

# SENATE BILL No. 427

April 24, 2007, Introduced by Senators KUIPERS and ALLEN and referred to the Committee on Energy Policy and Public Utilities.

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 the title and section 6j (MCL 460.6j), the title as

amended by 2005 PA 190 and section 6j as amended by 1987 PA 81, and by adding section 6q.

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

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TITLE

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 REQUIRE THE PUBLIC SERVICE COMMISSION TO ASSESS FUTURE CAPACITY AND ENERGY NEEDS; TO REQUIRE CERTAIN ELECTRIC UTILITIES TO SECURE NEEDED CAPACITY AND ENERGY; TO REQUIRE COMPETITIVE PROCUREMENT OF CAPACITY AND ENERGY;** 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

1 purpose of this act; to prescribe remedies and penalties; and to  
2 repeal acts and parts of acts.

3 Sec. 6j. (1) As used in this act:

4 (a) "Power supply cost recovery clause" means a clause in the  
5 electric rates or rate schedule of a utility which permits the  
6 monthly adjustment of rates for power supply to allow the utility  
7 to recover the booked costs, including transportation costs,  
8 reclamation costs, and disposal and reprocessing costs, of fuel  
9 burned by the utility for electric generation and the booked costs  
10 of purchased and net interchanged power transactions by the utility  
11 incurred under reasonable and prudent policies and practices.

12 (b) "Power supply cost recovery factor" means that element of  
13 the rates to be charged for electric service to reflect power  
14 supply costs incurred by an electric utility and made pursuant to a  
15 power supply cost recovery clause incorporated in the rates or rate  
16 schedule of an electric utility.

17 **(C) "RESOURCE SUPPLIER" MEANS A PERSON WITH THE CAPABILITY TO**  
18 **DEVELOP AND PROVIDE ELECTRIC GENERATING CAPACITY, ELECTRIC ENERGY,**  
19 **ELECTRIC TRANSMISSION SERVICE, OR ELECTRIC LOAD REDUCTION SERVICE.**

20 (2) Pursuant to its authority under this act, the public  
21 service commission may incorporate a power supply cost recovery  
22 clause in the electric rates or rate schedule of a utility, but is  
23 not required to do so. Any order incorporating a power supply cost  
24 recovery clause shall be as a result of a hearing solely on the  
25 question of the inclusion of the clause in the rates or rate  
26 schedule, which hearing shall be conducted as a contested case  
27 pursuant to chapter 4 of the administrative procedures act of 1969,

1 ~~Act No. 306 of the Public Acts of 1969, being sections 24.271 to~~  
2 ~~24.287 of the Michigan Compiled Laws 1969 PA 306, MCL 24.271 TO~~  
3 ~~24.287~~, or, pursuant to subsection (18), as a result of a general  
4 rate case. Any order incorporating a power supply cost recovery  
5 clause shall replace and rescind any previous fuel cost adjustment  
6 clause or purchased and net interchanged power adjustment clause  
7 incorporated in the electric rates of the utility upon the  
8 effective date of the first power supply cost recovery factor  
9 authorized for the utility under its power supply cost recovery  
10 clause.

11 (3) In order to implement the power supply cost recovery  
12 clause established pursuant to subsection (2), a utility annually  
13 shall file, pursuant to procedures established by the commission,  
14 if any, a complete power supply cost recovery plan describing the  
15 expected sources of electric power supply and changes in the cost  
16 of power supply anticipated over a future 12-month period specified  
17 by the commission and requesting for each of those 12 months a  
18 specific power supply cost recovery factor. The plan shall be filed  
19 not less than 3 months before the beginning of the 12-month period  
20 covered by the plan. The plan shall describe all major contracts  
21 and power supply arrangements entered into by the utility for  
22 providing power supply during the specified 12-month period. The  
23 description of the major contracts and arrangements shall include  
24 the price of fuel, the duration of the contract or arrangement, and  
25 an explanation or description of any other term or provision as  
26 required by the commission. The plan shall also include the  
27 utility's evaluation of the reasonableness and prudence of its

1 decisions to provide power supply in the manner described in the  
2 plan, in light of its existing sources of electrical generation,  
3 and an explanation of the actions taken by the utility to minimize  
4 the cost of fuel to the utility.

5 (4) In order to implement the power supply cost recovery  
6 clause established pursuant to subsection (2), a utility shall  
7 file, contemporaneously with the power supply cost recovery plan  
8 required by subsection (3), a 5-year forecast of the power supply  
9 requirements of its customers, its anticipated sources of supply,  
10 and projections of power supply costs, in light of its existing  
11 sources of electrical generation and sources of electrical  
12 generation under construction. The forecast shall include a  
13 description of all relevant major contracts and power supply  
14 arrangements entered into or contemplated by the utility, and such  
15 other information as the commission may require.

