

MICHIGAN PUBLIC SERVICE COMMISSION (EXCERPT)
Act 3 of 1939

460.6h Incorporation of gas cost recovery clause in rate or rate schedule of gas utility; definitions; order and hearing; filing gas cost recovery plan and 5-year forecast; gas supply and cost review; final or temporary order; incorporating gas cost recovery factors in rates; filing revised gas cost recovery plan; reopening gas supply and cost review; monthly statement of revenues; gas cost reconciliation; commission order; refunds, credits, or additional charges to include interest; apportionment; exemption; setting gas cost recovery factors in general rate case order.

Sec. 6h.

(1) As used in this act:

(a) "Commission" or "public service commission" means the Michigan public service commission created in section 1.

(b) "Gas cost recovery clause" means an adjustment clause in the rates or rate schedule of a gas utility which permits the monthly adjustment of rates for gas in order to allow the utility to recover the booked costs of gas sold by the utility if incurred under reasonable and prudent policies and practices.

(c) "Gas cost recovery factor" means that element of the rates to be charged for gas service to reflect gas costs incurred by a gas utility and made pursuant to a gas cost recovery clause incorporated in the rates or rate schedules of a gas utility.

(d) "General rate case" means a proceeding before the commission in which interested parties are given notice and a reasonable opportunity for a full and complete hearing on a utility's total cost of service and all other lawful elements properly to be considered in determining just and reasonable rates.

(e) "Interested persons" means the attorney general, the technical staff of the commission, any intervenor admitted to 1 of the utility's 2 previous general rate cases, any intervenor admitted to 1 of the utility's 2 previous reconciliation hearings, or any association of utility customers which meets the requirements to intervene in a reconciliation hearing under the rules of practice and procedure of the commission as applicable.

(2) Pursuant to its authority under this act, the public service commission may incorporate a gas cost recovery clause in the rates or rate schedule of a gas utility, but is not required to do so. Any order incorporating a gas cost recovery clause shall be as a result of a hearing solely on the question of the inclusion of the clause in the rates or rate schedule, which hearing shall be conducted as a contested case pursuant to chapter 4 of Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 of the Michigan Compiled Laws, or, pursuant to subsection (17), as a result of a general rate case. Any order incorporating a gas cost recovery clause shall replace and rescind any previous purchased gas adjustment clause incorporated in the rates of the utility upon the effective date of the first gas cost recovery factor authorized for the utility under its gas cost recovery clause.

(3) In order to implement the gas cost recovery clause established pursuant to subsection (2), a utility annually shall file, pursuant to procedures established by the commission, if any, a complete gas cost recovery plan describing the expected sources and volumes of its gas supply and changes in the cost of gas anticipated over a future 12-month period specified by the commission and requesting for each of those 12 months a specific gas cost recovery factor. The plan shall be filed not less than 3 months before the beginning of the 12-month period covered by the plan. The plan shall describe all major contracts and gas supply arrangements entered into by the utility for obtaining gas during the specified 12-month period. The description of the major contracts and arrangements shall include the price of the gas, the duration of the contract or arrangement, and an explanation or description of any other term or provision as required by the commission. The plan shall also include the gas utility's evaluation of the reasonableness and prudence of its decisions to obtain gas in the manner described in the plan, in light of the major alternative gas supplies available to the utility, and an explanation of the legal and regulatory actions taken by the utility to minimize the cost of gas purchased by the utility.

(4) In order to implement the gas cost recovery clause established pursuant to subsection (2), a gas utility shall file, contemporaneously with the gas cost recovery plan described in subsection (3), a 5-year forecast of the gas requirements of its customers, its anticipated sources of supply, and projections of gas costs. The forecast shall include a description of all relevant major contracts and gas supply arrangements entered into or contemplated between the gas utility and its suppliers, a description of all major gas supply arrangements which the gas utility knows have been, or expects will be, entered into between the gas utility's principal pipeline suppliers and their major sources of gas, and such other information as the commission may require.

(5) If a utility files a gas cost recovery plan and a 5-year forecast as provided in subsections (3) and (4), the commission shall conduct a proceeding, to be known as a gas supply and cost review, for the purpose of evaluating the reasonableness and prudence of the plan, and establishing the gas cost recovery factors to implement a gas cost recovery clause incorporated in the rates or rate schedule of the gas utility. The gas supply and cost review shall be conducted as a contested case pursuant to chapter 4 of Act No. 306 of the Public Acts of 1969.

