

# SENATE BILL No. 1207

July 18, 2012, Introduced by Senators CASPERSON and WALKER and referred to the Committee on Energy 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 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 2008 PA 286.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 6a. (1) A gas or electric utility shall not increase its

1 rates and charges or alter, change, or amend any rate or rate  
2 schedules, the effect of which will be to increase the cost of  
3 services to its customers, without first receiving commission  
4 approval as provided in this section. The utility shall place in  
5 evidence facts relied upon to support the utility's petition or  
6 application to increase its rates and charges, or to alter, change,  
7 or amend any rate or rate schedules. The commission shall require  
8 notice to be given to all interested parties within the service  
9 area to be affected, and all interested parties shall have a  
10 reasonable opportunity for a full and complete hearing. A utility  
11 may use projected costs and revenues for a future consecutive 12-  
12 month period in developing its requested rates and charges. The  
13 commission shall notify the utility within 30 days of filing,  
14 whether the utility's petition or application is complete. A  
15 petition or application is considered complete if it complies with  
16 the rate application filing forms and instructions adopted under  
17 subsection (6). A petition or application pending before the  
18 commission ~~prior to~~ **BEFORE** the adoption of filing forms and  
19 instructions ~~pursuant to~~ **UNDER** subsection (6) shall be evaluated  
20 based upon the filing requirements in effect at the time the  
21 petition or application was filed. If the application is not  
22 complete, the commission shall notify the utility of all  
23 information necessary to make that filing complete. If the  
24 commission has not notified the utility within 30 days of whether  
25 the utility's petition or application is complete, the application  
26 is considered complete. If the commission has not issued an order  
27 within 180 days of the filing of a complete application, the

1 utility may implement up to the amount of the proposed annual rate  
2 request through equal percentage increases or decreases applied to  
3 all base rates. For a petition or application pending before the  
4 commission ~~prior to the effective date of the amendatory act that~~  
5 ~~added this sentence, BEFORE OCTOBER 6, 2008,~~ the 180-day period  
6 commences on ~~the effective date of the amendatory act that added~~  
7 ~~this sentence. OCTOBER 6, 2008.~~ If the utility uses projected costs  
8 and revenues for a future period in developing its requested rates  
9 and charges, the utility may not implement the equal percentage  
10 increases or decreases ~~prior to~~ **BEFORE** the calendar date  
11 corresponding to the start of the projected 12-month period. For  
12 good cause, the commission may issue a temporary order preventing  
13 or delaying a utility from implementing its proposed rates or  
14 charges. If a utility implements increased rates or charges under  
15 this subsection before the commission issues a final order, that  
16 utility shall refund to customers, with interest, any portion of  
17 the total revenues collected through application of the equal  
18 percentage increase that exceed the total that would have been  
19 produced by the rates or charges subsequently ordered by the  
20 commission in its final order. The commission shall allocate any  
21 refund required by this section among primary customers based upon  
22 their pro rata share of the total revenue collected through the  
23 applicable increase, and among secondary and residential customers  
24 in a manner to be determined by the commission. The rate of  
25 interest for refunds shall equal 5% plus the London interbank  
26 offered rate (LIBOR) for the appropriate time period. For any  
27 portion of the refund which, exclusive of interest, exceeds 25% of

1 the annual revenue increase awarded by the commission in its final  
2 order, the rate of interest shall be the authorized rate of return  
3 on the common stock of the utility during the appropriate period.  
4 Any refund or interest awarded under this subsection shall not be  
5 included, in whole or in part, in any application for a rate  
6 increase by a utility. Nothing in this section impairs the  
7 commission's ability to issue a show cause order as part of its  
8 rate-making authority. An alteration or amendment in rates or rate  
9 schedules applied for by a public utility that will not result in  
10 an increase in the cost of service to its customers may be  
11 authorized and approved without notice or hearing. There shall be  
12 no increase in rates based upon changes in cost of fuel or  
13 purchased gas unless notice has been given within the service area  
14 to be affected, and there has been an opportunity for a full and  
15 complete hearing on the cost of fuel or purchased gas. The rates  
16 charged by any utility pursuant to an automatic fuel or purchased  
17 gas adjustment clause shall not be altered, changed, or amended  
18 unless notice has been given within the service area to be  
19 affected, and there has been an opportunity for a full and complete  
20 hearing on the cost of the fuel or purchased gas.

