

# SENATE BILL NO. 812

April 09, 2024, Introduced by Senator RUNESTAD and referred to the Committee on Energy and Environment.

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 and certain providers of electric vehicle charging services; 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 2023 PA 231.

**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 interested parties a reasonable opportunity for a full and  
 20 complete hearing. ~~A utility may use projected costs and revenues~~

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

28 (2) If the commission has not issued an order within 180 days  
29 after the filing of a complete application, the utility may

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

1 April 20, 2017.

2 (3) This section does not impair the commission's ability to  
3 issue a show cause order as part of its rate-making authority. An  
4 alteration or amendment in rates or rate schedules applied for by a  
5 public utility that will not result in an increase in the cost of  
6 service to its customers may be authorized and approved without  
7 notice or hearing. There shall be no increase in rates based upon  
8 changes in cost of fuel, purchased gas, or purchased steam unless  
9 notice has been given within the service area to be affected, and  
10 there has been an opportunity for a full and complete hearing on  
11 the cost of fuel, purchased gas, or purchased steam. The rates  
12 charged by any utility under an automatic fuel, purchased gas, or  
13 purchased steam adjustment clause ~~shall~~**must** not be altered,  
14 changed, or amended unless notice has been given within the service  
15 area to be affected, and there has been an opportunity for a full  
16 and complete hearing on the cost of the fuel, purchased gas, or  
17 purchased steam.

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

1 hearing on a general rate case and may hold that hearing  
2 concurrently with the general rate case. The commission shall  
3 authorize a utility to recover the cost of fuel, purchased gas,  
4 purchased steam, or purchased power only to the extent that the  
5 purchases are reasonable and prudent.

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

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

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

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

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

26 (9) If, on or before January 1, 2008, a merchant plant entered  
27 into a contract with an initial term of 20 years or more to sell  
28 electricity to an electric utility whose rates are regulated by the  
29 commission with 1,000,000 or more retail customers in this state

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

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



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

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

28 (12) Subject to subsection (13), if requested by an electric  
29 utility with less than 200,000 customers in this state, the

1 commission shall approve an appropriate revenue decoupling  
2 mechanism that adjusts for decreases in actual sales compared to  
3 the projected levels used in that utility's most recent rate case  
4 that are the result of implemented energy waste reduction,  
5 conservation, demand-side programs, and other waste reduction  
6 measures, if the utility first demonstrates the following to the  
7 commission:

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

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

12 (i) The incremental energy savings requirement of section 77(1)  
13 of the clean and renewable energy and energy waste reduction act,  
14 2008 PA 295, MCL 460.1077.

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

19 (13) The commission shall consider the aggregate revenues  
20 attributable to revenue decoupling mechanisms, financial  
21 incentives, and shared savings mechanisms the commission has  
22 approved for an electric utility relative to energy waste  
23 reduction, conservation, demand-side programs, peak load reduction,  
24 and other waste reduction measures. The commission may approve an  
25 alternative methodology for a revenue decoupling mechanism  
26 authorized under subsection (12) or a financial incentive  
27 authorized under section 75 of the clean and renewable energy and  
28 energy waste reduction act, 2008 PA 295, MCL 460.1075, if the  
29 commission determines that the resulting aggregate revenues from

1 those mechanisms would not result in a reasonable and cost-  
2 effective method to ensure that investments in energy waste  
3 reduction, demand-side programs, peak load reduction, and other  
4 waste reduction measures are not disfavored when compared to  
5 utility supply-side investments. The commission's consideration of  
6 an alternative methodology under this subsection must be conducted  
7 as a contested case in accordance with chapter 4 of the  
8 administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to  
9 24.288.

10 (14) By April 20, 2018, the commission shall conduct a study  
11 on an appropriate tariff reflecting equitable cost of service for  
12 utility revenue requirements for customers who participate in a net  
13 metering program or distributed generation program under the clean  
14 and renewable energy and energy waste reduction act, 2008 PA 295,  
15 MCL 460.1001 to ~~460.1211.~~ **460.1232**. In any rate case filed after  
16 June 1, 2018, the commission shall, subject to section 173(7) of  
17 the clean and renewable energy and energy waste reduction act, 2008  
18 PA 295, MCL 460.1173, approve such a tariff for inclusion in the  
19 rates of all customers participating in a net metering or  
20 distributed generation program under the clean and renewable energy  
21 and energy waste reduction act, 2008 PA 295, MCL 460.1001 to  
22 ~~460.1211.~~ **460.1232**. A tariff established under this subsection does  
23 not apply to customers participating in a net metering program  
24 under the clean and renewable energy and energy waste reduction  
25 act, 2008 PA 295, MCL 460.1001 to ~~460.1211,~~ **460.1232**, before the  
26 date that the commission establishes a tariff under this  
27 subsection, who continues to participate in the program at their  
28 current site or facility.

29 (15) Except as otherwise provided in this act, "utility" and

1 "electric utility" do not include a municipally owned electric  
2 utility.

3 (16) As used in this section:

4 (a) "Full and complete hearing" means a hearing that provides  
5 interested parties a reasonable opportunity to present and cross-  
6 examine evidence and present arguments relevant to the specific  
7 element or elements of the request that are the subject of the  
8 hearing.

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

14 (c) **"Historical test year" means the most recent 12-month**  
15 **period for which the utility has actual cost and revenue data.**

16 (d) ~~(e)~~—"Steam utility" means a steam distribution company  
17 regulated by the commission.