(6) In its final order in a gas supply and cost review, the commission shall evaluate the reasonableness and prudence of the decisions underlying the gas cost recovery plan filed by the gas utility pursuant to subsection (3), and shall approve, disapprove, or amend the gas cost recovery plan accordingly. In evaluating the decisions underlying the gas cost recovery plan, the commission shall consider the volume, cost, and reliability of the major alternative gas supplies available to the utility; the cost of alternative fuels available to some or all of the utility's customers; the availability of gas in storage; the ability of the utility to reduce or to eliminate any sales to out-of-state customers; whether the utility has taken all appropriate legal and regulatory actions to minimize the cost of purchased gas; and other relevant factors. The commission shall approve, reject, or amend the 12 monthly gas cost recovery factors requested by the utility in its gas cost recovery plan. The factors ordered shall be described in fixed dollar amounts per unit of gas, but may include specific amounts contingent on future events, including proceedings of the federal energy regulatory commission or its successor agency.

(7) In its final order in a gas supply and cost review, the commission shall evaluate the decisions underlying the 5-year forecast filed by a gas utility pursuant to subsection (4). The commission may also indicate any cost items in the 5-year forecast that on the basis of present evidence, the commission would be unlikely to permit the gas utility to recover from its customers in rates, rate schedules, or gas cost recovery factors established in the future.

(8) The commission, on its own motion or the motion of any party, may make a finding and enter a temporary order granting approval or partial approval of a gas cost recovery plan in a gas supply and cost recovery review, after first having given notice to the parties to the review, and after having afforded to the parties to the review a reasonable opportunity for a full and complete hearing. A temporary order made pursuant to this subsection shall be considered a final order for purposes of judicial review.

(9) If the commission has made a final or temporary order in a gas supply and cost review, the utility may each month incorporate in its rates for the period covered by the order any amounts up to the gas cost recovery factors permitted in that order. If the commission has not made a final or temporary order within 3 months of the submission of a complete gas cost recovery plan, or by the beginning of the period covered in the plan, whichever comes later, or if a temporary order has expired without being extended or replaced, then pending an order which determines the gas cost recovery factors, a gas utility may each month adjust its rates to incorporate all or a part of the gas cost recovery factors requested in its plan. Any amounts collected under the gas cost recovery factors before the commission makes its final order shall be subject to prompt refund with interest to the extent that the total amounts collected exceed the total amounts determined in the commission's final order to be reasonable and prudent for the same period of time.

(10) Not less than 3 months before the beginning of the third quarter of the 12-month period, the utility may file a revised gas cost recovery plan which shall cover the remainder of the 12-month period. Upon receipt of the revised gas cost recovery plan, the commission shall reopen the gas supply and cost review. In addition, the commission may reopen the gas supply and cost review on its own motion or on the showing of good cause by any party if at least 6 months have elapsed since the utility submitted its complete filing and if there are at least 60 days remaining in the 12-month period under consideration. A reopened gas supply and cost review shall be conducted as a contested case pursuant to chapter 4 of Act No. 306 of the Public Acts of 1969, and in accordance with subsections (3), (6), (8), and (9).

(11) Not more than 45 days following the last day of each billing month in which a gas cost recovery factor has been applied to customers' bills, the gas utility shall file with the commission a detailed statement for that month of the revenues recorded pursuant to the gas cost recovery factor and the allowance for cost of gas included in the base rates established in the latest commission order for the gas utility, and the cost of gas sold. The detailed statement shall be in the manner and form prescribed by the commission. The commission shall establish procedures for insuring that the detailed statement is promptly verified and corrected if necessary.

(12) Not less than once a year, and not later than 3 months after the end of the 12-month period covered by a gas utility's gas cost recovery plan, the commission shall commence a proceeding, to be known as a gas cost reconciliation, as a contested case pursuant to chapter 4 of Act No. 306 of the Public Acts of 1969. Reasonable discovery shall be permitted before and during the reconciliation proceeding in order to assist parties and interested persons in obtaining evidence concerning reconciliation issues including, but not limited to, the reasonableness and prudence of expenditures and the amounts collected pursuant to the clause. At the gas cost reconciliation the commission shall reconcile the revenues recorded pursuant to the gas cost recovery factor and the allowance for cost of gas included in the base rates established in the latest commission order for the gas utility with the amounts actually expensed and included in the cost of gas sold by the gas utility. The commission shall consider any issue regarding the reasonableness and prudence of expenses for which customers were charged if the issue could not have been considered adequately at a previously conducted gas supply and cost review.

