

SENATE BILL No. 536

September 30, 2015, Introduced by Senator CASPERSON 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 6q (MCL 460.6q), as added by 2008 PA 286, and by adding section 6t.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 6q. (1) A person shall not acquire, control, or merge,
2 directly or indirectly, in whole or in part, with a jurisdictional
3 regulated utility nor shall a jurisdictional regulated utility
4 sell, assign, transfer, or encumber its assets to another person
5 without first applying to and receiving the approval of the
6 commission.

7 (2) After notice and hearing, the commission shall issue an
8 order stating what constitutes acquisition, transfer of control,
9 merger activities, or encumbrance of assets that are subject to
10 this section. This section does not apply to the encumbrance,
11 assignment, acquisition, or transfer of assets that are encumbered,
12 assigned, acquired, transferred, or sold in the normal course of
13 business or to the issuance of securities or other financing
14 transactions not directly or indirectly involved in an acquisition,
15 merger, encumbrance, or transfer of control that is governed by
16 this section. **THIS SECTION DOES NOT APPLY TO THE CREATION OF A**
17 **MICHIGAN-ONLY STATE JURISDICTIONAL UTILITY UNDER SECTION 6T.**

18 (3) The commission shall promulgate rules creating procedures
19 for the application process required under this section. The
20 application shall include, but is not limited to, all of the
21 following information:

22 (a) A concise summary of the terms and conditions of the
23 proposed acquisition, transfer, merger, or encumbrance.

24 (b) Copies of the material acquisition, transfer, merger, or
25 encumbrance documents if available.

26 (c) A summary of the projected impacts of the acquisition,
27 transfer, merger, or encumbrance on rates and electric service in

1 this state.

2 (d) Pro forma financial statements that are relevant to the
3 acquisition, transfer, merger, or encumbrance.

4 (e) Copies of the parties' public filings with other state or
5 federal regulatory agencies regarding the same acquisition,
6 transfer, merger, or encumbrance, including any regulatory orders
7 issued by the agencies regarding the acquisition, transfer, merger,
8 or encumbrance.

9 (4) Within 60 days ~~from~~**AFTER** the date an application is filed
10 under this section, interested parties, including the attorney
11 general, may file comments with the commission on the proposed
12 acquisition, transfer, merger, or encumbrance.

13 (5) After notice and hearing and within 180 days ~~from~~**AFTER**
14 the date an application is filed under this section, the commission
15 shall issue an order approving or rejecting the proposed
16 acquisition, transfer of control, merger, or encumbrance.

17 (6) All parties to an acquisition, transfer, merger, or
18 encumbrance subject to this section shall provide the commission
19 and the attorney general access to all books, records, accounts,
20 documents, and any other data and information the commission
21 considers necessary to effectively assess the impact of the
22 proposed acquisition, transfer, merger, or encumbrance.

23 (7) The commission shall consider among other factors all of
24 the following in its evaluation of whether or not to approve a
25 proposed acquisition, transfer, merger, or encumbrance:

26 (a) Whether the proposed action would have an adverse impact
27 on the rates of the customers affected by the acquisition,

1 transfer, merger, or encumbrance.

2 (b) Whether the proposed action would have an adverse impact
3 on the provision of safe, reliable, and adequate energy service in
4 this state.

5 (c) Whether the action will result in the subsidization of a
6 nonregulated activity of the new entity through the rates paid by
7 the customers of the jurisdictional regulated utility.

8 (d) Whether the action will significantly impair the
9 jurisdictional regulated utility's ability to raise necessary
10 capital or to maintain a reasonable capital structure.

11 (e) Whether the action is otherwise inconsistent with public
12 policy and interest.

13 (8) In approving an acquisition, transfer, merger, or
14 encumbrance under this section, the commission may impose
15 reasonable terms and conditions on the acquisition, transfer,
16 merger, or encumbrance to protect the jurisdictional regulated
17 utility, including the division and allocation of the utility's
18 assets. A jurisdictional regulated utility may reject the terms and
19 conditions imposed by the commission and not proceed with the
20 transaction.

21 (9) In approving an acquisition, transfer, merger, or
22 encumbrance under this section, the commission may impose
23 reasonable terms and conditions on the acquisition, transfer,
24 merger, or encumbrance to protect the customers of the
25 jurisdictional regulated utility. A jurisdictional regulated
26 utility may reject the terms and conditions imposed by the
27 commission and not proceed with the transaction.

(10) Nonpublic information and materials submitted by a jurisdictional regulated utility under this section clearly designated by that utility as confidential are exempt from the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. The commission shall issue protective orders as necessary to protect information designated by that utility as confidential.

(11) ~~Nothing in this~~ **THIS** section ~~alters~~ **DOES NOT ALTER** the authority of the attorney general to enforce federal and state antitrust laws.

(12) As used in this section:

(a) "Commission" means the Michigan public service commission.

(b) "Jurisdictional regulated utility" means a utility whose rates are regulated by the commission. Jurisdictional regulated utility does not include a telecommunication provider as defined in the Michigan telecommunications act, 1991 PA 179, MCL 484.2101 to ~~484.2604~~, **484.2603**, or a motor carrier as defined in the motor carrier act, 1933 PA 254, MCL 475.1 to ~~479.43~~. **479.42**.

