HOUSE BILL NO. 5144

October 23, 2019, Introduced by Reps. Rabhi, Peterson, Gay-Dagnogo, Hood, LaGrand, Howell, Wozniak and Markkanen and referred to the Committee on Energy.

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 powers and duties of certain state governmental officers and entities; 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 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:

Sec. 6a. (1) A gas utility, electric utility, or steam utility shall not increase its rates and charges or alter, change, or amend any rate or rate schedules, the effect of which will be to increase the cost of services to its customers, without first receiving commission approval as provided in this section. A utility shall coordinate with the commission staff in advance of filing its general rate case application under this section to avoid resource challenges with applications being filed at the same time as applications filed under this section by other utilities. In the case of electric utilities serving more than 1,000,000 customers in this state, the commission may, if necessary, order a delay in filing an application to establish a 21-day spacing between filings of electric utilities serving more than 1,000,000 customers in this state. The utility shall place in evidence facts relied upon to support the utility's petition or application to increase its rates and charges, or to alter, change, or amend any rate or rate schedules. The commission shall require notice to be given to all interested parties within the service area to be affected, and allow all interested parties shall have a reasonable opportunity for a full and complete hearing. A utility may use projected costs and revenues for a future consecutive 12-month period in developing
its requested rates and charges. The commission shall notify the
utility within 30 days after filing, whether the utility's petition
or application is complete. A petition or application is considered
complete if it complies with the rate application filing forms and
instructions adopted under subsection (8). If the application is
not complete, the commission shall notify the utility of all
information necessary to make that filing complete. If the
commission has not notified the utility within 30 days of whether
the utility's petition or application is complete, the application
is considered complete. Concurrently with filing a complete
application, or at any time after filing a complete application, a
gas utility serving fewer than 1,000,000 customers in this state
may file a motion seeking partial and immediate rate relief. After
providing notice to the interested parties within the service area
to be affected and affording interested parties a reasonable
opportunity to present written evidence and written arguments
relevant to the motion seeking partial and immediate rate relief,
the commission shall make a finding and enter an order granting or
denying partial and immediate relief within 180 days after the
motion seeking partial and immediate rate relief was submitted. The
commission has 12 months to issue a final order in a case in which
a gas utility has filed a motion seeking partial and immediate rate
relief.

(2) If the commission has not issued an order within 180 days
of the filing of a complete application, the utility may implement
up to the amount of the proposed annual rate request through equal
percentage increases or decreases applied to all base rates. If the
utility uses projected costs and revenues for a future period in
developing its requested rates and charges, the utility may not
implement the equal percentage increases or decreases before the calendar date corresponding to the start of the projected 12-month period. For good cause, the commission may issue a temporary order preventing or delaying a utility from implementing its proposed rates or charges. If a utility implements increased rates or charges under this subsection before the commission issues a final order, that utility shall refund to customers, with interest, any portion of the total revenues collected through application of the equal percentage increase that exceed the total that would have been produced by the rates or charges subsequently ordered by the commission in its final order. The commission shall allocate any refund required by this subsection among primary customers based upon their pro rata share of the total revenue collected through the applicable increase, and among secondary and residential customers in a manner to be determined by the commission. The rate of interest for refunds shall equal 5% plus the London interbank offered rate (LIBOR) for the appropriate time period. For any portion of the refund that, exclusive of interest, exceeds 25% of the annual revenue increase awarded by the commission in its final order, the rate of interest shall be the authorized rate of return on the common stock of the utility during the appropriate period. Any refund or interest awarded under this subsection shall not be included, in whole or in part, in any application for a rate increase by a utility. This subsection only applies to completed applications filed with the commission before the effective date of the amendatory act that added section 6t, April 20, 2017.

(3) This section does not impair the commission's ability to issue a show cause order as part of its rate-making authority. An
alteration or amendment in rates or rate schedules applied for by a public utility that will not result in an increase in the cost of service to its customers may be authorized and approved without notice or hearing. There shall be no increase in rates based upon changes in cost of fuel, purchased gas, or purchased steam unless notice has been given within the service area to be affected, and there has been an opportunity for a full and complete hearing on the cost of fuel, purchased gas, or purchased steam. The rates charged by any utility under an automatic fuel, purchased gas, or purchased steam adjustment clause shall not be altered, changed, or amended unless notice has been given within the service area to be affected, and there has been an opportunity for a full and complete hearing on the cost of the fuel, purchased gas, or purchased steam.