21 (2) The commission shall adopt rules and procedures for the  
22 filing, investigation, and hearing of petitions or applications to  
23 increase or decrease utility rates and charges as the commission  
24 finds necessary or appropriate to enable it to reach a final  
25 decision with respect to petitions or applications within a period  
26 of 12 months from the filing of the complete petitions or  
27 applications. The commission shall not authorize or approve

1 adjustment clauses that operate without notice and an opportunity  
2 for a full and complete hearing, and all such clauses ~~shall be~~ **ARE**  
3 abolished. The commission may hold a full and complete hearing to  
4 determine the cost of fuel, purchased gas, or purchased power  
5 separately from a full and complete hearing on a general rate case  
6 and may be held concurrently with the general rate case. The  
7 commission shall authorize a utility to recover the cost of fuel,  
8 purchased gas, or purchased power only to the extent that the  
9 purchases are reasonable and prudent. ~~As used in this section:~~

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

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

20 (3) Except as otherwise provided in this subsection, if the  
21 commission fails to reach a final decision with respect to a  
22 completed petition or application to increase or decrease utility  
23 rates within the 12-month period following the filing of the  
24 completed petition or application, the petition or application is  
25 considered approved. If a utility makes any significant amendment  
26 to its filing, the commission has an additional 12 months from the  
27 date of the amendment to reach a final decision on the petition or

1 application. If the utility files for an extension of time, the  
2 commission shall extend the 12-month period by the amount of  
3 additional time requested by the utility.

4 (4) A utility shall not file a general rate case application  
5 for an increase in rates earlier than 12 months after the date of  
6 the filing of a complete prior general rate case application. A  
7 utility may not file a new general rate case application until the  
8 commission has issued a final order on a prior general rate case or  
9 until the rates are approved under subsection (3).

10 (5) The commission shall, if requested by a gas utility,  
11 establish load retention transportation rate schedules or approve  
12 gas transportation contracts as required for the purpose of  
13 retaining industrial or commercial customers whose individual  
14 annual transportation volumes exceed 500,000 decatherms on the gas  
15 utility's system. The commission shall approve these rate schedules  
16 or approve transportation contracts entered into by the utility in  
17 good faith if the industrial or commercial customer has the  
18 installed capability to use an alternative fuel or otherwise has a  
19 viable alternative to receiving natural gas transportation service  
20 from the utility, the customer can obtain the alternative fuel or  
21 gas transportation from an alternative source at a price which  
22 would cause them to cease using the gas utility's system, and the  
23 customer, as a result of their use of the system and receipt of  
24 transportation service, makes a significant contribution to the  
25 utility's fixed costs. The commission shall adopt accounting and  
26 rate-making policies to ensure that the discounts associated with  
27 the transportation rate schedules and contracts are recovered by

1 the gas utility through charges applicable to other customers if  
2 the incremental costs related to the discounts are no greater than  
3 the costs that would be passed on to those customers as the result  
4 of a loss of the industrial or commercial customer's contribution  
5 to a utility's fixed costs.

6 ~~(6) Within 90 days of the effective date of the amendatory act~~  
7 ~~that added this subsection, BY JANUARY 4, 2009,~~ the commission  
8 shall adopt standard rate application filing forms and instructions  
9 for use in all general rate cases filed by utilities whose rates  
10 are regulated by the commission. For cooperative electric utilities  
11 whose rates are regulated by the commission, in addition to rate  
12 applications filed under this section, the commission shall  
13 continue to allow for rate filings based on the cooperative's times  
14 interest earned ratio. The commission may, in its discretion,  
15 modify the standard rate application forms and instructions adopted  
16 under this subsection.

17 (7) If, on or before January 1, 2008, a merchant plant entered  
18 into a contract with an initial term of 20 years or more to sell  
19 electricity to an electric utility whose rates are regulated by the  
20 commission with 1,000,000 or more retail customers in this state  
21 and if, ~~prior to~~ **BEFORE** January 1, 2008, the merchant plant  
22 generated electricity under that contract, in whole or in part,  
23 from wood or solid wood wastes, then the merchant plant shall, upon  
24 petition by the merchant plant, and subject to the limitation set  
25 forth in subsection (8), recover the amount, if any, by which the  
26 merchant plant's reasonably and prudently incurred actual fuel and  
27 variable operation and maintenance costs exceed the amount that the

1 merchant plant is paid under the contract for those costs. This  
2 subsection does not apply to landfill gas plants, hydro plants,  
3 municipal solid waste plants, or to merchant plants engaged in  
4 litigation against an electric utility seeking higher payments for  
5 power delivered pursuant to contract.