16 (5) If a utility files a power supply cost recovery plan and a  
17 5-year forecast as provided in subsections (3) and (4), the  
18 commission shall conduct a proceeding, to be known as a power  
19 supply and cost review, for the purpose of evaluating the  
20 reasonableness and prudence of the power supply cost recovery plan  
21 filed by a utility pursuant to subsection (3), and establishing the  
22 power supply cost recovery factors to implement a power supply cost  
23 recovery clause incorporated in the electric rates or rate schedule  
24 of the utility. The power supply and cost review shall be conducted  
25 as a contested case pursuant to chapter 4 of the administrative  
26 procedures act of 1969, ~~Act No. 306 of the Public Acts of 1969~~ 1969  
27 PA 306, MCL 24.271 TO 24.287.

1           (6) In its final order in a power supply and cost review, the  
2 commission shall evaluate the reasonableness and prudence of the  
3 decisions underlying the power supply cost recovery plan filed by  
4 the utility pursuant to subsection (3), and shall approve,  
5 disapprove, or amend the power supply cost recovery plan  
6 accordingly. In evaluating the decisions underlying the power  
7 supply cost recovery plan, the commission shall consider the cost  
8 and availability of the electrical generation available to the  
9 utility; the cost of short-term firm purchases available to the  
10 utility; the availability of interruptible service; the ability of  
11 the utility to reduce or to eliminate any firm sales to out-of-  
12 state customers if the utility is not a multi-state utility whose  
13 firm sales are subject to other regulatory authority; whether the  
14 utility has taken all appropriate actions to minimize the cost of  
15 fuel; and other relevant factors. The commission shall approve,  
16 reject, or amend the 12 monthly power supply cost recovery factors  
17 requested by the utility in its power supply cost recovery plan.  
18 The factors shall not reflect items the commission could reasonably  
19 anticipate would be disallowed under subsection (13). The factors  
20 ordered shall be described in fixed dollar amounts per unit of  
21 electricity, but may include specific amounts contingent on future  
22 events.

23           (7) In its final order in a power supply and cost review, the  
24 commission shall evaluate the decisions underlying the 5-year  
25 forecast filed by a utility pursuant to subsection (4). The  
26 commission may also indicate any cost items in the 5-year forecast  
27 that, on the basis of present evidence, the commission would be

1 unlikely to permit the utility to recover from its customers in  
2 rates, rate schedules, or power supply cost recovery factors  
3 established in the future.

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

13 (9) If the commission has made a final or temporary order in a  
14 power supply and cost review, the utility may each month  
15 incorporate in its rates for the period covered by the order any  
16 amounts up to the power supply cost recovery factors permitted in  
17 that order. If the commission has not made a final or temporary  
18 order within 3 months of the submission of a complete power supply  
19 cost recovery plan, or by the beginning of the period covered in  
20 the plan, whichever comes later, or if a temporary order has  
21 expired without being extended or replaced, then pending an order  
22 which determines the power supply cost recovery factors, a utility  
23 may each month adjust its rates to incorporate all or a part of the  
24 power supply cost recovery factors requested in its plan. Any  
25 amounts collected under the power supply cost recovery factors  
26 before the commission makes its final order shall be subject to  
27 prompt refund with interest to the extent that the total amounts

1 collected exceed the total amounts determined in the commission's  
2 final order to be reasonable and prudent for the same period of  
3 time.

4 (10) Not less than 3 months before the beginning of the third  
5 quarter of the 12-month period, the utility may file a revised  
6 power supply cost recovery plan which shall cover the remainder of  
7 the 12-month period. Upon receipt of the revised power supply cost  
8 recovery plan, the commission shall reopen the power supply and  
9 cost review. In addition, the commission may reopen the power  
10 supply and cost review on its own motion or on the showing of good  
11 cause by any party if at least 6 months have elapsed since the  
12 utility submitted its complete filing and if there are at least 60  
13 days remaining in the 12-month period under consideration. A  
14 reopened power supply and cost review shall be conducted as a  
15 contested case pursuant to chapter 4 of the administrative  
16 procedures act of 1969, ~~Act No. 306 of the Public Acts of 1969-1969~~  
17 **PA 306, MCL 24.271 TO 24.287**, and in accordance with subsections  
18 (3), (6), (8), and (9).

19 (11) Not more than 45 days following the last day of each  
20 billing month in which a power supply cost recovery factor has been  
21 applied to customers' bills, the utility shall file with the  
22 commission a detailed statement for that month of the revenues  
23 recorded pursuant to the power supply cost recovery factor and the  
24 allowance for cost of power supply included in the base rates  
25 established in the latest commission order for the utility, and the  
26 cost of power supply. The detailed statement shall be in the manner  
27 and form prescribed by the commission. The commission shall



1 establish procedures for insuring that the detailed statement is  
2 promptly verified and corrected if necessary.

