

HOUSE BILL No. 4683

June 4, 2015, Introduced by Rep. Dianda and referred to the Committee on Energy Policy.

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 6s (MCL 460.6s), as added by 2008 PA 286.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 6s. (1) An electric utility that proposes to construct an
2 electric generation facility, make a significant investment in an
3 existing electric generation facility, purchase an existing
4 electric generation facility, or enter into a power purchase
5 agreement for the purchase of electric capacity ~~for a period of 6~~
6 ~~years or longer may~~ **THAT HAS BEEN APPROVED IN AN INTEGRATED**
7 **RESOURCE PLAN UNDER SUBSECTION (11) SHALL** submit an application to
8 the commission seeking a certificate of necessity for that
9 construction, investment, or purchase if that construction,
10 investment, or purchase costs ~~\$500,000,000.00~~ **\$100,000,000.00** or
11 more and a portion of the costs would be allocable to retail
12 customers in this state. A significant investment in an electric
13 generation facility includes a group of investments reasonably
14 planned to be made over a multiple year period not to exceed 6
15 years for a singular purpose such as increasing the capacity of an
16 existing electric generation plant. ~~The commission shall not issue~~
17 ~~a certificate of necessity under this section for any environmental~~
18 ~~upgrades to existing electric generation facilities or for a~~
19 ~~renewable energy system.~~

20 (2) The commission may implement separate review criteria and
21 approval standards for electric utilities with less than 1,000,000
22 retail customers who seek a certificate of necessity for projects
23 costing less than ~~\$500,000,000.00~~ **\$50,000,000.00**.

24 (3) An electric utility submitting an application under this
25 section may request 1 or more of the following:

26 (a) A certificate of necessity that the power to be supplied

1 as a result of the proposed construction, investment, or purchase
2 is needed.

3 (b) A certificate of necessity that the size, fuel type, and
4 other design characteristics of the existing or proposed electric
5 generation facility or the terms of the power purchase agreement
6 represent the most reasonable and prudent means of meeting that
7 power need.

8 (c) A certificate of necessity that the price specified in the
9 power purchase agreement will be recovered in rates from the
10 electric utility's customers.

11 (d) A certificate of necessity that the estimated purchase or
12 capital costs of and the financing plan for the existing or
13 proposed electric generation facility, including, but not limited
14 to, the costs of siting and licensing a new facility and the
15 estimated cost of power from the new or proposed electric
16 generation facility, will be recoverable in rates from the electric
17 utility's customers subject to subsection (4)(c).

18 (4) Within 270 days of the filing of an application under ~~this~~
19 ~~section,~~ **SUBSECTION (1)**, the commission shall issue an order
20 granting or denying the requested certificate of necessity. The
21 commission shall hold a hearing on the application. The hearing
22 shall be conducted as a contested case pursuant to chapter 4 of the
23 administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to
24 24.287. The commission shall allow intervention by interested
25 persons. Reasonable discovery shall be permitted before and during
26 the hearing in order to assist parties and interested persons in
27 obtaining evidence concerning the application, including, but not

1 limited to, the reasonableness and prudence of the construction,
2 investment, or purchase for which the certificate of necessity has
3 been requested. The commission shall grant the request if it
4 determines all of the following:

5 (a) That the electric utility has demonstrated a need for the
6 power that would be supplied by the existing or proposed electric
7 generation facility or pursuant to the proposed power purchase
8 agreement through ~~its~~**AN** approved integrated resource plan that
9 complies with subsection ~~(11)~~**(14)**.

10 (b) The information supplied indicates that the existing or
11 proposed electric generation facility will comply with all
12 applicable state and federal environmental standards, laws, and
13 rules.

14 (c) The estimated cost of power from the existing or proposed
15 electric generation facility or the price of power specified in the
16 proposed power purchase agreement is reasonable. The commission
17 shall find that the cost is reasonable if, in the construction or
18 investment in a new or existing facility, to the extent it is
19 commercially practicable, the estimated costs are the result of
20 competitively bid engineering, procurement, and construction
21 contracts, or in a power purchase agreement, the cost is the result
22 of a competitive solicitation. Up to 150 days after an electric
23 utility makes its initial filing, it may file to update its cost
24 estimates if they have materially changed. No other aspect of the
25 initial filing may be modified unless the application is withdrawn
26 and refiled. A utility's filing updating its cost estimates does
27 not extend the period for the commission to issue an order granting

1 or denying a certificate of necessity. An affiliate of an electric
2 utility that serves customers in this state and at least 1 other
3 state may participate in the competitive bidding to provide
4 engineering, procurement, and construction services to that
5 electric utility for a project covered by this section.

6 (d) The existing or proposed electric generation facility or
7 proposed power purchase agreement represents the most reasonable
8 and prudent means of meeting the power need relative to other
9 resource options for meeting power demand, including energy
10 efficiency programs and electric transmission efficiencies.

