

MICHIGAN PUBLIC SERVICE COMMISSION (EXCERPT)
Act 3 of 1939

460.6s Electric generation facility; application; review criteria and approval standards; order granting or denying certificate of necessity; hearing; reports; inclusion of costs in utility's retail rates; refunds; interest; modifying or canceling approval of certificate of necessity; filing forms and instructions; integrated resource plan; financing interest cost recovery in utility's base rates; submission of alternative proposal; order subject to judicial review.

Sec. 6s.

(1) An electric utility that proposes to construct an electric generation facility, make a significant investment in an existing electric generation facility, purchase an existing electric generation facility, or enter into a power purchase agreement for the purchase of electric capacity for a period of 6 years or longer may submit an application to the commission seeking a certificate of necessity for that construction, investment, or purchase if that construction, investment, or purchase costs \$100,000,000.00 or more and a portion of the costs would be allocable to retail customers in this state. A significant investment in an electric generation facility includes a group of investments reasonably planned to be made over a multiple year period not to exceed 6 years for a singular purpose such as increasing the capacity of an existing electric generation plant. The commission shall not issue a certificate of necessity under this section for any environmental upgrades to existing electric generation facilities. If the application is for the construction of an electric generation facility of 225 megawatts or more or for the construction of an additional generating unit or units totaling 225 megawatts or more at an existing electric generation facility submitted as required under section 6t(13), the commission shall consolidate its proceedings under section 6t and this section. If the commission approves or denies an application for an electric generation facility under this section that has been submitted as required under section 6t(13), the provisions of this section prevail in a conflict with section 6t.

(2) The commission may implement separate review criteria and approval standards for electric utilities with less than 1,000,000 retail customers that seek a certificate of necessity for projects costing less than \$100,000,000.00.

(3) An electric utility submitting an application under this section may request 1 or more of the following:

(a) A certificate of necessity that the power to be supplied as a result of the proposed construction, investment, or purchase is needed.

(b) A certificate of necessity 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 the most reasonable and prudent means of meeting that power need.

(c) A certificate of necessity that the price specified in the power purchase agreement will be recovered in rates from the electric utility's customers.

(d) A certificate of necessity that the estimated purchase or capital costs of and the financing plan for the existing or proposed electric generation facility, including, but not limited to, the costs of siting and licensing a new facility and the estimated cost of power from the new or proposed electric generation facility, will be recoverable in rates from the electric utility's customers subject to subsection (4)(c).

(4) Within 270 days after the filing of an application under this section, or, for an application for an electric generation facility submitted as required under section 6t(13), concurrently with a final order issued under section 6t, the commission shall issue an order granting or denying the requested certificate of necessity. The commission shall hold a hearing on the application. The hearing shall be conducted as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. The commission may allow intervention by persons under the rules of practice and procedure of the commission and shall allow intervention by existing suppliers of electric generation capacity under subsection (13), persons allowed to intervene in the contested case under section 6t, and interested persons. The commission shall permit reasonable discovery before and during the hearing in order to assist parties and interested persons in obtaining evidence concerning the application, including, but not limited to, the reasonableness and prudence of the construction, investment, or purchase for which the certificate of necessity has been requested. The commission shall grant the request if it determines all of the following:

(a) That the electric utility has demonstrated a need for the power that would be supplied by the existing or proposed electric generation facility or pursuant to the proposed power purchase agreement through its approved integrated resource plan under section 6t or subsection (11).

(b) The information supplied indicates that the existing or proposed electric generation facility will comply with all applicable state and federal environmental standards, laws, and rules.

(c) The estimated cost of power from the existing or proposed electric generation facility or the price of power specified in the proposed power purchase agreement is reasonable. The commission shall find that the cost is reasonable if, in the construction or investment in a new or existing facility, to the extent it is commercially

practicable, the estimated costs are the result of competitively bid engineering, procurement, and construction contracts, or in a power purchase agreement, the cost is the result of a competitive solicitation. Up to 150 days after an electric utility makes its initial filing, it may file to update its cost estimates if they have materially changed. No other aspect of the initial filing may be modified unless the application is withdrawn and refiled. A utility's filing updating its cost estimates does not extend the period for the commission to issue an order granting or denying a certificate of necessity. An affiliate of an electric utility that serves customers in this state and at least 1 other state may participate in the competitive bidding to provide engineering, procurement, and construction services to that electric utility for a project covered by this section.

(d) The existing or proposed electric generation facility or proposed power purchase agreement represents the most reasonable and prudent means of meeting the power need relative to other resource options for meeting power demand, including energy efficiency programs, electric transmission efficiencies, and any alternative proposals submitted under this section by existing suppliers of electric generation capacity under subsection (13) or other intervenors.

(e) To the extent practicable, the construction or investment in a new or existing facility in this state is completed using a workforce composed of residents of this state as determined by the commission. This subdivision does not apply to a facility that is located in a county that lies on the border with another state.

(5) The commission may consider any other costs or information related to the costs associated with the power that would be supplied by the existing or proposed electric generation facility or pursuant to the proposed purchase agreement or alternatives to the proposal raised by intervening parties.

(6) In a certificate of necessity under this section, the commission shall specify the costs approved for the construction of or significant investment in the electric generation facility, the price approved for the purchase of the existing electric generation facility, or the price approved for the purchase of power pursuant to the terms of the power purchase agreement. For power purchase agreements that an electric utility enters into with an entity that is not affiliated with that electric utility after the effective date of the amendatory act that added section 6t, the commission shall consider and may authorize a financial incentive for that utility that does not exceed the electric utility's weighted average cost of capital.