6 (8) The total aggregate additional amounts recoverable by  
7 merchant plants ~~pursuant to~~ **UNDER** subsection (7) in excess of the  
8 amounts paid under the contracts shall not exceed \$1,000,000.00 per  
9 month for each affected electric utility. The \$1,000,000.00 per  
10 month limit specified in this subsection shall be reviewed by the  
11 commission upon petition of the merchant plant filed no more than  
12 once per year and may be adjusted if the commission finds that the  
13 eligible merchant plants reasonably and prudently incurred actual  
14 fuel and variable operation and maintenance costs exceed the amount  
15 that those merchant plants are paid under the contract by more than  
16 \$1,000,000.00 per month. The annual amount of the adjustments shall  
17 not exceed a rate equal to the United States consumer price index.  
18 An adjustment shall not be made by the commission unless each  
19 affected merchant plant files a petition with the commission. As  
20 used in this subsection, "United States consumer price index" means  
21 the United States consumer price index for all urban consumers as  
22 defined and reported by the United States department of labor,  
23 bureau of labor statistics. If the total aggregate amount by which  
24 the eligible merchant plants reasonably and prudently incurred  
25 actual fuel and variable operation and maintenance costs determined  
26 by the commission exceed the amount that the merchant plants are  
27 paid under the contract by more than \$1,000,000.00 per month, the



1 commission shall allocate the additional \$1,000,000.00 per month  
2 payment among the eligible merchant plants based upon the  
3 relationship of excess costs among the eligible merchant plants.  
4 The \$1,000,000.00 limit specified in this subsection, as adjusted,  
5 shall not apply with respect to actual fuel and variable operation  
6 and maintenance costs that are incurred due to changes in federal  
7 or state environmental laws or regulations that are implemented  
8 after ~~the effective date of the amendatory act that added this~~  
9 ~~subsection.~~ **OCTOBER 6, 2008.** The \$1,000,000.00 per month payment  
10 limit under this subsection shall not apply to merchant plants  
11 eligible under subsection (7) whose electricity is purchased by a  
12 utility that is using wood or wood waste or fuels derived from  
13 those materials for fuel in their power plants.

14 (9) The commission shall issue orders to permit the recovery  
15 authorized under subsections (7) and (8) upon petition of the  
16 merchant plant. The merchant plant ~~shall~~ **IS** not ~~be~~ required to  
17 alter or amend the existing contract with the electric utility in  
18 order to obtain the recovery under subsections (7) and (8). The  
19 commission shall permit or require the electric utility whose rates  
20 are regulated by the commission to recover from its ratepayers all  
21 fuel and variable operation and maintenance costs that the electric  
22 utility is required to pay to the merchant plant as reasonably and  
23 prudently incurred costs.

24 **(10) IF AN ELECTRIC UTILITY IN THE UPPER PENINSULA OF THIS**  
25 **STATE LEASES WITH AN OPTION TO PURCHASE AN ELECTRIC GENERATION**  
26 **FACILITY FROM AN AFFILIATED ENTITY UNDER A LAW EXPRESSLY**  
27 **AUTHORIZING PUBLIC UTILITY AFFILIATE LEASED GENERATION CONTRACTS,**

1 THE COMMISSION SHALL NOT INCLUDE IN THAT ELECTRIC UTILITY'S RATES  
2 ANY COSTS IN EXCESS OF THE COSTS THAT WOULD HAVE BEEN INCLUDED IN  
3 RATES IF THE UTILITY OWNED, RATHER THAN LEASED, THE ELECTRIC  
4 GENERATION FACILITY. THIS SUBSECTION DOES NOT APPLY IF THE  
5 AFFILIATED ENTITY IS MORE THAN 1/3 OWNED BY A NONPROFIT OR  
6 GOVERNMENTAL ENTITY.

7 (11) AS USED IN THIS SECTION:

8 (A) "FULL AND COMPLETE HEARING" MEANS A HEARING THAT PROVIDES  
9 INTERESTED PARTIES A REASONABLE OPPORTUNITY TO PRESENT AND CROSS-  
10 EXAMINE EVIDENCE AND PRESENT ARGUMENTS RELEVANT TO THE SPECIFIC  
11 ELEMENT OR ELEMENTS OF THE REQUEST THAT ARE THE SUBJECT OF THE  
12 HEARING.

13 (B) "GENERAL RATE CASE" MEANS A PROCEEDING INITIATED BY A  
14 UTILITY IN AN APPLICATION FILED WITH THE COMMISSION THAT ALLEGES A  
15 REVENUE DEFICIENCY AND REQUESTS AN INCREASE IN THE SCHEDULE OF  
16 RATES OR CHARGES BASED ON THE UTILITY'S TOTAL COST OF PROVIDING  
17 SERVICE.