MPSC Issue Brief

Michigan's New Resource Adequacy Law

What does Michigan's new energy law require?

Section 6w of PA 341 of 2016 established a **"state reliability mechanism"** to make sure the state has enough electricity supplies over the long term. Specifically, the law requires all electric providers to annually demonstrate to the MPSC that they have enough generating capacity to serve customers four years into the future. This includes municipal utilities, electric cooperatives, alternative electric suppliers, and investor-owned utilities. Alternative electric suppliers, if they cannot or choose not to arrange generating capacity to meet the new requirements, can instead rely on the local utility to provide "capacity service" to their customers. In this case, there would be a charge paid to the utility based on a rate determined by the MPSC.

Why does this issue matter?

Having reliable electricity is essential in today's world. With power plants closing in Michigan and across the Midwest, the Michigan Legislature recognized the need to **ensure all electric providers are planning to adequately meet their customers' needs for electricity.** Federal rules only require electric providers to plan for customers one year ahead of time, so Michigan's new law gives more lead time for providers to build or buy resources to serve customers. By planning ahead, it can also keep costs of electricity lower by avoiding price spikes or more costly last-minute purchases when supplies are limited.

How is the MPSC implementing these new provisions?

There are two important aspects of the new energy law currently being addressed by the MPSC:

1) Setting the rules and guidelines for how energy providers demonstrate they have enough electricity supplies or capacity, referred to as the **"bring your own capacity"** option; and
2) Setting the **state reliability mechanism charge** for alternative electric suppliers whose customers receive default capacity service from the local utility.

Capacity Demonstration

The MPSC solicited feedback and held numerous workgroup meetings to address the details of the "bring your own capacity" option. Comments and information are available on the MPSC's e-dockets webpage, under Case No. U-18197. In an order issued September 15, 2017, the MPSC addressed the process and requirements for this option as described further below.

State Reliability Mechanism Charge

The state reliability mechanism charge is being set through a contested case process for individual utilities that have customers served by alternative electric suppliers. This includes expert witnesses and other evidence presented to the MPSC through a formal hearing process. The MPSC must issue orders by December 1, 2017 in these cases and is on track to do so.

What is required of electric providers under the "bring your own capacity" option? What types of electricity supplies can be used to meet capacity requirements?

The law requires providers to annually demonstrate to the MPSC that they have **sufficient owned or contracted resources to meet capacity obligations four years into the future.** Electric providers must document that they own or have contracted resources to meet the capacity obligations set by the regional grid operator or the MPSC. Electric providers can meet their obligations in numerous ways: by entering into contracts with generators, owning existing or building new power plants, or by pursuing new programs to cut demand for electricity during peak times. Electric providers could also buy some of their capacity through a regional auction. These are all traditional ways providers use to serve their customers today.

What is the local clearing requirement, or locational requirement?

In order to ensure the reliability of the electric grid, **some electric generation resources used to serve Michigan customers need to be located within Michigan.** MISO, the regional grid operator in which most of Michigan is located, and which administers federally-approved rules and regulations, required that almost 95% of the generation capacity used to serve customers in the Lower Peninsula of Michigan be physically located within that region during 2017. This is due to the reliability of Michigan's existing generating resources, Michigan's geography as a peninsular state, and the amount of transmission capacity to import electricity into the state from elsewhere. Having local resources in place is known as either a "local clearing requirement" or a "locational requirement."

Does the new law reference "local clearing requirement"?

Yes. **The new law defines *local clearing requirement*** as "the amount of capacity resources required to be in the local resource zone in which the electric provider's demand is served to ensure reliability in that zone as determined by the appropriate independent system operator for the local resource zone in which the electric provider's demand is served and by the commission under subsection (8)." It also requires the MPSC, in order to determine capacity obligations, to request that MISO "provide technical assistance in determining the local clearing requirement."

Does the MPSC have the authority to implement a locational requirement?

