

# HOUSE BILL No. 5692

March 6, 2018, Introduced by Reps. Rabhi, Sabo, Reilly, Robinson, Howell, Scott, Cambensy, Geiss and Johnson and referred to the Committee on Energy Policy.

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; 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 all  
19 interested parties shall have a reasonable opportunity for a full  
20 and complete hearing. A utility may use projected costs and  
21 revenues for a future consecutive 12-month period in developing its  
22 requested rates and charges. The commission shall notify the  
23 utility within 30 days after filing, whether the utility's petition  
24 or application is complete. A petition or application is considered  
25 complete if it complies with the rate application filing forms and  
26 instructions adopted under subsection (8). If the application is

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

19 (2) If the commission has not issued an order within 180 days  
20 of the filing of a complete application, the utility may implement  
21 up to the amount of the proposed annual rate request through equal  
22 percentage increases or decreases applied to all base rates. If the  
23 utility uses projected costs and revenues for a future period in  
24 developing its requested rates and charges, the utility may not  
25 implement the equal percentage increases or decreases before the  
26 calendar date corresponding to the start of the projected 12-month  
27 period. For good cause, the commission may issue a temporary order

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

25 (3) This section does not impair the commission's ability to  
 26 issue a show cause order as part of its rate-making authority. An  
 27 alteration or amendment in rates or rate schedules applied for by a

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

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

1 purchased steam, or purchased power only to the extent that the  
2 purchases are reasonable and prudent.

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

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

20 (7) The commission shall, if requested by a gas utility,  
21 establish load retention transportation rate schedules or approve  
22 gas transportation contracts as required for the purpose of serving  
23 industrial or commercial customers whose individual annual  
24 transportation volumes exceed 500,000 decatherms on the gas  
25 utility's system. The commission shall approve these rate schedules  
26 or approve transportation contracts entered into by the utility in  
27 good faith if the industrial or commercial customer has the

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

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

25 (9) If, on or before January 1, 2008, a merchant plant entered  
26 into a contract with an initial term of 20 years or more to sell  
27 electricity to an electric utility whose rates are regulated by the

1 commission with 1,000,000 or more retail customers in this state  
2 and if, before January 1, 2008, the merchant plant generated  
3 electricity under that contract, in whole or in part, from wood or  
4 solid wood wastes, then the merchant plant shall, upon petition by  
5 the merchant plant, and subject to the limitation set forth in  
6 subsection (10), recover the amount, if any, by which the merchant  
7 plant's reasonably and prudently incurred actual fuel and variable  
8 operation and maintenance costs exceed the amount that the merchant  
9 plant is paid under the contract for those costs. This subsection  
10 does not apply to landfill gas plants, hydro plants, municipal  
11 solid waste plants, or to merchant plants engaged in litigation  
12 against an electric utility seeking higher payments for power  
13 delivered pursuant to contract.

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



1 the total aggregate amount by which the eligible merchant plants  
2 reasonably and prudently incurred actual fuel and variable  
3 operation and maintenance costs determined by the commission exceed  
4 the amount that the merchant plants are paid under the contract by  
5 more than \$1,000,000.00 per month, the commission shall allocate  
6 the additional \$1,000,000.00 per month payment among the eligible  
7 merchant plants based upon the relationship of excess costs among  
8 the eligible merchant plants. The \$1,000,000.00 limit specified in  
9 this subsection, as adjusted, does not apply to actual fuel and  
10 variable operation and maintenance costs that are incurred due to  
11 changes in federal or state environmental laws or regulations that  
12 are implemented after October 6, 2008. The \$1,000,000.00 per month  
13 payment limit under this subsection does not apply to merchant  
14 plants eligible under subsection (9) whose electricity is purchased  
15 by a utility that is using wood or wood waste or fuels derived from  
16 those materials for fuel in their power plants. As used in this  
17 subsection, "United States consumer price index" means the United  
18 States consumer price index for all urban consumers as defined and  
19 reported by the United States Department of Labor, Bureau of Labor  
20 Statistics.

