

HOUSE BILL No. 4937

June 10, 1991, Introduced by Rep. Sikkema and referred to the Committee on Public Utilities.

A bill to amend the title and section 6j of Act No. 3 of the Public Acts of 1939, entitled as amended

"An act to provide for the regulation and control of public utilities and other services affected with a public interest within this state; 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 therein 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 rate increases without notice and hearing; to qualify residential energy conservation programs permitted under state law for certain federal exemption; to provide for a restructuring of rates for certain utilities; to encourage the utilization of resource recovery facilities; to provide for appeals; to provide appropriations; to declare the effect of this act; to prescribe penalties; and to repeal all acts contrary to this act,"

section 6j as amended by Act No. 81 of the Public Acts of 1987, being section 460.6j of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. The title and section 6j of Act No. 3 of the
2 Public Acts of 1939, section 6j as amended by Act No. 81 of the

1 Public Acts of 1987, being section 460.6j of the Michigan
2 Compiled Laws, are amended to read as follows:

3 TITLE

4 An act to provide for the regulation and control of public
5 utilities and other services affected with a public interest
6 within this state; to create a public service commission and to
7 prescribe and define its powers and duties; to abolish the
8 Michigan public utilities commission and to confer the powers and
9 duties vested by law therein on the public service commission; to
10 provide for the continuance, transfer, and completion of certain
11 matters and proceedings; to abolish automatic adjustment clauses;
12 TO PROVIDE FOR THE FILING AND APPROVAL OF CAPACITY SOLICITATION
13 PLANS; to prohibit rate increases without notice and hearing; to
14 qualify residential energy conservation programs permitted under
15 state law for certain federal exemption; to provide for a
16 restructuring of rates for certain utilities; to encourage the
17 utilization of resource recovery facilities; to provide for
18 appeals; to provide appropriations; to declare the effect of this
19 act; to prescribe penalties; and to repeal all acts contrary to
20 this act.

21 Sec. 6j. (1) As used in this act:

22 (A) "CAPACITY SOLICITATION PLAN" MEANS A PLAN FILED BY A
23 UTILITY THAT INCLUDES ALL OF THE FOLLOWING:

24 (i) THE UTILITY'S NEED FOR CAPACITY.

25 (ii) AVOIDED CAPACITY COSTS.

1 (iii) PROCEDURES AND METHODS FOR DETERMINING SELECTION OF
2 SOURCES OF CAPACITY, INCLUDING, BUT NOT LIMITED TO, COMPETITIVE
3 BIDDING.

4 (iv) ALLOCATION OF CAPACITY AMONG SUPPLY- AND DEMAND- SIDE
5 OPTIONS.

6 (B) ~~(a)~~ "Power supply cost recovery clause" means a clause
7 in the electric rates or rate schedule of a utility ~~which~~ THAT
8 permits the monthly adjustment of rates for power supply to allow
9 the utility to recover the booked costs, including transportation
10 costs, reclamation costs, and disposal and reprocessing costs, of
11 fuel burned by the utility for electric generation and the booked
12 costs of purchased and net interchanged power transactions by the
13 utility incurred under reasonable and prudent policies and
14 practices.

15 (C) ~~(b)~~ "Power supply cost recovery factor" means that
16 element of the rates to be charged for electric service to
17 reflect power supply costs incurred by an electric utility and
18 made pursuant to a power supply cost recovery clause incorporated
19 in the rates or rate schedule of an electric utility.

