

HOUSE BILL No. 5521

December 4, 2007, Introduced by Reps. Gaffney, Mayes, Accavitti, LaJoy and Hune and referred to the Committee on Energy and Technology.

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,"

(MCL 460.1 to 460.10cc) by adding section 6r.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 6R. (1) AN ELECTRIC UTILITY THAT PROPOSES TO CONSTRUCT AN
2 ELECTRIC GENERATION FACILITY, MAKE A SIGNIFICANT INVESTMENT IN AN
3 EXISTING ELECTRIC GENERATION FACILITY, PURCHASE AN EXISTING
4 ELECTRIC GENERATION FACILITY, OR ENTER INTO A POWER PURCHASE
5 AGREEMENT FOR THE PURCHASE OF ELECTRIC CAPACITY FOR A PERIOD IN
6 EXCESS OF 5 YEARS MAY SUBMIT AN APPLICATION TO THE COMMISSION
7 SEEKING CERTIFICATION OF THAT CONSTRUCTION, INVESTMENT, OR
8 PURCHASE.

9 (2) AN ELECTRIC UTILITY SUBMITTING AN APPLICATION UNDER THIS
10 SECTION MAY REQUEST 1 OR MORE OF THE FOLLOWING FORMS OF RELIEF:

11 (A) CERTIFICATION THAT THE POWER TO BE SUPPLIED AS A RESULT OF
12 THE PROPOSED CONSTRUCTION, INVESTMENT, OR PURCHASE IS NEEDED.

13 (B) CERTIFICATION THAT THE SIZE, FUEL TYPE, AND OTHER DESIGN
14 CHARACTERISTICS OF THE EXISTING OR PROPOSED ELECTRIC GENERATION
15 FACILITY OR THE TERMS OF THE POWER PURCHASE AGREEMENT REPRESENT A
16 REASONABLE AND PRUDENT MEANS OF MEETING THAT POWER NEED.

17 (C) CERTIFICATION THAT THE PRICE SPECIFIED IN THE POWER
18 PURCHASE AGREEMENT WILL BE RECOVERED IN RATES FROM THE ELECTRIC
19 UTILITY'S CUSTOMERS.

20 (D) CERTIFICATION THAT THE ESTIMATED PURCHASE OR CAPITAL COSTS
21 OF THE EXISTING OR PROPOSED ELECTRIC GENERATION FACILITY,
22 INCLUDING, BUT NOT LIMITED TO, THE COSTS OF SITING AND LICENSING A
23 NEW FACILITY, THE CAPITAL AND OPERATING COSTS TO INSTALL EQUIPMENT
24 NEEDED TO COMPLY WITH FEDERAL, STATE, OR LOCAL ENVIRONMENTAL
25 REQUIREMENTS, AND THE ESTIMATED COST OF POWER FROM THE NEW ELECTRIC
26 GENERATION FACILITY, WILL BE RECOVERABLE IN RATES FROM THE ELECTRIC
27 UTILITY'S CUSTOMERS.

1 (E) CERTIFICATION THAT, WITH RESPECT TO THE CONSTRUCTION COSTS
2 OF AN ELECTRIC GENERATION FACILITY, THE COMMISSION WILL ADOPT RATE-
3 MAKING TREATMENT THAT WILL ALLOW THE UTILITY TO EARN A CASH RETURN
4 ON ITS INVESTMENT DURING THE CONSTRUCTION PERIOD OF THAT FACILITY.

5 (3) WITHIN 180 DAYS OF THE FILING OF AN APPLICATION UNDER THIS
6 SECTION, THE COMMISSION SHALL HOLD A HEARING ON THE APPLICATION AND
7 ISSUE AN ORDER GRANTING OR DENYING THE REQUESTED CERTIFICATION. THE
8 COMMISSION SHALL GRANT THE REQUESTED CERTIFICATION IF IT DETERMINES
9 ALL OF THE FOLLOWING:

10 (A) THE UTILITY HAS FILED AN INTEGRATED RESOURCE PLAN THAT
11 ADDRESSES ISSUES SUCH AS CAPACITY NEEDS, ENERGY EFFICIENCY, AND THE
12 AVAILABILITY OF RENEWABLE ENERGY RESOURCES.

13 (B) THERE IS A NEED FOR THE POWER THAT WOULD BE SUPPLIED BY
14 THE EXISTING OR PROPOSED ELECTRIC GENERATION FACILITY OR PURSUANT
15 TO THE PROPOSED POWER PURCHASE AGREEMENT.

16 (C) THE INFORMATION SUPPLIED INDICATES THAT THE EXISTING OR
17 PROPOSED ELECTRIC GENERATION FACILITY WILL COMPLY WITH ALL
18 APPLICABLE STATE AND FEDERAL ENVIRONMENTAL STANDARDS, LAWS, AND
19 RULES.