Yes. The new law defines local clearing requirement, allows for a determination of the local clearing requirement to be made by the MPSC, and requires the MPSC to work with MISO in determining the local clearing requirement.

Does the MPSC have the authority to require individual electric providers to obtain some of their capacity from local generation sources?

Yes. The new law directs the MPSC to require each electric provider to demonstrate that it "owns or has contractual rights to sufficient capacity to meet its capacity obligations as set by the appropriate independent system operator, or commission, as applicable" four years into the future. While the law allows providers to use "any resource that [MISO] allows to meet the capacity obligation of the electric provider," MISO only allows generation located in a specific geographic area to count towards meeting the local clearing requirement.

Further, the law specifically allows for municipal and cooperative electric utilities to aggregate their resources to meet the local clearing requirement. Without this aggregation option provided for in the law, these utilities would have to individually demonstrate that they could meet a local clearing requirement four years into the future. The MPSC carefully considered the statute and can find nothing in the law, and no rational basis, to indicate an intent to place a local clearing requirement *only* on non-profit utilities. Instead, the law is more logically understood to require that all individual utilities be treated similarly in terms of requirements, and that the aggregation option was intended to assist non-profit utilities (many of which are small) to comply more easily.

Is the MPSC requiring individual electric providers to meet some or all of their capacity from local generation sources?

In its September 15 order, **the MPSC *does not* require individual providers to meet a locational requirement during the first cycle for capacity demonstration under the new law** (which looks ahead through 2021); however, the MPSC did indicate that it would open a new contested case to establish locational requirements for future capacity demonstration cycles (for years 2022 and beyond). In its most recent reliability outlook, the MPSC found that Michigan as a whole is anticipated to meet reliability requirements over the next five years if available supplies at the regional level can be secured. This will allow individual providers adequate time to comply with a locational requirement and **give the MPSC more information to make a decision on the best way to structure the locational requirement to ensure that it is fair and helps to meet future reliability needs.**

How do the requirements in the new energy law relate to the annual auction process of the regional grid operator, MISO? Can energy providers still participate fully in the auction?

MISO annually holds an auction to allow electric providers to obtain capacity to serve customer needs in the upcoming year. Even with Michigan's new law, electric providers continue to be required to meet MISO's capacity obligations (which include a local clearing requirement) one year forward, and can use MISO's annual auction to obtain capacity to meet those obligations. The requirements set by the MPSC are for four years into the future, and are meant to complement the MISO requirements. Providers will be required to show the MPSC they have adequate supplies four years ahead of time, but **may use the MISO auction** to meet the year-ahead MISO requirements, as well as to account for any changes from their initial four-year ahead projections.

Will the new capacity requirements raise electricity costs?

The new requirements will ensure that all providers have owned or contracted resources sufficient to serve customers' needs four years ahead of time. The vast majority of Michigan customers, who take service from incumbent electric providers, are unlikely to see price increases since their providers already meet these requirements. For providers that do not meet these requirements today, these requirements have the potential to raise electricity costs. If alternative electric suppliers cannot or choose not to obtain generating capacity to meet the new requirements, the local utility would provide capacity service to those customers, and there would be a charge paid to the utility based on a rate determined by the MPSC. At the same time, **planning ahead can ultimately keep costs of electricity lower by avoiding price spikes or more costly last-minute purchases when supplies are limited.**

Will the new capacity requirements improve reliability of Michigan's electric grid?

Yes. The new capacity requirements are an improvement in reliability over the status quo: if it is necessary to procure new resources, there are concerns about whether the MISO auction provides adequate incentives or lead time to be able to build or acquire those resources. **Looking four years into the future, instead of only one year ahead, is the fundamental improvement to reliability resulting from the new law.**

How will the new capacity requirements affect electric choice?