(13) In its order in a gas cost reconciliation, the commission shall require a gas utility to refund to customers or credit to customers' bills any net amount determined to have been recovered over the period covered in excess of the amounts determined to have been actually expensed by the utility for gas sold, and to have been incurred through reasonable and prudent actions not precluded by the commission order in the gas supply and cost review. Such refunds or credits shall be apportioned among the customers of the utility utilizing procedures that the commission determines to be reasonable. The commission may adopt different procedures with respect to

customers served under the various rate schedules of the utility and may, in appropriate circumstances, order refunds or credits in proportion to the excess amounts actually collected from each such customer during the period covered.

(14) In its order in a gas cost reconciliation, the commission shall authorize a gas utility to recover from customers any net amount by which the amount determined to have been recovered over the period covered was less than the amount determined to have been actually expensed by the utility for gas sold, and to have been incurred through reasonable and prudent actions not precluded by the commission order in the gas supply and cost review. For excess costs incurred through actions contrary to the commission's gas supply and cost review order, the commission shall authorize a utility to recover costs incurred for gas sold in the 12-month period in excess of the amount recovered over the period only if the utility demonstrates by clear and convincing evidence that the excess expenses were beyond the ability of the utility to control through reasonable and prudent actions. For excess costs incurred through actions consistent with commission's gas supply and cost review order, the commission shall authorize a utility to recover costs incurred for gas sold in the 12-month period in excess of the amount recovered over the period only if the utility demonstrates that the excess expenses were reasonable and prudent. Such amounts in excess of the amounts actually recovered by the utility for gas sold shall be apportioned among and charged to the customers of the utility utilizing procedures that the commission determines to be reasonable. The commission may adopt different procedures with respect to customers served under the various rate schedules of the utility and may, in appropriate circumstances, order charges to be made in proportion to the amounts which would have been paid by such customers if the amounts in excess of the amounts actually recovered by the utility for gas sold had been included in the gas cost recovery factors with respect to such customers during the period covered. Charges for such excess amounts shall be spread over a period that the commission determines to be appropriate.

(15) If the commission orders refunds or credits pursuant to subsection (13), or additional charges to customers pursuant to subsection (14), in its final order in a gas cost reconciliation, the refunds, credits, or additional charges shall include interest and shall be apportioned among the utility's customer classes in proportion to their respective usage during the reconciliation period. In determining the interest included in a refund, credit, or additional charge pursuant to this subsection, the commission shall consider, to the extent material and practicable, the time at which the excess recoveries or insufficient recoveries, or both, occurred. The commission shall determine a rate of interest for excess recoveries, refunds, and credits equal to the greater of the average short-term borrowing rate available to the gas utility during the appropriate period, or the authorized rate of return on the common stock of the gas utility during that same period. The commission shall determine a rate of interest for insufficient recoveries and additional charges equal to the average short-term borrowing rate available to the gas utility during the appropriate period.

(16) To avoid undue hardship or unduly burdensome or excessive cost, the commission may exempt a gas utility with fewer than 200,000 customers in the state of Michigan from 1 or more of the procedural provisions of this section or may modify the filing requirements of this section.

(17) Notwithstanding any other provision of this act, the commission may, upon application by a gas utility, set gas cost recovery factors, in a manner otherwise consistent with this act, in an order resulting from a general rate case. Within 120 days following the effective date of this section, for the purpose of setting gas cost recovery factors, the commission shall permit a gas utility to reopen a general rate case in which a final order was issued within 120 days before or after the effective date of this section or to amend an application or reopen the evidentiary record in a pending general rate case. If the commission sets gas cost recovery factors in an order resulting from a general rate case:

(a) The gas cost recovery factors shall cover a future period of 48 months or the number of months which elapse until the commission orders new gas cost recovery factors in a general rate case, whichever is the shorter period.

(b) Annual reconciliation proceedings shall be conducted pursuant to subsection (12) and if an annual reconciliation proceeding shows a recoverable amount pursuant to subsection (14), the commission shall authorize the gas utility to defer the amount and to accumulate interest on the amount pursuant to subsection (15), and in the next order resulting from a general rate case authorize the utility to recover the amount and interest from its customers in the manner provided in subsection (14).

(c) The gas cost recovery factors shall not be subject to revision pursuant to subsection (10).

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