20 (D) THE ESTIMATED COST OF POWER FROM THE EXISTING OR PROPOSED
21 ELECTRIC GENERATION FACILITY OR THE PRICE OF POWER SPECIFIED IN THE
22 PROPOSED POWER PURCHASE AGREEMENT IS REASONABLE. THE COMMISSION
23 SHALL FIND THAT THE COST IS REASONABLE IF, IN THE CONSTRUCTION OR
24 SIGNIFICANT INVESTMENT IN A NEW OR EXISTING FACILITY, TO THE EXTENT
25 IT IS COMMERCIALY PRACTICABLE, THE ESTIMATED COSTS ARE THE RESULT
26 OF COMPETITIVELY BID ENGINEERING, PROCUREMENT, AND CONSTRUCTION
27 CONTRACTS, OR IN A POWER PURCHASE AGREEMENT, THE COST IS THE RESULT

1 OF A COMPETITIVE SOLICITATION.

2 (E) THE EXISTING OR PROPOSED ELECTRIC GENERATION FACILITY OR
3 PROPOSED POWER PURCHASE AGREEMENT REPRESENTS A REASONABLE AND
4 PRUDENT MEANS OF MEETING THE POWER NEED.

5 (4) IN A CERTIFICATION GRANTED UNDER THIS SECTION, THE
6 COMMISSION SHALL SPECIFY THE COSTS APPROVED FOR CONSTRUCTION OF THE
7 ELECTRIC GENERATION FACILITY, THE PRICE APPROVED FOR THE PURCHASE
8 OF THE EXISTING ELECTRIC GENERATION FACILITY, OR THE PRICE APPROVED
9 FOR THE PURCHASE OF POWER PURSUANT TO THE TERMS OF THE POWER
10 PURCHASE AGREEMENT.

11 (5) THE COMMISSION MAY UNDERTAKE PERIODIC REVIEWS OF A
12 CERTIFICATION GRANTED UNDER SUBSECTION (3) AND MAY ADOPT A
13 MECHANISM TO ALLOCATE BETWEEN CUSTOMERS AND AN ELECTRIC UTILITY ANY
14 DIFFERENCES BETWEEN THE COSTS INCLUDED IN THE CERTIFICATION AND THE
15 ACTUAL COSTS.

16 (6) IF THE COMMISSION DENIES ANY OF THE RELIEF REQUESTED BY AN
17 ELECTRIC UTILITY, THE ELECTRIC UTILITY MAY WITHDRAW ITS APPLICATION
18 OR PROCEED WITH THE PROPOSED CONSTRUCTION, PURCHASE, OR POWER
19 PURCHASE AGREEMENT.

20 (7) THE COMMISSION SHALL INCLUDE IN AN ELECTRIC UTILITY'S
21 RETAIL RATES ALL REASONABLE AND PRUDENT COSTS FOR AN ELECTRIC
22 GENERATION FACILITY OR POWER PURCHASE AGREEMENT FOR WHICH A
23 CERTIFICATION HAS BEEN GRANTED. THE COMMISSION SHALL NOT DISALLOW
24 RECOVERY OF COSTS AN ELECTRIC UTILITY INCURS IN CONSTRUCTING OR
25 PURCHASING AN ELECTRIC GENERATION FACILITY OR IN PURCHASING POWER
26 PURSUANT TO A POWER PURCHASE AGREEMENT FOR WHICH A CERTIFICATION
27 HAS BEEN GRANTED, IF THE COSTS DO NOT EXCEED THE COSTS APPROVED BY

1 THE COMMISSION IN THE CERTIFICATION. THE COMMISSION SHALL INCLUDE
 2 IN THE ELECTRIC UTILITY'S RETAIL RATES COSTS ACTUALLY INCURRED BY
 3 THE ELECTRIC UTILITY THAT EXCEED THE COSTS APPROVED BY THE
 4 COMMISSION IF THE ELECTRIC UTILITY PRESENTS EVIDENCE TO THE
 5 COMMISSION DEMONSTRATING THAT THE ADDITIONAL COSTS ARE REASONABLE
 6 AND PRUDENT.

7 (8) AS USED IN THIS SECTION, "ELECTRIC GENERATION FACILITY"
 8 MEANS A FACILITY FOR THE GENERATION OF ELECTRICITY, INCLUDING, BUT
 9 NOT LIMITED TO, A RENEWABLE RESOURCE GENERATION FACILITY.

10 Enacting section 1. This amendatory act does not take effect
 11 unless all of the following bills of the 94th Legislature are
 12 enacted into law:

13 (a) Senate Bill No.____ or House Bill No. 5524(request no.
 14 02552'07 *).

15 (b) Senate Bill No.____ or House Bill No. 5522(request no.
 16 04884'07 *).

17 (c) Senate Bill No.____ or House Bill No. 5520(request no.
 18 04885'07 *).

19 (d) Senate Bill No.____ or House Bill No. 5523(request no.
 20 05023'07 *).

21 (e) Senate Bill No.____ or House Bill No.____ (request no.
 22 05570'07).

23 (f) Senate Bill No.____ or House Bill No.____ (request no.
 24 05919'07).

25 (g) Senate Bill No.____ or House Bill No. 5525(request no.
 26 05920'07).

27 (h) House Bill No. 5383.

1 (i) House Bill No. 5384.