

# SENATE BILL No. 919

April 26, 2016, Introduced by Senators SHIRKEY and STAMAS 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 the title and section 6s (MCL 460.6s), the title as amended by 2005 PA 190 and section 6s as added by 2008 PA 286.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

## TITLE

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 REQUIRE THE COMPETITIVE PROCUREMENT OF ELECTRIC CAPACITY AND ENERGY**; 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.

Sec. 6s. (1) An electric utility that proposes to construct an electric generation facility, make a significant investment in an existing electric generation facility, purchase an existing electric generation facility, or enter into a power purchase

1 agreement for the purchase of electric capacity for a period of 6  
2 years or longer may submit an application to the commission seeking  
3 a certificate of necessity for that construction, investment, or  
4 purchase if that construction, investment, or purchase costs  
5 ~~\$500,000,000.00~~ **\$100,000,000.00** or more and a portion of the costs  
6 would be allocable to retail customers in this state. A significant  
7 investment in an electric generation facility includes a group of  
8 investments reasonably planned to be made over a multiple year  
9 period not to exceed 6 years for a ~~THE~~ singular purpose ~~such as OF~~  
10 increasing the capacity of an existing electric generation plant.  
11 ~~The commission shall not issue a certificate of necessity under~~  
12 ~~this section for any environmental upgrades to existing electric~~  
13 ~~generation facilities or for a renewable energy system.~~

14 (2) The commission may implement separate review criteria and  
15 approval standards for electric utilities with less than 1,000,000  
16 retail customers ~~who~~ **THAT** seek a certificate of necessity for  
17 projects costing less than ~~\$500,000,000.00~~ **\$100,000,000.00**.

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

20 (a) A certificate of necessity that the power to be supplied  
21 as a result of the proposed construction, investment, or purchase  
22 is needed.

23 (b) A certificate of necessity that the size, fuel type, and  
24 other design characteristics of the existing or proposed electric  
25 generation facility or the terms of the power purchase agreement  
26 represent the most reasonable and prudent means of meeting that  
27 power need.

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

4 (d) A certificate of necessity that the estimated purchase or  
5 capital costs of and the financing plan for the existing or  
6 proposed electric generation facility, including, but not limited  
7 to, the costs of siting and licensing a new facility and the  
8 estimated cost of power from the new or proposed electric  
9 generation facility, will be recoverable in rates from the electric  
10 utility's customers subject to subsection (4)(c).

11 (4) Within 270 days ~~of~~ **AFTER** the filing of an application  
12 under this section, the commission shall issue an order granting,  
13 **MODIFYING**, or denying the requested certificate of necessity **FOR**  
14 **THE CONSTRUCTION, INVESTMENT, OR PURCHASE CONTAINED IN THE**  
15 **APPLICATION OR ALTERNATIVE PROPOSALS SUBMITTED UNDER SUBSECTION**  
16 **(13) THAT BEST REPRESENT THE MOST REASONABLE AND PRUDENT MEANS OF**  
17 **MEETING THE POWER NEED.** The commission shall hold a hearing on the  
18 application **AND ANY ALTERNATIVE PROPOSALS SUBMITTED UNDER**  
19 **SUBSECTION (13).** The hearing shall be conducted as a contested case  
20 pursuant to chapter 4 of the administrative procedures act of 1969,  
21 1969 PA 306, MCL 24.271 to 24.287. The commission shall allow  
22 intervention by interested persons. ~~Reasonable~~ **A PERSON SUBMITTING**  
23 **AN ALTERNATIVE PROPOSAL UNDER SUBSECTION (13) HAS STANDING TO**  
24 **INTERVENE AS A PARTY. THE COMMISSION SHALL PERMIT REASONABLE**  
25 ~~discovery shall be permitted before and during the hearing in order~~  
26 ~~to assist parties and interested persons in obtaining evidence~~  
27 concerning the application **OR ANY ALTERNATIVE PROPOSALS SUBMITTED**

1 UNDER SUBSECTION (13), including, but not limited to, the  
2 reasonableness and prudence of the construction, investment, or  
3 ~~purchase for which the certificate of necessity has been requested.~~

4 **PROPOSED IN THE APPLICATION OR AN ALTERNATIVE PROPOSAL SUBMITTED**  
5 **UNDER SUBSECTION (13).** The commission shall grant the request **FOR A**  
6 **CERTIFICATE OF NECESSITY FOR THE CONSTRUCTION, INVESTMENT, OR**  
7 **PURCHASE CONTAINED IN THE APPLICATION AS PROPOSED OR AS MODIFIED,**  
8 **ALTERNATIVE PROPOSALS SUBMITTED UNDER SUBSECTION (13), OR A**  
9 **COMBINATION OF BOTH, THAT BEST REPRESENT THE MOST REASONABLE AND**  
10 **PRUDENT MEANS OF MEETING THE POWER NEED** if it determines all of the  
11 following:

12 (a) That the electric utility has demonstrated a need for the  
13 power that would be supplied by the existing or proposed electric  
14 generation facility or pursuant to the proposed power purchase  
15 agreement through its approved integrated resource plan that  
16 complies with subsection (11).

