

HOUSE BILL NO. 5144

October 23, 2019, Introduced by Reps. Rabhi, Peterson, Gay-Dagnogo, Hood, LaGrand, Howell, Wozniak and Markkanen and referred to the Committee on Energy.

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 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;



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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,"

by amending section 6a (MCL 460.6a), as amended by 2016 PA 341.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 6a. (1) A gas utility, electric utility, or steam utility
 2 shall not increase its rates and charges or alter, change, or amend
 3 any rate or rate schedules, the effect of which will be to increase
 4 the cost of services to its customers, without first receiving
 5 commission approval as provided in this section. A utility shall
 6 coordinate with the commission staff in advance of filing its
 7 general rate case application under this section to avoid resource
 8 challenges with applications being filed at the same time as
 9 applications filed under this section by other utilities. In the
 10 case of electric utilities serving more than 1,000,000 customers in
 11 this state, the commission may, if necessary, order a delay in
 12 filing an application to establish a 21-day spacing between filings
 13 of electric utilities serving more than 1,000,000 customers in this
 14 state. The utility shall place in evidence facts relied upon to
 15 support the utility's petition or application to increase its rates
 16 and charges, or to alter, change, or amend any rate or rate
 17 schedules. The commission shall require notice to be given to all
 18 interested parties within the service area to be affected, and
 19 **allow** all interested parties ~~shall have~~ a reasonable opportunity
 20 for a full and complete hearing. A utility may use projected costs
 21 and revenues for a future consecutive 12-month period in developing



1 its requested rates and charges. The commission shall notify the
2 utility within 30 days after filing, whether the utility's petition
3 or application is complete. A petition or application is considered
4 complete if it complies with the rate application filing forms and
5 instructions adopted under subsection (8). If the application is
6 not complete, the commission shall notify the utility of all
7 information necessary to make that filing complete. If the
8 commission has not notified the utility within 30 days of whether
9 the utility's petition or application is complete, the application
10 is considered complete. Concurrently with filing a complete
11 application, or at any time after filing a complete application, a
12 gas utility serving fewer than 1,000,000 customers in this state
13 may file a motion seeking partial and immediate rate relief. After
14 providing notice to the interested parties within the service area
15 to be affected and affording interested parties a reasonable
16 opportunity to present written evidence and written arguments
17 relevant to the motion seeking partial and immediate rate relief,
18 the commission shall make a finding and enter an order granting or
19 denying partial and immediate relief within 180 days after the
20 motion seeking partial and immediate rate relief was submitted. The
21 commission has 12 months to issue a final order in a case in which
22 a gas utility has filed a motion seeking partial and immediate rate
23 relief.

24 (2) If the commission has not issued an order within 180 days
25 of the filing of a complete application, the utility may implement
26 up to the amount of the proposed annual rate request through equal
27 percentage increases or decreases applied to all base rates. If the
28 utility uses projected costs and revenues for a future period in
29 developing its requested rates and charges, the utility may not



1 implement the equal percentage increases or decreases before the
2 calendar date corresponding to the start of the projected 12-month
3 period. For good cause, the commission may issue a temporary order
4 preventing or delaying a utility from implementing its proposed
5 rates or charges. If a utility implements increased rates or
6 charges under this subsection before the commission issues a final
7 order, that utility shall refund to customers, with interest, any
8 portion of the total revenues collected through application of the
9 equal percentage increase that exceed the total that would have
10 been produced by the rates or charges subsequently ordered by the
11 commission in its final order. The commission shall allocate any
12 refund required by this subsection among primary customers based
13 upon their pro rata share of the total revenue collected through
14 the applicable increase, and among secondary and residential
15 customers in a manner to be determined by the commission. The rate
16 of interest for refunds ~~shall equal~~ **is** 5% plus the London interbank
17 offered rate (LIBOR) for the appropriate time period. For any
18 portion of the refund that, exclusive of interest, exceeds 25% of
19 the annual revenue increase awarded by the commission in its final
20 order, the rate of interest ~~shall be~~ **is** the authorized rate of
21 return on the common stock of the utility during the appropriate
22 period. Any refund or interest awarded under this subsection ~~shall~~
23 **must** not be included, in whole or in part, in any application for a
24 rate increase by a utility. This subsection only applies to
25 completed applications filed with the commission before ~~the~~
26 ~~effective date of the amendatory act that added section 6t.~~ **April**
27 **20, 2017.**