11 (e) To the extent practicable, the construction or investment
12 in a new or existing facility in this state is completed using a
13 workforce composed of residents of this state as determined by the
14 commission. This subdivision does not apply to a facility that is
15 located in a county that lies on the border with another state.

16 (5) The commission may consider any other costs or information
17 related to the costs associated with the power that would be
18 supplied by the existing or proposed electric generation facility
19 or pursuant to the proposed purchase agreement or alternatives to
20 the proposal raised by intervening parties.

21 (6) In a certificate of necessity under this section, the
22 commission shall specify the costs approved for the construction of
23 or significant investment in the electric generation facility, the
24 price approved for the purchase of the existing electric generation
25 facility, or the price approved for the purchase of power pursuant
26 to the terms of the power purchase agreement.

27 (7) The utility shall annually file, or more frequent if

1 required by the commission, reports to the commission regarding the
2 status of any project for which a certificate of necessity has been
3 granted under subsection (4), including an update concerning the
4 cost and schedule of that project.

5 (8) If the commission denies any of the relief requested by an
6 electric utility, the electric utility may withdraw its
7 application. ~~or proceed with the proposed construction, purchase,~~
8 ~~investment, or power purchase agreement without a certificate and~~
9 ~~the assurances granted under this section.~~

10 (9) Once the electric generation facility or power purchase
11 agreement is considered used and useful or as otherwise provided in
12 subsection ~~(12),~~ **(16)**, the commission shall include in an electric
13 utility's retail rates all reasonable and prudent costs for an
14 electric generation facility or power purchase agreement for which
15 a certificate of necessity has been granted. The commission shall
16 not disallow recovery of costs an electric utility incurs in
17 constructing, investing in, or purchasing an electric generation
18 facility or in purchasing power pursuant to a power purchase
19 agreement for which a certificate of necessity has been granted, if
20 the costs do not exceed the costs approved by the commission in the
21 certificate. Once the electric generation facility or power
22 purchase agreement is considered used and useful or as otherwise
23 provided in subsection ~~(12),~~ **(16)**, the commission shall include in
24 the electric utility's retail rates costs actually incurred by the
25 electric utility that exceed the costs approved by the commission
26 only if the commission finds that the additional costs are
27 reasonable and prudent. If the actual costs incurred by the

1 electric utility exceed the costs approved by the commission, the
2 electric utility has the burden of proving by a preponderance of
3 the evidence that the costs are reasonable and prudent. The portion
4 of the cost of a plant, facility, or power purchase agreement which
5 exceeds 110% of the cost approved by the commission is presumed to
6 have been incurred due to a lack of prudence. The commission may
7 include any or all of the portion of the cost in excess of 110% of
8 the cost approved by the commission if the commission finds by a
9 preponderance of the evidence that the costs were prudently
10 incurred.

11 ~~(10) Within 90 days of the effective date of the amendatory~~
12 ~~act that added this section, the~~ **THE** commission shall adopt
13 standard application filing forms and instructions for use in all
14 requests for a certificate of necessity under this section. The
15 commission may, in its discretion, modify the standard application
16 filing forms and instructions adopted under this section.

17 ~~—— (11) The commission shall establish standards for an~~
18 ~~integrated resource plan that shall be filed by an electric utility~~
19 ~~requesting a certificate of necessity under this section. An~~
20 ~~integrated resource plan shall include all of the following:~~

21 ~~—— (a) A long term forecast of the electric utility's load growth~~
22 ~~under various reasonable scenarios.~~

23 ~~—— (b) The type of generation technology proposed for the~~
24 ~~generation facility and the proposed capacity of the generation~~
25 ~~facility, including projected fuel and regulatory costs under~~
26 ~~various reasonable scenarios.~~

27 **(11) WITHIN 120 DAYS AFTER THE EFFECTIVE DATE OF THE**

1 AMENDATORY ACT THAT ADDED THIS SENTENCE, THE COMMISSION SHALL
2 COMMENCE HEARINGS ON ITS OWN MOTION TO ADOPT A REGIONAL INTEGRATED
3 RESOURCE PLAN FOR EACH OF THE FOLLOWING REGIONS:

4 (A) THE DETROIT METRO REGION.

5 (B) THE EAST CENTRAL REGION.

6 (C) THE EAST REGION.

7 (D) THE NORTHEAST REGION.

8 (E) THE NORTHWEST REGION.

9 (F) THE SOUTH CENTRAL REGION.

10 (G) THE SOUTHEAST REGION.

11 (H) THE SOUTHWEST REGION.

12 (I) THE UPPER PENINSULA REGION.

13 (J) THE WEST REGION.

