

# HOUSE BILL No. 5913

September 21, 2016, Introduced by Reps. Irwin, Santana, Robinson, Pagan, Hoadley, Dianda and Gay-Dagnogo 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 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 section 6a (MCL 460.6a), as amended by 2008 PA 286.

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

1           Sec. 6a. (1) A gas or electric utility shall not increase its  
2 rates and charges or alter, change, or amend any rate or rate  
3 schedules, the effect of which will be to increase the cost of  
4 services to its customers, without first receiving commission  
5 approval as provided in this section. The utility shall place in  
6 evidence facts relied upon to support the utility's petition or  
7 application to increase its rates and charges, or to alter, change,  
8 or amend any rate or rate schedules. The commission shall require  
9 notice to be given to all interested parties within the service  
10 area to be affected, and all interested parties shall have a  
11 reasonable opportunity for a full and complete hearing. A utility  
12 may use projected costs and revenues for a future consecutive 12-  
13 month period in developing its requested rates and charges. The  
14 commission shall notify the utility within 30 days ~~of~~ **AFTER** filing,  
15 whether the utility's petition or application is complete. A  
16 petition or application is considered complete if it complies with  
17 the rate application filing forms and instructions adopted under  
18 subsection (6). ~~A petition or application pending before the~~  
19 ~~commission prior to the adoption of filing forms and instructions~~  
20 ~~pursuant to subsection (6) shall be evaluated based upon the filing~~  
21 ~~requirements in effect at the time the petition or application was~~  
22 ~~filed.~~ If the application is not complete, the commission shall  
23 notify the utility of all information necessary to make that filing  
24 complete. If the commission has not notified the utility within 30  
25 days of whether the utility's petition or application is complete,

1 the application is considered complete. If the commission has not  
2 issued an order within 180 days ~~of~~ **AFTER** the filing of a complete  
3 application, the utility may implement up to the amount of the  
4 proposed annual rate request through equal percentage increases or  
5 decreases applied to all base rates. ~~For a petition or application~~  
6 ~~pending before the commission prior to the effective date of the~~  
7 ~~amendatory act that added this sentence, the 180-day period~~  
8 ~~commences on the effective date of the amendatory act that added~~  
9 ~~this sentence.~~ If the utility uses projected costs and revenues for  
10 a future period in developing its requested rates and charges, the  
11 utility may not implement the equal percentage increases or  
12 decreases ~~prior to~~ **BEFORE** the calendar date corresponding to the  
13 start of the projected 12-month period. For good cause, the  
14 commission may issue a temporary order preventing or delaying a  
15 utility from implementing its proposed rates or charges. If a  
16 utility implements increased rates or charges under this subsection  
17 before the commission issues a final order, that utility shall  
18 refund to customers, with interest, any portion of the total  
19 revenues collected through application of the equal percentage  
20 increase that exceed the total that would have been produced by the  
21 rates or charges subsequently ordered by the commission in its  
22 final order. The commission shall allocate any refund required by  
23 this section among primary customers based upon their pro rata  
24 share of the total revenue collected through the applicable  
25 increase, and among secondary and residential customers in a manner  
26 to be determined by the commission. The rate of interest for  
27 refunds shall equal 5% plus the London interbank offered rate

1 (LIBOR) for the appropriate time period. For any portion of the  
2 refund ~~which, THAT~~, exclusive of interest, exceeds 25% of the  
3 annual revenue increase awarded by the commission in its final  
4 order, the rate of interest shall be the authorized rate of return  
5 on the common stock of the utility during the appropriate period.  
6 Any refund or interest awarded under this subsection shall not be  
7 included, in whole or in part, in any application for a rate  
8 increase by a utility. ~~Nothing in this~~ **THIS** section ~~impairs~~ **DOES**  
9 **NOT IMPAIR** the commission's ability to issue a show cause order as  
10 part of its rate-making authority. An alteration or amendment in  
11 rates or rate schedules applied for by a public utility that will  
12 not result in an increase in the cost of service to its customers  
13 may be authorized and approved without notice or hearing. There  
14 shall be no increase in rates based upon changes in cost of fuel or  
15 purchased gas unless notice has been given within the service area  
16 to be affected, and there has been an opportunity for a full and  
17 complete hearing on the cost of fuel or purchased gas. The rates  
18 charged by any utility ~~pursuant to~~ **UNDER** an automatic fuel or  
19 purchased gas adjustment clause shall not be altered, changed, or  
20 amended unless notice has been given within the service area to be  
21 affected, and there has been an opportunity for a full and complete  
22 hearing on the cost of the fuel or purchased gas.