20 (2) Pursuant to its authority under this act, the public
21 service commission may incorporate a power supply cost recovery
22 clause in the electric rates or rate schedule of a utility, but
23 is not required to do so. Any order incorporating a power supply
24 cost recovery clause shall be as a result of a hearing solely on
25 the question of the inclusion of the clause in the rates or rate
26 schedule, which hearing shall be conducted as a contested case
27 pursuant to chapter 4 of ~~the administrative procedures act of~~

1 ~~1969,~~ Act No. 306 of the Public Acts of 1969, being sections
2 24.271 to 24.287 of the Michigan Compiled Laws, or, pursuant to
3 subsection (18), as a result of a general rate case. Any order
4 incorporating a power supply cost recovery clause shall replace
5 and rescind any previous fuel cost adjustment clause or purchased
6 and net interchanged power adjustment clause incorporated in the
7 electric rates of the utility upon the effective date of the
8 first power supply cost recovery factor authorized for the util-
9 ity under its power supply cost recovery clause.

10 (3) ~~In order to~~ TO implement the power supply cost recov-
11 ery clause established pursuant to subsection (2), a utility
12 annually shall file, pursuant to procedures established by the
13 commission, if any, a complete power supply cost recovery plan
14 describing the expected sources of electric power supply and
15 changes in the cost of power supply anticipated over a future
16 12-month period specified by the commission and requesting for
17 each of those 12 months a specific power supply cost recovery
18 factor. The plan shall be filed not less than 3 months before
19 the beginning of the 12-month period covered by the plan. The
20 plan shall describe all major contracts and power supply arrange-
21 ments entered into by the utility for providing power supply
22 during the specified 12-month period. The description of the
23 major contracts and arrangements shall include the price of fuel,
24 the duration of the contract or arrangement, and an explanation
25 or description of any other term or provision as required by the
26 commission. The plan shall also include the utility's evaluation
27 of the reasonableness and prudence of its decisions to provide

1 power supply in the manner described in the plan, in light of its
2 existing sources of electrical generation, and an explanation of
3 the actions taken by the utility to minimize the cost of fuel to
4 the utility.

5 (4) ~~In order to~~ TO implement the power supply cost recov-
6 ery clause established pursuant to subsection (2), a utility
7 shall file, contemporaneously with the power supply cost recovery
8 plan required by subsection (3), a 5-year forecast of the power
9 supply requirements of its customers, its anticipated sources of
10 supply, and projections of power supply costs, in light of its
11 existing sources of electrical generation and sources of electri-
12 cal generation under construction. The forecast shall include a
13 description of all relevant major contracts and power supply
14 arrangements entered into or contemplated by the utility, and
15 such other information as the commission may require.

16 (5) If a utility files a power supply cost recovery plan and
17 a 5-year forecast as provided in subsections (3) and (4), the
18 commission shall conduct a proceeding, to be known as a power
19 supply and cost review, for the purpose of evaluating the reason-
20 ableness and prudence of the power supply cost recovery plan
21 filed by a utility pursuant to subsection (3), and establishing
22 the power supply cost recovery factors to implement a power
23 supply cost recovery clause incorporated in the electric rates or
24 rate schedule of the utility. The power supply and cost review
25 shall be conducted as a contested case pursuant to chapter 4 of
26 ~~the administrative procedures act of 1969,~~ Act No. 306 of the
27 Public Acts of 1969.

1 (6) In its final order in a power supply and cost review,
2 the commission shall evaluate the reasonableness and prudence of
3 the decisions underlying the power supply cost recovery plan
4 filed by the utility pursuant to subsection (3), and shall
5 approve, disapprove, or amend the power supply cost recovery plan
6 accordingly. In evaluating the decisions underlying the power
7 supply cost recovery plan, the commission shall consider the cost
8 and availability of the electrical generation available to the
9 utility; the cost of short-term firm purchases available to the
10 utility; the availability of interruptible service; the ability
11 of the utility to reduce or to eliminate any firm sales to
12 out-of-state customers if the utility is not a multi-state util-
13 ity whose firm sales are subject to other regulatory authority;
14 whether the utility has taken all appropriate actions to minimize
15 the cost of fuel; and other relevant factors. The commission
16 shall approve, reject, or amend the 12 monthly power supply cost
17 recovery factors requested by the utility in its power supply
18 cost recovery plan. The factors shall not reflect items the com-
19 mission could reasonably anticipate would be disallowed under
20 subsection (13). The factors ordered shall be described in fixed
21 dollar amounts per unit of electricity, but may include specific
22 amounts contingent on future events.

