

Act No. 132
Public Acts of 2008
Approved by the Governor
May 21, 2008
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May 21, 2008
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**STATE OF MICHIGAN
94TH LEGISLATURE
REGULAR SESSION OF 2008**

Introduced by Reps. Young and Accavitti

ENROLLED HOUSE BILL No. 5798

AN ACT 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," (MCL 460.1 to 460.10cc) by adding section 6r.

The People of the State of Michigan enact:

Sec. 6r. (1) As used in this section:

(a) "Booked cost of steam" includes all of the following:

(i) Retail gas purchases consisting of all costs for gas service including customer charges, distribution charges, and any gas cost recovery factor.

(ii) Wholesale gas purchases, consisting of the contract cost of gas, transportation fuel, pipeline transportation fees, and any local transportation or distribution fees.

(iii) Storage gas charges, including the cost of gas, fuel, gas injection fees, withdrawal fees, and associated transportation fees.

(iv) The cost of financial hedging instruments approved by the commission such as futures and options, including premiums, settlement gains and losses, and commodity exchange and administration fees.

(v) Steam purchases, consisting of all costs for steam purchased including customer charges, distribution charges, and associated transportation fees.

(vi) Costs for other fuel purchases including, but not limited to, any coal, wood, garbage, tires, waste oil, fuel oil or other materials used as a fuel for the production of steam, and all customer charges, distribution charges, and associated transportation and storage fees.

(b) "Steam supply cost recovery clause" means a clause in the rates or rate schedule of a utility which permits the monthly adjustment of rates for steam supply to allow the utility to recover the booked costs of fuel burned by the utility for steam generation and the booked costs of purchased steam transactions by the utility incurred under reasonable and prudent policies and practices.

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

(d) "Utility" means a steam distribution company regulated by the commission.

(2) Pursuant to its authority under this act, the commission may incorporate a steam supply cost recovery clause in the steam rates or rate schedule of a utility. An order incorporating a steam supply cost recovery clause shall be the result of a hearing solely on the question of the inclusion of the clause in the rates or rate schedule. The hearing shall be conducted as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287.

(3) In order to implement the steam supply cost recovery clause established pursuant to subsection (2), a utility annually shall file a complete steam supply cost recovery plan describing the expected sources of steam supply and changes in the cost of steam supply anticipated over a future 12-month period specified by the commission and requesting for each of those 12 months a specific steam supply cost recovery factor. The utility shall file the steam supply cost recovery plan at least 3 months before the beginning of the 12-month period covered by the plan. The plan shall describe all major contracts and steam supply arrangements entered into by the utility for providing steam supply during the specified 12-month period including the price of fuel, the duration of the contract or arrangement, and an explanation or description of any other term or provision of the contract or arrangement as required by the commission. The plan shall also include the utility's evaluation of the reasonableness and prudence of its decisions to provide steam supply in the manner described in the plan, in light of its existing sources of steam generation, and an explanation of the actions taken by the utility to minimize the cost of fuel to the utility.

(4) In order to implement the steam supply cost recovery clause established pursuant to subsection (2), a utility shall file, contemporaneously with the steam supply cost recovery plan required by subsection (3), a 3-year forecast of the steam supply requirements of its customers, its anticipated sources of supply, and projections of steam supply costs, in light of its existing sources of steam generation and sources of steam generation under construction. The forecast shall include a description of all relevant major contracts and steam supply arrangements entered into or contemplated by the utility, and any other information the commission may require.

(5) If a utility files a steam supply cost recovery plan and a 3-year forecast as provided in subsections (3) and (4), the commission shall conduct a proceeding, to be known as a steam supply and cost review, to evaluate the reasonableness and prudence of the steam supply cost recovery plan filed by a utility pursuant to subsection (3), and establish the steam supply cost recovery factors to implement a steam supply cost recovery clause incorporated in the rates or rate schedule of the utility. The steam supply and cost review shall be conducted as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287.

(6) In its final order in a steam supply and cost review, the commission shall evaluate the reasonableness and prudence of the decisions underlying the steam supply cost recovery plan filed by the utility pursuant to subsection (3), and shall approve, disapprove, or amend the steam supply cost recovery plan accordingly. In evaluating the decisions underlying the steam supply cost recovery plan, the commission shall consider the cost and availability of the steam generation available to the utility, the cost of short-term firm purchases available to the utility, whether the utility has taken all appropriate actions to minimize the cost of fuel, and other relevant factors. The commission shall approve, reject, or amend the 12 monthly steam supply cost recovery factors requested by the utility in its steam supply cost recovery plan. The factors ordered shall be described in fixed dollar amounts per unit of steam, but may include specific amounts contingent on future events.

