

MICHIGAN PUBLIC SERVICE COMMISSION (MPSC)

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Senate Bill 502 (S-6) as passed by the Senate

Sponsor: Sen. Sue Shink

House Committee: Energy, Communications, and Technology

Senate Committee: Energy and Environment

Revised 11-2-23

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

Senate Bill 502 would amend 1939 PA 3, the enabling act for the Michigan Public Service Commission (MPSC). Among other things, the bill would increase the amounts that utility companies must pay in cost recovery cases, revise certain requirements for integrated resource plans (IRPs), provide certain public engagement requirements, and require consideration of environmental justice impacts in certain circumstances.

Utility Consumer Representation Fund

The bill would increase the amounts that energy utilities remit to the Utility Consumer Representation Fund. Utilities serving at least 100,000 *total* customers would be liable for a proportional share of a \$1.8 million assessment (currently set at \$900,000), which is allocated to the attorney general for participation in administrative and judicial proceedings in various utility cases. Utilities serving at least 100,000 *residential* customers would be liable for a proportional share of a \$2.0 million assessment (currently set at \$650,000), which is used to support the Utility Consumer Participation Board and application-based grants for interest groups that advocate on behalf of residential consumers.

Proposals for those grants must serve the interests of residential utility customers. The bill would add that the interest of residential consumers includes such things as considerations of the affordability of utility service in this state, the reduction of greenhouse gas emission from the utility sector and protection of public health, equitable access to energy efficiency, weatherization, efficient electrification measures, programs, and services, and clean energy technologies. The bill would require the Utility Consumer Participation Board to encourage grant-making to nonprofits representing environmental justice communities and communities with the highest energy burdens. In addition to proceedings currently in law, the bill would allow money in the Utility Consumer Representation Fund to be used for participation in administrative and judicial proceedings under section 6w of the act,¹ under the Electric Transmission Line Certification Act,² and under sections 22 and 73 of the Clean and Renewable Energy and Energy Waste Reduction Act.³

¹ <http://legislature.mi.gov/doc.aspx?mcl-460-6w>

² <http://legislature.mi.gov/doc.aspx?mcl-Act-30-of-1995>

³ <http://legislature.mi.gov/doc.aspx?mcl-460-1022> and <http://legislature.mi.gov/doc.aspx?mcl-460-1073>. Section 22 would be amended by Senate Bill 271 (<http://legislature.mi.gov/doc.aspx?2023-SB-0271>), and section 77 would be amended by Senate Bill 273 (<http://legislature.mi.gov/doc.aspx?2023-SB-0273>).

Integrated resource plans

The bill would remove a requirement that a utility must include in its integrated resource plan details regarding its plan to eliminate energy waste. Currently the IRP must include the type of generation technology proposed for a generation facility contained in the plan. The bill would further require that any plan that includes the construction of a new natural-gas-fired generation facility, or that proposes retiring or retaining one or more fossil fuel peaking plants, must include a review of the reasonably anticipated environmental justice impacts for each facility. Those impacts would include at least impacts to the environment, human health, and economic and social impacts.

In addition, an IRP would newly have to include all of the following under the bill:

- An analysis of how the electric utility’s plan complies with all of the following provisions of the Clean and Renewable Energy and Energy Waste Reduction Act:
 - The renewable energy plan requirements and goals of section 28.⁴
 - The clean energy requirements of section 51.⁵
 - The energy waste reduction measures in section 77.⁶
 - The energy storage target of section 101.⁷
- The projected long-term forecast of greenhouse gas emissions and other pollutants from power generated or purchased by the electric utility. The electric utility could include details on the broader emissions impact of shifting to electrification of transportation, buildings, and industries.
- An environmental justice impact analysis that includes a review of the reasonably anticipated environmental justice impacts for any plan that includes the construction of a new natural-gas-fired generation facility (as also required above) and an analysis of whether the facility complies with the clean energy system requirements of the Clean and Renewable Energy and Energy Waste Reduction Act.
- If a plan proposes retiring or retaining one or more fossil fuel peaking plants, a review of the reasonably anticipated environmental justice impacts for each generation facility (as also required above), but only if the plant is located in an environmental justice community (more limited than the provision described above).