3 (12) Not less than once a year, and not later than 3 months  
4 after the end of the 12-month period covered by a utility's power  
5 supply cost recovery plan, the commission shall commence a  
6 proceeding, to be known as a power supply cost reconciliation, as a  
7 contested case pursuant to chapter 4 of the administrative  
8 procedures act of 1969, ~~Act No. 306 of the Public Acts of 1969~~ **1969**  
9 **PA 306, MCL 24.271 TO 24.287**. Reasonable discovery shall be  
10 permitted before and during the reconciliation proceeding in order  
11 to assist parties and interested persons in obtaining evidence  
12 concerning reconciliation issues including, but not limited to, the  
13 reasonableness and prudence of expenditures and the amounts  
14 collected pursuant to the clause. At the power supply cost  
15 reconciliation the commission shall reconcile the revenues recorded  
16 pursuant to the power supply cost recovery factors and the  
17 allowance for cost of power supply included in the base rates  
18 established in the latest commission order for the utility with the  
19 amounts actually expensed and included in the cost of power supply  
20 by the utility. The commission shall consider any issue regarding  
21 the reasonableness and prudence of expenses for which customers  
22 were charged if the issue was not considered adequately at a  
23 previously conducted power supply and cost review.

24 (13) In its order in a power supply cost reconciliation, the  
25 commission shall:

26 (a) Disallow cost increases resulting from changes in  
27 accounting or rate-making expense treatment not previously approved

1 by the commission. The commission may order the utility to pay a  
2 penalty not to exceed 25% of the amount improperly collected. Costs  
3 incurred by the utility for penalty payments shall not be charged  
4 to customers.

5 (b) Disallow any capacity charges associated with ~~power~~**EITHER**  
6 **OF THE FOLLOWING:**

7 (i) **POWER PURCHASED BY A UTILITY WITH FEWER THAN 1,000,000**  
8 **CUSTOMERS IN THIS STATE** for periods in excess of 6 months unless  
9 the utility has obtained the prior approval of the commission.

10 (ii) **POWER PURCHASED BY A UTILITY WITH 1,000,000 OR MORE**  
11 **CUSTOMERS IN THIS STATE FOR PERIODS IN EXCESS OF 6 MONTHS UNLESS**  
12 **THE CHARGES HAVE BEEN INCURRED UNDER A CONTRACT ENTERED INTO BY THE**  
13 **UTILITY FOR CAPACITY OR ENERGY UNDER SECTION 6Q AND PROCURED**  
14 **PURSUANT TO A REQUEST FOR PROPOSALS MADE IN ACCORDANCE WITH THE**  
15 **PROCEDURES ESTABLISHED BY THE COMMISSION IN SECTION 6Q(6).** If the  
16 commission has approved capacity charges in a contract with a  
17 qualifying facility, as defined by the federal energy regulatory  
18 commission pursuant to the public utilities regulatory policies act  
19 of 1978, Public Law 95-617, 92 Stat. 3117, the commission shall not  
20 disallow the capacity charges for the facility in the power supply  
21 cost reconciliation unless the commission has ordered revised  
22 capacity charges upon reconsideration pursuant to this subsection.  
23 A contract shall be valid and binding in accordance with its terms  
24 and capacity charges paid pursuant to such a contract shall be  
25 recoverable costs of the utility for rate-making purposes  
26 notwithstanding that the order approving such a contract is later  
27 vacated, modified, or otherwise held to be invalid in whole or in

1 part if the order approving the contract has not been stayed or  
2 suspended by a competent court within 30 days after the date of the  
3 order, or within 30 days of ~~the effective date of the 1987~~  
4 ~~amendatory act that added subsection (19)~~ **JUNE 29, 1987** if the  
5 order was issued after September 1, 1986, and before ~~the effective~~  
6 ~~date of the 1987 amendatory act that added subsection (19)~~ **JUNE 29,**  
7 **1987.** The scope and manner of the review of capacity charges for a  
8 qualifying facility shall be determined by the commission. Except  
9 as to approvals for qualifying facilities granted by the commission  
10 prior to June 1, 1987, proceedings before the commission seeking  
11 such approvals shall be conducted as a contested case pursuant to  
12 chapter 4 of the administrative procedures act of 1969, ~~Act No. 306~~  
13 ~~of the Public Acts of 1969~~ **1969 PA 306, MCL 24.271 TO 24.287.** The  
14 commission, upon its own motion or upon application of any person,  
15 may reconsider its approval of capacity charges in a contested case  
16 hearing after passage of a period necessary for financing the  
17 qualifying facility, provided that:

18 (A) ~~(i)~~—The commission has first issued an order making a  
19 finding based on evidence presented in a contested case that there  
20 has been a substantial change in circumstances since the  
21 commission's initial approval; and

22 (B) ~~(ii)~~—Such a commission finding shall be set forth in a  
23 commission order subject to immediate judicial review.

