HOUSE SUBSTITUTE FOR

SENATE BILL NO. 438

(as amended December 15, 2016)

[A bill to amend 2008 PA 295, entitled

"Clean, renewable, and efficient energy act,"

by amending the title, the headings of subparts B and C of part 2 and the heading of part 5, and sections 1, 3, 5, 7, 9, 11, 13, 29, 39, 41, 45, 47, 49, 71, 73, 75, 77, 81, 83, 85, 87, 89, 91, 93, 95, 97, 113, 173, 175, 177, and 179 (MCL 460.1001, 460.1003, 460.1005, 460.1007, 460.1009, 460.1011, 460.1013, 460.1029, 460.1039, 460.1041, 460.1045, 460.1047, 460.1049, 460.1071, 460.1073, 460.1075, 460.1077, 460.1081, 460.1083, 460.1085, 460.1087, 460.1089, 460.1091, 460.1093, 460.1095, 460.1097, 460.1113, 460.1173, 460.1175, 460.1177, and 460.1179), section 93 as amended by 2010 PA 269, and by adding subpart B to part 2, sections 22, 28, 54, 74, 78, 99, 183, and 185, and part 7; and to repeal acts and parts

Senate Bill No. 438 as amended December 15, 2016
of acts.]

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

An act to require certain providers of electric service to establish **AND RECOVER COSTS FOR** renewable energy programs; to require certain providers of electric or natural gas service to establish energy ~~optimization~~ **WASTE REDUCTION** programs; to authorize the use of certain energy systems to meet the requirements of those programs; to provide for the approval of energy ~~optimization~~ **WASTE REDUCTION** service companies; ~~to provide for certain charges on electric and natural gas bills; to promote energy conservation~~ **TO REDUCE ENERGY WASTE** by state agencies and the public; to create a wind energy resource zone board and provide for its power and duties; to authorize the creation and implementation of wind energy resource zones; to provide for expedited transmission line siting certificates; to provide for ~~a~~ **CUSTOMER GENERATION AND** net metering ~~program~~ **PROGRAMS** and the responsibilities of certain providers of electric service and customers with respect to **CUSTOMER GENERATION AND** net metering; to provide for fees; to prescribe the powers and duties of certain state agencies and officials; to require the promulgation of rules and the issuance of orders; **TO AUTHORIZE THE ESTABLISHMENT OF RESIDENTIAL ENERGY IMPROVEMENT PROGRAMS BY PROVIDERS OF ELECTRIC OR NATURAL GAS SERVICE**; and to provide for civil sanctions, remedies, and penalties.

Sec. 1. (1) This act shall be known and may be cited as the "clean ~~,~~ **AND** renewable ~~, and efficient~~ energy **AND ENERGY WASTE**

REDUCTION act".

(2) The purpose of this act is to promote the development ~~of clean energy, renewable energy, and energy optimization through the implementation of a clean, renewable, and energy efficient standard~~ **AND USE OF CLEAN AND RENEWABLE ENERGY RESOURCES AND THE REDUCTION OF ENERGY WASTE THROUGH PROGRAMS** that will cost-effectively do all of the following:

(a) Diversify the resources used to reliably meet the energy needs of consumers in this state.

(b) Provide greater energy security through the use of indigenous energy resources available within the state.

(c) Encourage private investment in renewable energy and energy ~~efficiency.~~**WASTE REDUCTION.**

(d) ~~Provide~~ **COORDINATE WITH FEDERAL REGULATIONS TO PROVIDE** improved air quality and other benefits to energy consumers and citizens of this state.

(E) REMOVE UNNECESSARY BURDENS ON THE APPROPRIATE USE OF SOLID WASTE AS A CLEAN ENERGY SOURCE.