17 (b) The information supplied indicates that the existing or  
18 proposed electric generation facility will comply with all  
19 applicable state and federal environmental standards, laws, and  
20 rules.

21 (c) ~~The~~ **FOR THE CONSTRUCTION, INVESTMENT, PURCHASE, OR**  
22 **ALTERNATIVE PROPOSALS THAT REPRESENT THE MOST REASONABLE AND**  
23 **PRUDENT MEANS OF MEETING THE POWER NEED, THE** estimated cost of  
24 power from the ~~existing or proposed electric generation facility or~~  
25 ~~the price of power specified in the proposed power purchase~~  
26 ~~agreement~~ **CONSTRUCTION, INVESTMENT, PURCHASE, OR ALTERNATIVE**  
27 **PROPOSALS** is reasonable. The commission shall find that the cost is

reasonable if, in the construction or investment in a new or existing facility, to the extent it is commercially practicable, the estimated costs are the result of competitively bid engineering, procurement, and construction contracts, or in a power purchase agreement, the cost is the result of a competitive solicitation **OR THE INCLUSION OF AN ALTERNATIVE PROPOSAL IN A CERTIFICATE OF NECESSITY UNDER SUBSECTION (13) (D)**. Up to 150 days after an electric utility makes its initial filing, ~~it~~ **THE ELECTRIC UTILITY** may file to update its cost estimates if ~~they~~ **THOSE ESTIMATES** have materially changed. ~~No~~ **AN ELECTRIC UTILITY MAY NOT MODIFY ANY** other aspect of the initial filing ~~may be modified~~ unless the **ELECTRIC UTILITY WITHDRAWS AND REFILES THE** application. ~~is withdrawn and refiled.~~ A utility's filing updating its cost estimates does not extend the period for the commission to issue an order granting or denying a certificate of necessity. An affiliate of an electric utility that serves customers in this state and at least 1 other state may participate in the competitive bidding to provide engineering, procurement, and construction services to that electric utility for a project covered by this section.

(d) ~~The existing or proposed electric generation facility or proposed power purchase agreement represents~~ **CONSTRUCTION, INVESTMENT, PURCHASE, OR ALTERNATIVE PROPOSALS REPRESENT** the most reasonable and prudent means of meeting the power need ~~relative~~ **COMPARED** to other resource options for meeting power demand, including **ALTERNATIVE PROPOSALS SUBMITTED UNDER SUBSECTION (13)**, energy efficiency programs, and electric transmission efficiencies.

(e) To the extent practicable, the construction or investment

1 in a new or existing facility in this state is completed using a  
2 workforce composed of residents of this state as determined by the  
3 commission. This subdivision does not apply to a facility that is  
4 located in a county that lies on the border with another state.

5 (5) The commission ~~may~~ **SHALL** consider any other costs or  
6 information related to the costs associated with the power that  
7 would be supplied by the existing or proposed electric generation  
8 facility or pursuant to the proposed purchase agreement or  
9 ~~alternatives to the proposal raised by intervening~~

10 ~~parties.~~ **ALTERNATIVE PROPOSALS SUBMITTED UNDER SUBSECTION (13).**

11 (6) In a certificate of necessity under this section, the  
12 commission shall specify the costs approved for the construction of  
13 or significant investment in the electric generation facility, the  
14 price approved for the purchase of the existing electric generation  
15 facility, or the price approved for the purchase of power pursuant  
16 to the terms of the power purchase agreement. **AFTER APPROVING A**  
17 **CERTIFICATE OF NECESSITY THAT INCLUDES AN ALTERNATIVE PROPOSAL**  
18 **SUBMITTED UNDER SUBSECTION (13), THE COMMISSION SHALL APPROVE AN**  
19 **AGREEMENT BETWEEN THE ELECTRIC UTILITY AND THE PARTY THAT SUBMITTED**  
20 **THE ALTERNATIVE PROPOSAL IF THE AGREEMENT CONTAINS PROVISIONS THAT**  
21 **ARE NOT INCONSISTENT WITH THIS SECTION, INCLUDING, BUT NOT LIMITED**  
22 **TO, PROVISIONS ALLOWING A PARTY SUBMITTING THE ALTERNATIVE PROPOSAL**  
23 **TO CHARGE ADDITIONAL COSTS UNDER THE AGREEMENT FOR WHICH THE**  
24 **ELECTRIC UTILITY SEEKS AND HAS GAINED THE COMMISSION'S APPROVAL TO**  
25 **BE INCLUDED IN THE ELECTRIC UTILITY'S RATES UNDER SUBSECTION (9).**

26 (7) ~~The~~ **AN ELECTRIC** utility shall annually file, or more  
27 frequent if required by the commission, reports to the commission

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

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

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

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

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

16 (11) The commission shall establish standards for an  
17 integrated resource plan that shall be filed by an electric utility  
18 requesting a certificate of necessity under this section. An  
19 integrated resource plan **PROCEEDING** shall include all of the  
20 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 (c) Projected energy and capacity purchased or produced by the

1 electric utility pursuant to any renewable portfolio standard.