24 The financing period for a qualifying facility during which  
25 previously approved capacity charges shall not be subject to  
26 commission reconsideration shall be 17.5 years, beginning with the  
27 date of commercial operation, for all qualifying facilities, except

1 that the minimum financing period before reconsideration of the  
2 previously approved capacity charges shall be for the duration of  
3 the financing for a qualifying facility which produces electric  
4 energy by the use of biomass, waste, wood, hydroelectric, wind, and  
5 other renewable resources, or any combination of renewable  
6 resources, as the primary energy source.

7 (c) Disallow net increased costs attributable to a generating  
8 plant outage of more than 90 days in duration unless the utility  
9 demonstrates by clear and satisfactory evidence that the outage, or  
10 any part of the outage, was not caused or prolonged by the  
11 utility's negligence or by unreasonable or imprudent management.

12 (d) Disallow transportation costs attributable to capital  
13 investments to develop a utility's capability to transport fuel or  
14 relocate fuel at the utility's facilities and disallow unloading  
15 and handling expenses incurred after receipt of fuel by the  
16 utility.

17 (e) Disallow the cost of fuel purchased from an affiliated  
18 company to the extent that such fuel is more costly than fuel of  
19 requisite quality available at or about the same time from other  
20 suppliers with whom it would be comparably cost beneficial to deal.

21 (f) Disallow charges unreasonably or imprudently incurred for  
22 fuel not taken.

23 (g) Disallow additional costs resulting from unreasonably or  
24 imprudently renegotiated fuel contracts.

25 (h) Disallow penalty charges unreasonably or imprudently  
26 incurred.

27 (i) Disallow demurrage charges.

1           (j) Disallow increases in charges for nuclear fuel disposal  
2 unless the utility has received the prior approval of the  
3 commission.

4           (K) ALLOW ALL COSTS WHICH DO NOT EXCEED THE LIMITATIONS ON  
5 COMPENSATION SET FORTH IN SECTION 6Q(6)(G) INCURRED BY THE UTILITY  
6 UNDER A CONTRACT TO SECURE ELECTRIC GENERATING CAPACITY OR TO  
7 PURCHASE ELECTRICITY FOUND TO BE NEEDED UNDER SECTION 6Q(1) AND  
8 ENTERED INTO BY THE UTILITY PURSUANT TO A REQUEST FOR PROPOSALS  
9 UNDER SECTION 6Q(6) INCLUDING ALL REASONABLE COSTS INCURRED IN  
10 CONNECTION WITH THE ISSUANCE, ADMINISTRATION, AND AWARD OF A  
11 CONTRACT PURSUANT TO SECTION 6Q(6).

12           (14) In its order in a power supply cost reconciliation, the  
13 commission shall require a utility to refund to customers or credit  
14 to customers' bills any net amount determined to have been  
15 recovered over the period covered in excess of the amounts  
16 determined to have been actually expensed by the utility for power  
17 supply, and to have been incurred through reasonable and prudent  
18 actions not precluded by the commission order in the power supply  
19 and cost review. Such refunds or credits shall be apportioned among  
20 the customers of the utility utilizing procedures that the  
21 commission determines to be reasonable. The commission may adopt  
22 different procedures with respect to customers served under the  
23 various rate schedules of the utility and may, in appropriate  
24 circumstances, order refunds or credits in proportion to the excess  
25 amounts actually collected from each such customer during the  
26 period covered.

27           (15) In its order in a power supply cost reconciliation, the

1 commission shall authorize a utility to recover from customers any  
2 net amount by which the amount determined to have been recovered  
3 over the period covered was less than the amount determined to have  
4 been actually expended by the utility for power supply, and to have  
5 been incurred through reasonable and prudent actions not precluded  
6 by the commission order in the power supply and cost review. For  
7 excess costs incurred through management actions contrary to the  
8 commission's power supply and cost review order, the commission  
9 shall authorize a utility to recover costs incurred for power  
10 supply in the reconciliation period in excess of the amount  
11 recovered over the period only if the utility demonstrates by clear  
12 and convincing evidence that the excess expenses were beyond the  
13 ability of the utility to control through reasonable and prudent  
14 actions. For excess costs incurred through management actions  
15 consistent with the commission's power supply and cost review  
16 order, the commission shall authorize a utility to recover costs  
17 incurred for power supply in the reconciliation period in excess of  
18 the amount recovered over the period only if the utility  
19 demonstrates that the level of such expenses resulted from  
20 reasonable and prudent management actions. Such amounts in excess  
21 of the amounts actually recovered by the utility for power supply  
22 shall be apportioned among and charged to the customers of the  
23 utility utilizing procedures that the commission determines to be  
24 reasonable. The commission may adopt different procedures with  
25 respect to customers served under the various rate schedules of the  
26 utility and may, in appropriate circumstances, order charges to be  
27 made in proportion to the amounts which would have been paid by

1 such customers if the amounts in excess of the amounts actually  
2 recovered by the utility for cost of power supply had been included  
3 in the power supply cost recovery factors with respect to such  
4 customers during the period covered. Charges for such excess  
5 amounts shall be spread over a period that the commission  
6 determines to be appropriate.