(3) AS A GOAL, NOT LESS THAN 35% OF THIS STATE'S ELECTRIC NEEDS SHOULD BE MET THROUGH A COMBINATION OF ENERGY WASTE REDUCTION AND RENEWABLE ENERGY BY 2025, IF THE INVESTMENTS IN ENERGY WASTE REDUCTION AND RENEWABLE ENERGY ARE THE MOST REASONABLE MEANS OF MEETING AN ELECTRIC UTILITY'S ENERGY AND CAPACITY NEEDS RELATIVE TO OTHER RESOURCE OPTIONS. BOTH OF THE FOLLOWING COUNT TOWARD ACHIEVEMENT OF THE GOAL:

(A) ALL RENEWABLE ENERGY, INCLUDING RENEWABLE ENERGY CREDITS PURCHASED OR OTHERWISE ACQUIRED WITH OR WITHOUT THE ASSOCIATED

RENEWABLE ENERGY, AND ANY BANKED RENEWABLE ENERGY CREDITS, THAT COUNTED TOWARD THE RENEWABLE ENERGY STANDARD ON THE EFFECTIVE DATE OF THE 2016 AMENDATORY ACT THAT ADDED THIS SUBSECTION, AS WELL AS RENEWABLE ENERGY CREDITS GRANTED AS A RESULT OF ANY INVESTMENTS MADE IN RENEWABLE ENERGY BY THE UTILITY OR A UTILITY CUSTOMER AFTER THAT EFFECTIVE DATE.

(B) THE SUM OF THE ANNUAL ELECTRICITY SAVINGS SINCE OCTOBER 6, 2008, AS RECOGNIZED BY THE COMMISSION THROUGH ANNUAL RECONCILIATION PROCEEDINGS, THAT RESULTED FROM ENERGY WASTE REDUCTION MEASURES IMPLEMENTED UNDER AN ENERGY OPTIMIZATION PLAN OR ENERGY WASTE REDUCTION PLAN APPROVED UNDER SECTION 73.

Sec. 3. As used in this act:

~~(a) "Advanced cleaner energy" means electricity generated using an advanced cleaner energy system.~~

~~(b) "Advanced cleaner energy credit" means a credit certified under section 43 that represents generated advanced cleaner energy.~~

~~(c) "Advanced cleaner energy system" means any of the following:~~

~~(*i*) A gasification facility.~~

~~(*ii*) An industrial cogeneration facility.~~

~~(*iii*) A coal-fired electric generating facility if 85% or more of the carbon dioxide emissions are captured and permanently geologically sequestered.~~

~~(*iv*) An electric generating facility or system that uses technologies not in commercial operation on the effective date of this act.~~

~~(d) "Affiliated transmission company" means that term as~~

~~defined in the electric transmission line certification act, 1995 PA 30, MCL 460.562.~~

(A) ~~(e)~~ "Applicable regional transmission organization" means a nonprofit, member-based organization governed by an independent board of directors that serves as the ~~federal energy regulatory commission-approved~~ regional transmission organization **APPROVED BY THE FEDERAL ENERGY REGULATORY COMMISSION** with oversight responsibility for the region that includes the provider's service territory.

(B) ~~(f)~~ "Biomass" means any organic matter that is not derived from fossil fuels, that can be converted to usable fuel for the production of energy, and that replenishes over a human, not a geological, time frame, including, but not limited to, all of the following:

(*i*) Agricultural crops and crop wastes.

(*ii*) Short-rotation energy crops.

(*iii*) Herbaceous plants.

(*iv*) Trees and wood[~~.~~, but only if derived from sustainably managed forests or procurement systems, as defined in section 261c of the management and budget act, 1984 PA 431, MCL 18.1261c.]

(*v*) Paper and pulp products.

(*vi*) Precommercial wood thinning waste, brush, or yard waste.

(*vii*) Wood wastes and residues from the processing of wood products or paper.

(*viii*) Animal wastes.

(*ix*) Wastewater sludge or sewage.

(*x*) Aquatic plants.

(*xi*) Food production and processing waste.

(*xii*) Organic by-products from the production of biofuels.

(C) ~~(g)~~ "Board" means the wind energy resource zone board created under section 143.

(D) ~~(h)~~ "Carbon dioxide emissions benefits" means that the carbon dioxide emissions per megawatt hour of electricity generated by the advanced cleaner energy system are at least 85% less or, for an integrated gasification combined cycle facility **OR AN INTEGRATED PYROLYSIS COMBINED CYCLE FACILITY,** 70% less than the average carbon dioxide emissions per megawatt hour of electricity generated from all coal-fired electric generating facilities operating in this state on January 1, 2008.