23 (7) In its final order in a power supply and cost review,
24 the commission shall evaluate the decisions underlying the 5-year
25 forecast filed by a utility pursuant to subsection (4). The com-
26 mission may also indicate any cost items in the 5-year forecast
27 that, on the basis of present evidence, the commission would be

1 unlikely to permit the utility to recover from its customers in
2 rates, rate schedules, or power supply cost recovery factors
3 established in the future.

4 (8) The commission, on its own motion or the motion of any
5 party, may make a finding and enter a temporary order granting
6 approval or partial approval of a power supply cost recovery plan
7 in a power supply and cost recovery review, after first having
8 given notice to the parties to the review, and after having
9 afforded to the parties to the review a reasonable opportunity
10 for a full and complete hearing. A temporary order made pursuant
11 to this subsection shall be considered a final order for purposes
12 of judicial review.

13 (9) If the commission has made a final or temporary order in
14 a power supply and cost review, the utility may each month incor-
15 porate in its rates for the period covered by the order any
16 amounts up to the power supply cost recovery factors permitted in
17 that order. If the commission has not made a final or temporary
18 order within 3 months of the submission of a complete power
19 supply cost recovery plan, or by the beginning of the period cov-
20 ered in the plan, whichever comes later, or if a temporary order
21 has expired without being extended or replaced, then pending an
22 order ~~which~~ THAT determines the power supply cost recovery fac-
23 tors, a utility may each month adjust its rates to incorporate
24 all or a part of the power supply cost recovery factors requested
25 in its plan. Any amounts collected under the power supply cost
26 recovery factors before the commission makes its final order
27 ~~shall be~~ ARE subject to prompt refund with interest to the

1 extent that the total amounts collected exceed the total amounts
2 determined in the commission's final order to be reasonable and
3 prudent for the same period of time.

4 (10) Not less than 3 months before the beginning of the
5 third quarter of the 12-month period, the utility may file a
6 revised power supply cost recovery plan which shall cover the
7 remainder of the 12-month period. Upon receipt of the revised
8 power supply cost recovery plan, the commission shall reopen the
9 power supply and cost review. In addition, the commission may
10 reopen the power supply and cost review on its own motion or on
11 the showing of good cause by any party if at least 6 months have
12 elapsed since the utility submitted its complete filing and if
13 there are at least 60 days remaining in the 12-month period under
14 consideration. A reopened power supply and cost review shall be
15 conducted as a contested case pursuant to chapter 4 of ~~the~~
16 ~~administrative procedures act of 1969,~~ Act No. 306 of the Public
17 Acts of 1969, and in accordance with subsections (3), (6), (8),
18 and (9).

19 (11) Not more than 45 days following the last day of each
20 billing month in which a power supply cost recovery factor has
21 been applied to customers' bills, the utility shall file with the
22 commission a detailed statement for that month of the revenues
23 recorded pursuant to the power supply cost recovery factor and
24 the allowance for cost of power supply included in the base rates
25 established in the latest commission order for the utility, and
26 the cost of power supply. The detailed statement shall be in the
27 manner and form prescribed by the commission. The commission

1 shall establish procedures for insuring that the detailed
2 statement is promptly verified and corrected if necessary.

3 (12) Not less than once a year, and not later than 3 months
4 after the end of the 12-month period covered by a utility's power
5 supply cost recovery plan, the commission shall commence a pro-
6 ceeding, to be known as a power supply cost reconciliation, as a
7 contested case pursuant to chapter 4 of ~~the administrative pro-~~
8 ~~cedures act of 1969,~~ Act No. 306 of the Public Acts of 1969.

