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## BILL ANALYSIS

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Senate Bill 427 (as introduced 4-24-07)  
Sponsor: Senator Wayne Kuipers  
Committee: Energy Policy and Public Utilities

Date Completed: 9-12-07

### **CONTENT**

**The bill would amend Public Act 3 of 1939, the Public Service Commission (PSC) law, to do the following:**

- **Require the PSC to determine an electric utility's requirements for resources to meet the electricity needs of its full-service customers for the next 10 years, if the utility had at least 1.0 million Michigan customers.**
- **Require the PSC to make specific findings with respect to certain factors in its determination.**
- **Provide that a regional transmission organization (RTO) would have standing to intervene in the PSC proceeding.**
- **Require an electric utility to secure any additional resources the PSC determined were necessary.**
- **Require the PSC to establish or revise the procedures by which the utility would acquire the additional resources; and require the procedures to include a request for proposals (RFP) process, criteria for evaluating the proposals, and standardized contract terms to be entered into by the selected resource supplier and the utility.**
- **Limit to utilities with fewer than 1.0 million Michigan customers a requirement for the PSC, in a power supply cost reconciliation, to disallow capacity charges associated with power purchased for periods longer than six months unless a utility obtained the Commission's prior approval.**
- **In a power supply cost reconciliation for a utility with at least 1.0 million Michigan customers, require the PSC to disallow capacity charges associated with power purchased for periods longer than six months unless the charges were incurred under a contract for capacity or energy and procured pursuant to an RFP made in accordance with procedures established under the bill.**
- **Provide that an electric customer, alternative electric supplier, or resource supplier would have standing to intervene in a power supply cost review proceeding and power supply cost reconciliation proceeding.**

#### Utility 10-Year Resource Needs

The Act authorizes the PSC by order to incorporate in a utility's electric rates or rate schedule a power supply cost recovery (PSCR) clause permitting the monthly adjustment of rates for power supply, to allow the utility to recover the costs of fuel and purchased and net interchanged power transactions. In order to implement the clause, the utility annually must file a complete PSCR plan requesting a PSCR factor for each month in a 12-month period, as well as a five-year forecast of the power supply requirements of its customers, its

anticipated sources of supply, and projections of power supply costs, in light of its existing sources of electrical generation and sources of generation under construction. The PSC must conduct a power supply and cost review and may approve, reject, or amend the requested monthly PSCR factors. The utility then may incorporate the factors in its rates, and must file with the PSC a detailed statement of the revenue recorded each month pursuant to the PSCR factor.

Under the bill, for an electric utility with more than 1.0 million customers in Michigan, as part of the first power supply and cost review proceeding conducted by the PSC after the bill's effective date, and every two years after that, within 180 days after the proceeding began, the PSC would have to determine the utility's requirements for resources to meet the electricity needs of its full-service customers for the next 10 years.

Within 15 days after the proceeding began, the PSC would have to give notice to each RTO serving any portion of the utility's service area. The RTO would have standing to intervene in the proceeding.

In addition to any other person authorized by statute, rule, or regulation, any electric customer, alternative electric supplier, or resource supplier would have standing to intervene in any power supply cost review proceeding and in any power supply cost reconciliation proceeding (described below).

(Under the bill, "resource supplier" would mean a person with the capability to develop and provide electric generating capacity, electric energy, electric transmission service, or electric load reduction service.)

In the PSC's determination of a utility's requirements for resources to meet its 10-year electricity needs, the Commission would have to consider and make specific findings with respect to each of the following:

- The projected annual electric load requirements for all customers connected to the electric utility's distribution system for the next 10 years.
- The utility's projected wholesale sales and purchases of electricity.
- The electric generating capacity located within the utility's service area, including electric generating facilities not owned by the utility.
- The available transmission capacity that could be used to serve customers within the utility's distribution service area.
- The cost and reliability of resources located outside the utility's distribution service area that could be used to serve customers within the service area.
- The portion of the electric load connected to the utility's distribution system projected to be served by alternative electric suppliers.
- An analysis of the projected market prices for power purchased under the rules of the Midwest Independent System Operator (MISO) as compared to the costs of new electric generation facility and new electric transmission facilities.
- The relative costs to the utility's full-service customers of maintaining a one-day interruption in 10 years reliability standard and more or less stringent standards of reliability.
- The need for additional generating or transmission capacity to maintain electric reliability or secure economic advantages to the utility's full-service customers.
- A regional and statewide evaluation of electric supply and demand to identify sources outside of the utility service territory where power could be available or where there could be a particularly favorable site for building transmission or generation facilities.
- The quantity and type of resources, including reserves, required by the open access transmission and energy market tariffs of the RTO or the tariff of any successor organization in which the utility participated, and resources required by reliability standards or other requirements imposed under the authority of an electric reliability organization to which the utility was subject.

If the PSC concluded that there was a need for additional resources to serve the utility's full-service customers at any time within the next 10 years, the utility, according to the procedures established as described below and within the time ordered by the PSC, would have to secure the resources the Commission determined were required.