2 (d) Projected energy efficiency program savings under any  
3 energy efficiency program requirements and the projected costs for  
4 that program.

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

7 (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 (c) to (e).

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

14 (12) The commission shall allow financing interest cost  
15 recovery in an electric utility's base rates on construction work  
16 in progress for capital improvements approved under this section  
17 prior to the assets being considered used and useful. Regardless of  
18 whether or not the commission authorizes base rate treatment for  
19 construction work in progress financing interest expense, an  
20 electric utility shall be allowed to recognize, accrue, and defer  
21 the allowance for funds used during construction related to equity  
22 capital.

23 (13) THE COMMISSION SHALL ACCEPT AND CONSIDER ALTERNATIVE  
24 PROPOSALS TO ANY CONSTRUCTION, INVESTMENT, OR PURCHASE CONTAINED IN  
25 AN APPLICATION SUBMITTED UNDER SUBSECTION (1) AS FOLLOWS:

26 (A) WITHIN 20 BUSINESS DAYS AFTER AN ELECTRIC UTILITY FILES AN  
27 APPLICATION UNDER SUBSECTION (1), THE COMMISSION SHALL POST ON THE

1 COMMISSION'S INTERNET WEBSITE A NOTICE THAT INTERESTED PERSONS MAY  
2 SUBMIT ALTERNATIVE PROPOSALS TO THE CONSTRUCTION, INVESTMENT, OR  
3 PURCHASE CONTAINED IN THE APPLICATION. THE NOTICE MUST STATE THE  
4 POWER NEED THAT WOULD BE SUPPLIED BY THE CONSTRUCTION, INVESTMENT,  
5 OR PURCHASE IN THE APPLICATION. THE NOTICE MUST ALSO STATE THAT AN  
6 ALTERNATIVE PROPOSAL MUST INCLUDE THE TYPE OF GENERATION  
7 TECHNOLOGY, PROPOSED CAPACITY, PROJECTED COSTS, AND OTHER  
8 CHARACTERISTICS. THE NOTICE MAY INCLUDE ANY INSTRUCTIONS FOR  
9 SUBMITTING AN ALTERNATIVE PROPOSAL. THE COMMISSION MAY DISSEMINATE  
10 THE NOTICE BY ANY OTHER MEANS THAT THE COMMISSION DETERMINES WILL  
11 PROPERLY NOTIFY THE CITIZENS OF THIS STATE.

12 (B) ANY PERSON MAY SUBMIT AN ALTERNATIVE PROPOSAL ACCORDING TO  
13 THE NOTICE POSTED UNDER SUBDIVISION (A).

14 (C) THE COMMISSION SHALL CONSIDER ALTERNATIVE PROPOSALS  
15 SUBMITTED UNDER THIS SUBSECTION AND THE CONSTRUCTION, INVESTMENT,  
16 OR PURCHASE CONTAINED IN THE APPLICATION TO DETERMINE WHICH BEST  
17 REPRESENT THE MOST REASONABLE AND PRUDENT MEANS OF MEETING THE  
18 POWER NEED FOR WHICH A CERTIFICATE OF NECESSITY COULD BE GRANTED OR  
19 MODIFIED UNDER SUBSECTION (4). WHEN EVALUATING ALTERNATIVE  
20 PROPOSALS SUBMITTED UNDER THIS SUBSECTION, THE COMMISSION SHALL  
21 CONSIDER THE COST OF THE PROPOSAL AND THE SUBMITTER'S  
22 QUALIFICATIONS, TECHNICAL COMPETENCE, CAPABILITY, RELIABILITY,  
23 CREDITWORTHINESS, AND PAST PERFORMANCE. THE COMMISSION MAY PROCURE  
24 THE ASSISTANCE OF AN INDEPENDENT THIRD PARTY TO ASSIST IN THE  
25 COMMISSION'S EVALUATION UNDER THIS SUBDIVISION.

26 (D) IF THE COMMISSION DETERMINES THAT AN ALTERNATIVE PROPOSAL  
27 BEST REPRESENTS THE MOST REASONABLE AND PRUDENT MEANS OF MEETING

1 ALL OR A PORTION OF THE POWER NEED ACCORDING TO SUBSECTION (4), THE  
2 COMMISSION SHALL MODIFY THE CERTIFICATE OF NECESSITY UNDER  
3 SUBSECTION (4) TO INCLUDE THE ALTERNATIVE PROPOSAL.

4 (14) ~~(13)~~As used in this section, "renewable energy system"  
5 means that term as defined in SECTION 11 OF the clean, renewable,  
6 and efficient energy act, 2008 PA 295, MCL 460.1011.