9 Reasonable discovery shall be permitted before and during the
10 reconciliation proceeding in order to assist parties and inter-
11 ested persons in obtaining evidence concerning reconciliation
12 issues including, but not limited to, the reasonableness and pru-
13 dence of expenditures and the amounts collected pursuant to the
14 clause. At the power supply cost reconciliation the commission
15 shall reconcile the revenues recorded pursuant to the power
16 supply cost recovery factors and the allowance for cost of power
17 supply included in the base rates established in the latest com-
18 mission order for the utility with the amounts actually expensed
19 and included in the cost of power supply by the utility. The
20 commission shall consider any issue regarding the reasonableness
21 and prudence of expenses for which customers were charged if the
22 issue was not considered adequately at a previously conducted
23 power supply and cost review.

24 (13) In its order in a power supply cost reconciliation, the
25 commission shall:

26 (a) Disallow cost increases resulting from changes in
27 accounting or rate-making expense treatment not previously

1 approved by the commission. The commission may order the utility
2 to pay a penalty not to exceed 25% of the amount improperly
3 collected. Costs incurred by the utility for penalty payments
4 shall not be charged to customers.

5 (b) Disallow any capacity charges associated with power pur-
6 chased for periods in excess of 6 months unless the utility has
7 obtained the prior approval of the commission. ALSO, AFTER APRIL
8 30, 1991, FOR A UTILITY WITH 200,000 OR MORE CUSTOMERS IN THIS
9 STATE, THE COMMISSION SHALL DISALLOW ANY CAPACITY CHARGES ASSOCI-
10 ATED WITH POWER PURCHASED FOR PERIODS IN EXCESS OF 6 MONTHS
11 UNLESS THE UTILITY HAS AN APPROVED CAPACITY SOLICITATION PLAN ON
12 FILE WITH THE COMMISSION. THE COMMISSION SHALL REQUIRE A UTILITY
13 WITH 200,000 OR MORE CUSTOMERS IN THIS STATE TO FILE A CAPACITY
14 SOLICITATION PLAN. THE COMMISSION MAY CONDITION ITS APPROVAL OF
15 A CAPACITY SOLICITATION PLAN UPON MODIFICATION OF THE PLAN. If
16 the commission has approved capacity charges in a contract with a
17 qualifying facility, as defined by the federal energy regulatory
18 commission pursuant to the public utilities regulatory policies
19 act of 1978, Public Law 95-617, 92 Stat. 3117, the commission
20 shall not disallow the capacity charges for the facility in the
21 power supply cost reconciliation unless the commission has
22 ordered revised capacity charges upon reconsideration pursuant to
23 this subsection. A contract shall be valid and binding in
24 accordance with its terms and capacity charges paid pursuant to
25 such a contract shall be recoverable costs of the utility for
26 rate-making purposes notwithstanding that the order approving
27 such a contract is later vacated, modified, or otherwise held to

1 be invalid in whole or in part if the order approving the
2 contract has not been stayed or suspended by a competent court
3 within 30 days after the date of the order, or within 30 days of
4 ~~the effective date of the 1987 amendatory act that added subsec-~~
5 ~~tion (19)~~ JUNE 29, 1987, if the order was issued after
6 September 1, 1986, and before JUNE 29, 1987. ~~the effective date~~
7 ~~of the 1987 amendatory act that added subsection (19).~~ The scope
8 and manner of the review of capacity charges for a qualifying
9 facility shall be determined by the commission. Except as to
10 approvals for qualifying facilities granted by the commission
11 ~~prior to~~ BEFORE June 1, 1987, proceedings before the commission
12 seeking such approvals shall be conducted as a contested case
13 pursuant to chapter 4 of ~~the administrative procedures act of~~
14 ~~1969,~~ Act No. 306 of the Public Acts of 1969. The commission,
15 upon its own motion or upon application of any person, may recon-
16 sider its approval of capacity charges in a contested case hear-
17 ing after passage of a period necessary for financing the quali-
18 fying facility, provided that:

19 (i) The commission has first issued an order making a find-
20 ing based on evidence presented in a contested case that there
21 has been a substantial change in circumstances since the
22 commission's initial approval; and

23 (ii) Such a commission finding shall be set forth in a com-
24 mission order subject to immediate judicial review.