7 (16) If the commission orders refunds or credits pursuant to  
8 subsection (14), or additional charges to customers pursuant to  
9 subsection (15), in its final order in a power supply cost  
10 reconciliation, the refunds, credits, or additional charges shall  
11 include interest. In determining the interest included in a refund,  
12 credit, or additional charge pursuant to this subsection, the  
13 commission shall consider, to the extent material and practicable,  
14 the time at which the excess recoveries or insufficient recoveries,  
15 or both occurred. The commission shall determine a rate of interest  
16 for excess recoveries, refunds, and credits equal to the greater of  
17 the average short-term borrowing rate available to the utility  
18 during the appropriate period, or the authorized rate of return on  
19 the common stock of the utility during that same period. Costs  
20 incurred by the utility for refunds and interest on refunds shall  
21 not be charged to customers. The commission shall determine a rate  
22 of interest for insufficient recoveries and additional charges  
23 equal to the average short-term borrowing rate available to the  
24 utility during the appropriate period.

25 (17) To avoid undue hardship or unduly burdensome or excessive  
26 cost, the commission may:

27 (a) Exempt an electric utility with fewer than 200,000

1 customers in the state of Michigan from 1 or more of the procedural  
2 provisions of this section or may modify the filing requirements of  
3 this section.

4 (b) Exempt an energy utility organized as a cooperative  
5 corporation pursuant to sections 98 to 109 of ~~Act No. 327 of the~~  
6 ~~Public Acts of 1931, being sections 450.98 to 450.109 of the~~  
7 ~~Michigan Compiled Laws 1931 PA 327, MCL 450.98 TO 450.109~~, from 1  
8 or more of the provisions of this section.

9 (18) Notwithstanding any other provision of this act, the  
10 commission may, upon application by an electric utility, set power  
11 supply cost recovery factors, in a manner otherwise consistent with  
12 this act, in an order resulting from a general rate case. Within  
13 120 days following the effective date of this section, for the  
14 purpose of setting power supply cost recovery factors, the  
15 commission shall permit an electric utility to reopen a general  
16 rate case in which a final order was issued within 120 days before  
17 or after the effective date of this section or to amend an  
18 application or reopen the evidentiary record in a pending general  
19 rate case. If the commission sets power supply cost recovery  
20 factors in an order resulting from a general rate case:

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

25 (b) Annual reconciliation proceedings shall be conducted  
26 pursuant to subsection (12) and if an annual reconciliation  
27 proceeding shows a recoverable amount pursuant to subsection (15),



1 the commission shall authorize the electric utility to defer the  
2 amount and to accumulate interest on the amount pursuant to  
3 subsection (16), and in the next order resulting from a general  
4 rate case authorize the utility to recover the amount and interest  
5 from its customers in the manner provided in subsection (15).

6 (c) The power supply cost recovery factors shall not be  
7 subject to revision pursuant to subsection (10).

8 (19) Five years after ~~the effective date of the amendatory act~~  
9 ~~that added this subsection~~ **JUNE 29, 1987**, and every 5 years  
10 thereafter, the standing committees of the house and senate that  
11 deal with public utilities shall review the amendatory act that  
12 added this subsection.

13 **SEC. 6Q. (1) FOR AN ELECTRIC UTILITY WITH MORE THAN 1,000,000**  
14 **CUSTOMERS IN THIS STATE, AS PART OF THE FIRST POWER SUPPLY AND COST**  
15 **REVIEW PROCEEDING CONDUCTED BY THE COMMISSION UNDER SECTION 6J(5)**  
16 **AFTER THE EFFECTIVE DATE OF THE ACT WHICH ADDED THIS SECTION, AND**  
17 **EVERY 2 YEARS THEREAFTER, THE COMMISSION SHALL, NO LATER THAN 180**  
18 **DAYS AFTER THE COMMENCEMENT OF THE PROCEEDING, DETERMINE THE**  
19 **ELECTRIC UTILITY'S REQUIREMENTS FOR RESOURCES TO MEET THE**  
20 **ELECTRICITY NEEDS OF ITS FULL-SERVICE CUSTOMERS FOR THE NEXT 10**  
21 **YEARS.**

22 (2) NO LATER THAN 15 DAYS BEFORE THE COMMENCEMENT OF ANY  
23 PROCEEDING UNDER SUBSECTION (1), THE COMMISSION SHALL PROVIDE  
24 NOTICE TO EACH REGIONAL TRANSMISSION ORGANIZATION SERVING ANY  
25 PORTION OF THE UTILITY'S SERVICE AREA. THE REGIONAL TRANSMISSION  
26 ORGANIZATION SHALL HAVE STANDING TO INTERVENE IN ANY PROCEEDING  
27 UNDER SUBSECTION (1).