(E) "COGENERATION FACILITY" MEANS A FACILITY THAT PRODUCES BOTH ELECTRICITY AND USEFUL THERMAL ENERGY, SUCH AS HEAT OR STEAM, IN A WAY THAT IS MORE EFFICIENT THAN THE SEPARATE PRODUCTION OF THOSE FORMS OF ENERGY.

(F) ~~(i)~~ "Commission" means the Michigan public service commission.

(G) ~~(j)~~ "Customer meter" means an electric meter of a provider's retail customer. Customer meter does not include a municipal water pumping meter or additional meters at a single site that were installed specifically to support interruptible air conditioning, interruptible water heating, net metering, or time-of-day tariffs.

(H) "DISTRIBUTED GENERATION PROGRAM" MEANS THE PROGRAM ESTABLISHED BY THE COMMISSION UNDER SECTION 173.

Sec. 5. As used in this act:

(a) "Electric provider" ~~, subject to sections 21(1), 23(1), and 25(1),~~ means any of the following:

(*i*) Any person or entity that is regulated by the commission for the purpose of selling electricity to retail customers in this state.

(*ii*) A ~~municipally-owned~~ **MUNICIPALLY OWNED** electric utility in this state.

(*iii*) A cooperative electric utility in this state.

(*iv*) Except as used in subpart ~~B~~ **C** of part 2, an alternative electric supplier licensed under section 10a of 1939 PA 3, MCL 460.10a.

(b) "Eligible electric generator" means ~~that~~ a methane digester or renewable energy system with a generation capacity limited to the customer's electric need and that does not exceed the following:

(*i*) For a renewable energy system, 150 kilowatts of aggregate generation at a single site.

(*ii*) For a methane digester, 550 kilowatts of aggregate generation at a single site.

(c) "Energy conservation" means the reduction of customer energy use through the installation of measures or changes in energy usage behavior. ~~Energy conservation does not include the use of advanced cleaner energy systems.~~

(d) "Energy efficiency" means a decrease in customer consumption of electricity or natural gas achieved through measures or programs that target customer behavior, equipment, devices, or materials without reducing the quality of energy services.

(E) "ENERGY STAR" MEANS THE VOLUNTARY PARTNERSHIP AMONG THE UNITED STATES DEPARTMENT OF ENERGY, THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, PRODUCT MANUFACTURERS, LOCAL UTILITIES, AND RETAILERS TO HELP PROMOTE ENERGY EFFICIENT PRODUCTS BY LABELING WITH THE ENERGY STAR LOGO, EDUCATE CONSUMERS ABOUT THE BENEFITS OF ENERGY EFFICIENCY, AND HELP PROMOTE ENERGY EFFICIENCY IN BUILDINGS BY BENCHMARKING AND RATING ENERGY PERFORMANCE.

(F) ~~(e)~~ "Energy ~~optimization",~~ **WASTE REDUCTION",** subject to subdivision ~~(f),~~ **(G),** means all of the following:

(*i*) Energy efficiency.

(*ii*) Load management, to the extent that the load management reduces ~~overall energy usage.~~**PROVIDER COSTS.**

(*iii*) Energy conservation, but only to the extent that the decreases in the consumption of electricity produced by energy conservation are objectively measurable and attributable to an energy ~~optimization~~ **WASTE REDUCTION** plan.

(G) ~~(f)~~ Energy ~~optimization~~ **WASTE REDUCTION** does not include electric provider infrastructure projects that are approved for cost recovery by the commission other than as provided in this act.

(H) ~~(g)~~ "Energy ~~optimization~~ **WASTE REDUCTION** credit" means a credit certified pursuant to section 87 that represents achieved energy ~~optimization.~~**WASTE REDUCTION.**

(I) ~~(h)~~ "Energy ~~optimization~~ **WASTE REDUCTION** plan" ~~or "EO plan"~~ means a plan under section 71.

(J) ~~(i)~~ "Energy ~~optimization~~ **WASTE REDUCTION** standard" means the minimum energy savings required to be achieved under section 77 **OR 78(1), AS APPLICABLE.**

~~(j) "Energy star" means the voluntary partnership among the United States department of energy, the United States environmental protection agency, product manufacturers, local utilities, and retailers to help promote energy efficient products by labeling with the energy star logo, educate consumers about the benefits of energy efficiency, and help promote energy efficiency in buildings by benchmarking and rating energy performance.~~

(k) "Federal approval" means approval by the applicable regional transmission organization or other ~~federal energy regulatory commission approved~~ **FEDERAL ENERGY REGULATORY COMMISSION-APPROVED** transmission planning process of a transmission project that includes the transmission line. Federal approval may be evidenced in any of the following manners:

(*i*) The proposed transmission line is part of a transmission project included in the applicable regional transmission organization's board-approved transmission expansion plan.