25 The financing period for a qualifying facility during which pre-
26 viously approved capacity charges shall not be subject to
27 commission reconsideration shall be 17.5 years, beginning with

1 the date of commercial operation, for all qualifying facilities,
2 except that the minimum financing period before reconsideration
3 of the previously approved capacity charges shall be for the
4 duration of the financing for a qualifying facility which
5 produces electric energy by the use of biomass, waste, wood,
6 hydroelectric, wind, and other renewable resources, or any combi-
7 nation of renewable resources, as the primary energy source.

8 (c) Disallow net increased costs attributable to a generat-
9 ing plant outage of more than 90 days in duration unless the
10 utility demonstrates by clear and satisfactory evidence that the
11 outage, or any part of the outage, was not caused or prolonged by
12 the utility's negligence or by unreasonable or imprudent
13 management.

14 (d) Disallow transportation costs attributable to capital
15 investments to develop a utility's capability to transport fuel
16 or relocate fuel at the utility's facilities and disallow unload-
17 ing and handling expenses incurred after receipt of fuel by the
18 utility.

19 (e) Disallow the cost of fuel purchased from an affiliated
20 company to the extent that such fuel is more costly than fuel of
21 requisite quality available at or about the same time from other
22 suppliers with whom it would be comparably cost beneficial to
23 deal.

24 (f) Disallow charges unreasonably or imprudently incurred
25 for fuel not taken.

26 (g) Disallow additional costs resulting from unreasonably or
27 imprudently renegotiated fuel contracts.

1 (h) Disallow penalty charges unreasonably or imprudently
2 incurred.

3 (i) Disallow demurrage charges.

4 (j) Disallow increases in charges for nuclear fuel disposal
5 unless the utility has received the prior approval of the
6 commission.

7 (14) In its order in a power supply cost reconciliation, the
8 commission shall require a utility to refund to customers or
9 credit to customers' bills any net amount determined to have been
10 recovered over the period covered in excess of the amounts deter-
11 mined to have been actually expensed by the utility for power
12 supply, and to have been incurred through reasonable and prudent
13 actions not precluded by the commission order in the power supply
14 and cost review. Such refunds or credits shall be apportioned
15 among the customers of the utility utilizing procedures that the
16 commission determines to be reasonable. The commission may adopt
17 different procedures with respect to customers served under the
18 various rate schedules of the utility and may, in appropriate
19 circumstances, order refunds or credits in proportion to the
20 excess amounts actually collected from each such customer during
21 the period covered.

22 (15) In its order in a power supply cost reconciliation, the
23 commission shall authorize a utility to recover from customers
24 any net amount by which the amount determined to have been recov-
25 ered over the period covered was less than the amount determined
26 to have been actually expensed by the utility for power supply,
27 and to have been incurred through reasonable and prudent actions

1 not precluded by the commission order in the power supply and
2 cost review. For excess costs incurred through management
3 actions contrary to the commission's power supply and cost review
4 order, the commission shall authorize a utility to recover costs
5 incurred for power supply in the reconciliation period in excess
6 of the amount recovered over the period only if the utility
7 demonstrates by clear and convincing evidence that the excess
8 expenses were beyond the ability of the utility to control
9 through reasonable and prudent actions. For excess costs
10 incurred through management actions consistent with the
11 commission's power supply and cost review order, the commission
12 shall authorize a utility to recover costs incurred for power
13 supply in the reconciliation period in excess of the amount
14 recovered over the period only if the utility demonstrates that
15 the level of such expenses resulted from reasonable and prudent
16 management actions. Such amounts in excess of the amounts actu-
17 ally recovered by the utility for power supply shall be appor-
18 tioned among and charged to the customers of the utility utiliz-
19 ing procedures that the commission determines to be reasonable.
20 The commission may adopt different procedures with respect to
21 customers served under the various rate schedules of the utility
22 and may, in appropriate circumstances, order charges to be made
23 in proportion to the amounts which would have been paid by such
24 customers if the amounts in excess of the amounts actually recov-
25 ered by the utility for cost of power supply had been included in
26 the power supply cost recovery factors with respect to such
27 customers during the period covered. Charges for such excess