28 (3) This section does not impair the commission's ability to
29 issue a show cause order as part of its rate-making authority. An



1 alteration or amendment in rates or rate schedules applied for by a
2 public utility that will not result in an increase in the cost of
3 service to its customers may be authorized and approved without
4 notice or hearing. There shall be no increase in rates based upon
5 changes in cost of fuel, purchased gas, or purchased steam unless
6 notice has been given within the service area to be affected, and
7 there has been an opportunity for a full and complete hearing on
8 the cost of fuel, purchased gas, or purchased steam. The rates
9 charged by any utility under an automatic fuel, purchased gas, or
10 purchased steam adjustment clause shall not be altered, changed, or
11 amended unless notice has been given within the service area to be
12 affected, and there has been an opportunity for a full and complete
13 hearing on the cost of the fuel, purchased gas, or purchased steam.

14 (4) The commission shall adopt rules and procedures for the
15 filing, investigation, and hearing of petitions or applications to
16 increase or decrease utility rates and charges as the commission
17 finds necessary or appropriate to enable it to reach a final
18 decision with respect to petitions or applications within a period
19 of time allotted by law to issue a final order after the filing of
20 the complete petitions or applications. The commission shall not
21 authorize or approve adjustment clauses that operate without notice
22 and an opportunity for a full and complete hearing, and all such
23 clauses are abolished. The commission may hold a full and complete
24 hearing to determine the cost of fuel, purchased gas, purchased
25 steam, or purchased power separately from a full and complete
26 hearing on a general rate case and may hold that hearing
27 concurrently with the general rate case. The commission shall
28 authorize a utility to recover the cost of fuel, purchased gas,
29 purchased steam, or purchased power only to the extent that the



1 purchases are reasonable and prudent.

2 (5) Except as otherwise provided in this subsection and
3 subsection (1), if the commission fails to reach a final decision
4 with respect to a completed petition or application to increase or
5 decrease utility rates within the 10-month period following the
6 filing of the completed petition or application, the petition or
7 application is considered approved. If a utility makes any
8 significant amendment to its filing, the commission has an
9 additional 10 months after the date of the amendment to reach a
10 final decision on the petition or application. If the utility files
11 for an extension of time, the commission shall extend the 10-month
12 period by the amount of additional time requested by the utility.

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

19 (7) The commission shall, if requested by a gas utility,
20 establish load retention transportation rate schedules or approve
21 gas transportation contracts as required for the purpose of serving
22 industrial or commercial customers whose individual annual
23 transportation volumes exceed 500,000 decatherms on the gas
24 utility's system. The commission shall approve these rate schedules
25 or approve transportation contracts entered into by the utility in
26 good faith if the industrial or commercial customer has the
27 installed capability to use an alternative fuel or otherwise has a
28 viable alternative to receiving natural gas transportation service
29 from the utility, the customer can obtain the alternative fuel or



1 gas transportation from an alternative source at a price that would
2 cause them not to use the gas utility's system, and the customer,
3 as a result of their use of the system and receipt of
4 transportation service, makes a significant contribution to the
5 utility's fixed costs. The commission shall adopt accounting and
6 rate-making policies to ensure that the discounts associated with
7 the transportation rate schedules and contracts are recovered by
8 the gas utility through charges applicable to other customers if
9 the incremental costs related to the discounts are no greater than
10 the costs that would be passed on to those customers as the result
11 of a loss of the industrial or commercial customer's contribution
12 to a utility's fixed costs.

13 (8) The commission shall adopt standard rate application
14 filing forms and instructions for use in all general rate cases
15 filed by utilities whose rates are regulated by the commission. For
16 cooperative electric utilities whose rates are regulated by the
17 commission, in addition to rate applications filed under this
18 section, the commission shall continue to allow for rate filings
19 based on the cooperative's times interest earned ratio. The
20 commission may modify the standard rate application forms and
21 instructions adopted under this subsection.

