

HOUSE BILL NO. 5216

October 24, 2023, Introduced by Reps. Scott and Neeley and referred to the Committee on Energy, Communications, and Technology.

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 sections 6u and 10p (MCL 460.6u and 460.10p), section 6u as added and section 10p as amended by 2016 PA 341.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 6u. (1) ~~Not later than 90 days after the effective date~~
 2 ~~of the amendatory act that added this section, January 1, 2025,~~ the
 3 commission shall commence a ~~study in collaboration with~~
 4 ~~representatives of each customer class, utilities~~ **proceeding for**
 5 **each electric utility** whose rates are regulated by the commission
 6 **to establish incentives and penalties for electric distribution**
 7 **reliability performance.** ~~, and other interested parties regarding~~
 8 ~~performance-based regulation, under which a utility's authorized~~
 9 ~~rate of return would depend on the utility achieving targeted~~
 10 ~~policy outcomes.~~ **The commission shall conduct the proceeding as a**
 11 **contested case in accordance with chapter 4 of the administrative**
 12 **procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.288.**

13 (2) ~~In the study required under this section, the commission~~
 14 ~~shall review performance-based regulation systems that have been~~
 15 ~~implemented in another state or country, including, but not limited~~
 16 ~~to, the RIIO (revenue = incentives + innovation + outputs) model~~
 17 ~~utilized in the United Kingdom.~~ **Beginning 2 years after the**
 18 **effective date of the 2023 amendatory act that amended this section**
 19 **and each year thereafter, the commission shall provide a written**
 20 **report to the legislature on each electric utility's electric**
 21 **distribution reliability performance and progress toward targeted**

1 performance.

2 (3) ~~In reviewing various performance-based regulation systems,~~
 3 ~~the commission shall evaluate, but not be limited to,~~ **The**
 4 **commission retains authority to regulate the rates of electric**
 5 **utilities and modify incentives and penalties for electric**
 6 **reliability performance implemented under this section. Electric**
 7 **reliability performance incentives and penalties shall be developed**
 8 **based on all of the following: factors:**

9 (a) Methods for estimating the revenue needed by a utility
 10 during a multiyear pricing period, and a fair return, that uses
 11 forecasts of efficient total expenditures by the utility instead of
 12 distinguishing between operating and capital costs.

13 (b) Methods to increase the length of time between rate cases,
 14 to provide utilities with more opportunity to retain cost savings
 15 without the threat of imminent rate adjustments, and to encourage
 16 utilities to make investments that have extended payback periods.

17 (c) Options for establishing incentives and penalties that
 18 pertain to issues such as customer satisfaction, safety,
 19 reliability, environmental impact, and social obligations.

20 (d) Profit-sharing provisions that can spread efficiency gains
 21 among consumers and utility shareholders and can reduce the degree
 22 of downside risk associated with attempts at innovation.

23 (4) ~~Not later than 1 year after the effective date of the~~
 24 ~~amendatory act that added this section, the commission shall report~~
 25 ~~and make recommendations in writing to the legislature and governor~~
 26 ~~based on the result of the study conducted under this section.~~ **Not**
 27 **later than 90 days after January 1, 2024, the commission shall**
 28 **commence a study in collaboration with utilities whose rates are**
 29 **regulated by the commission and other interested parties regarding**

1 multiyear rate plans, under which a utility's cost recovery would
2 be determined through less frequent regulatory filings, periodic
3 cost reconciliation proceedings, applicable revenue recovery
4 mechanisms, and potentially paired with performance incentives and
5 disincentives.

6 (5) In the study required under this section, the commission
7 shall review multiyear rate plans that have been implemented in
8 another state or country.

9 (6) In reviewing various multiyear rate plan methodologies,
10 the commission shall evaluate, but is not limited to, all of the
11 following factors:

12 (a) Methods for estimating the revenue needed by a utility
13 during a multiyear pricing period, and a fair return.

14 (b) Methods to increase the length of time between rate cases,
15 to provide utilities with more opportunity to retain cost savings
16 without the threat of imminent rate adjustments, and to encourage
17 utilities to make investments that have extended payback periods.