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

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

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

(7) The commission shall, if requested by a gas utility, establish load retention transportation rate schedules or approve gas transportation contracts as required for the purpose of serving industrial or commercial customers whose individual annual transportation volumes exceed 500,000 decatherms on the gas utility's system. The commission shall approve these rate schedules or approve transportation contracts entered into by the utility in good faith if the industrial or commercial customer has the installed capability to use an alternative fuel or otherwise has a viable alternative to receiving natural gas transportation service from the utility, the customer can obtain the alternative fuel or
gas transportation from an alternative source at a price that would cause them not to use the gas utility's system, and the customer, as a result of their use of the system and receipt of transportation service, makes a significant contribution to the utility's fixed costs. The commission shall adopt accounting and rate-making policies to ensure that the discounts associated with the transportation rate schedules and contracts are recovered by the gas utility through charges applicable to other customers if the incremental costs related to the discounts are no greater than the costs that would be passed on to those customers as the result of a loss of the industrial or commercial customer's contribution to a utility's fixed costs.

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

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

(10) The total aggregate additional amounts recoverable by
merchant plants under subsection (9) in excess of the amounts paid
under the contracts shall must not exceed $1,000,000.00 per month
for each affected electric utility. The $1,000,000.00 per month
limit specified in this subsection shall must be reviewed by the
commission upon petition of the merchant plant filed no more than
once per year and may be adjusted if the commission finds that the
eligible merchant plants reasonably and prudently incurred actual
fuel and variable operation and maintenance costs exceed the amount
that those merchant plants are paid under the contract by more than
$1,000,000.00 per month. The annual amount of the adjustments shall
must not exceed a rate equal to the United States consumer price
index—Consumer Price Index. The commission shall not make an
adjustment unless each affected merchant plant files a petition
with the commission. If the total aggregate amount by which the
eligible merchant plants reasonably and prudently incurred actual
fuel and variable operation and maintenance costs determined by the
commission exceed the amount that the merchant plants are paid
under the contract by more than $1,000,000.00 per month, the
commission shall allocate the additional $1,000,000.00 per month
payment among the eligible merchant plants based upon the
relationship of excess costs among the eligible merchant plants. The $1,000,000.00 limit specified in this subsection, as adjusted, does not apply to actual fuel and variable operation and maintenance costs that are incurred due to changes in federal or state environmental laws or regulations that are implemented after October 6, 2008. The $1,000,000.00 per month payment limit under this subsection does not apply to merchant plants eligible under subsection (9) whose electricity is purchased by a utility that is using wood or wood waste or fuels derived from those materials for fuel in their power plants. As used in this subsection, "United States consumer price index" means the United States consumer price index for all urban consumers as defined and reported by the United States Department of Labor, Bureau of Labor Statistics.

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

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

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

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

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

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

(13) The commission shall consider the aggregate revenues
attributable to revenue decoupling mechanisms, financial
incentives, and shared savings mechanisms the commission has
approved for an electric utility relative to energy waste
reduction, conservation, demand-side programs, peak load reduction,
and other waste reduction measures. The commission may approve an
alternative methodology for a revenue decoupling mechanism
authorized under subsection (12), a financial incentive authorized
under section 75 of the clean and renewable energy and energy waste
reduction act, 2008 PA 295, MCL 460.1075, or a shared savings
mechanism authorized under section 6x if the commission determines
that the resulting aggregate revenues from those mechanisms would
not result in a reasonable and cost-effective method to ensure that
investments in energy waste reduction, demand-side programs, peak
load reduction, and other waste reduction measures are not
disfavored when compared to utility supply-side investments. The commission's consideration of an alternative methodology under this subsection 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.

(14) Within 1 year after the effective date of the amendatory act that added this subsection, the commission shall conduct a study on an appropriate tariff reflecting equitable cost of service for utility revenue requirements for customers who participate in a net metering program or distributed generation program under the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1001 to 460.1211. In any rate case filed after June 1, 2018, the commission shall approve such a tariff for inclusion in the rates of all customers participating in a net metering or distributed generation program under the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1001 to 460.1211. A tariff established under this subsection does not apply to customers participating in a net metering program under the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1001 to 460.1211, before the date that the commission establishes a tariff under this subsection, who continues to participate in the program at their current site or facility.

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

(15) (16) As used in this section:

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

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

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

Enacting section 1. This amendatory act does not take effect
unless Senate Bill No.____ or House Bill No. 5145 (request no.
02128'19) of the 100th Legislature is enacted into law.