1           (3) IN ADDITION TO ANY OTHER PERSON AUTHORIZED BY STATUTE,  
2 RULE, OR REGULATION, ANY ELECTRIC CUSTOMER, ALTERNATIVE ELECTRIC  
3 SUPPLIER, OR RESOURCE SUPPLIER HAS STANDING TO INTERVENE IN ANY  
4 POWER SUPPLY COST REVIEW PROCEEDING AND IN ANY POWER SUPPLY COST  
5 RECONCILIATION PROCEEDING.

6           (4) IN ITS DETERMINATION UNDER SUBSECTION (1), THE COMMISSION  
7 SHALL CONSIDER AND MAKE SPECIFIC FINDINGS WITH RESPECT TO EACH OF  
8 THE FOLLOWING:

9           (A) THE PROJECTED ANNUAL ELECTRIC LOAD REQUIREMENTS FOR ALL  
10 CUSTOMERS CONNECTED TO THE ELECTRIC UTILITY'S DISTRIBUTION SYSTEM  
11 FOR THE NEXT 10 YEARS.

12           (B) THE ELECTRIC UTILITY'S PROJECTED WHOLESALE SALES AND  
13 PURCHASES OF ELECTRICITY.

14           (C) THE ELECTRIC GENERATING CAPACITY LOCATED WITHIN THE  
15 ELECTRIC UTILITY'S SERVICE AREA, INCLUDING ELECTRIC GENERATING  
16 FACILITIES NOT OWNED BY THE ELECTRIC UTILITY.

17           (D) THE AVAILABLE TRANSMISSION CAPACITY AND THE COST OF  
18 ADDITIONAL TRANSMISSION CAPACITY THAT CAN BE USED TO SERVE  
19 CUSTOMERS WITHIN THE UTILITY'S DISTRIBUTION SERVICE AREA.

20           (E) THE COST AND RELIABILITY OF RESOURCES LOCATED OUTSIDE THE  
21 ELECTRIC UTILITY'S DISTRIBUTION SERVICE AREA THAT CAN BE USED TO  
22 SERVE CUSTOMERS WITHIN THE SERVICE AREA.

23           (F) THE PORTION OF THE ELECTRIC LOAD CONNECTED TO THE ELECTRIC  
24 UTILITY'S DISTRIBUTION SYSTEM PROJECTED TO BE SERVED BY ALTERNATIVE  
25 ELECTRIC SUPPLIERS.

26           (G) AN ANALYSIS OF THE PROJECTED MARKET PRICES FOR POWER  
27 PURCHASED UNDER THE RULES OF THE MIDWEST INDEPENDENT SYSTEM

1 OPERATOR AS COMPARED TO THE COSTS OF NEW ELECTRIC GENERATION  
2 FACILITIES AND NEW ELECTRIC TRANSMISSION FACILITIES.

3 (H) THE RELATIVE COSTS TO THE ELECTRIC UTILITY'S FULL-SERVICE  
4 CUSTOMERS OF MAINTAINING A 1-DAY INTERRUPTION IN 10 YEARS  
5 RELIABILITY STANDARD AND MORE OR LESS STRINGENT STANDARDS OF  
6 RELIABILITY.

7 (I) THE NEED FOR ADDITIONAL GENERATING OR TRANSMISSION  
8 CAPACITY TO MAINTAIN ELECTRIC RELIABILITY OR SECURE ECONOMIC  
9 ADVANTAGES TO THE UTILITY'S FULL-SERVICE CUSTOMERS.

10 (J) A REGIONAL AND STATEWIDE EVALUATION OF ELECTRIC SUPPLY AND  
11 DEMAND TO IDENTIFY SOURCES OUTSIDE OF THE ELECTRIC UTILITY SERVICE  
12 TERRITORY WHERE POWER MAY BE AVAILABLE OR WHERE THERE MAY BE A  
13 PARTICULARLY FAVORABLE SITE FOR BUILDING TRANSMISSION OR GENERATION  
14 FACILITIES.

15 (K) THE QUANTITY AND TYPE OF RESOURCES, INCLUDING RESERVES,  
16 REQUIRED BY THE OPEN ACCESS TRANSMISSION AND ENERGY MARKETS TARIFFS  
17 OF THE REGIONAL TRANSMISSION ORGANIZATION OR THE TARIFF OF ANY  
18 SUCCESSOR ORGANIZATION IN WHICH THE ELECTRIC UTILITY PARTICIPATES,  
19 AND RESOURCES REQUIRED BY RELIABILITY STANDARDS OR OTHER  
20 REQUIREMENTS IMPOSED UNDER THE AUTHORITY OF AN ELECTRIC RELIABILITY  
21 ORGANIZATION TO WHICH THE ELECTRIC UTILITY IS SUBJECT.