(c) "Person" means an individual, corporation, association, partnership, utility, or any other legal private or public entity.

SEC. 6T. (1) AN AFFECTED MULTISTATE JURISDICTIONAL UTILITY MAY NOT CHANGE ITS CORPORATE FORM TO CREATE A MICHIGAN-ONLY STATE JURISDICTIONAL UTILITY WITHOUT FIRST APPLYING FOR AND RECEIVING APPROVAL OF THE COMMISSION.

(2) ON ITS OWN MOTION, THE COMMISSION MAY ORDER ITS STAFF TO CONDUCT A REVIEW OF ANY AFFECTED MULTISTATE JURISDICTIONAL UTILITY TO RECOMMEND WHETHER THE COMMISSION SHOULD REQUIRE THE CREATION OF A MICHIGAN-ONLY SUBSIDIARY.

1 (3) AN APPLICATION FILED UNDER SUBSECTION (1) MUST INCLUDE ALL
2 OF THE FOLLOWING:

3 (A) AN ANALYSIS OF WHETHER THE DIVISION OF ASSETS,
4 LIABILITIES, AND COSTS BETWEEN THE UTILITY IN ITS CURRENT FORM AND
5 IN THE PROPOSED ALTERNATIVE IS FAIR AND EQUITABLE TO RATEPAYERS IN
6 BOTH STATES.

7 (B) AN ANALYSIS OF WHETHER THE CREATION OF A MICHIGAN-ONLY
8 STATE JURISDICTIONAL UTILITY WOULD ALLOW GREATER TRANSPARENCY OR
9 SIMPLICITY IN RATEMAKING AND OTHER PROCEEDINGS.

10 (C) ANY OTHER INFORMATION REQUIRED BY THE COMMISSION.

11 (4) AFTER NOTICE AND HEARING AND WITHIN 1 YEAR AFTER AN
12 APPLICATION IS FILED UNDER SUBSECTION (1) OR, IF THE COMMISSION
13 STAFF RECOMMENDS CREATION OF A MICHIGAN-ONLY STATE JURISDICTIONAL
14 UTILITY UNDER SUBSECTION (2), WITHIN 1 YEAR OF THAT RECOMMENDATION,
15 THE COMMISSION SHALL ISSUE AN ORDER APPROVING OR REJECTING THE
16 CREATION OF A MICHIGAN-ONLY STATE JURISDICTIONAL UTILITY. THE
17 COMMISSION SHALL NOT APPROVE THE CREATION OF A MICHIGAN-ONLY STATE
18 JURISDICTIONAL UTILITY UNDER THIS SECTION UNLESS IT DETERMINES THAT
19 IT IS IN THE BEST INTEREST OF ELECTRIC RATEPAYERS IN THIS STATE.
20 THE COMMISSION SHALL CONSIDER ALL OF THE FOLLOWING IN DETERMINING
21 WHETHER TO APPROVE THE PROPOSED CREATION OF A MICHIGAN-ONLY STATE
22 JURISDICTIONAL UTILITY:

23 (A) WHETHER THE DIVISION OF ASSETS, LIABILITIES, AND COSTS
24 BETWEEN THE UTILITY IN ITS CURRENT FORM AND IN THE PROPOSED
25 ALTERNATIVE IS FAIR AND EQUITABLE TO ELECTRIC RATEPAYERS IN THE
26 AFFECTED STATES.

27 (B) WHETHER THE CREATION OF A MICHIGAN-ONLY STATE

1 JURISDICTIONAL UTILITY WOULD ALLOW GREATER TRANSPARENCY OR
2 SIMPLICITY IN RATEMAKING AND OTHER PROCEEDINGS.

3 (C) ANY OTHER FACTORS THE COMMISSION CONSIDERS RELEVANT TO
4 DETERMINING THE BEST INTEREST OF ELECTRIC RATEPAYERS IN THIS STATE.
5 THE COMMISSION MAY ALSO EVALUATE THOSE FACTORS THAT WOULD BE
6 CONSIDERED IF A MERGER WERE PROPOSED UNDER SECTION 6Q.

7 (5) A HEARING UNDER SUBSECTION (4) SHALL BE CONDUCTED AS A
8 CONTESTED CASE PURSUANT TO CHAPTER 4 OF THE ADMINISTRATIVE
9 PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.271 TO 24.287. THE
10 COMMISSION SHALL ALLOW INTERVENTION BY INTERESTED PERSONS,
11 INCLUDING THE ATTORNEY GENERAL AND A REPRESENTATIVE OF THE ENTITY
12 CHARGED WITH REGULATING THE RATES OF THE AFFECTED MULTISTATE
13 JURISDICTIONAL UTILITY IN ANOTHER STATE. THE COMMISSION SHALL
14 PERMIT REASONABLE DISCOVERY BEFORE AND DURING THE HEARING IN ORDER
15 TO ASSIST PARTIES AND INTERESTED PERSONS IN OBTAINING EVIDENCE.

