

HOUSE BILL No. 5194

October 31, 2017, Introduced by Rep. Glenn and referred to the Committee on Energy Policy.

A bill to amend 1939 PA 3, entitled

"An act to provide for the regulation and control of public and certain private utilities and other services affected with a public interest within this state; to provide for alternative energy suppliers; to provide for licensing; to include municipally owned utilities and other providers of energy under certain provisions of this act; to create a public service commission and to prescribe and define its powers and duties; to abolish the Michigan public utilities commission and to confer the powers and duties vested by law on the public service commission; to provide for the continuance, transfer, and completion of certain matters and proceedings; to abolish automatic adjustment clauses; to prohibit certain rate increases without notice and hearing; to qualify residential energy conservation programs permitted under state law for certain federal exemption; to create a fund; to provide for a restructuring of the manner in which energy is provided in this state; to encourage the utilization of resource recovery facilities; to prohibit certain acts and practices of providers of energy; to allow for the securitization of stranded costs; to reduce rates; to provide for appeals; to provide appropriations; to declare the effect and purpose of this act; to prescribe remedies and penalties; and to repeal acts and parts of acts,"

by amending section 6a (MCL 460.6a), as amended by 2016 PA 341.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 6a. (1) A gas utility, electric utility, or steam utility

1 shall not increase its rates and charges or alter, change, or amend
2 any rate or rate schedules, the effect of which will be to increase
3 the cost of services to its customers, without first receiving
4 commission approval as provided in this section. A utility shall
5 coordinate with the commission staff in advance of filing its
6 general rate case application under this section to avoid resource
7 challenges with applications being filed at the same time as
8 applications filed under this section by other utilities. In the
9 case of electric utilities serving more than 1,000,000 customers in
10 this state, the commission may, if necessary, order a delay in
11 filing an application to establish a 21-day spacing between filings
12 of electric utilities serving more than 1,000,000 customers in this
13 state. The utility shall place in evidence facts relied upon to
14 support the utility's petition or application to increase its rates
15 and charges, or to alter, change, or amend any rate or rate
16 schedules. The commission shall require notice to be given to all
17 interested parties within the service area to be affected, and all
18 interested parties shall have a reasonable opportunity for a full
19 and complete hearing. A utility may use projected costs and
20 revenues for a future consecutive 12-month period in developing its
21 requested rates and charges. The commission shall notify the
22 utility within 30 days after filing, whether the utility's petition
23 or application is complete. A petition or application is considered
24 complete if it complies with the rate application filing forms and
25 instructions adopted under subsection (8). If the application is
26 not complete, the commission shall notify the utility of all
27 information necessary to make that filing complete. If the

1 commission has not notified the utility within 30 days of whether
2 the utility's petition or application is complete, the application
3 is considered complete. Concurrently with filing a complete
4 application, or at any time after filing a complete application, a
5 gas utility serving fewer than 1,000,000 customers in this state
6 may file a motion seeking partial and immediate rate relief. After
7 providing notice to the interested parties within the service area
8 to be affected and affording interested parties a reasonable
9 opportunity to present written evidence and written arguments
10 relevant to the motion seeking partial and immediate rate relief,
11 the commission shall make a finding and enter an order granting or
12 denying partial and immediate relief within 180 days after the
13 motion seeking partial and immediate rate relief was submitted. The
14 commission has 12 months to issue a final order in a case in which
15 a gas utility has filed a motion seeking partial and immediate rate
16 relief.

17 (2) If the commission has not issued an order within 180 days
18 of the filing of a complete application, the utility may implement
19 up to the amount of the proposed annual rate request through equal
20 percentage increases or decreases applied to all base rates. If the
21 utility uses projected costs and revenues for a future period in
22 developing its requested rates and charges, the utility may not
23 implement the equal percentage increases or decreases before the
24 calendar date corresponding to the start of the projected 12-month
25 period. For good cause, the commission may issue a temporary order
26 preventing or delaying a utility from implementing its proposed
27 rates or charges. If a utility implements increased rates or

1 charges under this subsection before the commission issues a final
2 order, that utility shall refund to customers, with interest, any
3 portion of the total revenues collected through application of the
4 equal percentage increase that exceed the total that would have
5 been produced by the rates or charges subsequently ordered by the
6 commission in its final order. The commission shall allocate any
7 refund required by this subsection among primary customers based
8 upon their pro rata share of the total revenue collected through
9 the applicable increase, and among secondary and residential
10 customers in a manner to be determined by the commission. The rate
11 of interest for refunds ~~shall equal~~ **EQUALS** 5% plus the London
12 interbank offered rate (LIBOR) for the appropriate time period. For
13 any portion of the refund that, exclusive of interest, exceeds 25%
14 of the annual revenue increase awarded by the commission in its
15 final order, the rate of interest ~~shall be~~ **IS** the authorized rate
16 of return on the common stock of the utility during the appropriate
17 period. Any refund or interest awarded under this subsection ~~shall~~
18 **MUST** not be included, in whole or in part, in any application for a
19 rate increase by a utility. This subsection only applies to
20 completed applications filed with the commission before ~~the~~
21 ~~effective date of the amendatory act that added section 6t.~~ **APRIL**
22 **20, 2017.**

