

Act No. 348
Public Acts of 2018
Approved by the Governor
October 23, 2018
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October 24, 2018
EFFECTIVE DATE: October 24, 2018

**STATE OF MICHIGAN
99TH LEGISLATURE
REGULAR SESSION OF 2018**

**Introduced by Reps. Lauwers, Glenn, Elder, Guerra, Kelly, Hauck, Lucido, Frederick, Lower, Bellino,
Wentworth, Cole and Sneller**

ENROLLED HOUSE BILL No. 5902

AN ACT 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 powers and duties of certain state governmental officers and entities; 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 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,” (MCL 460.1 to 460.11) by adding section 10gg.

The People of the State of Michigan enact:

Sec. 10gg. (1) Notwithstanding any other provision of this act, the commission may establish long-term industrial load rates for industrial customers as provided in this section. An electric utility may propose a long-term industrial load rate in a general rate case filing or in a stand-alone proceeding. The commission shall approve the long-term industrial load rate proposed by the electric utility if the commission finds all of the following:

(a) The cost of service for the capacity needed to serve the industrial customer under the proposed long-term industrial load rate is based on 1 or more designated power supply resources.

(b) The proposed long-term industrial load rate requires the industrial customer to enter into a contract for a term equal to either of the following:

(i) The term of the electric utility power purchase agreement or agreements, that must not be less than 15 years, for 1 or more designated power supply resources if the resources are an electric utility power purchase agreement or agreements.

(ii) The expected remaining life of 1 or more designated power supply resources if the resources are utility-owned resources.

(c) The proposed long-term industrial load rate requires that the industrial customer have an annual average electric demand of at least 200 megawatts at 1 site at the time the contract for a term is entered into, have an annual load factor of at least 75% at the time the contract for a term is entered into, and must demonstrate that the industrial customer would not purchase standard tariff service from the electric utility except under the long-term industrial load rate. The

industrial customer demonstrates that it would not purchase standard tariff service from the electric utility except under the long-term industrial load rate if any of the following conditions exist:

(i) The customer has available self-service power in a quantity equal to the contract demand level.

(ii) The customer, or an entity acting on the customer's behalf, has entered the applicable regional transmission organization's generation interconnection queue for a new generation resource that, if constructed, would qualify as self-service power in a quantity equal to the contract demand level. Entering the applicable regional transmission organization's interconnection queue means compliance with all applicable interconnection application requirements, such as payment of the application fee, disclosure of the technical requirements, payment of the definitive planning phase studying funding deposit, demonstration of site control, and payment of all other applicable per-megawatt fees or deposits, as required by the regional transmission organization.

(d) The proposed long-term industrial load rate is only available to the industrial customer for service at a site where the industrial customer's annual average electric demand is at least 200 megawatts at the time the contract for a term is entered into. The contract for a term must be for a minimum of 100 megawatts of firm contracted capacity.

(e) If the resource designated in a contract executed under the long-term industrial load rate is a utility-owned resource, then the proposed long-term industrial load rate is based on all of the following:

(i) The electric utility's levelized cost of capacity, including fixed operation and maintenance expense, associated with the designated power supply resource at the time the customer contract is executed.

(ii) The electric utility's actual variable fuel and actual variable operation and maintenance expense based on the customer's actual energy consumption and associated with the designated power supply resource.

(iii) The electric utility's actual energy and capacity market purchases, if any, based on the customer's actual consumption. The amount of capacity needed to serve a qualifying long-term industrial load is based on the capacity needed by the electric utility to comply with its regional transmission organization's load-serving resource requirement based on the amount of contractual firm and interruptible capacity supplied to the industrial customer.

(f) If the designated resource associated with a contract executed under the long-term industrial load rate is an electric utility power purchase agreement or agreements, then the proposed long-term industrial load rate is based on recovering all costs associated with the designated power purchase agreement or agreements.

(g) The proposed long-term industrial load rate ensures that the electric utility recovers its direct costs to provide transmission and distribution service to the industrial customer based on the dedicated distribution service costs and transmission service costs incurred specifically to serve the industrial customer, as approved by the commission.

(2) A long-term industrial load rate may contain other terms and conditions proposed by the electric utility.

(3) The commission shall approve any contract for a term proposed by an electric utility under a long-term industrial load rate authorized under this section if there is a net benefit to the electric utility's customers resulting from the industrial customer taking service under the long-term industrial load rate compared to the industrial customer not purchasing standard tariff service from the electric utility. In determining whether a net benefit exists, the commission may consider any benefit, including, but not limited to, benefits to customers as a result of the following:

(a) System peak demand reduction due to ability to curtail, engage in demand response, or participate in federal load management programs.

(b) Avoidance of new production capacity costs and risks for other ratepayers.

(c) Ability to reduce system costs, such as by contributing to volt-var control.

(4) If the customer taking service under a long-term industrial load rate will contribute to the electric utility's fixed distribution or transmission costs that otherwise would have been recovered from the electric utility's other customers as compared to the customer not purchasing standard tariff service from the electric utility, then the commission shall determine that a net benefit exists under subsection (3).

(5) An electric utility may submit a proposal for a long-term industrial load rate and a proposed contract for a term under the proposed long-term industrial load rate in the same proceeding.

(6) If an electric utility proposes a long-term industrial load rate in a stand-alone proceeding, that proceeding must be conducted as a contested case under chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.288, and must be supported by a complete cost of service study, rate design, and proposed tariffs reflecting the impact of the long-term industrial load rate on other customer rates. A stand-alone proceeding filed under this section must not be expanded to result in any changes to the electric utility's overall revenue requirement. The commission shall issue a final order in a stand-alone proceeding conducted under this section no later than 270 days after an electric utility files an application requesting approval of a long-term industrial load rate.

(7) A contract for a term executed under a long-term industrial load rate approved under this section is considered reasonable and prudent for the contract's entire term.

(8) A designated power supply resource that is an electric utility power purchase agreement or agreements may be a power purchase agreement or agreements with an affiliate of the electric utility.

(9) A single customer may not aggregate load from multiple sites to meet the requirements of this section. Multiple customers may not aggregate load to meet the requirements of this section.

(10) As used in this section:

(a) "Annual load factor" means a load factor calculated as an average of the prior 12 monthly load factors. Each monthly load factor must be determined by dividing the customer's actual monthly kilowatt hours consumption by the product of the customer's monthly maximum on peak demand and the number of hours in the month.

(b) "Contract for a term" means an agreement executed between an electric utility and industrial customer under a long-term industrial load rate authorized by this section.

(c) "Electric utility power purchase agreement" means an agreement executed between an electric utility and an electric generation facility not owned by the electric utility for the purchase of energy and capacity.

(d) "Long-term industrial load rate" means a rate approved by the commission under this section.

(e) "Self-service power" means that term as defined in section 10a(4).

(f) "Site" means an industrial site or contiguous industrial site or single commercial establishment. A site that is divided by an inland body of water or by a public highway, road, or street but that otherwise meets this definition meets the contiguous requirement.

(g) "Standard tariff service" means the retail rates, terms, and conditions of service approved by the commission for service to customers.

This act is ordered to take immediate effect.



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Clerk of the House of Representatives



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Secretary of the Senate

Approved

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Governor