22 (5) IF THE COMMISSION CONCLUDES UNDER SUBSECTION (1) THAT  
23 THERE IS A NEED FOR ADDITIONAL RESOURCES TO SERVE THE ELECTRIC  
24 UTILITY'S FULL-SERVICE CUSTOMERS AT ANY TIME WITHIN THE NEXT 10  
25 YEARS, THE ELECTRIC UTILITY SHALL, ACCORDING TO THE PROCEDURES  
26 ESTABLISHED UNDER SUBSECTION (6) AND WITHIN THE TIME ORDERED BY THE  
27 COMMISSION, SECURE THE RESOURCES THE COMMISSION DETERMINES ARE

1 REQUIRED.

2 (6) IN A PROCEEDING UNDER SUBSECTION (1), IF THE COMMISSION  
3 FINDS ADDITIONAL RESOURCES ARE NEEDED, THE COMMISSION SHALL  
4 ESTABLISH OR REVISE THE PROCEDURES BY WHICH THE ELECTRIC UTILITY  
5 SHALL ACQUIRE THE RESOURCES. THE PROCEDURES SHALL DO ALL OF THE  
6 FOLLOWING:

7 (A) INCLUDE A FORM OF REQUEST FOR PROPOSALS TO BE EMPLOYED BY  
8 THE UTILITY FOR THE PURPOSE OF PROCURING NEEDED RESOURCES.

9 (B) SPECIFY THE EVALUATION CRITERIA BY WHICH THE PREFERRED  
10 PROPOSAL RECEIVED UNDER SUBDIVISION (A) WILL BE DETERMINED.

11 (C) ESTABLISH A PREFERRED FORM OF CONTRACT OR STANDARDIZED  
12 CONTRACT TERMS TO BE ENTERED INTO BY THE SELECTED RESOURCE SUPPLIER  
13 AND THE ELECTRIC UTILITY.

14 (D) PRESCRIBE THE FOLLOWING:

15 (i) THE RESPONSIBILITIES AND DUTIES OF AN INDEPENDENT THIRD-  
16 PARTY EVALUATOR SELECTED BY THE COMMISSION TO ISSUE REQUESTS FOR  
17 PROPOSALS, ADMINISTER THE REQUEST FOR PROPOSALS PROCESS, RECEIVE  
18 PROPOSALS SUBMITTED IN RESPONSE TO A REQUEST FOR PROPOSALS,  
19 IDENTIFY THE PROPOSAL WHICH BEST MEETS THE EVALUATION CRITERIA, AND  
20 RECOMMEND TO THE COMMISSION THE SELECTION OF 1 OR MORE PROPOSALS.

21 (ii) THE MEANS BY WHICH THE EVALUATOR IS SELECTED AND THE TIME  
22 FOLLOWING SUBMISSION OF PROPOSALS WITHIN WHICH THE INDEPENDENT  
23 EVALUATOR SHALL RECOMMEND A PROPOSAL FOR SELECTION.

24 (E) PRESCRIBE CONDITIONS UNDER WHICH THE ELECTRIC UTILITY MAY  
25 SUBMIT A PROPOSAL IN RESPONSE TO ITS OWN REQUEST FOR PROPOSALS  
26 DESIGNED TO ASSURE THAT UTILITY USE OF RATEPAYER-FUNDED ASSETS DOES  
27 NOT RESULT IN PLACING RESOURCE SUPPLIERS SUBMITTING PROPOSALS AT A

1 DISADVANTAGE AND TO ASSURE THAT THE PARTICIPATION OF THE ELECTRIC  
2 UTILITY WILL BE CONSISTENT WITH THE ELECTRIC UTILITY'S CODE OF  
3 CONDUCT.

4 (F) PRESCRIBE THE PROCESS FOR IDENTIFICATION AND APPROVAL OF  
5 PROPOSALS.

6 (G) PRESCRIBE TERMS TO BE INCLUDED IN ANY CONTRACT BETWEEN AN  
7 ELECTRIC UTILITY AND A RESOURCE SUPPLIER WHICH WILL LIMIT  
8 COMPENSATION TO BE RECEIVED BY THE RESOURCE SUPPLIER TO NO MORE  
9 THAN THE COMPENSATION PROPOSED.

10 (H) CLEARLY IDENTIFY IN THE REQUEST FOR PROPOSALS WHICH RISKS  
11 ARE TO BE ASSUMED BY UTILITY CUSTOMERS AND WHICH RISKS ARE TO BE  
12 BORNE BY PERSONS SUBMITTING PROPOSALS IN CONNECTION WITH EACH  
13 RESOURCE TO BE PROCURED.

