

MICHIGAN PUBLIC SERVICE COMMISSION (EXCERPT)
Act 3 of 1939

460.6q Acquisition, control, or merger with jurisdictional regulated utility; approval of commission; notice and hearing; issuance of order; rules; filing comments; access to data and information; evaluation factors; terms and conditions; confidential information; definitions.

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

(2) After notice and hearing, the commission shall issue an order stating what constitutes acquisition, transfer of control, merger activities, or encumbrance of assets that are subject to this section. This section does not apply to the encumbrance, assignment, acquisition, or transfer of assets that are encumbered, assigned, acquired, transferred, or sold in the normal course of business or to the issuance of securities or other financing transactions not directly or indirectly involved in an acquisition, merger, encumbrance, or transfer of control that is governed by this section.

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

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

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

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

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

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

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

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

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

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

(a) Whether the proposed action would have an adverse impact on the rates of the customers affected by the acquisition, transfer, merger, or encumbrance.

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

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

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

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

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

(9) In approving an acquisition, transfer, merger, or encumbrance under this section, the commission may impose reasonable terms and conditions on the acquisition, transfer, merger, or encumbrance to protect the customers of the jurisdictional regulated utility. A jurisdictional regulated utility may reject the terms and conditions imposed by the 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 section alters 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, or a motor carrier as defined in the motor carrier act, 1933 PA 254, MCL 475.1 to 479.43.

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

History: Add. 2008, Act 286, Imd. Eff. Oct. 6, 2008.