(*ii*) The applicable regional transmission organization has informed the electric utility, affiliated transmission company, or independent transmission company that a transmission project submitted for an out-of-cycle project review has been approved by the applicable regional transmission organization, and the approved transmission project includes the proposed transmission line.

(*iii*) If, after ~~the effective date of this act,~~ **OCTOBER 6, 2008,** the applicable regional transmission organization utilizes another approval process for transmission projects proposed by an electric utility, affiliated transmission company, or independent transmission company, the proposed transmission line is included in

a transmission project approved by the applicable regional transmission organization through the approval process developed after ~~the effective date of this act.~~**OCTOBER 6, 2008.**

(*iv*) Any other ~~federal energy regulatory commission approved~~ **FEDERAL ENERGY REGULATORY COMMISSION-APPROVED** transmission planning process for a transmission project.

Sec. 7. As used in this act:

(a) "Gasification facility" means a facility located in this state that, ~~uses~~ **USING** a thermochemical process that does not involve direct combustion, ~~to produce~~ **PRODUCES** synthesis gas, composed of carbon monoxide and hydrogen, from carbon-based feedstocks (such as coal, petroleum coke, wood, biomass, hazardous waste, medical waste, industrial waste, and solid waste, including, but not limited to, municipal solid waste, electronic waste, and waste described in section 11514 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.11514) and that uses the synthesis gas or a mixture of the synthesis gas and methane to generate electricity for commercial use. Gasification facility includes the transmission lines, gas transportation lines and facilities, and associated property and equipment specifically attributable to such a facility. Gasification facility includes, but is not limited to, an integrated gasification combined cycle facility and a plasma arc gasification facility.

(b) "Incremental costs of compliance" means the net revenue required by an electric provider to comply with the renewable energy standard, calculated as provided under section 47.

(c) "Independent transmission company" means that term as

defined in section 2 of the electric transmission line certification act, 1995 PA 30, MCL 460.562.

~~(d) "Industrial cogeneration facility" means a facility that generates electricity using industrial thermal energy or industrial waste energy.~~

~~(e) "Industrial thermal energy" means thermal energy that is a by-product of an industrial or manufacturing process and that would otherwise be wasted. For the purposes of this subdivision, industrial or manufacturing process does not include the generation of electricity.~~

~~(f) "Industrial waste energy" means exhaust gas or flue gas that is a by-product of an industrial or manufacturing process and that would otherwise be wasted. For the purposes of this subdivision, industrial or manufacturing process does not include the generation of electricity.~~

(D) ~~(g)~~ "Integrated gasification combined cycle facility" means a gasification facility that uses a thermochemical process, including high temperatures and controlled amounts of air and oxygen, to break substances down into their molecular structures and that uses exhaust heat to generate electricity.

(E) "INTEGRATED PYROLYSIS COMBINED CYCLE FACILITY" MEANS A PYROLYSIS FACILITY THAT USES EXHAUST HEAT TO GENERATE ELECTRICITY.

(F) ~~(h)~~ "LEED" means the leadership in energy and environmental design green building rating system developed by the United States ~~green building council.~~**GREEN BUILDING COUNCIL.**

(G) ~~(i)~~ "Load management" means measures or programs that target equipment or ~~devices~~ **BEHAVIOR** to result in decreased peak

electricity demand such as by shifting demand from a peak to an off-peak period.

(H) "MEGAWATT", "MEGAWATT HOUR", OR "MEGAWATT HOUR OF ELECTRICITY", UNLESS THE CONTEXT IMPLIES OTHERWISE, INCLUDES THE STEAM EQUIVALENT OF A MEGAWATT OR MEGAWATT HOUR OF ELECTRICITY.