All providers, including alternative electric suppliers that provide service to electric choice customers, will need to demonstrate to the MPSC four years in advance that they have owned or contracted resources to meet anticipated customer needs. This is a new requirement, and may mean that some providers have to alter their business models in order to comply. However, ensuring that there is adequate visibility into Michigan's resource adequacy position four years in the future is critical to maintaining the reliability of the electric grid, and is a benefit to all customers. **The MPSC recognizes that the Legislature prioritized keeping the electric customer choice program in place, and has worked to balance the needs of electric choice customers with the reliability of the grid.**

When do electric providers need to file their capacity plans with the MPSC?

Investor-owned electric utilities like Consumers Energy and DTE Electric Company are required to file their plans by **December 1, 2017**. All other providers – alternative electric suppliers, municipal utilities, and electric cooperatives – are required to file their plans by **February 9, 2018**.

What are the next steps?

Beginning December 1, 2017, electric providers will have to make their initial capacity demonstrations to the MPSC, showing they have adequate capacity through 2021. The MPSC will open a new contested case to determine how to establish capacity obligations, including a locational requirement, for future capacity demonstration cycles (for the years 2022 and after). The MPSC is required to establish state reliability mechanism charges by December 1, 2017; once this "price to beat" is set, alternative electric suppliers have until February 9, 2018 to choose whether to procure capacity or pay the charge.

For more information, visit:
www.michigan.gov/energylegislation

460.6w Resource adequacy tariff that provides for capacity forward auction; option for state to implement prevailing state compensation mechanism for capacity; order to implement prevailing state compensation mechanism; contested case proceeding; finding; order to implement state reliability mechanism; capacity charge; establishment; determination; failure to meet requirements in subsection (8)(b); civil action for injunctive relief; definitions.

Sec. 6w. (1) If the appropriate independent system operator receives approval from the Federal Energy Regulatory Commission to implement a resource adequacy tariff that provides for a capacity forward auction, and includes the option for a state to implement a prevailing state compensation mechanism for capacity, then the commission shall examine whether the prevailing state compensation mechanism would be more cost-effective, reasonable, and prudent than the capacity forward auction for this state before the commission may order the prevailing state compensation mechanism to be implemented in any utility service territory in which the prevailing state compensation mechanism is not yet effective. Before the commission orders the implementation of the prevailing state compensation mechanism in 1 or more utility service territories, the commission shall hold a contested case hearing pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. The commission shall allow intervention by interested persons, alternative electric suppliers, and customers of alternative electric suppliers and the utility under consideration. At the conclusion of the proceeding, the commission shall make a finding for each utility service territory under consideration, based on clear and convincing evidence, as to whether or not the prevailing state compensation mechanism would be more cost-effective, reasonable, and prudent than the use of the capacity forward auction for this state in meeting the local clearing requirement and the planning reserve margin requirement. The contested case must be scheduled for completion by December 1 before the independent system operator's capacity forward auction for this state, and the commission's decision shall identify which utility service territories will be subject to the prevailing state compensation mechanism. If the commission implements the prevailing state compensation mechanism, it shall implement the prevailing state compensation mechanism for a minimum of 4 consecutive planning years unless such period conflicts with the federal tariff. The commission shall establish the charge as a capacity charge under subsection (3) and determine that charge consistent with the approved resource adequacy tariff of the appropriate independent system operator.