21 (11) The commission shall issue orders to permit the recovery  
22 authorized under subsections (9) and (10) upon petition of the  
23 merchant plant. The merchant plant is not required to alter or  
24 amend the existing contract with the electric utility in order to  
25 obtain the recovery under subsections (9) and (10). The commission  
26 shall permit or require the electric utility whose rates are  
27 regulated by the commission to recover from its ratepayers all fuel

1 and variable operation and maintenance costs that the electric  
2 utility is required to pay to the merchant plant as reasonably and  
3 prudently incurred costs.

4 (12) Subject to subsection (13), if requested by an electric  
5 utility with less than 200,000 customers in this state, the  
6 commission shall approve an appropriate revenue decoupling  
7 mechanism that adjusts for decreases in actual sales compared to  
8 the projected levels used in that utility's most recent rate case  
9 that are the result of implemented energy waste reduction,  
10 conservation, demand-side programs, and other waste reduction  
11 measures, if the utility first demonstrates the following to the  
12 commission:

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

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

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

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

23 (13) The commission shall consider the aggregate revenues  
24 attributable to revenue decoupling mechanisms, financial  
25 incentives, and shared savings mechanisms the commission has  
26 approved for an electric utility relative to energy waste  
27 reduction, conservation, demand-side programs, peak load reduction,

1 and other waste reduction measures. The commission may approve an  
2 alternative methodology for a revenue decoupling mechanism  
3 authorized under subsection (12), a financial incentive authorized  
4 under section 75 of the clean and renewable energy and energy waste  
5 reduction act, 2008 PA 295, MCL 460.1075, or a shared savings  
6 mechanism authorized under section 6x if the commission determines  
7 that the resulting aggregate revenues from those mechanisms would  
8 not result in a reasonable and cost-effective method to ensure that  
9 investments in energy waste reduction, demand-side programs, peak  
10 load reduction, and other waste reduction measures are not  
11 disfavored when compared to utility supply-side investments. The  
12 commission's consideration of an alternative methodology under this  
13 subsection ~~shall~~ **MUST** be conducted as a contested case pursuant to  
14 chapter 4 of the administrative procedures act of 1969, 1969 PA  
15 306, MCL 24.271 to 24.287.

16 ~~—— (14) Within 1 year after the effective date of the amendatory~~  
17 ~~act that added this subsection, the commission shall conduct a~~  
18 ~~study on an appropriate tariff reflecting equitable cost of service~~  
19 ~~for utility revenue requirements for customers who participate in a~~  
20 ~~net metering program or distributed generation program under the~~  
21 ~~clean and renewable energy and energy waste reduction act, 2008 PA~~  
22 ~~295, MCL 460.1001 to 460.1211. In any rate case filed after June 1,~~  
23 ~~2018, the commission shall approve such a tariff for inclusion in~~  
24 ~~the rates of all customers participating in a net metering or~~  
25 ~~distributed generation program under the clean and renewable energy~~  
26 ~~and energy waste reduction act, 2008 PA 295, MCL 460.1001 to~~  
27 ~~460.1211. A tariff established under this subsection does not apply~~

1 ~~to customers participating in a net metering program under the~~  
2 ~~clean and renewable energy and energy waste reduction act, 2008 PA~~  
3 ~~295, MCL 460.1001 to 460.1211, before the date that the commission~~  
4 ~~establishes a tariff under this subsection, who continues to~~  
5 ~~participate in the program at their current site or facility.~~

6       **(14)** ~~(15)~~ Except as otherwise provided in this act, "utility"  
7 and "electric utility" do not include a municipally owned electric  
8 utility.

9       **(15)** ~~(16)~~ As used in this section:

10       (a) "Full and complete hearing" means a hearing that provides  
11 interested parties a reasonable opportunity to present and cross-  
12 examine evidence and present arguments relevant to the specific  
13 element or elements of the request that are the subject of the  
14 hearing.

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

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