1 amounts shall be spread over a period that the commission
2 determines to be appropriate.

3 (16) If the commission orders refunds or credits pursuant to
4 subsection (14), or additional charges to customers pursuant to
5 subsection (15), in its final order in a power supply cost recon-
6 ciliation, the refunds, credits, or additional charges shall
7 include interest. In determining the interest included in a
8 refund, credit, or additional charge pursuant to this subsection,
9 the commission shall consider, to the extent material and practi-
10 cable, the time at which the excess recoveries or insufficient
11 recoveries, or both occurred. The commission shall determine a
12 rate of interest for excess recoveries, refunds, and credits
13 equal to the greater of the average short-term borrowing rate
14 available to the utility during the appropriate period, or the
15 authorized rate of return on the common stock of the utility
16 during that same period. Costs incurred by the utility for
17 refunds and interest on refunds shall not be charged to
18 customers. The commission shall determine a rate of interest for
19 insufficient recoveries and additional charges equal to the aver-
20 age short-term borrowing rate available to the utility during the
21 appropriate period.

22 (17) To avoid undue hardship or unduly burdensome or exces-
23 sive cost, the commission may:

24 (a) Exempt an electric utility with fewer than 200,000 cus-
25 tomers in the state of Michigan from 1 or more of the procedural
26 provisions of this section or may modify the filing requirements
27 of this section.

1 (b) Exempt an energy utility organized as a cooperative
2 corporation pursuant to sections 98 to 109 of Act No. 327 of the
3 Public Acts of 1931, being sections 450.98 to 450.109 of the
4 Michigan Compiled Laws, from 1 or more of the provisions of this
5 section.

6 (18) Notwithstanding any other provision of this act, the
7 commission may, upon application by an electric utility, set
8 power supply cost recovery factors, in a manner otherwise consis-
9 tent with this act, in an order resulting from a general rate
10 case. Within 120 days following the effective date of this sec-
11 tion, for the purpose of setting power supply cost recovery fac-
12 tors, the commission shall permit an electric utility to reopen a
13 general rate case in which a final order was issued within 120
14 days before or after the effective date of this section or to
15 amend an application or reopen the evidentiary record in a pend-
16 ing general rate case. If the commission sets power supply cost
17 recovery factors in an order resulting from a general rate case:

18 (a) The power supply cost recovery factors shall cover a
19 future period of 48 months or the number of months which elapse
20 until the commission orders new power supply cost recovery fac-
21 tors in a general rate case, whichever is the shorter period.

22 (b) Annual reconciliation proceedings shall be conducted
23 pursuant to subsection (12) and if an annual reconciliation pro-
24 ceeding shows a recoverable amount pursuant to subsection (15),
25 the commission shall authorize the electric utility to defer the
26 amount and to accumulate interest on the amount pursuant to
27 subsection (16), and in the next order resulting from a general

1 rate case authorize the utility to recover the amount and
2 interest from its customers in the manner provided in subsection
3 (15).

4 (c) The power supply cost recovery factors shall not be
5 subject to revision pursuant to subsection (10).

6 (19) ~~Five years after the effective date of the amendatory~~
7 ~~act that added this subsection~~ BEGINNING JUNE 29, 1992, and
8 every 5 years ~~thereafter~~ AFTER THAT DATE, the standing commit-
9 tees of the house and senate that deal with public utilities
10 shall review the amendatory act that added this subsection.