23 (2) The commission shall adopt rules and procedures for the  
24 filing, investigation, and hearing of petitions or applications to  
25 increase or decrease utility rates and charges as the commission  
26 finds necessary or appropriate to enable it to reach a final  
27 decision with respect to petitions or applications within a period

1 of 12 months ~~from~~ **AFTER** the filing of the complete petitions or  
2 applications. The commission shall not authorize or approve  
3 adjustment clauses that operate without notice and an opportunity  
4 for a full and complete hearing, and all such clauses ~~shall be~~ **ARE**  
5 abolished. The commission may hold a full and complete hearing to  
6 determine the cost of fuel, purchased gas, or purchased power  
7 separately from a full and complete hearing on a general rate case  
8 and may ~~be held~~ **HOLD THAT HEARING** concurrently with the general  
9 rate case. The commission shall authorize a utility to recover the  
10 cost of fuel, purchased gas, or purchased power only to the extent  
11 that the purchases are reasonable and prudent. ~~As used in this~~  
12 ~~section:~~

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

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

23 (3) Except as otherwise provided in this subsection, if the  
24 commission fails to reach a final decision with respect to a  
25 completed petition or application to increase or decrease utility  
26 rates within the 12-month period following the filing of the  
27 completed petition or application, the petition or application is

1 considered approved. If a utility makes any significant amendment  
2 to its filing, the commission has an additional 12 months ~~from~~  
3 **AFTER** the date of the amendment to reach a final decision on the  
4 petition or application. If the utility files for an extension of  
5 time, the commission shall extend the 12-month period by the amount  
6 of additional time requested by the utility.

7 (4) A utility shall not file a general rate case application  
8 for an increase in rates earlier than 12 months after the date of  
9 the filing of a complete prior general rate case application. A  
10 utility may not file a new general rate case application until the  
11 commission has issued a final order on a prior general rate case or  
12 until the rates are approved under subsection (3).

13 (5) The commission shall, if requested by a gas utility,  
14 establish load retention transportation rate schedules or approve  
15 gas transportation contracts as required for the purpose of  
16 retaining industrial or commercial customers whose individual  
17 annual transportation volumes exceed 500,000 decatherms on the gas  
18 utility's system. The commission shall approve these rate schedules  
19 or approve transportation contracts entered into by the utility in  
20 good faith if the industrial or commercial customer has the  
21 installed capability to use an alternative fuel or otherwise has a  
22 viable alternative to receiving natural gas transportation service  
23 from the utility, the customer can obtain the alternative fuel or  
24 gas transportation from an alternative source at a price ~~which~~**THAT**  
25 would cause them to cease using the gas utility's system, and the  
26 customer, as a result of their use of the system and receipt of  
27 transportation service, makes a significant contribution to the

1 utility's fixed costs. The commission shall adopt accounting and  
2 rate-making policies to ensure that the discounts associated with  
3 the transportation rate schedules and contracts are recovered by  
4 the gas utility through charges applicable to other customers if  
5 the incremental costs related to the discounts are no greater than  
6 the costs that would be passed on to those customers as the result  
7 of a loss of the industrial or commercial customer's contribution  
8 to a utility's fixed costs.

9 (6) ~~Within 90 days of the effective date of the amendatory act~~  
10 ~~that added this subsection, the~~ **THE** commission shall adopt standard  
11 rate application filing forms and instructions for use in all  
12 general rate cases filed by utilities whose rates are regulated by  
13 the commission. For cooperative electric utilities whose rates are  
14 regulated by the commission, in addition to rate applications filed  
15 under this section, the commission shall continue to allow for rate  
16 filings based on the cooperative's times interest earned ratio. The  
17 commission may ~~, in its discretion,~~ modify the standard rate  
18 application forms and instructions adopted under this subsection.

19 (7) If, on or before January 1, 2008, a merchant plant entered  
20 into a contract with an initial term of 20 years or more to sell  
21 electricity to an electric utility whose rates are regulated by the  
22 commission with 1,000,000 or more retail customers in this state  
23 and if, ~~prior to~~ **BEFORE** January 1, 2008, the merchant plant  
24 generated electricity under that contract, in whole or in part,  
25 from wood or solid wood wastes, then the merchant plant shall, upon  
26 petition by the merchant plant, and subject to the limitation set  
27 forth in subsection (8), recover the amount, if any, by which the