18 (c) Options for establishing incentives and penalties that
19 pertain to issues such as customer satisfaction, safety,
20 reliability, environmental impact, and social obligations.

21 (d) Profit-sharing provisions that can spread efficiency gains
22 among consumers and utility shareholders and can reduce the degree
23 of downside risk associated with attempts at innovation.

24 (e) Revenue adjustment mechanisms and other formula rate
25 factors that allow the utility to recover exogenous costs
26 associated with large storms or other unpredictable events.

27 (f) Incentives for utility innovation or experimental
28 initiatives to increase efficiency or provide additional or
29 improved services to customers.

1 **(g) Incentives for software or other noncapital investments**
 2 **that increase utility performance and promote more efficient or**
 3 **safer operations.**

4 **(7) ~~(5)~~—This section does not limit the commission's authority**
 5 **to authorize performance-based regulation or multiyear rate plans**
 6 **or revenue recovery mechanisms.**

7 Sec. 10p. (1) Each electric utility operating in this state
 8 shall establish an industry worker transition program that, in
 9 consultation with employees or applicable collective bargaining
 10 representatives, provides skills upgrades, apprenticeship and
 11 training programs, voluntary separation packages consistent with
 12 reasonable business practices, and job banks to coordinate and
 13 assist placement of employees into comparable employment at no less
 14 than the wage rates and substantially equivalent fringe benefits
 15 received before the transition.

16 (2) The costs resulting from subsection (1) include audited
 17 and verified employee-related restructuring costs that are incurred
 18 as a result of 2000 PA 141 or as a result of prior commission
 19 restructuring orders, including employee severance costs, employee
 20 retraining programs, early retirement programs, outplacement
 21 programs, and similar costs and programs, that have been approved
 22 and found to be prudently incurred by the commission.

23 (3) In the event of a sale, purchase, or any other transfer of
 24 ownership of 1 or more Michigan divisions or business units, or
 25 generating stations or generating units, of an electric utility, to
 26 either a third party or ~~a~~ utility subsidiary, the electric
 27 utility's contract and agreements with the acquiring entity or
 28 persons shall require all of the following for a period of at least
 29 30 months:

1 (a) That the acquiring entity or persons hire a sufficient
2 number of nonsupervisory employees to safely and reliably operate
3 and maintain the station, division, or unit by making offers of
4 employment to the nonsupervisory workforce of the electric
5 utility's division, business unit, generating station, or
6 generating unit.

7 (b) That the acquiring entity or persons not employ
8 nonsupervisory employees from outside the electric utility's
9 workforce unless offers of employment have been made to all
10 qualified nonsupervisory employees of the acquired business unit or
11 facility.

12 (c) That the acquiring entity or persons have a dispute
13 resolution mechanism culminating in a final and binding decision by
14 a neutral third party for resolving employee complaints or disputes
15 over wages, fringe benefits, and working conditions.

16 (d) That the acquiring entity or persons offer employment at
17 no less than the wage rates and substantially equivalent fringe
18 benefits and terms and conditions of employment that are in effect
19 at the time of transfer of ownership of the division, business
20 unit, generating station, or generating unit. The wage rates and
21 substantially equivalent fringe benefits and terms and conditions
22 of employment ~~shall~~**must** continue for at least 30 months ~~from~~**after**
23 the time of the transfer of ownership unless the employees, or
24 where applicable collective bargaining representative, and the new
25 employer mutually agree to different terms and conditions of
26 employment within that 30-month period.

27 (4) The electric utility shall offer a transition plan to
28 those employees who are not offered jobs by the entity because the
29 entity has a need for fewer workers. If there is litigation

1 concerning the sale, or other transfer of ownership of the electric
2 utility's divisions, business units, generating stations, or
3 generating units, the 30-month period under subsection (3) begins
4 on the date the acquiring entity or persons take control or
5 management of the divisions, business units, generating stations,
6 or generating units of the electric utility.