(I) ~~(j)~~ "Modified net metering" means a utility billing method that applies the power supply component of the full retail rate to the net of the bidirectional flow of kilowatt hours across the customer interconnection with the utility distribution system, during a billing period or time-of-use pricing period. A negative net metered quantity during the billing period or during each time-of-use pricing period within the billing period reflects net excess generation for which the customer is entitled to receive credit under section 177(4). ~~Standby charges for~~ **UNDER** modified net metering, **STANDBY CHARGES FOR DISTRIBUTED GENERATION** customers on an energy rate schedule shall be equal to the retail distribution charge applied to the imputed customer usage during the billing period. The imputed customer usage is calculated as the sum of the metered on-site generation and the net of the bidirectional flow of power across the customer interconnection during the billing period. The commission shall establish standby charges ~~for~~ **UNDER** modified net metering **FOR DISTRIBUTED GENERATION** customers on demand-based rate schedules that provide an equivalent contribution to utility system costs. **A CHARGE FOR NET METERING AND DISTRIBUTED GENERATION CUSTOMERS ESTABLISHED PURSUANT TO SECTION 6A OF 1939 PA 3, MCL 460.6A, SHALL NOT BE RECOVERED MORE THAN ONCE. THIS SUBDIVISION IS SUBJECT TO SECTION 177(5).**

Sec. 9. As used in this act:

(a) "Natural gas provider" means an investor-owned business engaged in the sale and distribution **AT RETAIL** of natural gas within this state whose rates are regulated by the commission. ~~However, as used in subpart B of part 2, natural gas provider does not include an alternative gas supplier licensed under section 9b of 1939 PA 3, MCL 460.9b.~~

(B) "PET COKE" MEANS A SOLID CARBONACEOUS RESIDUE PRODUCED FROM A COKER AFTER CRACKING AND DISTILLATION FROM PETROLEUM REFINING OPERATIONS.

(C) ~~(b)~~ "Plasma arc gasification facility" means a gasification facility that uses a plasma torch to break substances down into their molecular structures.

(D) ~~(c)~~ "Provider" means an electric provider or a natural gas provider.

(E) ~~(d)~~ "PURPA" means the public utility regulatory policies act of 1978, Public Law 95-617.

~~(e) "Qualifying small power production facility" means that term as defined in 16 USC 824a-3.~~

(F) "PYROLYSIS FACILITY" MEANS A FACILITY THAT EFFECTS THERMOCHEMICAL DECOMPOSITION AT ELEVATED TEMPERATURES WITHOUT THE PARTICIPATION OF OXYGEN, FROM CARBON-BASED FEEDSTOCKS INCLUDING, BUT NOT LIMITED TO, COAL, WOOD, BIOMASS, INDUSTRIAL WASTE, OR SOLID WASTE, BUT NOT INCLUDING PET COKE, HAZARDOUS WASTE, COAL WASTE, OR SCRAP TIRES. PYROLYSIS FACILITY INCLUDES THE TRANSMISSION LINES, GAS TRANSPORTATION LINES AND FACILITIES, AND ASSOCIATED PROPERTY AND EQUIPMENT SPECIFICALLY ATTRIBUTABLE TO THE FACILITY. PYROLYSIS

FACILITY INCLUDES, BUT IS NOT LIMITED TO, AN INTEGRATED PYROLYSIS COMBINED CYCLE FACILITY.

Sec. 11. As used in this act:

(a) "Renewable energy" means electricity **OR STEAM** generated using a renewable energy system.

~~(b) "Renewable energy capacity portfolio" means the number of megawatts calculated under section 27(2) for a particular year.~~

(B) ~~(c)~~ "Renewable energy contract" means a contract to acquire renewable energy and the associated renewable energy credits from 1 or more renewable energy systems.

(C) ~~(d)~~ "Renewable energy credit" means a credit granted ~~pursuant to~~ **UNDER A CERTIFICATION AND TRACKING PROGRAM ESTABLISHED UNDER** section 41, ~~that~~ **WHICH** represents generated renewable energy.

(D) ~~(e)~~ "Renewable energy credit portfolio" means the sum of the renewable energy credits achieved by a provider for a particular year.

(E) ~~(f)~~ "Renewable energy credit standard" means a minimum renewable energy **CREDIT** portfolio required under **SECTION 28 OR FORMER** section 27.