(2) If the appropriate independent system operator receives approval from the Federal Energy Regulatory Commission to implement a resource adequacy tariff that provides for a capacity forward auction, and does not include the option for a state to implement a prevailing state compensation mechanism for capacity, then the commission shall examine whether a state reliability mechanism established under subsection (8) would be more cost-effective, reasonable, and prudent than the capacity forward auction for this state before the commission may order the state reliability mechanism to be implemented in any utility service territory. Before the commission orders the implementation of the state reliability mechanism in 1 or more utility service territories, the commission shall hold a contested case hearing pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. The commission shall allow intervention by interested persons, alternative electric suppliers, and customers of alternative electric suppliers and the utility under consideration. At the conclusion of the proceeding, the commission shall make a finding for each utility service territory under consideration, based on clear and convincing evidence, as to whether or not the state reliability mechanism would be more cost-effective, reasonable, and prudent than the use of the capacity forward auction for this state in meeting the local clearing requirement and the planning reserve margin requirement. The contested case must be scheduled for completion by December 1 before the independent system operator's capacity forward auction for this state, and the commission's decision shall identify which utility service territories will be subject to the state reliability mechanism. If, by September 30, 2017, the Federal Energy Regulatory Commission does not put into effect a resource adequacy tariff that includes a capacity forward auction or a prevailing state compensation mechanism, then the commission shall establish a state reliability mechanism under subsection (8). The commission may commence a proceeding before October 1 if the commission believes orderly administration would be enabled by doing so. If the commission implements a state reliability mechanism, it shall be for a minimum of 4 consecutive planning years beginning in the upcoming planning year. A state reliability charge must be established in the same manner as a capacity charge under subsection (3) and be determined consistent with subsection (8).

(3) After the effective date of the amendatory act that added section 6t, the commission shall establish a

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capacity charge as provided in this section. A determination of a capacity charge must 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, after providing interested persons with notice and a reasonable opportunity for a full and complete hearing and conclude by December 1 of each year. The commission shall allow intervention by interested persons, alternative electric suppliers, and customers of alternative electric suppliers and the utility under consideration. The commission shall provide notice to the public of the single capacity charge as determined for each territory. No new capacity charge is required to be paid before June 1, 2018. The capacity charge must be applied to alternative electric load that is not exempt as set forth under subsections (6) and (7). If the commission elects to implement a capacity forward auction for this state as set forth in subsection (1) or (2), then a capacity charge shall not apply beginning in the first year that the capacity forward auction for this state is effective. In order to ensure that noncapacity electric generation services are not included in the capacity charge, in determining the capacity charge, the commission shall do both of the following and ensure that the resulting capacity charge does not differ for full service load and alternative electric supplier load:

(a) For the applicable term of the capacity charge, include the capacity-related generation costs included in the utility's base rates, surcharges, and power supply cost recovery factors, regardless of whether those costs result from utility ownership of the capacity resources or the purchase or lease of the capacity resource from a third party.

(b) For the applicable term of the capacity charge, subtract all non-capacity-related electric generation costs, including, but not limited to, costs previously set for recovery through net stranded cost recovery and securitization and the projected revenues, net of projected fuel costs, from all of the following:

(*i*) All energy market sales.

(*ii*) Off-system energy sales.

(*iii*) Ancillary services sales.

(*iv*) Energy sales under unit-specific bilateral contracts.

(4) The commission shall provide for a true-up mechanism that results in a utility charge or credit for the difference between the projected net revenues described in subsection (3) and the actual net revenues reflected in the capacity charge. The true-up shall be reflected in the capacity charge in the subsequent year. The methodology used to set the capacity charge shall be the same methodology used in the true-up for the applicable planning year.

(5) Not less than once every year, the commission shall review or amend the capacity charge in all subsequent rate cases, power supply cost recovery cases, or separate proceedings established for that purpose.

(6) A capacity charge shall not be assessed for any portion of capacity obligations for each planning year for which an alternative electric supplier can demonstrate that it can meet its capacity obligations through owned or contractual rights to any resource that the appropriate independent system operator allows to meet the capacity obligation of the electric provider. The preceding sentence shall not be applied in any way that conflicts with a fedral resource adequacy tariff, when applicable. Any electric provider that has previously demonstrated that it can meet all or a portion of its capacity obligations shall give notice to the commission by September 1 of the year 4 years before the beginning of the applicable planning year if it does not expect to meet that capacity obligation and instead expects to pay a capacity charge. The capacity charge in the utility service territory must be paid for the portion of its load taking service from the alternative electric supplier not covered by capacity as set forth in this subsection during the period that any such capacity charge is effective.