(7) In its final order in a steam supply and cost review, the commission shall evaluate the decisions underlying the 3-year forecast filed by a utility pursuant to subsection (4). The commission may also indicate any cost items in the 3-year forecast that, on the basis of present evidence, the commission would be unlikely to permit the utility to recover from its customers in rates, rate schedules, or steam supply 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 steam supply cost recovery plan in a steam supply and cost recovery review after first having given notice to the parties to the review and giving those parties a reasonable opportunity for a full and complete hearing. A temporary order made pursuant to this subsection is considered a final order for purposes of judicial review.

(9) If the commission has made a final or temporary order in a steam supply and cost review, the utility may each month incorporate in its rates for the period covered by the order any amount up to the steam supply 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 steam supply 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 steam supply cost recovery factors, a utility may each month adjust its rates to incorporate all or a part of the steam supply cost recovery factors requested in its plan. Any amount collected under the steam supply cost recovery factors before the commission makes its final order shall be subject to prompt refund with interest to the extent that the total amount collected exceeds the total amount 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, a utility may file a revised steam supply cost recovery plan which shall cover the remainder of the 12-month period. Upon receipt of a revised steam supply cost recovery plan, the commission shall reopen the steam supply and cost review. In addition, the commission may reopen the steam 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 steam supply and cost review shall be conducted as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287, 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 steam supply cost recovery factor has been applied to customers' bills, a utility shall file with the commission a detailed statement for that month of the revenues recorded pursuant to the steam supply cost recovery factor and the allowance for cost of steam supply included in the base rates established in the latest commission order for the utility, and the cost of steam supply. 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 utility's steam supply cost recovery plan, the commission shall commence a proceeding, to be known as a steam supply cost reconciliation, as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. 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 steam supply cost reconciliation, the commission shall reconcile the revenues recorded pursuant to the steam supply cost recovery factors and the allowance for cost of steam supply included in the base rates established in the latest commission order for the utility with the amounts actually expensed and included in the cost of steam supply by the utility. The commission shall consider any issue regarding the reasonableness and prudence of expenses for which customers were charged if the issue was not considered adequately at a previously conducted steam supply and cost review.

(13) In its order in a steam supply cost reconciliation, the commission shall require a 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 steam supply, and to have been incurred through reasonable and prudent actions not precluded by the commission order in the steam supply and cost review. The refunds or credits shall be apportioned among the customers of the utility utilizing procedures that the commission determines are 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 customer during the period covered.

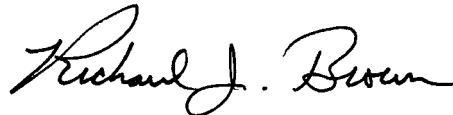
(14) In its order in a steam supply cost reconciliation, the commission shall authorize a utility to recover from customers any net amount by which the amount determined to have been recovered over the period covered was less than the amount determined to have been actually expensed by the utility for steam supply, and to have been incurred through reasonable and prudent actions not precluded by the commission order in the steam supply and cost review. For excess costs incurred through management actions contrary to the commission's steam supply and cost review order, the commission shall authorize a utility to recover costs incurred for steam supply in the reconciliation 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 management actions consistent with the commission's steam supply and cost review order, the commission shall authorize a utility to recover costs incurred for steam supply in the reconciliation period in excess of the amount recovered over the period only if the utility demonstrates that the level of the expenses resulted from reasonable and prudent management actions. The amounts in excess of the amounts actually recovered by the utility for steam supply shall be apportioned among and charged to the customers of the utility utilizing procedures that the commission determines are 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 those customers if the amounts in excess of the amounts actually recovered by the utility for cost of steam supply had been included in the steam supply cost recovery factors with respect to those customers during the period covered. Charges for the excess amounts shall be spread over a period that the commission determines is 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 steam supply cost reconciliation, the refunds, credits, or additional

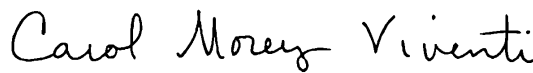
charges shall include interest. In determining the interest included in a refund, credit, or additional charge pursuant to this subsection, the commission shall consider, to the extent material and practicable, the time at which the excess recoveries or insufficient recoveries, or both, occurred. The 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 utility during the appropriate period, or the authorized rate of return on the common stock of the utility during that same period. Costs incurred by the utility for refunds and interest on refunds shall not be charged to customers. 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 utility during the appropriate period.

(16) The commission shall file a report with the governor and legislature 5 years after the effective date of the amendatory act that added this section, and every 5 years thereafter, that shall include recommendations for any needed legislation regarding this section.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor