

HOUSE BILL No. 5791

April 30, 1992, Introduced by Reps. Griffin, Gilmer, Stopczynski, DeMars, Dobronski and Murphy and referred to the Committee on Public Utilities.

A bill to amend 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,"

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. Section 6j of Act No. 3 of the Public Acts of
2 1939, as amended by Act No. 81 of the Public Acts of 1987, being

1 section 460.6j of the Michigan Compiled Laws, is amended to read
2 as follows:

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

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

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

18 (2) Pursuant to its authority under this act, the public
19 service commission may incorporate a power supply cost recovery
20 clause in the electric rates or rate schedule of a utility, but
21 is not required to do so. Any order incorporating a power supply
22 cost recovery clause shall be as a result of a hearing solely on
23 the question of the inclusion of the clause in the rates or rate
24 schedule, which hearing shall be conducted as a contested case
25 pursuant to chapter 4 of the administrative procedures act of
26 1969, Act No. 306 of the Public Acts of 1969, being
27 sections 24.271 to 24.287 of the Michigan Compiled Laws, or,

1 pursuant to subsection (18), as a result of a general rate case.
2 Any order incorporating a power supply cost recovery clause shall
3 replace and rescind any previous fuel cost adjustment clause or
4 purchased and net interchanged power adjustment clause incorpo-
5 rated in the electric rates of the utility upon the effective
6 date of the first power supply cost recovery factor authorized
7 for the utility under its power supply cost recovery clause.

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

1 the actions taken by the utility to minimize the cost of fuel to
2 the utility.

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

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

26 (6) In its final order in a power supply and cost review,
27 the commission shall evaluate the reasonableness and prudence of

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

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

1 rates, rate schedules, or power supply cost recovery factors
2 established in the future.

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

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

1 determined in the commission's final order to be reasonable and
2 prudent for the same period of time.

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

18 (11) Not more than 45 days following the last day of each
19 billing month in which a power supply cost recovery factor has
20 been applied to customers' bills, the utility shall file with the
21 commission a detailed statement for that month of the revenues
22 recorded pursuant to the power supply cost recovery factor and
23 the allowance for cost of power supply included in the base rates
24 established in the latest commission order for the utility, and
25 the cost of power supply. The detailed statement shall be in the
26 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 proce-
8 dures 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. If the commission
8 has approved capacity charges in a contract with a qualifying
9 facility, as defined by the federal energy regulatory commission
10 pursuant to the public utilities regulatory policies act of 1978,
11 Public Law 95-617, 92 Stat. 3117, the commission shall not disal-
12 low the capacity charges for the facility in the power supply
13 cost reconciliation unless the commission has ordered revised
14 capacity charges upon reconsideration pursuant to this
15 subsection. A contract shall be valid and binding in accordance
16 with its terms and capacity charges paid pursuant to such a con-
17 tract shall be recoverable costs of the utility for rate-making
18 purposes notwithstanding that the order approving such a contract
19 is later vacated, modified, or otherwise held to be invalid in
20 whole or in part if the order approving the contract has not been
21 stayed or suspended by a competent court within 30 days after the
22 date of the order, or within 30 days ~~of the effective date of~~
23 ~~the 1987 amendatory act that added subsection (19)~~ AFTER JUNE
24 29, 1987, if the order was issued after September 1, 1986, and
25 before ~~the effective date of the 1987 amendatory act that added~~
26 ~~subsection (19)~~ JUNE 29, 1987. The scope and manner of the
27 review of capacity charges for a qualifying facility shall be

1 determined by the commission. Except as to approvals for
2 qualifying facilities granted by the commission ~~prior to~~ BEFORE
3 June 1, 1987, proceedings before the commission seeking such
4 approvals shall be conducted as a contested case pursuant to
5 chapter 4 of the administrative procedures act of 1969, Act
6 No. 306 of the Public Acts of 1969. The commission, upon its own
7 motion or upon application of any person, may reconsider its
8 approval of capacity charges in a contested case hearing after
9 passage of a period necessary for financing the qualifying facil-
10 ity ~~, provided that: (i) The~~ IF THE commission has first
11 issued an order making a finding based on evidence presented in a
12 contested case that there has been a substantial change in cir-
13 cumstances since the commission's initial approval ~~, and (ii)~~
14 ~~Such a commission~~ THE COMMISSION'S finding ~~shall be~~ IS set
15 forth in a commission order subject to immediate judicial
16 review. The financing period for a qualifying facility during
17 which previously approved capacity charges shall not be subject
18 to commission reconsideration shall be 17.5 years, beginning with
19 the date of commercial operation, for all qualifying facilities,
20 except that the minimum financing period before reconsideration
21 of the previously approved capacity charges shall be for the
22 duration of the financing for a qualifying facility which
23 produces electric energy by the use of biomass, waste, wood,
24 hydroelectric, wind, and other renewable resources, or any combi-
25 nation of renewable resources, as the primary energy source.