22 (9) If, on or before January 1, 2008, a merchant plant entered
23 into a contract with an initial term of 20 years or more to sell
24 electricity to an electric utility whose rates are regulated by the
25 commission with 1,000,000 or more retail customers in this state
26 and if, before January 1, 2008, the merchant plant generated
27 electricity under that contract, in whole or in part, from wood or
28 solid wood wastes, then the merchant plant shall, upon petition by
29 the merchant plant, and subject to the limitation set forth in



1 subsection (10), recover the amount, if any, by which the merchant
 2 plant's reasonably and prudently incurred actual fuel and variable
 3 operation and maintenance costs exceed the amount that the merchant
 4 plant is paid under the contract for those costs. This subsection
 5 does not apply to landfill gas plants, hydro plants, municipal
 6 solid waste plants, or to merchant plants engaged in litigation
 7 against an electric utility seeking higher payments for power
 8 delivered pursuant to contract.

9 (10) The total aggregate additional amounts recoverable by
 10 merchant plants under subsection (9) in excess of the amounts paid
 11 under the contracts ~~shall~~**must** not exceed \$1,000,000.00 per month
 12 for each affected electric utility. The \$1,000,000.00 per month
 13 limit specified in this subsection ~~shall~~**must** be reviewed by the
 14 commission upon petition of the merchant plant filed no more than
 15 once per year and may be adjusted if the commission finds that the
 16 eligible merchant plants reasonably and prudently incurred actual
 17 fuel and variable operation and maintenance costs exceed the amount
 18 that those merchant plants are paid under the contract by more than
 19 \$1,000,000.00 per month. The annual amount of the adjustments ~~shall~~
 20 **must** not exceed a rate equal to the United States ~~consumer price~~
 21 ~~index.~~ **Consumer Price Index**. The commission shall not make an
 22 adjustment unless each affected merchant plant files a petition
 23 with the commission. If the total aggregate amount by which the
 24 eligible merchant plants reasonably and prudently incurred actual
 25 fuel and variable operation and maintenance costs determined by the
 26 commission exceed the amount that the merchant plants are paid
 27 under the contract by more than \$1,000,000.00 per month, the
 28 commission shall allocate the additional \$1,000,000.00 per month
 29 payment among the eligible merchant plants based upon the



1 relationship of excess costs among the eligible merchant plants.
2 The \$1,000,000.00 limit specified in this subsection, as adjusted,
3 does not apply to actual fuel and variable operation and
4 maintenance costs that are incurred due to changes in federal or
5 state environmental laws or regulations that are implemented after
6 October 6, 2008. The \$1,000,000.00 per month payment limit under
7 this subsection does not apply to merchant plants eligible under
8 subsection (9) whose electricity is purchased by a utility that is
9 using wood or wood waste or fuels derived from those materials for
10 fuel in their power plants. As used in this subsection, "~~United~~
11 ~~States consumer price index~~" **Consumer Price Index**" means the United
12 ~~States consumer price index~~ **Consumer Price Index** for all urban
13 consumers as defined and reported by the United States Department
14 of Labor, Bureau of Labor Statistics.

15 (11) The commission shall issue orders to permit the recovery
16 authorized under subsections (9) and (10) upon petition of the
17 merchant plant. The merchant plant is not required to alter or
18 amend the existing contract with the electric utility in order to
19 obtain the recovery under subsections (9) and (10). The commission
20 shall permit or require the electric utility whose rates are
21 regulated by the commission to recover from its ratepayers all fuel
22 and variable operation and maintenance costs that the electric
23 utility is required to pay to the merchant plant as reasonably and
24 prudently incurred costs.

