contamination.

19 Sec. 3. (1) An electric utility that seeks to construct an
20 electric generation facility to serve its customers may apply to
21 the commission for a certificate. The commission shall not issue a
22 certificate unless a requesting electric utility files an
23 integrated resource plan and demonstrates a need for the generation
24 facility. If the commission issues a certificate to an electric
25 utility, the need for the generation facility shall not be used as
26 the basis for challenging the cost recovery of the electric
27 generation facility in subsequent rate proceedings.

1 (2) Before applying for a certificate, a utility shall
2 schedule and hold a public meeting in the municipality in which the
3 generation facility has been proposed. A public meeting held in a
4 township satisfies the requirement that a public meeting be held in
5 each affected village located within the township.

6 Sec. 4. (1) Upon applying for a certificate, an electric
7 utility shall give public notice in the manner and form the
8 commission prescribes of an opportunity to comment on the
9 application. Notice shall be published in a newspaper of general
10 circulation in the utility's service area within a reasonable time
11 period after an application is provided to the commission and shall
12 be sent to each affected municipality and each affected landowner
13 within 1,000 feet of the proposed generation facility. The notice
14 shall be written in plain, nontechnical, and easily understood
15 terms and shall contain a title that includes the name of the
16 electric utility and the words "NOTICE OF INTENT TO CONSTRUCT AN
17 ELECTRIC GENERATION FACILITY".

18 (2) The commission shall conduct a proceeding on the
19 application as a contested case under chapter 4 of the
20 administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to
21 24.287. Upon receiving an application for a certificate, each
22 affected municipality and each affected landowner shall be granted
23 full intervenor status as of right in commission proceedings
24 concerning the proposed generation facility.

25 (3) The commission shall grant or deny the application for a
26 certificate not later than 270 days after the application's filing
27 date. The commission may condition its approval upon the

1 applicant's taking additional action to ensure the public
2 convenience, health, and safety and reliability of the proposed
3 electric generation facility.

4 (4) The commission shall grant the application and issue a
5 certificate if it determines all of the following:

6 (a) The electric utility has demonstrated a need for the
7 generation facility through its integrated resource plan filing.

8 (b) The proposed location is feasible and reasonable.

9 (c) The proposed generation facility does not present an
10 unreasonable threat to public health or safety.

11 (d) The electric utility can finance the generation facility
12 on reasonable terms.

13 (5) A certificate issued under this section shall identify the
14 generation facility's proposed location and shall contain an
15 estimated cost for the generation facility.

16 (6) If construction of a proposed generation facility is not
17 begun within 5 years of the date that a certificate is granted, the
18 certificate is invalid and a new certificate shall be required for
19 the proposed generation facility.

20 Sec. 5. A utility that receives a certificate for an electric
21 generation facility shall competitively bid the engineering,
22 procurement, and construction portion of the generation facility.

23 Sec. 6. If the commission grants a certificate under this act,
24 that certificate shall take precedence over a conflicting local
25 ordinance, law, rule, regulation, policy, or practice that
26 prohibits or regulates the location or construction of a generation
27 facility for which the commission has issued a certificate.

1 Sec. 7. The commission shall establish standards for an
2 integrated resource plan that shall be filed by an electric utility
3 requesting a certificate. An integrated resource plan shall include
4 all of the following:

5 (a) A long-term forecast of the electric utility's load
6 growth.

7 (b) The type of generation technology proposed for the
8 generation facility and the proposed capacity of the generation
9 facility.

10 (c) Energy purchased or produced by the electric utility
11 pursuant to any renewable portfolio standard.

12 (d) Energy efficiency savings, load management savings, and
13 demand response savings for the electric utility.

14 (e) Electric transmission options for the electric utility.

15 Sec. 8. (1) Customers who receive electric generation service
16 from an electric utility when a certificate is issued but
17 subsequently receive electric generation service from an
18 alternative electric supplier shall be assessed a prorated share of
19 the fixed cost of the new plant through a distribution charge
20 established by the commission.

21 (2) Customers who receive electric generation service from an
22 alternative electric supplier when a certificate is issued but
23 subsequently receive electric generation service from an electric
24 utility that receives a certificate will be assessed the cost of
25 the new plant in their base rates. If that customer subsequently
26 receives service from an alternative electric supplier, that
27 customer shall be assessed a prorated share of the fixed cost of

1 the new plant through a distribution charge established by the
2 commission.

3 (3) Customers who receive electric generation service from an
4 alternative electric supplier when a certificate is issued shall
5 not be assessed the cost of the generation facility that receives a
6 certificate as long as they do not receive electric generation
7 service from an electric utility that receives a certificate.

8 Sec. 9. (1) Except as otherwise provided in this section,
9 information obtained by the commission under this act is a public
10 record as provided in the freedom of information act, 1976 PA 442,
11 MCL 15.231 to 15.246.

12 (2) An electric utility may designate information received by
13 a third party that the electric utility submits to the commission
14 in an application for a certificate or in other documents required
15 by the commission for purposes of certification as being only for
16 the confidential use of the commission. The commission shall notify
17 the electric utility of a request for public records under section
18 5 of the freedom of information act, 1976 PA 442, MCL 15.235, if
19 the scope of the request includes information designated as
20 confidential. The electric utility has 10 days after the receipt of
21 the notice to demonstrate to the commission that the information
22 designated as confidential should not be disclosed because the
23 information is a trade secret or secret process or is production,
24 commercial, or financial information the disclosure of which would
25 jeopardize the competitive position of the electric utility or the
26 person from whom the information was obtained. The commission shall
27 not grant the request for the information if the electric utility

1 demonstrates to the satisfaction of the commission that the
2 information should not be disclosed for a reason authorized in this
3 section. If the commission makes a decision to grant a request, the
4 information requested shall not be released until 3 days have
5 elapsed after notice of the decision is provided to the electric
6 utility.

7 Sec. 10. (1) The commission may promulgate rules to implement
8 this act pursuant to the administrative procedures act of 1969,
9 1969 PA 306, MCL 24.201 to 24.328. The rules may contain standards
10 to determine a proposed electric generation facility's health and
11 safety aspects.

12 (2) Until rules are promulgated as provided in subsection (1),
13 the commission shall consider and determine any health or safety
14 issue a party raises in a proceeding concerning a certificate
15 application.