The bill would require the MPSC, in reviewing an IRP, to request an advisory opinion from EGLE regarding the following (in addition to currently required topics):

- The potential impacts of proposed energy generation resources and of any prudent and feasible alternatives identified by EGLE on whether the IRP makes adequate progress toward achieving the clean energy standard established in the Clean and Renewable Energy and Energy Waste Reduction Act.
- The potential impacts of the IRP and of any prudent and feasible alternatives identified by EGLE on whether the IRP makes adequate progress toward the economywide virtual elimination of greenhouse gas emissions in Michigan by 2050.

⁴ <http://legislature.mi.gov/doc.aspx?mcl-460-1028> This section would be amended by Senate Bill 271: <http://legislature.mi.gov/doc.aspx?2023-SB-0271>

⁵ This section would be added by Senate Bill 271: <http://legislature.mi.gov/doc.aspx?2023-SB-0271>

⁶ <http://legislature.mi.gov/doc.aspx?mcl-460-1077> This section would be amended by Senate Bill 273: <http://legislature.mi.gov/doc.aspx?2023-SB-0273>

⁷ This section would be added by Senate Bill 271: <http://legislature.mi.gov/doc.aspx?2023-SB-0271>

- Whether the IRP in comparison to any prudent and feasible alternatives makes adequate progress toward the elimination of adverse effects on human health due to power generation in Michigan.
- Whether the IRP in comparison to any prudent and feasible alternatives adequately reduces harms to the health, safety, and welfare of individuals in environmental justice communities.

Currently, the MPSC must approve an IRP if it makes certain determinations, among which is that the proposed IRP represents the most reasonable and prudent means of meeting the utility’s energy and capacity needs. To make that determination, the MPSC is required to consider whether the plan appropriately balances several factors. The bill would add to this requirement the factors of affordability and overall cost-effectiveness in providing utility service. The bill also would add the following to the determinations that, if made by the MPSC, require approval of the IRP:

- The construction and maintenance of new or existing capacity resources in Michigan meets all of the following:
 - The construction and maintenance includes using apprenticeship programs registered and in good standing with the U.S. Department of Labor.
 - The workers employed for the construction or maintenance of the facility are paid a minimum wage standard not less than the wage and fringe benefit rates prevailing in the locality where the work is to be performed, as determined under 2023 PA 10 or 40 USC 3141 to 3148, whichever provides the higher rates.
 - To the extent allowed by law, the entities performing the construction or maintenance work enter into a project labor agreement or operate under a collective bargaining agreement for the work to be performed.
- The plan is consistent with all of the following provisions of the Clean and Renewable Energy and Energy Waste Reduction Act:
 - The renewable energy plan requirements and goals of section 28.
 - The clean energy requirements of section 51.
 - The energy waste reduction measures in section 77.
 - The energy storage target of section 101.
- The plan promotes environmental quality and public health and reasonably mitigates adverse effects on human health due to power generation, with a priority on mitigating impacts and prioritizing benefits to communities disproportionately impacted by pollution and other environmental harms.

The bill also would add energy storage facilities to provisions referencing electric generation facilities in IRP provisions.

Required financial incentive approval

Currently, the MPSC must consider, and *may* authorize, a financial incentive for a utility for power purchase agreements that a utility enters into with an entity that is not affiliated with that utility. The financial incentive cannot exceed the utility’s weighted average cost of capital.

Under the bill, the MPSC *would have to* authorize a financial incentive for a utility for power purchase agreements for renewable energy resources, third-party contracts for energy storage systems, or clean energy systems that a electric utility enters into with an entity that is not

affiliated with that utility. The financial incentive would have to be calculated as the product of contract payments in that year multiplied by the electric provider's pretax weighted average cost of permanent capital consisting of long-term debt obligations and equity of the electric provider's total capital structure, at the time of contract execution, for the entire term of the contract.

The above provision would apply to all contracts entered into after the bill's effective date.

Quadrennial proceeding

The act requires the MPSC to commence a proceeding every five years to do such things (in consultation with the Department of Environment, Great Lakes, and Energy) as assess the potential for energy waste reduction and establish modeling scenarios and assumptions for utilities to include in their integrated resource plans. In developing these assumptions, the bill would additionally require consideration of projected load impact due to electrification on the need for additional generation capacity and the projected costs of different types of technologies used for electric generation. The bill also would require MPSC to commence the proceeding every four years (instead of five) and require MPSC to do both of the following at the proceeding:

- Conduct an assessment of the potential for electrification of transportation, buildings, and industries consistent with economywide elimination of greenhouse gas emissions in Michigan, based on what is economically and technically feasible, as well as what is reasonably achievable.
- Identify *environmental justice communities*.