26 (c) Disallow net increased costs attributable to a
27 generating plant outage of more than 90 days in duration unless

1 the utility demonstrates by clear and satisfactory evidence that
2 the outage, or any part of the outage, was not caused or pro-
3 longed by the utility's negligence or by unreasonable or impru-
4 dent management.

5 (d) Disallow transportation costs attributable to capital
6 investments to develop a utility's capability to transport fuel
7 or relocate fuel at the utility's facilities and disallow unload-
8 ing and handling expenses incurred after receipt of fuel by the
9 utility.

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

15 (f) Disallow charges unreasonably or imprudently incurred
16 for fuel not taken.

17 (g) Disallow additional costs resulting from unreasonably or
18 imprudently renegotiated fuel contracts.

19 (h) Disallow penalty charges unreasonably or imprudently
20 incurred.

21 (i) Disallow demurrage charges.

22 (j) Disallow increases in charges for nuclear fuel disposal
23 unless the utility has received the prior approval of the
24 commission.

25 (K) AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT
26 ADDED THIS SUBDIVISION, FOR A UTILITY WITH 200,000 OR MORE
27 CUSTOMERS IN THIS STATE, DISALLOW THE COSTS OF ANY POWER

1 PURCHASED FROM AN AFFILIATE OF THE PURCHASING UTILITY OR AN
2 AFFILIATE OF A UTILITY ENGAGED IN A RECIPROCAL SALE WITH THE PUR-
3 CHASING UTILITY UNLESS THE POWER IS COMPETITIVELY PRICED. POWER
4 PURCHASED FROM AN AFFILIATE OF THE PURCHASING UTILITY OR AN
5 AFFILIATE OF A UTILITY ENGAGED IN A RECIPROCAL SALE WITH THE PUR-
6 CHASING UTILITY IS NOT COMPETITIVELY PRICED UNLESS THE UTILITY
7 DEMONSTRATES BY CLEAR AND CONVINCING EVIDENCE THAT IT COMPLIED
8 WITH COMPETITIVE BIDDING PROCEDURES PRESCRIBED BY THE COMMISSION
9 AND THAT THE PRICE OF THE POWER FROM THE AFFILIATE WAS THE LOWEST
10 PRICE AVAILABLE. AS USED IN THIS SUBDIVISION, "AFFILIATE" MEANS
11 1 OR MORE OF THE FOLLOWING:

12 (i) A PERSON THAT OWNS OR CONTROLS, DIRECTLY OR INDIRECTLY,
13 5% OR MORE OF THE VOTING SHARES OF A UTILITY.

14 (ii) EACH PERSON IN A CHAIN OF SUCCESSIVE OWNERSHIP OR CON-
15 TROL, DIRECTLY OR INDIRECTLY, OF 5% OR MORE OF THE VOTING SHARES
16 OF A UTILITY.

17 (iii) A PERSON THAT HAS 5% OR MORE OF ITS VOTING SHARES
18 OWNED OR CONTROLLED, DIRECTLY OR INDIRECTLY, BY A UTILITY OR A
19 PERSON DESCRIBED IN SUBPARAGRAPH (i) OR (ii).

20 (iv) AN OFFICER, DIRECTOR, OR PARTNER OF A UTILITY OR A
21 PERSON DESCRIBED IN SUBPARAGRAPH (i) OR (ii).

22 (v) A PERSON THAT EXERTS SUBSTANTIAL INFLUENCE OVER THE POL-
23 ICIES OR ACTIONS OF A UTILITY.

24 (14) In its order in a power supply cost reconciliation, the
25 commission shall require a utility to refund to customers or
26 credit to customers' bills any net amount determined to have been
27 recovered over the period covered in excess of the amounts

1 determined to have been actually expensed by the utility for
2 power supply, and to have been incurred through reasonable and
3 prudent actions not precluded by the commission order in the
4 power supply and cost review. Such refunds or credits shall be
5 apportioned among the customers of the utility utilizing proce-
6 dures that the commission determines to be reasonable. The com-
7 mission may adopt different procedures with respect to customers
8 served under the various rate schedules of the utility and may,
9 in appropriate circumstances, order refunds or credits in propor-
10 tion to the excess amounts actually collected from each such cus-
11 tomer during the period covered.