(7) The utility shall annually file, or more frequent if required by the commission, reports to the commission regarding the status of any project for which a certificate of necessity has been granted under subsection (4), including an update concerning the cost and schedule of that project.

(8) If the commission denies any of the relief requested by an electric utility, the electric utility may withdraw its application or proceed with the proposed construction, purchase, investment, or power purchase agreement without a certificate and the assurances granted under this section.

(9) Once the electric generation facility or power purchase agreement is considered used and useful or as otherwise provided in subsection (12), the commission shall include in an electric utility's retail rates all reasonable and prudent costs for an electric generation facility or power purchase agreement for which a certificate of necessity has been granted. The commission shall not disallow recovery of costs an electric utility incurs in constructing, investing in, or purchasing an electric generation facility or in purchasing power pursuant to a power purchase agreement for which a certificate of necessity has been granted, if the costs do not exceed the costs approved by the commission in the certificate. The portion of the cost of a plant, facility, or power purchase agreement that exceeds the cost approved by the commission is presumed to have been incurred due to a lack of prudence. Once the electric generation facility or power purchase agreement is considered used and useful or as otherwise provided in subsection (12), the commission shall include in the electric utility's retail rates costs actually incurred by the electric utility that exceed the costs approved by the commission only if the commission finds by a preponderance of the evidence that the additional costs were prudently incurred. The commission shall disallow costs the commission finds have been incurred as the result of fraud, concealment, gross mismanagement, or lack of quality controls amounting to gross mismanagement. The commission shall also require refunds with interest to ratepayers of any of these costs already recovered through the electric utility's rates and charges. If the assumptions underlying an approved certificate of necessity, other than a certificate of necessity approved for a power purchase agreement for the purchase of electric capacity, materially change, an electric utility may request, or the commission on its own motion may initiate, a proceeding to review whether it is reasonable and prudent to complete an unfinished project for which a certificate of necessity has been granted. If the commission finds that completion of the project is no longer reasonable and prudent, the commission may modify or cancel approval of the certificate of necessity. Except for costs the commission finds an electric utility has incurred as the result of fraud, concealment, gross mismanagement, or lack of quality controls amounting to gross mismanagement, if commission approval is modified or canceled, the commission shall not disallow reasonable and prudent costs already incurred or committed to by contract by an electric utility. Once the commission finds that completion of the project is no longer reasonable and prudent, the commission may limit future cost recovery to those costs that could not be reasonably avoided.

(10) The commission shall adopt standard application filing forms and instructions for use in all requests for a certificate of necessity under this section. The commission may modify the standard application filing forms and instructions adopted under this section.

(11) The commission shall establish standards for an integrated resource plan that shall be filed by an electric utility requesting a certificate of necessity under this section. This subsection does not apply to an electric utility that has an approved integrated resource plan under section 6t. An integrated resource plan shall include all of the following:

- (a) A long-term forecast of the electric utility's load growth under various reasonable scenarios.
- (b) The type of generation technology proposed for the generation facility and the proposed capacity of the generation facility, including projected fuel and regulatory costs under various reasonable scenarios.
- (c) Projected energy and capacity purchased or produced by the electric utility under any renewable portfolio standard.
- (d) Projected energy efficiency program savings under any energy efficiency program requirements and the projected costs for that program.
- (e) Projected load management and demand response savings for the electric utility and the projected costs for those programs.
- (f) An analysis of the availability and costs of other electric resources that could defer, displace, or partially displace the proposed generation facility or purchased power agreement, including additional renewable energy, energy efficiency programs, load management, and demand response, beyond those amounts contained in subdivisions (c) to (e).
- (g) Electric transmission options for the electric utility.

(12) The commission may allow financing interest cost recovery in an electric utility's base rates on construction work in progress for capital improvements approved under this section prior to the assets being considered used and useful. Regardless of whether or not the commission authorizes base rate treatment for construction work in progress financing interest expense, an electric utility shall be allowed to recognize, accrue, and defer the allowance for funds used during construction.

(13) An existing supplier of electric generation capacity currently producing at least 200 megawatts of firm electric generation capacity resources located in the independent system operator's zone in which the utility's load is served that seeks to provide electric generation capacity resources to the utility may submit a written proposal directly to the commission as an alternative to the construction, investment, or purchase for which the certificate of necessity is sought under this section. The entity submitting an alternative proposal under this subsection has standing to intervene and the commission shall allow reasonable discovery in the contested case proceeding conducted under this section. In evaluating an alternative proposal, the commission shall consider the cost of the alternative proposal and the submitting entity's qualifications, technical competence, capability, reliability, creditworthiness, and past performance. In reviewing an application, the commission may consider any alternative proposals submitted under this subsection. This subsection does not limit the ability of any other person to submit to the commission an alternative proposal to the construction, investment, or purchase for which a certificate of necessity is sought under this section and to petition for and be granted leave to intervene in the contested case proceeding conducted under this section under the rules of practice and procedure of the commission. This subsection does not authorize the commission to order or otherwise require an electric utility to adopt any alternative proposal submitted under this subsection.

(14) An order of the commission following a hearing under this section is subject to judicial review as provided under section 28 of article VI of the state constitution of 1963 and chapter 6 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.301 to 24.306, except that the filing of a petition for review must be filed in the court of appeals within 30 days after the order of the commission is issued and the court shall conduct the review as expeditiously as possible with lawful precedence over other matters.

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