Environmental justice communities would mean that term as defined by the MPSC in consultation with EGLE and the Office of the Environmental Justice Public Advocate.

Revenue decoupling for certain utilities

The act allows electric utilities with fewer than 200,000 Michigan customers to request a revenue decoupling mechanism that adjusts for decreases in actual sales compared to the levels projected in that utility's most recent rate case that are the result of implemented energy waste reduction, conservation, demand-side programs, and other waste reduction measures if the utility demonstrates to the MPSC that the projected level is reasonable and that the utility has achieved annual incremental energy savings at least equal to the lesser of the following:

- The amount of any incremental savings from energy waste reduction, conservation, demand-side programs, and other waste reduction measures approved by the MPSC in the utility's most recent integrated resource plan (IRP).
- One percent of its total annual retail electricity sales in the previous year.

The bill would change the second bulleted item above (the 1% rule) to instead refer to the incremental energy savings requirement of section 77(1) of the Clean and Renewable Energy and Energy Waste Reduction Act.⁸

⁸ <http://legislature.mi.gov/doc.aspx?mcl-460-1077> This section would be amended by Senate Bill 273: <http://legislature.mi.gov/doc.aspx?2023-SB-0273>

Net metering/distributed generation tariff

The act requires the MPSC to approve a tariff, reflecting equitable cost of service for utility revenue requirements, in the rates of all customers participating in a net metering or distributed generation program under the Clean and Renewable Energy and Energy Waste Reduction Act. The bill would require the approval of such a tariff to be subject to section 172(7) of that act.⁹

Public engagement

The bill would require the MPSC to conduct at least four public meetings, hearings, town halls, or similar events per year in geographically dispersed areas of the state. The MPSC would have to set the time, place, and procedures for public engagement at these events to take comments from low-income residential customers, residential customers with high energy burdens, and individuals and communities likely to be affected by the outcome of MPSC proceedings, as well as to encourage meaningful participation by those individuals and groups. A public meeting, hearing, town hall, or other opportunity for public engagement that the MPSC is otherwise required to conduct under law could count toward the four-times-a-year requirement.

By June 1, 2024, the MPSC would have to open a proceeding to consider options for expanding opportunities for public engagement in its decision-making processes and procedures with respect to all of the following:

- The accessibility and transparency of the MPSC’s decision-making processes.
- Opportunities for participation in the MPSC’s decision-making processes, especially by low-income residential customers, residential customers with high energy burdens, and individuals and communities affected by commission decisions.
- The responsiveness of MPSC decisions to community needs and priorities.

By June 1, 2024, the MPSC would have to open a proceeding to investigate opportunities for improving the process by which it reviews utility rate requests.

Effectiveness

The bill cannot take effect unless Senate Bills 271 and 273 are also enacted.

MCL 460.6a et seq.

FISCAL IMPACT:

Senate Bill 502 would have fiscal implications for the Michigan Public Service Commission (housed within the Department of Licensing and Regulatory Affairs) and the Department of Environment, Great Lakes, and Energy.

The bill would increase the amounts that energy utilities remit to the Utility Consumer Representation Fund (UCRF), thereby also increasing allocations made from the UCRF. Utilities serving at least 100,000 customers would be liable for a proportional share of a \$1.8 million assessment (currently set at \$900,000), which is allocated to the attorney general for participation in administrative and judicial proceedings in various utility cases. Utilities serving at least 100,000 residential customers would be liable for a proportional share of a \$2.0 million assessment (currently set at \$650,000), which is used to support the Utility Consumer

⁹ This section would be added by Senate Bill 273: <http://legislature.mi.gov/doc.aspx?2023-SB-0273>

Participation Board and application-based grants for interest groups that advocate on behalf of residential consumers.

The bill would also increase the frequency and scope of assessments conducted by the MPSC, in consultation with EGLE. It is unclear whether the changes under the bill could be sufficiently absorbed by existing resources, or whether additional appropriations would be required to offset the cost. In the event that additional resources were required, the MPSC is financed primarily by public utility assessments levied on the utilities, so any additional incurred costs would likely be factored into the assessment and sufficiently mitigated.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.