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

8 (8) The total aggregate additional amounts recoverable by  
9 merchant plants ~~pursuant to~~ **UNDER** subsection (7) in excess of the  
10 amounts paid under the contracts shall not exceed \$1,000,000.00 per  
11 month for each affected electric utility. The \$1,000,000.00 per  
12 month limit specified in this subsection shall be reviewed by the  
13 commission upon petition of the merchant plant filed no more than  
14 once per year and may be adjusted if the commission finds that the  
15 eligible merchant plants reasonably and prudently incurred actual  
16 fuel and variable operation and maintenance costs exceed the amount  
17 that those merchant plants are paid under the contract by more than  
18 \$1,000,000.00 per month. The annual amount of the adjustments shall  
19 not exceed a rate equal to the United States consumer price index.  
20 ~~An~~ **THE COMMISSION SHALL NOT MAKE AN** adjustment ~~shall not be made by~~  
21 ~~the commission~~ unless each affected merchant plant files a petition  
22 with the commission. ~~As used in this subsection, "United States~~  
23 ~~consumer price index" means the United States consumer price index~~  
24 ~~for all urban consumers as defined and reported by the United~~  
25 ~~States department of labor, bureau of labor statistics.~~ If the  
26 total aggregate amount by which the eligible merchant plants  
27 reasonably and prudently incurred actual fuel and variable

1 operation and maintenance costs determined by the commission exceed  
2 the amount that the merchant plants are paid under the contract by  
3 more than \$1,000,000.00 per month, the commission shall allocate  
4 the additional \$1,000,000.00 per month payment among the eligible  
5 merchant plants based upon the relationship of excess costs among  
6 the eligible merchant plants. The \$1,000,000.00 limit specified in  
7 this subsection, as adjusted, ~~shall DOES~~ not apply ~~with respect to~~  
8 actual fuel and variable operation and maintenance costs that are  
9 incurred due to changes in federal or state environmental laws or  
10 regulations that are implemented after ~~the effective date of the~~  
11 ~~amendatory act that added this subsection.~~ **OCTOBER 6, 2008.** The  
12 \$1,000,000.00 per month payment limit under this subsection shall  
13 not apply to merchant plants eligible under subsection (7) whose  
14 electricity is purchased by a utility that is using wood or wood  
15 waste or fuels derived from those materials for fuel in their power  
16 plants. **AS USED IN THIS SUBSECTION, "UNITED STATES CONSUMER PRICE**  
17 **INDEX" MEANS THE UNITED STATES CONSUMER PRICE INDEX FOR ALL URBAN**  
18 **CONSUMERS AS DEFINED AND REPORTED BY THE UNITED STATES DEPARTMENT**  
19 **OF LABOR, BUREAU OF LABOR STATISTICS.**

20 (9) The commission shall issue orders to permit the recovery  
21 authorized under subsections (7) and (8) upon petition of the  
22 merchant plant. The merchant plant shall not be required to alter  
23 or amend the existing contract with the electric utility in order  
24 to obtain the recovery under subsections (7) and (8). The  
25 commission shall permit or require the electric utility whose rates  
26 are regulated by the commission to recover from its ratepayers all  
27 fuel and variable operation and maintenance costs that the electric

1 utility is required to pay to the merchant plant as reasonably and  
2 prudently incurred costs.

3 (10) A GAS UTILITY SHALL NOT INCLUDE ANY EXPENSES FOR LOST AND  
4 UNACCOUNTED-FOR NATURAL GAS IN AN APPLICATION FOR A RATE INCREASE.  
5 THE COMMISSION SHALL NOT ALLOW A GAS UTILITY TO RECOVER ANY  
6 EXPENSES FOR LOST AND UNACCOUNTED-FOR NATURAL GAS.

7 (11) AS USED IN THIS SECTION:

8 (A) "FULL AND COMPLETE HEARING" MEANS A HEARING THAT PROVIDES  
9 INTERESTED PARTIES A REASONABLE OPPORTUNITY TO PRESENT AND CROSS-  
10 EXAMINE EVIDENCE AND PRESENT ARGUMENTS RELEVANT TO THE SPECIFIC  
11 ELEMENT OR ELEMENTS OF THE REQUEST THAT ARE THE SUBJECT OF THE  
12 HEARING.

13 (B) "GENERAL RATE CASE" MEANS A PROCEEDING INITIATED BY A  
14 UTILITY IN AN APPLICATION FILED WITH THE COMMISSION THAT ALLEGES A  
15 REVENUE DEFICIENCY AND REQUESTS AN INCREASE IN THE SCHEDULE OF  
16 RATES OR CHARGES BASED ON THE UTILITY'S TOTAL COST OF PROVIDING  
17 SERVICE.