12 (15) In its order in a power supply cost reconciliation, the
13 commission shall authorize a utility to recover from customers
14 any net amount by which the amount determined to have been recov-
15 ered over the period covered was less than the amount determined
16 to have been actually expensed by the utility for power supply,
17 and to have been incurred through reasonable and prudent actions
18 not precluded by the commission order in the power supply and
19 cost review. For excess costs incurred through management
20 actions contrary to the commission's power supply and cost review
21 order, the commission shall authorize a utility to recover costs
22 incurred for power supply in the reconciliation period in excess
23 of the amount recovered over the period only if the utility
24 demonstrates by clear and convincing evidence that the excess
25 expenses were beyond the ability of the utility to control
26 through reasonable and prudent actions. For excess costs
27 incurred through management actions consistent with the

1 commission's power supply and cost review order, the commission
2 shall authorize a utility to recover costs incurred for power
3 supply in the reconciliation period in excess of the amount
4 recovered over the period only if the utility demonstrates that
5 the level of such expenses resulted from reasonable and prudent
6 management actions. Such amounts in excess of the amounts actu-
7 ally recovered by the utility for power supply shall be appor-
8 tioned among and charged to the customers of the utility utiliz-
9 ing procedures that the commission determines to be reasonable.
10 The commission may adopt different procedures with respect to
11 customers served under the various rate schedules of the utility
12 and may, in appropriate circumstances, order charges to be made
13 in proportion to the amounts which would have been paid by such
14 customers if the amounts in excess of the amounts actually recov-
15 ered by the utility for cost of power supply had been included in
16 the power supply cost recovery factors with respect to such cus-
17 tomers during the period covered. Charges for such excess
18 amounts shall be spread over a period that the commission deter-
19 mines to be appropriate.

20 (16) If the commission orders refunds or credits pursuant to
21 subsection (14), or additional charges to customers pursuant to
22 subsection (15), in its final order in a power supply cost recon-
23 ciliation, the refunds, credits, or additional charges shall
24 include interest. In determining the interest included in a
25 refund, credit, or additional charge pursuant to this subsection,
26 the commission shall consider, to the extent material and
27 practicable, the time at which the excess recoveries or

1 insufficient recoveries, or both occurred. The commission shall
2 determine a rate of interest for excess recoveries, refunds, and
3 credits equal to the greater of the average short-term borrowing
4 rate available to the utility during the appropriate period, or
5 the authorized rate of return on the common stock of the utility
6 during that same period. Costs incurred by the utility for
7 refunds and interest on refunds shall not be charged to
8 customers. The commission shall determine a rate of interest for
9 insufficient recoveries and additional charges equal to the aver-
10 age short-term borrowing rate available to the utility during the
11 appropriate period.

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

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

18 (b) Exempt an energy utility organized as a cooperative cor-
19 poration pursuant to sections 98 to 109 of Act No. 327 of the
20 Public Acts of 1931, being sections 450.98 to 450.109 of the
21 Michigan Compiled Laws, from 1 or more of the provisions of this
22 section.

23 (18) Notwithstanding any other provision of this act, the
24 commission may, upon application by an electric utility, set
25 power supply cost recovery factors, in a manner otherwise consis-
26 tent with this act, in an order resulting from a general rate
27 case. Within 120 days following the effective date of this

1 section, for the purpose of setting power supply cost recovery
2 factors, the commission shall permit an electric utility to
3 reopen a general rate case in which a final order was issued
4 within 120 days before or after the effective date of this sec-
5 tion or to amend an application or reopen the evidentiary record
6 in a pending general rate case. If the commission sets power
7 supply cost recovery factors in an order resulting from a general
8 rate case:

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

13 (b) Annual reconciliation proceedings shall be conducted
14 pursuant to subsection (12) and if an annual reconciliation pro-
15 ceeding shows a recoverable amount pursuant to subsection (15),
16 the commission shall authorize the electric utility to defer the
17 amount and to accumulate interest on the amount pursuant to
18 subsection (16), and in the next order resulting from a general
19 rate case authorize the utility to recover the amount and inter-
20 est from its customers in the manner provided in
21 subsection (15).

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

24 ~~(19) Five years after the effective date of the amendatory~~
25 ~~act that added this subsection,~~ BEGINNING JUNE 29, 1992, and
26 every 5 years ~~thereafter,~~ AFTER THAT DATE, the standing
27 committees of the house and senate that deal with public

1 utilities shall review the amendatory act that added this
2 subsection.