14 (12) THE COMMISSION SHALL CONSIDER ALL OF THE FOLLOWING IN
15 ADOPTING A REGIONAL INTEGRATED RESOURCE PLAN UNDER THIS SECTION:

16 (A) THE PROJECTED FUEL AND REGULATORY COSTS OF DIFFERENT TYPES
17 OF GENERATION TECHNOLOGY.

18 (B) THE AVAILABILITY OF RENEWABLE ENERGY RESOURCES IN THE
19 REGION.

20 (C) THE CURRENT GENERATION FACILITIES IN THE REGION AND THE
21 PROJECTED REMAINING USEFUL LIFE OF EACH OF THOSE GENERATION
22 FACILITIES.

23 (D) ANY STATE OR FEDERAL ENVIRONMENTAL STANDARD, LAW, OR RULE
24 AND HOW THE STANDARD, LAW, OR RULE WOULD AFFECT ELECTRIC
25 RELIABILITY AND COST IN THE REGION.

26 (E) ~~(e)~~—Projected energy and capacity purchased or produced by
27 the electric utility pursuant to any renewable portfolio standard.

1 **(F)** ~~(d)~~—Projected energy efficiency program savings under any
 2 energy efficiency program requirements and the projected costs for
 3 that program.

4 **(G)** ~~(e)~~—Projected load management and demand response savings
 5 for the electric utility and the projected costs for those
 6 programs.

7 **(H)** ~~(f)~~—An analysis of the availability and costs of other
 8 electric resources that could defer, displace, or partially
 9 displace the proposed generation facility or purchased power
 10 agreement, including additional renewable energy, energy efficiency
 11 programs, load management, and demand response, beyond those
 12 amounts contained in subdivisions ~~(e) to (e)~~ **TO (G)**.

13 ~~—— (g) Electric transmission options for the electric utility.~~

14 **(I) THE REGION'S CURRENT ELECTRIC TRANSMISSION INFRASTRUCTURE.**

15 **(J) THE COST OF ELECTRICITY TO CUSTOMERS IN THAT REGION AND**
 16 **THE RELIABILITY OF THE TRANSMISSION AND GENERATION SYSTEMS IN THAT**
 17 **REGION IF ANY OF THE FOLLOWING OCCUR:**

18 **(i) ANY MINING OR MINERAL PROCESSING FACILITIES LOCATED IN**
 19 **THOSE REGIONS CEASE OPERATION.**

20 **(ii) ANY NEW TRANSMISSION LINE SERVING THAT AREA IS**
 21 **CONSTRUCTED.**

22 **(iii) AN INVESTOR-OWNED ELECTRIC UTILITY LOCATED IN THE REGION**
 23 **THAT IS REGULATED BY THE COMMISSION AND THAT HAS A GREATER NUMBER**
 24 **OF CUSTOMERS LOCATED OUTSIDE OF THIS STATE CHANGES ITS CORPORATE**
 25 **FORM TO CREATE A MICHIGAN-ONLY STATE JURISDICTIONAL UTILITY.**

26 **(13) A HEARING UNDER SUBSECTION (11) SHALL BE CONDUCTED AS A**
 27 **CONTESTED CASE PURSUANT TO CHAPTER 4 OF THE ADMINISTRATIVE**

1 PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.271 TO 24.287. THE
2 COMMISSION SHALL ALLOW INTERVENTION BY INTERESTED PERSONS. THE
3 COMMISSION SHALL PERMIT REASONABLE DISCOVERY BEFORE AND DURING THE
4 HEARING IN ORDER TO ASSIST PARTIES AND INTERESTED PERSONS IN
5 OBTAINING EVIDENCE CONCERNING THE PLAN.

6 (14) WITHIN 240 DAYS AFTER THE EFFECTIVE DATE OF THE
7 AMENDATORY ACT THAT ADDED THIS SUBSECTION, THE COMMISSION SHALL
8 ADOPT A REGIONAL INTEGRATED RESOURCE PLAN FOR EACH REGION LISTED IN
9 SUBSECTION (11) THAT DOES ALL OF THE FOLLOWING:

10 (A) INCLUDES A 20-YEAR FORECAST OF ELECTRIC LOAD GROWTH IN THE
11 REGION.

12 (B) INCLUDES AN OPTIMAL PERCENTAGE OF EACH TYPE OF TECHNOLOGY
13 USED IN THE REGION'S GENERATION PORTFOLIO, BASED ON THE COST AND
14 RELIABILITY OF THOSE TECHNOLOGIES.

15 (C) INCLUDES A PLAN FOR MEETING CURRENT AND FUTURE ELECTRICITY
16 DEMAND, INCLUDING WHETHER THAT DEMAND WILL BE MET BY CONSTRUCTION
17 OF NEW GENERATION OR TRANSMISSION FACILITIES, ENERGY EFFICIENCY
18 PROGRAMS, LOAD MANAGEMENT AND DEMAND RESPONSE PROGRAMS, THE
19 ESTABLISHMENT OF MICROGRIDS, OR DISTRIBUTED GENERATION.

