

Legislative Analysis



PSC CERTIFICATIONS

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House Bill 5521

Sponsor: Rep. Edward Gaffney, Jr.

Committee: Energy and Technology

Complete to 12-11-07

A SUMMARY OF HOUSE BILL 5521 AS INTRODUCED 12-04-07

The bill would add a new Section 6r (MCL 460.6r) to the Public Service Commission Law to allow an electric utility considering taking certain steps to apply for one or more of five types of certifications that would be available from the Public Service Commission (PSC).

Types of proposals. Certifications would be available for electric utility proposals concerning:

- Building an electric generation facility, including a renewable resource generation facility.
- Making a significant investment in an existing facility.
- Purchasing an existing facility. [Note: House Bill 5520 also relates to a proposed sale of a generation facility and sets forth a procedure and standards for PSC approval of a generation facility sale.]
- Entering into a power purchase contract with a term of more than five years.

Available types of certifications. An electric utility could apply for one or more of five types of certifications:

- Certification of need. A certification that the power to be supplied as a result of the proposed construction, investment, or purchase is needed.
- Certification of reasonableness and prudence. A certification that the size, fuel type, and other design characteristics of the existing or proposed electric generation facility or the terms of the power purchase agreement represent a reasonable and prudent means of meeting that power need.
- Certification that price of purchased power would be recovered in rates. A certification that the price specified in a power purchase agreement would be recovered in rates from the electric utility's customers.
- Certification that costs relating to a new or existing generation facility would be recoverable in rates. A certification that the following costs would be recoverable in rates from the electric utility's customers:

"the estimated purchase or capital costs of the existing or proposed electric generation facility, including, but not limited to, the costs of siting and

licensing a new facility, the capital and operating costs to install equipment needed to comply with federal, state, or local environmental requirements, and the estimated cost of power from the new electric generation facility...."

- Certification regarding construction costs. A certification that, as to a new generation facility's construction costs, the Commission would adopt a ratemaking treatment that would allow a utility to earn a cash return on its investment during the construction period.

Hearings on applications for certification. Within 180 days of the filing of an application, the PSC would have to hold a hearing and issue an order granting or denying the requested certification.

Criteria for granting a certification. The PSC would be required to grant a requested certification if it determines the following:

- Integrated resource plan. The utility has filed an integrated resource plan that addresses issues such as capacity needs, energy efficiency, and availability of renewable energy.
- Need. There is a need for the power to be supplied by the facility or agreement.
- Compliance with environmental laws. It appears that the existing or proposed facility would comply with all applicable state and federal environmental standards, laws, and rules.
- Reasonable cost. The estimated cost of power from the facility or under the proposed contract is reasonable. The PSC would have to find the estimated cost of power from a *facility* reasonable if the engineering, procurement, and construction costs were competitively bid. The PSC would have to find the cost under a *power purchase contract* reasonable if the cost results from a "competitive solicitation."
- Reasonable way to meet power need. The facility or agreement represents a reasonable and prudent means of meeting the power need.

Certification approvals. In a certification, the PSC would have to specify (1) the approved construction costs; (2) the approved price for the purchase of an existing electric generation facility; or (3) the approved price for the purchase of power under a power purchase agreement.

Periodic review of certifications and allocation of differences between certified and actual costs. The PSC could undertake periodic review of the certifications it has granted and adopt a mechanism to allocate between customers and an electric utility "any differences between the costs included in the certification and the actual costs."

Effect of denial. If the PSC denies any of the relief requested by an electric utility, the utility could withdraw its application or proceed with the proposed construction, purchase, or power purchase agreement.

Mandatory inclusion of certified costs in retail rates. The PSC would have to include in an electric utility's retail rates all "reasonable and prudent" costs for a facility or a power purchase agreement for which certification has been granted. The PSC would be prohibited from disallowing the recovery of construction, facility purchase, or power purchase costs for which a certification has been granted, if the costs do not exceed the amounts approved in the certification. The PSC would have to include costs exceeding approved amounts in rates if the utility presents evidence to the commission demonstrating that the additional costs are reasonable and prudent.

[Note: It is unclear whether this section, which would appear to allocate the entire difference between certified and actual costs to retail customers, is consistent with the previous section allowing the PSC to adopt a mechanism for allocating such differences between retail customers and the utility.]

FISCAL IMPACT:

House Bills 5520-5525 are expected to be tie-barred to other pending bills in both Chambers, so this analysis is preliminary. This group of six bills is expected to require the addition of 25 to 30 staff to the Michigan Public Service Commission to administer the new programs and standards and the resulting caseload. The cost of this additional staff is estimated to be \$1.5 million to \$1.8 million, assuming that this many staff can be added to the existing MPSC office space.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.