23 (3) This section does not impair the commission's ability to
24 issue a show cause order as part of its rate-making authority. An
25 alteration or amendment in rates or rate schedules applied for by a
26 public utility that will not result in an increase in the cost of
27 service to its customers may be authorized and approved without

1 notice or hearing. There shall be no increase in rates based upon
2 changes in cost of fuel, purchased gas, or purchased steam unless
3 notice has been given within the service area to be affected, and
4 there has been an opportunity for a full and complete hearing on
5 the cost of fuel, purchased gas, or purchased steam. The rates
6 charged by any utility under an automatic fuel, purchased gas, or
7 purchased steam adjustment clause ~~shall~~**MUST** not be altered,
8 changed, or amended unless notice has been given within the service
9 area to be affected, and there has been an opportunity for a full
10 and complete hearing on the cost of the fuel, purchased gas, or
11 purchased steam.

12 (4) The commission shall adopt rules and procedures for the
13 filing, investigation, and hearing of petitions or applications to
14 increase or decrease utility rates and charges as the commission
15 finds necessary or appropriate to enable it to reach a final
16 decision with respect to petitions or applications within a period
17 of time allotted by law to issue a final order after the filing of
18 the complete petitions or applications. The commission shall not
19 authorize or approve adjustment clauses that operate without notice
20 and an opportunity for a full and complete hearing, and all such
21 clauses are abolished. The commission may hold a full and complete
22 hearing to determine the cost of fuel, purchased gas, purchased
23 steam, or purchased power separately from a full and complete
24 hearing on a general rate case and may hold that hearing
25 concurrently with the general rate case. The commission shall
26 authorize a utility to recover the cost of fuel, purchased gas,
27 purchased steam, or purchased power only to the extent that the

1 purchases are reasonable and prudent.

2 (5) Except as otherwise provided in this subsection and
3 subsection (1), if the commission fails to reach a final decision
4 with respect to a completed petition or application to increase or
5 decrease utility rates within the 10-month period following the
6 filing of the completed petition or application, the petition or
7 application is considered approved. If a utility makes any
8 significant amendment to its filing, the commission has an
9 additional 10 months after the date of the amendment to reach a
10 final decision on the petition or application. If the utility files
11 for an extension of time, the commission shall extend the 10-month
12 period by the amount of additional time requested by the utility.

13 (6) A utility shall not file a general rate case application
14 for an increase in rates earlier than 12 months after the date of
15 the filing of a complete prior general rate case application. A
16 utility may not file a new general rate case application until the
17 commission has issued a final order on a prior general rate case or
18 until the rates are approved under subsection (5).

19 (7) The commission shall, if requested by a gas utility,
20 establish load retention transportation rate schedules or approve
21 gas transportation contracts as required for the purpose of serving
22 industrial or commercial customers whose individual annual
23 transportation volumes exceed 500,000 decatherms on the gas
24 utility's system. The commission shall approve these rate schedules
25 or approve transportation contracts entered into by the utility in
26 good faith if the industrial or commercial customer has the
27 installed capability to use an alternative fuel or otherwise has a

1 viable alternative to receiving natural gas transportation service
2 from the utility, the customer can obtain the alternative fuel or
3 gas transportation from an alternative source at a price that would
4 cause them not to use the gas utility's system, and the customer,
5 as a result of their use of the system and receipt of
6 transportation service, makes a significant contribution to the
7 utility's fixed costs. The commission shall adopt accounting and
8 rate-making policies to ensure that the discounts associated with
9 the transportation rate schedules and contracts are recovered by
10 the gas utility through charges applicable to other customers if
11 the incremental costs related to the discounts are no greater than
12 the costs that would be passed on to those customers as the result
13 of a loss of the industrial or commercial customer's contribution
14 to a utility's fixed costs.

15 (8) The commission shall adopt standard rate application
16 filing forms and instructions for use in all general rate cases
17 filed by utilities whose rates are regulated by the commission. For
18 cooperative electric utilities whose rates are regulated by the
19 commission, in addition to rate applications filed under this
20 section, the commission shall continue to allow for rate filings
21 based on the cooperative's times interest earned ratio. The
22 commission may modify the standard rate application forms and
23 instructions adopted under this subsection.

