

# HOUSE BILL No. 6074

May 24, 2018, Introduced by Reps. Reilly, Glenn and Johnson 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 ~~shall~~ **MUST** have a reasonable opportunity for a  
19 full 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 USE A UTILITY'S**  
22 **ACTUAL COST OF PROVIDING SERVICE DURING A HISTORICAL TEST YEAR**  
23 **ADJUSTED ONLY FOR KNOWN AND MEASURABLE CHANGES IN ESTABLISHING THAT**  
24 **UTILITY'S RATES AND CHARGES.** The commission shall notify the  
25 utility within 30 days after filing ~~whether~~ the utility's  
26 petition or application is complete. A petition or application is  
27 considered complete if it complies with the rate application filing

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

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

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

26 (3) This section does not impair the commission's ability to  
27 issue a show cause order as part of its rate-making authority. An

1 alteration or amendment in rates or rate schedules applied for by a  
2 public utility that will not result in an increase in the cost of  
3 service to its customers may be authorized and approved without  
4 notice or hearing. There shall be no increase in rates based upon  
5 changes in cost of fuel, purchased gas, or purchased steam unless  
6 notice has been given within the service area to be affected, and  
7 there has been an opportunity for a full and complete hearing on  
8 the cost of fuel, purchased gas, or purchased steam. The rates  
9 charged by any utility under an automatic fuel, purchased gas, or  
10 purchased steam adjustment clause ~~shall~~**MUST** not be altered,  
11 changed, or amended unless notice has been given within the service  
12 area to be affected, and there has been an opportunity for a full  
13 and complete hearing on the cost of the fuel, purchased gas, or  
14 purchased steam.

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

1 concurrently with the general rate case. The commission shall  
2 authorize a utility to recover the cost of fuel, purchased gas,  
3 purchased steam, or purchased power only to the extent that the  
4 purchases are reasonable and prudent.

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

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

22 (7) The commission shall, if requested by a gas utility,  
23 establish load retention transportation rate schedules or approve  
24 gas transportation contracts as required for the purpose of serving  
25 industrial or commercial customers whose individual annual  
26 transportation volumes exceed 500,000 decatherms on the gas  
27 utility's system. The commission shall approve these rate schedules

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

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

27 (9) If, on or before January 1, 2008, a merchant plant entered

1 into a contract with an initial term of 20 years or more to sell  
2 electricity to an electric utility whose rates are regulated by the  
3 commission with 1,000,000 or more retail customers in this state  
4 and if, before January 1, 2008, the merchant plant generated  
5 electricity under that contract, in whole or in part, from wood or  
6 solid wood wastes, then the merchant plant shall, upon petition by  
7 the merchant plant, and subject to the limitation set forth in  
8 subsection (10), recover the amount, if any, by which the merchant  
9 plant's reasonably and prudently incurred actual fuel and variable  
10 operation and maintenance costs exceed the amount that the merchant  
11 plant is paid under the contract for those costs. This subsection  
12 does not apply to landfill gas plants, hydro plants, municipal  
13 solid waste plants, or to merchant plants engaged in litigation  
14 against an electric utility seeking higher payments for power  
15 delivered pursuant to contract.

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

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

23 (11) The commission shall issue orders to permit the recovery  
24 authorized under subsections (9) and (10) upon petition of the  
25 merchant plant. The merchant plant is not required to alter or  
26 amend the existing contract with the electric utility in order to  
27 obtain the recovery under subsections (9) and (10). The commission

1 shall permit or require the electric utility whose rates are  
2 regulated by the commission to recover from its ratepayers all fuel  
3 and variable operation and maintenance costs that the electric  
4 utility is required to pay to the merchant plant as reasonably and  
5 prudently incurred costs.

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

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

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

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

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

25 (13) The commission shall consider the aggregate revenues  
26 attributable to revenue decoupling mechanisms, financial  
27 incentives, and shared savings mechanisms the commission has

1 approved for an electric utility relative to energy waste  
2 reduction, conservation, demand-side programs, peak load reduction,  
3 and other waste reduction measures. The commission may approve an  
4 alternative methodology for a revenue decoupling mechanism  
5 authorized under subsection (12), a financial incentive authorized  
6 under section 75 of the clean and renewable energy and energy waste  
7 reduction act, 2008 PA 295, MCL 460.1075, or a shared savings  
8 mechanism authorized under section 6x if the commission determines  
9 that the resulting aggregate revenues from those mechanisms would  
10 not result in a reasonable and cost-effective method to ensure that  
11 investments in energy waste reduction, demand-side programs, peak  
12 load reduction, and other waste reduction measures are not  
13 disfavored when compared to utility supply-side investments. The  
14 commission's consideration of an alternative methodology under this  
15 subsection shall be conducted as a contested case pursuant to  
16 chapter 4 of the administrative procedures act of 1969, 1969 PA  
17 306, MCL 24.271 to 24.287.

18 (14) ~~Within 1 year after the effective date of the amendatory~~  
19 ~~act that added this subsection, **BY APRIL 20, 2018,**~~ the commission  
20 shall conduct a study on an appropriate tariff reflecting equitable  
21 cost of service for utility revenue requirements for customers who  
22 participate in a net metering program or distributed generation  
23 program under the clean and renewable energy and energy waste  
24 reduction act, 2008 PA 295, MCL 460.1001 to 460.1211. In any rate  
25 case filed after June 1, 2018, the commission shall approve such a  
26 tariff for inclusion in the rates of all customers participating in  
27 a net metering or distributed generation program under the clean

1 and renewable energy and energy waste reduction act, 2008 PA 295,  
2 MCL 460.1001 to 460.1211. A tariff established under this  
3 subsection does not apply to customers participating in a net  
4 metering program under the clean and renewable energy and energy  
5 waste reduction act, 2008 PA 295, MCL 460.1001 to 460.1211, before  
6 the date that the commission establishes a tariff under this  
7 subsection, who continues to participate in the program at their  
8 current site or facility.

9 (15) Except as otherwise provided in this act, "utility" and  
10 "electric utility" do not include a municipally owned electric  
11 utility.

12 (16) As used in this section:

13 (a) "Full and complete hearing" means a hearing that provides  
14 interested parties a reasonable opportunity to present and cross-  
15 examine evidence and present arguments relevant to the specific  
16 element or elements of the request that are the subject of the  
17 hearing.

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

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