(7) An electric provider shall provide capacity to meet the capacity obligation for the portion of that load taking service from an alternative electric supplier in the electric provider's service territory that is covered by the capacity charge during the period that any such capacity charge is effective. The alternative electric supplier has the obligation to provide capacity for the portion of the load for which the alternative electric supplier has demonstrated an ability to meet its capacity obligations. If an alternative electric supplier ceases to provide service for a portion or all of its load, it shall allow, at a cost no higher than the determined capacity charge, the assignment of any right to that capacity in the applicable planning year to whatever electric provider accepts that load.

(8) If a state reliability mechanism is required to be established under subsection (2), the commission shall do all of the following:

(a) Require, by December 1 of each year, that each electric utility demonstrate to the commission, in a format determined by the commission, that for the planning year beginning 4 years after the beginning of the current planning year, the electric utility owns or has contractual rights to sufficient capacity to meet its capacity obligations as set by the appropriate independent system operator, or commission, as applicable.

(b) Require, by the seventh business day of February each year, that each alternative electric supplier, cooperative electric utility, or municipally owned electric utility demonstrate to the commission, in a format determined by the commission, that for the planning year beginning 4 years after the beginning of the current

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planning year, the alternative electric supplier, cooperative electric utility, or municipally owned electric utility owns or has contractual rights to sufficient capacity to meet its capacity obligations as set by the appropriate independent system operator, or commission, as applicable. One or more municipally owned electric utilities may aggregate their capacity resources that are located in the same local resource zone to meet the requirements of this subdivision. One or more cooperative electric utilities may aggregate their capacity resources that are located in the same local resource zone to meet the requirements of this subdivision. A cooperative or municipally owned electric utility may meet the requirements of this subdivision through any resource, including a resource acquired through a capacity forward auction, that the appropriate independent system operator allows to qualify for meeting the local clearing requirement. A cooperative or municipally owned electric utility's payment of an auction price related to a capacity deficiency as part of a capacity forward auction conducted by the appropriate independent system operator does not by itself satisfy the resource adequacy requirements of this section unless the appropriate independent system operator can directly tie that provider's payment to a capacity resource that meets the requirements of this subsection. By the seventh business day of February in 2018, an alternative electric supplier shall demonstrate to the commission, in a format determined by the commission, that for the planning year beginning June 1, 2018, and the subsequent 3 planning years, the alternative electric supplier owns or has contractual rights to sufficient capacity to meet its capacity obligations as set by the appropriate independent system operator, or commission, as applicable. If the commission finds an electric provider has failed to demonstrate it can meet a portion or all of its capacity obligation, the commission shall do all of the following:

(*i*) For alternative electric load, require the payment of a capacity charge that is determined, assessed, and applied in the same manner as under subsection (3) for that portion of the load not covered as set forth in subsections (6) and (7). If a capacity charge is required to be paid under this subdivision in the planning year beginning June 1, 2018 or any of the 3 subsequent planning years, the capacity charge is applicable for each of those planning years.

(*ii*) For a cooperative or municipally owned electric utility, recommend to the attorney general that suit be brought consistent with the provisions of subsection (9) to require that procurement.

(*iii*) For an electric utility, require any audits and reporting as the commission considers necessary to determine if sufficient capacity is procured. If an electric utility fails to meet its capacity obligations, the commission may assess appropriate and reasonable fines, penalties, and customer refunds under this act.

(c) In order to determine the capacity obligations, request that the appropriate independent system operator provide technical assistance in determining the local clearing requirement and planning reserve margin requirement. If the appropriate independent system operator declines, or has not made a determination by October 1 of that year, the commission shall set any required local clearing requirement and planning reserve margin requirement, consistent with federal reliability requirements.