#### Procedures for Resource Acquisition

In the proceeding to determine a utility's 10-year resource requirements, if the PSC found that additional resources were needed, it would have to establish or revise the procedures by which the utility would have to acquire the resources. The procedures would have to do all of the following:

- Include a form of RFP for the utility to use for the purpose of procuring needed resources.
- Specify the evaluation criteria by which the preferred proposal would be determined.
- Establish a preferred form of contract or standardized contract terms to be entered into by the selected resource supplier and the utility.
- Prescribe the responsibilities and duties of an independent third-party evaluator selected by the PSC to issue RFPs, receive proposals submitted in response to an RFP, identify the proposal that best met the evaluation criteria, and recommend to the Commission the selection of one or more proposals.
- Prescribe the means by which the evaluator would be selected and the time following submission of proposals within which the independent evaluator would have to recommend a proposal for selection.
- Prescribe conditions under which the utility could submit a proposal in response to its own RFP designed to assure that utility use of ratepayer-funded assets did not result in placing resource suppliers submitting proposals at a disadvantage and that the participation of the utility would be consistent with its code of conduct.
- Prescribe the process for identification and approval of proposals.
- Prescribe terms to be included in any contract between a utility and a resource supplier that would limit compensation to be received by the resource supplier to no more than the compensation proposed.
- Identify clearly in the RFP which risks were to be assumed by utility customers and which risks were to be borne by people submitting proposals in connection with each resource to be procured.
- Prescribe criteria that would permit people proposing to provide demand-side management, transmission service, or generating capacity, including renewable and distributed generation capacity, to compete fairly to provide required resources.
- Provide reasonable means to assure that the RFP process would be open and fair to all participating parties.
- Provide that, after the PSC had selected a proposal, all proposals submitted, except the one selected, would be given confidential treatment to the extent permitted by law.
- Provide that demand-side management resources and renewable generating resources would be selected if their cost did not exceed the cost of competing proposals.
- Provide that, in considering the relative cost of new generating resources, all costs of transmitting power to the utility would be considered a part of the cost of generation.

Additionally, the procedures would have to provide for all of the following:

- That the independent evaluator would recommend to the PSC one or more proposals for selection within the time prescribed by the Commission.
- That the recommendation would be posted on the PSC's website and copies mailed to each party to the proceeding in which the PSC determined the utility's resource needs and to each supplier submitting a proposal.
- That any notified person or supplier could, within 15 days of the date the recommendation was posted, submit comments on the independent evaluator's recommendation or request PSC review of the process of requesting, receiving, and selecting proposals.

- That within 30 days of the date the recommendation was posted, the PSC by order would have to select the proposal most advantageous to the utility's customers unless the utility or supplier committed fraud or the evaluator failed to follow PSC procedures and the failure was materially detrimental to the utility's customers.
- That the utility and the supplier submitting the selected proposal would, not later than five days after the Commission's order selecting a proposal, execute a contract setting forth all terms and conditions of the RFP except to the extent that they had been modified in the selected proposal.
- That if the order had not been stayed or suspended by a competent court within 30 days after its date, the contract would be valid and binding according to its terms notwithstanding that the PSC's procedures or selection was later vacated, modified, or otherwise held to be invalid in whole or in part.

### Power Supply Cost Reconciliation

The Act requires the PSC to commence a power supply cost reconciliation proceeding at least once per year and not later than three months after the end of the 12-month period covered by a utility's PSCR plan. The Commission must reconcile the revenue recorded pursuant to the PSCR factors and the allowance for cost of power supply included in the base rates established in the latest PSC order for the utility with the amounts actually expensed and included in the cost of power supply by the utility. In its reconciliation order, the PSC may either authorize the utility to recover from customers, or to require the utility to refund to customers or credit customers' bills, as applicable, the difference between the PSCR factors and the utility's actual costs incurred each month.

In its reconciliation order, the PSC must disallow certain costs and charges, including any capacity charges associated with power purchased for periods in excess of six months unless the utility has obtained the prior approval of the Commission. Under the bill, this provision would apply to a utility with fewer than 1.0 million customers in Michigan.

Additionally, the PSC would have to disallow any capacity charges associated with power purchased by a utility with at least 1.0 million customers in Michigan for periods in excess of six months unless the charges had been incurred under a contract entered into by the utility for capacity or energy to meet its determined 10-year needs and procured pursuant to an RFP made in accordance with the procedures established by the PSC under the bill.

The PSC would have to allow all costs that did not exceed the limitations on compensation prescribed in the bill that the utility incurred under a contract to secure electric generating capacity or to purchase electricity found to be needed and entered into by the utility pursuant to an RFP, including all reasonable costs incurred in connection with the issuance, administration, and award of a contract pursuant to the bill.

MCL 460.6j

Legislative Analyst: Julie Cassidy

### **FISCAL IMPACT**

The bill would increase the responsibilities of the Commission, and would therefore increase costs. These costs would be offset by the fee structure charged under the existing public utility assessments.

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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.