~~(g) "Renewable energy generator" means a person that, together with its affiliates, has constructed or has owned and operated 1 or more renewable energy systems with combined gross generating capacity of at least 10 megawatts.~~

(F) ~~(h)~~ "Renewable energy plan" or "plan" ~~,~~ means a plan approved under **SECTION 22 OR FORMER** section 21 or 23 or found to comply with this act under **FORMER** section 25, with any amendments adopted under this act.

(G) ~~(i)~~ "Renewable energy resource" means a resource that naturally replenishes over a human, not a geological, time frame and that is ultimately derived from solar power, water power, or wind power. Renewable energy resource does not include petroleum, nuclear, natural gas, or coal. A renewable energy resource comes from the sun or from thermal inertia of the earth and minimizes the output of toxic material in the conversion of the energy and includes, but is not limited to, all of the following:

(*i*) Biomass.

(*ii*) Solar and solar thermal energy.

(*iii*) Wind energy.

(*iv*) Kinetic energy of moving water, including all of the following:

(A) Waves, tides, or currents.

(B) Water released through a dam.

(*v*) Geothermal energy.

(*vi*) THERMAL ENERGY PRODUCED FROM A GEOTHERMAL HEAT PUMP.

(*vii*) ~~*(vi)*~~ **ANY OF THE FOLLOWING CLEANER ENERGY RESOURCES:**

(A) Municipal solid waste, **INCLUDING THE BIOGENIC AND ANTHROPOGENIC FACTIONS.**

(B) ~~*(vii)*~~ Landfill gas produced by municipal solid waste.

(C) FUEL THAT HAS BEEN MANUFACTURED IN WHOLE OR SIGNIFICANT PART FROM WASTE, INCLUDING, BUT NOT LIMITED TO, MUNICIPAL SOLID WASTE. FUEL THAT MEETS THE REQUIREMENTS OF THIS SUBPARAGRAPH INCLUDES, BUT IS NOT LIMITED TO, MATERIAL THAT IS LISTED UNDER 40 CFR 241.3(B) OR 241.4(A) OR FOR WHICH A NONWASTE DETERMINATION IS MADE BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY PURSUANT

TO 40 CFR 241.3(C). PET COKE, HAZARDOUS WASTE, COAL WASTE, OR SCRAP TIRES ARE NOT FUEL THAT MEETS THE REQUIREMENTS OF THIS SUBPARAGRAPH.

(H) ~~(j)~~ "Renewable energy standard" means the minimum renewable energy capacity portfolio, if applicable, and the renewable energy credit portfolio required to be achieved under **SECTION 28 OR FORMER** section 27.

(I) ~~(k)~~ "Renewable energy system" means a facility, electricity generation system, or set of electricity generation systems that use 1 or more renewable energy resources to generate electricity **OR STEAM**. Renewable energy system does not include any of the following:

(*i*) A hydroelectric pumped storage facility.

(*ii*) A hydroelectric facility that uses a dam constructed after ~~the effective date of this act~~ **OCTOBER 6, 2008** unless the dam is a repair or replacement of a dam in existence on ~~the effective date of this act~~ **OCTOBER 6, 2008** or an upgrade of a dam in existence on ~~the effective date of this act~~ **OCTOBER 6, 2008** that increases its energy efficiency.

(*iii*) An incinerator unless the incinerator is a municipal solid waste incinerator as defined in section 11504 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.11504. ~~, that was brought into service before the effective date of this act, including any of the following:~~

~~(A) Any upgrade of such an incinerator that increases energy efficiency.~~

~~(B) Any expansion of such an incinerator before the effective~~

~~date of this act.~~

~~(C) Any expansion of such an incinerator on or after the effective date of this act to an approximate design rated capacity of not more than 950 tons per day pursuant to the terms of a final request for proposals issued on or before October 1, 1986.~~

(J) ~~*(l)*~~ "Revenue recovery mechanism" means the mechanism for recovery of incremental costs of compliance ~~established under section 21.~~**PROVIDED FOR UNDER SECTION 22.**

Sec. 13. As used in this act:

(a) "Site" means a contiguous site, regardless of the number of meters at that site. A site that would be contiguous but for the presence of a street, road, or highway ~~shall be~~ **IS** considered to be contiguous for the purposes of this subdivision.