24 (9) If, on or before January 1, 2008, a merchant plant entered
25 into a contract with an initial term of 20 years or more to sell
26 electricity to an electric utility whose rates are regulated by the
27 commission with 1,000,000 or more retail customers in this state

1 and if, before January 1, 2008, the merchant plant generated
2 electricity under that contract, in whole or in part, from wood or
3 solid wood wastes, then the merchant plant shall, upon petition by
4 the merchant plant, and subject to the limitation set forth in
5 subsection (10), recover the amount, if any, by which the merchant
6 plant's reasonably and prudently incurred actual fuel and variable
7 operation and maintenance costs exceed the amount that the merchant
8 plant is paid under the contract for those costs. This subsection
9 does not apply to landfill gas plants, hydro plants, municipal
10 solid waste plants, or to merchant plants engaged in litigation
11 against an electric utility seeking higher payments for power
12 delivered pursuant to contract.

13 (10) The total aggregate additional amounts recoverable by
14 merchant plants under subsection (9) in excess of the amounts paid
15 under the contracts shall not exceed \$1,000,000.00 per month for
16 each affected electric utility. The \$1,000,000.00 per month limit
17 specified in this subsection ~~shall~~ **MUST** be reviewed by the
18 commission upon petition of the merchant plant filed no more than
19 once per year and may be adjusted if the commission finds that the
20 eligible merchant plants reasonably and prudently incurred actual
21 fuel and variable operation and maintenance costs exceed the amount
22 that those merchant plants are paid under the contract by more than
23 \$1,000,000.00 per month. The annual amount of the adjustments ~~shall~~
24 **MUST** not exceed a rate equal to the United States consumer price
25 index. The commission shall not make an adjustment unless each
26 affected merchant plant files a petition with the commission. If
27 the total aggregate amount by which the eligible merchant plants

1 reasonably and prudently incurred actual fuel and variable
2 operation and maintenance costs determined by the commission exceed
3 the amount that the merchant plants are paid under the contract by
4 more than \$1,000,000.00 per month, the commission shall allocate
5 the additional \$1,000,000.00 per month payment among the eligible
6 merchant plants based upon the relationship of excess costs among
7 the eligible merchant plants. The \$1,000,000.00 limit specified in
8 this subsection, as adjusted, does not apply to actual fuel and
9 variable operation and maintenance costs that are incurred due to
10 changes in federal or state environmental laws or regulations that
11 are implemented after October 6, 2008. The \$1,000,000.00 per month
12 payment limit under this subsection does not apply to merchant
13 plants eligible under subsection (9) whose electricity is purchased
14 by a utility that is using wood or wood waste or fuels derived from
15 those materials for fuel in their power plants. As used in this
16 subsection, "United States consumer price index" means the United
17 States consumer price index for all urban consumers as defined and
18 reported by the United States Department of Labor, Bureau of Labor
19 Statistics.

20 (11) The commission shall issue orders to permit the recovery
21 authorized under subsections (9) and (10) upon petition of the
22 merchant plant. The merchant plant is not required to alter or
23 amend the existing contract with the electric utility in order to
24 obtain the recovery under subsections (9) and (10). The commission
25 shall permit or require the electric utility whose rates are
26 regulated by the commission to recover from its ratepayers all fuel
27 and variable operation and maintenance costs that the electric

1 utility is required to pay to the merchant plant as reasonably and
2 prudently incurred costs.

3 (12) Subject to subsection (13), if requested by an electric
4 utility with less than 200,000 customers in this state, the
5 commission shall approve an appropriate revenue decoupling
6 mechanism that adjusts for decreases in actual sales compared to
7 the projected levels used in that utility's most recent rate case
8 that are the result of implemented energy waste reduction,
9 conservation, demand-side programs, and other waste reduction
10 measures, if the utility first demonstrates the following to the
11 commission:

12 (a) That the projected sales forecast in the utility's most
13 recent rate case is reasonable.

14 (b) That the electric utility has achieved annual incremental
15 energy savings at least equal to the lesser of the following:

16 (i) One percent of its total annual retail electricity sales
17 in the previous year.

18 (ii) The amount of any incremental savings yielded by energy
19 waste reduction, conservation, demand-side programs, and other
20 waste reduction measures approved by the commission in that
21 utility's most recent integrated resource plan.