7 (5) The commission shall adopt generally applicable service
8 quality and reliability standards for the transmission, generation,
9 and distribution systems of electric utilities and other entities
10 subject to its jurisdiction, including, but not limited to,
11 standards for service outages, distribution facility upgrades,
12 repairs and maintenance, telephone service, billing service,
13 operational reliability, and public and worker safety. In setting
14 service quality and reliability standards, the commission shall
15 consider safety, costs, local geography and weather, applicable
16 codes, national electric industry practices, sound engineering
17 judgment, and experience. The commission shall also include
18 provisions to upgrade the service quality of distribution circuits
19 that historically have experienced significantly below-average
20 performance in relationship to similar distribution circuits.

21 (6) Annually, each jurisdictional utility or entity shall file
22 its report with the commission detailing actions to be taken to
23 comply with the service quality and reliability standards during
24 the next calendar year and its performance in relation to the
25 service quality and reliability standards during the prior calendar
26 year. The annual reports ~~shall~~**must** contain that data as required
27 by the commission, including the estimated cost of achieving
28 improvements in the jurisdictional utility's or entity's
29 performance with respect to the service quality and reliability

1 standards.

2 (7) The commission shall analyze the data to determine whether
3 the jurisdictional entities are properly operating and maintaining
4 their systems and take corrective action if needed.

5 (8) By ~~December 31, 2009~~, **January 1, 2025**, the commission
6 shall review its existing rules under this section and amend the
7 rules, if needed, under the administrative procedures act of 1969,
8 1969 PA 306, MCL 24.201 to 24.328, to implement performance
9 standards for generation facilities and for distribution facilities
10 to protect end-use customers from power quality disturbances.

11 (9) Any standards or rules developed under this section ~~shall~~
12 **must** be designed to do the following, as applicable:

13 (a) Establish different requirements for each customer class,
14 whenever those different requirements are appropriate to carry out
15 the provisions of this section, and to reflect different load and
16 service characteristics of each customer class.

17 (b) Consider the availability and associated cost of necessary
18 equipment and labor required to maintain or upgrade distribution
19 and generating facilities.

20 (c) Ensure that the most cost-effective means of addressing
21 power quality disturbances are promoted for each utility, including
22 consideration of the installation of equipment or adoption of
23 operating practices at the end-user's location.

24 (d) Take into account the extent to which the benefits
25 associated with achieving a specified standard or improvement are
26 offset by the incremental capital, fuel, and operation and
27 maintenance expenses associated with meeting the specified standard
28 or improvement.

29 (e) Carefully consider the time frame for achieving a

1 specified standard, taking into account the time required to
 2 implement needed investments or modify operating practices.

3 (10) The commission shall also create benchmarks for
 4 individual jurisdictional entities within their rate-making process
 5 in order to accomplish the goals of this section to alleviate end-
 6 use customer power quality disturbances and promote power plant
 7 generating cost efficiency.

8 (11) The commission shall establish a method for gathering
 9 data from the industrial customer class to assist in monitoring
 10 power quality and reliability standards related to service
 11 characteristics of the industrial customer class.

12 (12) The commission may levy financial incentives and
 13 penalties ~~upon~~**on** any jurisdictional entity ~~which~~**that** exceeds or
 14 fails to meet the service quality and reliability standards.

15 (13) As used in this section, "jurisdictional utility" or
 16 "jurisdictional entity" means a jurisdictional regulated utility as
 17 that term is defined in section 6q.

18 Enacting section 1. This amendatory act does not take effect
 19 unless all of the following bills of the 102nd Legislature are
 20 enacted into law:

21 (a) Senate Bill No. ____ or House Bill No. 5222 (request no.
 22 04428'23 *).

23 (b) Senate Bill No. ____ or House Bill No. 5220 (request no.
 24 04429'23 *).

25 (c) Senate Bill No. ____ or House Bill No. 5221 (request no.
 26 04430'23 *).

27 (d) Senate Bill No. ____ or House Bill No. ____ (request no.
 28 04646'23 *).

29 (e) Senate Bill No. ____ or House Bill No. 5217 (request no.

1 04647'23 *).

2 (f) Senate Bill No. _____ or House Bill No. 5219 (request no.

3 04648'23 *).