16 (6) AN AFFECTED MULTISTATE JURISDICTIONAL UTILITY SHALL
17 PROVIDE THE COMMISSION ACCESS TO ALL BOOKS, RECORDS, ACCOUNTS,
18 DOCUMENTS, AND ANY OTHER DATA AND INFORMATION THAT THE COMMISSION
19 CONSIDERS NECESSARY TO DETERMINE WHETHER TO APPROVE THE CREATION OF
20 A MICHIGAN-ONLY STATE JURISDICTIONAL UTILITY UNDER THIS SECTION.

21 (7) NONPUBLIC INFORMATION AND MATERIALS SUBMITTED BY AN
22 AFFECTED MULTISTATE JURISDICTIONAL UTILITY AND DESIGNATED BY THE
23 UTILITY AS CONFIDENTIAL ARE EXEMPT FROM DISCLOSURE UNDER THE
24 FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246. THE
25 COMMISSION SHALL ISSUE PROTECTIVE ORDERS AS NECESSARY TO PROTECT
26 INFORMATION DESIGNATED BY THE AFFECTED MULTISTATE JURISDICTIONAL
27 UTILITY AS CONFIDENTIAL. THE INTERVENORS PROVIDED FOR IN SUBSECTION

(5) MAY VIEW ALL MATERIALS SUBMITTED TO THE COMMISSION UNDER AN APPROPRIATE PROTECTIVE ORDER.

(8) IN A PROCEEDING INITIATED UNDER THIS SECTION, IF THE COMMISSION FINDS THAT THE CREATION OF A MICHIGAN-ONLY STATE JURISDICTIONAL UTILITY IS IN THE BEST INTEREST OF RATEPAYERS, THE COMMISSION MAY ORDER AN AFFECTED MULTISTATE JURISDICTIONAL UTILITY TO DO 1 OR MORE OF THE FOLLOWING:

(A) MAKE CHANGES TO THE UTILITY'S CORPORATE FORM.

(B) MAKE CHANGES TO THE DIVISION OF ASSETS, LIABILITIES, AND COSTS BETWEEN THE VARIOUS JURISDICTIONS OF THE UTILITY IN ITS CURRENT FORM AND THE UTILITY'S AFFILIATES.

(C) CREATE A CORPORATE ENTITY SEPARATE FROM THE ENTITY OR ENTITIES SUBJECT TO THE JURISDICTION OF ANOTHER STATE TO OWN THE UTILITY'S FACILITIES IN THIS STATE.

(D) FILE A GENERAL RATE CASE IN THIS STATE UNDER SECTION 6A ESTABLISHING RATES FOR THE NEW ENTITY.

(E) MAKE ANY OTHER CHANGES NECESSARY TO EFFECTUATE THE COMMISSION'S ORDER.

(F) REQUIRE THE UTILITY TO REPORT TO THE COMMISSION IN 90 DAYS REGARDING THE EFFECTUATION OF THE COMMISSION'S ORDER.

(9) ANY APPEAL FROM A COMMISSION DECISION UNDER THIS SECTION EITHER TAKEN BY A REPRESENTATIVE OF THE ENTITY CHARGED WITH THE REGULATION OF RATES OF THE UTILITY IN ANOTHER STATE OR ARGUING THAT THE DIVISION OF ASSETS, LIABILITIES, AND COSTS IS NOT FAIR AND EQUITABLE BETWEEN THE CORPORATE ENTITIES IN EACH STATE IS NOT REQUIRED TO BE TAKEN IN THE COURTS OF THIS STATE.

(10) THE COMMISSION SHALL SET JUST AND REASONABLE RATES FOR AN

1 AFFECTED MULTISTATE JURISDICTIONAL UTILITY UNDER MICHIGAN LAW. IN
2 SETTING RATES FOR AN AFFECTED MULTISTATE JURISDICTIONAL UTILITY
3 UNDER THE LAWS OF THIS STATE, THE COMMISSION IS NOT BOUND BY THE
4 DECISIONS OF, OR ANY PREAPPROVALS GIVEN BY, THE ENTITY CHARGED WITH
5 REGULATION OF RATES OF THE AFFECTED MULTISTATE JURISDICTIONAL
6 UTILITY IN ANOTHER STATE.

7 (11) AS USED IN THIS SECTION:

8 (A) "AFFECTED MULTISTATE JURISDICTIONAL UTILITY" MEANS AN
9 INVESTOR-OWNED ELECTRIC UTILITY REGULATED BY THE COMMISSION THAT
10 HAS FEWER THAN 75,000 CUSTOMERS LOCATED IN THIS STATE AND THAT HAS
11 A GREATER NUMBER OF CUSTOMERS LOCATED OUTSIDE OF THIS STATE.

12 (B) "ATTORNEY GENERAL" MEANS THE MICHIGAN ATTORNEY GENERAL.

13 (C) "COMMISSION" MEANS THE MICHIGAN PUBLIC SERVICE COMMISSION
14 CREATED IN SECTION 6.

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