20 (D) GIVES A PREFERENCE TO ENERGY RESOURCES LOCATED IN THIS
21 STATE.

22 (15) AN ELECTRIC UTILITY SHALL NOT CONSTRUCT AN ELECTRIC
23 GENERATION FACILITY, MAKE A SIGNIFICANT INVESTMENT IN AN EXISTING
24 ELECTRIC GENERATION FACILITY, PURCHASE AN EXISTING ELECTRIC
25 GENERATION FACILITY, OR ENTER INTO A POWER PURCHASE AGREEMENT FOR
26 THE PURCHASE OF ELECTRIC CAPACITY UNLESS THAT CONSTRUCTION,
27 INVESTMENT, PURCHASE, OR AGREEMENT COMPLIES WITH THE REGIONAL

1 INTEGRATED RESOURCE PLAN FOR THAT REGION ADOPTED BY THE COMMISSION
2 UNDER SUBSECTION (14) AND THAT ELECTRIC UTILITY RECEIVES A
3 CERTIFICATE OF NECESSITY UNDER SUBSECTION (1).

4 (16) ~~(12)~~ The commission shall allow financing interest cost
5 recovery in an electric utility's base rates on construction work
6 in progress for capital improvements approved under this section
7 prior to the assets being considered used and useful. Regardless of
8 whether or not the commission authorizes base rate treatment for
9 construction work in progress financing interest expense, an
10 electric utility shall be allowed to recognize, accrue, and defer
11 the allowance for funds used during construction related to equity
12 capital.

13 (17) ~~(13)~~ As used in this section: ~~,"renewable energy system"~~
14 ~~means that term as defined in the clean, renewable, and efficient~~
15 ~~energy act.~~

16 (A) "DETROIT METRO REGION" MEANS THE COUNTIES OF MACOMB,
17 OAKLAND, AND WAYNE.

18 (B) "EAST CENTRAL REGION" MEANS THE COUNTIES OF ARENAC, BAY,
19 CLARE, GLADWIN, GRATIOT, ISABELLA, MIDLAND, AND SAGINAW.

20 (C) "EAST REGION" MEANS THE COUNTIES OF GENESEE, HURON,
21 LAPEER, ST. CLAIR, SANILAC, SHIAWASSEE, AND TUSCOLA.

22 (D) "NORTHEAST REGION" MEANS THE COUNTIES OF ALCONA, ALPENA,
23 CHEBOYGAN, CRAWFORD, IOSCO, MONTMORENCY, OGEMAW, OSCODA, OTSEGO,
24 PRESQUE ISLE, AND ROSCOMMON.

25 (E) "NORTHWEST REGION" MEANS THE COUNTIES OF ANTRIM, BENZIE,
26 CHARLEVOIX, EMMET, GRAND TRAVERSE, KALKASKA, LEELANAU, MANISTEE,
27 MISSAUKEE, AND WEXFORD.

1 (F) "RENEWABLE ENERGY RESOURCE" MEANS THAT TERM AS DEFINED IN
2 SECTION 11 OF THE CLEAN, RENEWABLE, AND EFFICIENT ENERGY ACT, 2008
3 PA 295, MCL 460.1011.

4 (G) "SOUTH CENTRAL REGION" MEANS THE COUNTIES OF CLINTON,
5 EATON, AND INGHAM.

6 (H) "SOUTHEAST REGION" MEANS THE COUNTIES OF HILLSDALE,
7 JACKSON, LENAWEE, LIVINGSTON, MONROE, AND WASHTENAW.

8 (I) "SOUTHWEST REGION" MEANS THE COUNTIES OF BERRIEN, BRANCH,
9 CALHOUN, CASS, KALAMAZOO, ST. JOSEPH, AND VAN BUREN.

10 (J) "UPPER PENINSULA REGION" MEANS THE COUNTIES OF ALGER,
11 BARAGA, CHIPPEWA, DELTA, DICKINSON, GOGEBIC, HOUGHTON, IRON,
12 KEWEENAW, LUCE, MACKINAC, MARQUETTE, MENOMINEE, ONTONAGON, AND
13 SCHOOLCRAFT.

14 (K) "WEST MICHIGAN REGION" MEANS THE COUNTIES OF ALLEGAN,
15 BARRY, IONIA, KENT, LAKE, MASON, MECOSTA, MONTCALM, MUSKEGON,
16 NEWAYGO, OCEANA, OSCEOLA, AND OTTAWA.

17 Enacting section 1. This amendatory act takes effect 90 days
18 after the date it is enacted into law.