22 (13) The commission shall consider the aggregate revenues
23 attributable to revenue decoupling mechanisms, financial
24 incentives, and shared savings mechanisms the commission has
25 approved for an electric utility relative to energy waste
26 reduction, conservation, demand-side programs, peak load reduction,
27 and other waste reduction measures. The commission may approve an

1 alternative methodology for a revenue decoupling mechanism
2 authorized under subsection (12), a financial incentive authorized
3 under section 75 of the clean and renewable energy and energy waste
4 reduction act, 2008 PA 295, MCL 460.1075, or a shared savings
5 mechanism authorized under section 6x if the commission determines
6 that the resulting aggregate revenues from those mechanisms would
7 not result in a reasonable and cost-effective method to ensure that
8 investments in energy waste reduction, demand-side programs, peak
9 load reduction, and other waste reduction measures are not
10 disfavored when compared to utility supply-side investments. The
11 commission's consideration of an alternative methodology under this
12 subsection shall be conducted as a contested case pursuant to
13 chapter 4 of the administrative procedures act of 1969, 1969 PA
14 306, MCL 24.271 to 24.287.

15 (14) ~~Within 1 year after the effective date of the amendatory~~
16 ~~act that added this subsection, **BY APRIL 20, 2018,**~~ the commission
17 shall conduct a study on an appropriate tariff reflecting equitable
18 cost of service for utility revenue requirements for customers who
19 participate in a net metering program or distributed generation
20 program under the clean and renewable energy and energy waste
21 reduction act, 2008 PA 295, MCL 460.1001 to 460.1211. In any rate
22 case filed after June 1, 2018, the commission shall approve such a
23 tariff for inclusion in the rates of all customers participating in
24 a net metering or distributed generation program under the clean
25 and renewable energy and energy waste reduction act, 2008 PA 295,
26 MCL 460.1001 to 460.1211. A tariff established under this
27 subsection does not apply to customers participating in a net

1 metering program under the clean and renewable energy and energy
2 waste reduction act, 2008 PA 295, MCL 460.1001 to 460.1211, before
3 the date that the commission establishes a tariff under this
4 subsection, who continues to participate in the program at their
5 current site or facility.

6 (15) THE COMMISSION SHALL NOT AUTHORIZE A RETURN ON EQUITY FOR
7 A GAS OR ELECTRIC UTILITY RESPECTIVELY THAT EXCEEDS THE NATIONAL
8 AVERAGE OF INVESTOR-OWNED GAS OR ELECTRIC UTILITIES' AUTHORIZED
9 RETURN ON EQUITY DURING THE MOST RECENT 12 CONSECUTIVE MONTHS
10 AVAILABLE.

11 (16) IF THE COMMISSION DETERMINES THAT A GAS OR ELECTRIC
12 UTILITY'S AVERAGE RETURN ON EQUITY OVER THE MOST RECENT 12
13 CONSECUTIVE MONTHS EXCEEDED THE AVERAGE OF ITS AUTHORIZED RETURN ON
14 EQUITY OVER THAT TIME PERIOD BY 20 BASIS POINTS OR MORE, THE
15 COMMISSION SHALL ISSUE A SHOW CAUSE ORDER AS TO WHY THE GAS OR
16 ELECTRIC UTILITY'S RATES SHOULD NOT BE IMMEDIATELY REDUCED TO
17 ELIMINATE THE OVER-COLLECTION. THE GAS OR ELECTRIC UTILITY'S RATES
18 MUST BE COLLECTED UNDER BOND AND ARE SUBJECT TO REFUND FROM THE
19 DATE OF THE COMMISSION'S SHOW CAUSE ORDER. UPON REESTABLISHING THE
20 GAS OR ELECTRIC UTILITY'S RATES TO ELIMINATE ANY FUTURE OVER-
21 COLLECTION FOLLOWING THE SHOW CAUSE HEARING, THE COMMISSION SHALL
22 REFUND TO CUSTOMERS, WITH INTEREST, ANY AMOUNTS THE GAS OR ELECTRIC
23 UTILITY COLLECTED FROM THE DATE OF SHOW CAUSE. THE COMMISSION SHALL
24 ORDER THE REFUNDS BE MADE TO THE CUSTOMERS WHO WERE OVERCHARGED IN
25 THE ACTUAL AMOUNT THEY WERE OVERCHARGED. THE RATE OF INTEREST ON
26 THE REFUNDS IS THE GAS OR ELECTRIC UTILITY'S AUTHORIZED RETURN ON
27 EQUITY.

1 **(17)** ~~(15)~~ Except as otherwise provided in this act, "utility"
2 and "electric utility" do not include a municipally owned electric
3 utility.

4 **(18)** ~~(16)~~ As used in this section:

5 (a) "Full and complete hearing" means a hearing that provides
6 interested parties a reasonable opportunity to present and cross-
7 examine evidence and present arguments relevant to the specific
8 element or elements of the request that are the subject of the
9 hearing.

10 (b) "General rate case" means a proceeding initiated by a
11 utility in an application filed with the commission that alleges a
12 revenue deficiency and requests an increase in the schedule of
13 rates or charges based on the utility's total cost of providing
14 service.

15 (c) "Steam utility" means a steam distribution company
16 regulated by the commission.