14 (I) PRESCRIBE CRITERIA WHICH WILL PERMIT PERSONS PROPOSING TO  
15 PROVIDE DEMAND-SIDE MANAGEMENT, TRANSMISSION SERVICE, OR GENERATING  
16 CAPACITY, INCLUDING RENEWABLE AND DISTRIBUTED GENERATING CAPACITY,  
17 TO FAIRLY COMPETE TO PROVIDE REQUIRED RESOURCES.

18 (J) PROVIDE REASONABLE MEANS TO ASSURE THAT THE REQUEST FOR  
19 PROPOSALS PROCESS WILL BE OPEN AND FAIR TO ALL PARTICIPATING  
20 PARTIES.

21 (K) PROVIDE THAT, AFTER THE COMMISSION HAS SELECTED A  
22 PROPOSAL, ALL PROPOSALS SUBMITTED, EXCEPT THE SELECTED PROPOSAL, BE  
23 AFFORDED CONFIDENTIAL TREATMENT TO THE EXTENT PERMITTED BY LAW.

24 (L) PROVIDE THAT DEMAND-SIDE MANAGEMENT RESOURCES AND RENEWABLE  
25 GENERATING RESOURCES ARE SELECTED IF THE COST OF THOSE RESOURCES  
26 DOES NOT EXCEED THE COST OF COMPETING PROPOSALS.

27 (M) PROVIDE THAT, IN CONSIDERING THE RELATIVE COST OF NEW

1 GENERATING RESOURCES, ALL COSTS OF TRANSMITTING POWER TO THE  
2 ELECTRIC UTILITY ARE CONSIDERED A PART OF THE COST OF GENERATION.

3 (N) PROVIDE FOR THE FOLLOWING:

4 (i) WITHIN THE TIME PRESCRIBED BY THE COMMISSION, THE  
5 INDEPENDENT EVALUATOR WILL RECOMMEND TO THE COMMISSION 1 OR MORE  
6 PROPOSALS FOR SELECTION.

7 (ii) THE RECOMMENDATION BE POSTED ON THE COMMISSION'S INTERNET  
8 SITE AND MAIL COPIES TO EACH PARTY TO THE PROCEEDING IN WHICH THE  
9 COMMISSION DETERMINED THE UTILITY'S RESOURCE NEEDS AND TO EACH  
10 SUPPLIER SUBMITTING A PROPOSAL.

11 (iii) ANY PERSON OR SUPPLIER NOTIFIED UNDER SUBPARAGRAPH (ii)  
12 MAY, WITHIN 15 DAYS OF THE DATE THE RECOMMENDATION IS POSTED,  
13 SUBMIT COMMENTS ON THE INDEPENDENT EVALUATOR'S RECOMMENDATION OR  
14 REQUEST COMMISSION REVIEW OF THE PROCESS OF REQUESTING, RECEIVING,  
15 AND SELECTING PROPOSALS.

16 (iv) WITHIN 30 DAYS OF THE DATE THE RECOMMENDATION IS POSTED,  
17 THE COMMISSION SHALL BY ORDER SELECT THE PROPOSAL MOST ADVANTAGEOUS  
18 TO THE UTILITY'S CUSTOMERS UNLESS THE UTILITY OR SUPPLIER COMMITTED  
19 FRAUD OR THE INDEPENDENT EVALUATOR FAILED TO FOLLOW COMMISSION  
20 PROCEDURES AND THE FAILURE WAS MATERIALLY DETRIMENTAL TO THE  
21 UTILITY'S CUSTOMERS.

22 (v) THAT THE UTILITY AND THE SUPPLIER SUBMITTING THE SELECTED  
23 PROPOSAL SHALL, NOT LATER THAN 5 DAYS AFTER THE COMMISSION'S ORDER  
24 SELECTING A PROPOSAL, EXECUTE A CONTRACT SETTING FORTH ALL TERMS  
25 AND CONDITIONS OF THE REQUEST FOR PROPOSALS EXCEPT TO THE EXTENT  
26 THEY HAVE BEEN MODIFIED IN THE SELECTED PROPOSAL.

27 (vi) THAT IF THE ORDER HAS NOT BEEN STAYED OR SUSPENDED BY A

1   COMPETENT COURT WITHIN 30 DAYS AFTER THE DATE OF THE ORDER, THE  
2   CONTRACT WILL BE VALID AND BINDING ACCORDING TO ITS TERMS  
3   NOTWITHSTANDING THAT THE COMMISSION'S PROCEDURES OR SELECTION IS  
4   LATER VACATED, MODIFIED, OR OTHERWISE HELD TO BE INVALID IN WHOLE  
5   OR IN PART.