25 (12) Subject to subsection (13), if requested by an electric
26 utility with less than 200,000 customers in this state, the
27 commission shall approve an appropriate revenue decoupling
28 mechanism that adjusts for decreases in actual sales compared to
29 the projected levels used in that utility's most recent rate case



1 that are the result of implemented energy waste reduction,
2 conservation, demand-side programs, and other waste reduction
3 measures, if the utility first demonstrates the following to the
4 commission:

5 (a) That the projected sales forecast in the utility's most
6 recent rate case is reasonable.

7 (b) That the electric utility has achieved annual incremental
8 energy savings at least equal to the lesser of the following:

9 (i) One percent of its total annual retail electricity sales in
10 the previous year.

11 (ii) The amount of any incremental savings yielded by energy
12 waste reduction, conservation, demand-side programs, and other
13 waste reduction measures approved by the commission in that
14 utility's most recent integrated resource plan.

15 (13) The commission shall consider the aggregate revenues
16 attributable to revenue decoupling mechanisms, financial
17 incentives, and shared savings mechanisms the commission has
18 approved for an electric utility relative to energy waste
19 reduction, conservation, demand-side programs, peak load reduction,
20 and other waste reduction measures. The commission may approve an
21 alternative methodology for a revenue decoupling mechanism
22 authorized under subsection (12), a financial incentive authorized
23 under section 75 of the clean and renewable energy and energy waste
24 reduction act, 2008 PA 295, MCL 460.1075, or a shared savings
25 mechanism authorized under section 6x if the commission determines
26 that the resulting aggregate revenues from those mechanisms would
27 not result in a reasonable and cost-effective method to ensure that
28 investments in energy waste reduction, demand-side programs, peak
29 load reduction, and other waste reduction measures are not



1 disfavored when compared to utility supply-side investments. The
 2 commission's consideration of an alternative methodology under this
 3 subsection ~~shall~~**must** be conducted as a contested case pursuant to
 4 chapter 4 of the administrative procedures act of 1969, 1969 PA
 5 306, MCL 24.271 to ~~24.287.~~**24.288.**

6 ~~(14) Within 1 year after the effective date of the amendatory~~
 7 ~~act that added this subsection, the commission shall conduct a~~
 8 ~~study on an appropriate tariff reflecting equitable cost of service~~
 9 ~~for utility revenue requirements for customers who participate in a~~
 10 ~~net metering program or distributed generation program under the~~
 11 ~~clean and renewable energy and energy waste reduction act, 2008 PA~~
 12 ~~295, MCL 460.1001 to 460.1211. In any rate case filed after June 1,~~
 13 ~~2018, the commission shall approve such a tariff for inclusion in~~
 14 ~~the rates of all customers participating in a net metering or~~
 15 ~~distributed generation program under the clean and renewable energy~~
 16 ~~and energy waste reduction act, 2008 PA 295, MCL 460.1001 to~~
 17 ~~460.1211. A tariff established under this subsection does not apply~~
 18 ~~to customers participating in a net metering program under the~~
 19 ~~clean and renewable energy and energy waste reduction act, 2008 PA~~
 20 ~~295, MCL 460.1001 to 460.1211, before the date that the commission~~
 21 ~~establishes a tariff under this subsection, who continues to~~
 22 ~~participate in the program at their current site or facility.~~

23 **(14)** ~~(15)~~ Except as otherwise provided in this act, "utility"
 24 and "electric utility" do not include a municipally owned electric
 25 utility.

26 **(15)** ~~(16)~~ As used in this section:

27 (a) "Full and complete hearing" means a hearing that provides
 28 interested parties a reasonable opportunity to present and cross-
 29 examine evidence and present arguments relevant to the specific



1 element or elements of the request that are the subject of the
2 hearing.

3 (b) "General rate case" means a proceeding initiated by a
4 utility in an application filed with the commission that alleges a
5 revenue deficiency and requests an increase in the schedule of
6 rates or charges based on the utility's total cost of providing
7 service.

8 (c) "Steam utility" means a steam distribution company
9 regulated by the commission.

10 Enacting section 1. This amendatory act does not take effect
11 unless Senate Bill No. _____ or House Bill No. 5145 (request no.
12 02128'19) of the 100th Legislature is enacted into law.