(b) "Transmission line" means all structures, equipment, and real property necessary to transfer electricity at system bulk supply voltage of 100 kilovolts or more.

(c) "True net metering" means a utility billing method that applies the full retail rate to the net of the bidirectional flow of kilowatt hours across the customer interconnection with the utility distribution system, during a billing period or time-of-use pricing period. A negative net metered quantity during the billing period or during each time-of-use pricing period within the billing period reflects net excess generation for which the customer is entitled to receive credit under section 177(4). **THIS SUBDIVISION IS SUBJECT TO SECTION 177(5).**

(d) "Utility system resource cost test" means a standard that is met for an investment in energy ~~optimization~~ **WASTE REDUCTION** if,

on a life cycle basis, the total avoided supply-side costs to the provider, including representative values for electricity or natural gas supply, transmission, distribution, and other associated costs, are greater than the total costs to the provider of administering and delivering the energy ~~optimization~~ **WASTE REDUCTION** program, including net costs for any provider incentives paid by customers and capitalized costs recovered under section 89.

(e) "Wind energy conversion system" means a ~~renewable energy~~ system that uses 1 or more wind turbines to generate electricity and has a nameplate capacity of 100 kilowatts or more.

(f) "Wind energy resource zone" or "wind zone" means an area designated by the commission under section 147.

SEC. 22. (1) RENEWABLE ENERGY PLANS AND ASSOCIATED REVENUE RECOVERY MECHANISMS FILED BY AN ELECTRIC PROVIDER, APPROVED UNDER FORMER SECTION 21 OR 23 OR FOUND TO COMPLY WITH THIS ACT UNDER FORMER SECTION 25 AND IN EFFECT ON THE EFFECTIVE DATE OF THE 2016 AMENDATORY ACT THAT ADDED THIS SECTION, REMAIN IN EFFECT, SUBJECT TO AMENDMENTS AS PROVIDED FOR UNDER SUBSECTIONS (3) AND (4).

(2) FOR AN ELECTRIC PROVIDER WHOSE RATES ARE REGULATED BY THE COMMISSION, AMENDED RENEWABLE ENERGY PLANS SHALL ESTABLISH A NONVOLUMETRIC MECHANISM FOR THE RECOVERY OF THE INCREMENTAL COSTS OF COMPLIANCE WITHIN THE ELECTRIC PROVIDER'S CUSTOMER RATES. THE REVENUE RECOVERY MECHANISM SHALL NOT RESULT IN RATE IMPACTS THAT EXCEED THE MONTHLY MAXIMUM RETAIL RATE IMPACTS SPECIFIED UNDER SECTION 45. THE REVENUE RECOVERY MECHANISM IS SUBJECT TO ADJUSTMENT UNDER SECTIONS 47(4) AND 49.

(3) WITHIN 1 YEAR AFTER THE EFFECTIVE DATE OF THE 2016

AMENDATORY ACT THAT ADDED THIS SECTION, THE COMMISSION SHALL REVIEW EACH ELECTRIC PROVIDER'S PLAN PURSUANT TO A FILING SCHEDULE ESTABLISHED BY THE COMMISSION. FOR AN ELECTRIC PROVIDER WHOSE RATES ARE REGULATED BY THE COMMISSION, THE COMMISSION SHALL CONDUCT A CONTESTED CASE HEARING ON THE PLAN PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO 24.328. AFTER THE HEARING, THE COMMISSION SHALL APPROVE, WITH ANY CHANGES CONSENTED TO BY THE ELECTRIC PROVIDER, OR REJECT THE PLAN AND ANY AMENDMENTS TO THE PLAN. FOR ALL OTHER ELECTRIC PROVIDERS, THE COMMISSION SHALL PROVIDE AN OPPORTUNITY FOR PUBLIC COMMENT ON THE PLAN. AFTER THE APPLICABLE OPPORTUNITY FOR PUBLIC COMMENT, THE COMMISSION SHALL DETERMINE WHETHER ANY AMENDMENT TO THE PLAN PROPOSED BY THE PROVIDER COMPLIES WITH THIS ACT. FOR ALTERNATIVE ELECTRIC SUPPLIERS, THE COMMISSION SHALL APPROVE, WITH ANY CHANGES CONSENTED TO BY THE ELECTRIC PROVIDER, OR REJECT ANY PROPOSED AMENDMENTS TO THE PLAN. FOR COOPERATIVE ELECTRIC UTILITIES AND MUNICIPALLY OWNED UTILITIES, THE PROPOSED AMENDMENT IS ADOPTED IF THE COMMISSION DETERMINES THAT IT COMPLIES WITH THIS ACT.