(d) In order to determine if resources put forward will meet such federal reliability requirements, request technical assistance from the appropriate independent system operator to assist with assessing resources to ensure that any resources will meet federal reliability requirements. If the technical assistance is rendered, the commission shall accept the appropriate independent system operator's determinations unless it finds adequate justification to deviate from the determinations related to the qualification of resources. If the appropriate independent system operator declines, or has not made a determination by February 28, the commission shall make those determinations.

(9) The attorney general or any customer of a municipally owned electric utility or cooperative electric utility may commence a civil action for injunctive relief against that municipally owned electric utility or cooperative electric utility if the municipally owned electric utility or cooperative electric utility fails to meet the applicable requirements of subsection (8)(b). The attorney general or customer shall commence an action under this subsection in the circuit court for the county in which the principal office of the municipally owned electric utility or cooperative electric utility is located. The attorney general or customer shall not file an action under this subsection unless the attorney general or customer gives the municipally owned electric utility or cooperative electric utility at least 60 days' written notice of the intent to sue, the basis for the suit, and the relief sought. Within 30 days after the municipally owned electric utility or cooperative electric utility receives written notice of the intent to sue, the municipally owned electric utility or cooperative electric utility and the attorney general or customer shall meet and make a good-faith attempt to determine if there is a credible basis for the action. The municipally owned electric utility or cooperative electric utility shall take all reasonable and prudent steps necessary to comply with the applicable requirements of subsection (8)(b) within 90 days after the meeting if there is a credible basis for the action. If the parties do not agree as to whether there is a credible basis for the action, the attorney general or customer may proceed to file the suit.

(10) The commission shall adjust the dates under this section if needed to ensure proper alignment with the appropriate independent system operator's procedures and requirements. However, any changes to the dates in

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this section must ensure that providers still meet applicable reliability requirements. The commission shall not permit a capacity charge to be assessed under this section for any year in which it has elected the capacity forward auction instead of the prevailing state compensation mechanism or the state reliability mechanism.

(11) Nothing in this act shall prevent the commission from determining a generation capacity charge under the reliability assurance agreement, rate schedule FERC No. 44 of the independent system operator known as PJM Interconnection, LLC, as approved by the Federal Energy Regulatory Commission in docket no. ER10-2710 or similar successor tariff.

(12) As used in this section:

(a) "Appropriate independent system operator" means the Midcontinent Independent System Operator.

(b) "Capacity forward auction" means an auction-based resource adequacy construct and the associated tariffs developed by the appropriate independent system operator for at least a portion of this state for 3 years forward or more.

(c) "Electric provider" means any of the following:

(*i*) Any person or entity that is regulated by the commission for the purpose of selling electricity to retail customers in this state.

(*ii*) A municipally owned electric utility in this state.

(*iii*) A cooperative electric utility in this state.

(*iv*) An alternative electric supplier licensed under section 10a.

(d) "Local clearing requirement" means the amount of capacity resources required to be in the local resource zone in which the electric provider's demand is served to ensure reliability in that zone as determined by the appropriate independent system operator for the local resource zone in which the electric provider's demand is served and by the commission under subsection (8).

(e) "Planning reserve margin requirement" means the amount of capacity equal to the forecasted coincident peak demand that occurs when the appropriate independent system operator footprint peak demand occurs plus a reserve margin that meets an acceptable loss of load expectation as set by the commission or the appropriate independent system operator under subsection (8).

(f) "Planning year" means June 1 through the following May 31 of each year.

(g) "Prevailing state compensation mechanism" means an option for a state to elect a prevailing compensation rate for capacity consistent with the requirements of the appropriate independent system operator's resource adequacy tariff.

(h) "State reliability mechanism" means a plan adopted by the commission in the absence of a prevailing state compensation mechanism to ensure reliability of the electric grid in this state consistent with subsection (8).

History: Add. 2016, Act 341, Eff. Apr. 20, 2017.

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