(4) IF AN ELECTRIC PROVIDER PROPOSES TO AMEND ITS PLAN AFTER THE REVIEW PROCESS UNDER SUBSECTION (3), THE ELECTRIC PROVIDER SHALL FILE THE PROPOSED AMENDMENT WITH THE COMMISSION. FOR AN ELECTRIC PROVIDER WHOSE RATES ARE REGULATED BY THE COMMISSION, IF THE PROPOSED AMENDMENT WOULD MODIFY THE REVENUE RECOVERY MECHANISM, THE COMMISSION SHALL CONDUCT A CONTESTED CASE HEARING ON THE AMENDMENT PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO 24.328. AFTER THE HEARING AND WITHIN 90 DAYS AFTER THE AMENDMENT IS FILED, THE COMMISSION SHALL APPROVE,

WITH ANY CHANGES CONSENTED TO BY THE ELECTRIC PROVIDER, OR REJECT THE PLAN AND THE PROPOSED AMENDMENT OR AMENDMENTS TO THE PLAN. FOR ALL OTHER ELECTRIC PROVIDERS, THE COMMISSION SHALL PROVIDE AN OPPORTUNITY FOR PUBLIC COMMENT ON THE AMENDMENT. AFTER THE APPLICABLE OPPORTUNITY FOR PUBLIC COMMENT AND WITHIN 90 DAYS AFTER THE AMENDMENT IS FILED, THE COMMISSION SHALL DETERMINE WHETHER THE PROPOSED AMENDMENT TO THE PLAN COMPLIES WITH THIS ACT. FOR ALTERNATIVE ELECTRIC SUPPLIERS, THE COMMISSION SHALL APPROVE, WITH ANY CHANGES CONSENTED TO BY THE ELECTRIC PROVIDER, OR REJECT ANY PROPOSED AMENDMENTS TO THE PLAN. FOR COOPERATIVE ELECTRIC UTILITIES AND MUNICIPALLY OWNED UTILITIES, THE PROPOSED AMENDMENT IS ADOPTED IF THE COMMISSION DETERMINES THAT IT COMPLIES WITH THIS ACT.

(5) FOR AN ELECTRIC PROVIDER WHOSE RATES ARE REGULATED BY THE COMMISSION, THE COMMISSION SHALL APPROVE THE PLAN OR AMENDMENTS TO THE PLAN IF THE COMMISSION DETERMINES:

(A) THAT THE PLAN IS REASONABLE AND PRUDENT. IN MAKING THIS DETERMINATION, THE COMMISSION SHALL TAKE INTO CONSIDERATION PROJECTED COSTS AND WHETHER OR NOT PROJECTED COSTS IN PRIOR PLANS WERE EXCEEDED.

(B) THAT THE PLAN IS CONSISTENT WITH THE PURPOSE AND GOAL SET FORTH IN SECTION 1(2) AND (3) AND MEETS THE RENEWABLE ENERGY CREDIT STANDARD THROUGH 2021.

(6) IF THE COMMISSION REJECTS A PROPOSED PLAN OR AMENDMENT UNDER THIS SECTION, THE COMMISSION SHALL EXPLAIN IN WRITING THE REASONS FOR ITS DETERMINATION.

SEC. 28. (1) AN ELECTRIC PROVIDER SHALL ACHIEVE A RENEWABLE ENERGY CREDIT PORTFOLIO AS FOLLOWS:

(A) IN 2016 THROUGH 2018, A RENEWABLE ENERGY CREDIT PORTFOLIO THAT CONSISTS OF AT LEAST THE SAME NUMBER OF RENEWABLE ENERGY CREDITS AS WERE REQUIRED UNDER FORMER SECTION 27.

(B) IN 2019 AND 2020, A RENEWABLE ENERGY CREDIT PORTFOLIO OF AT LEAST 12.5%, AS CALCULATED UNDER SUBSECTION (2).

(C) IN 2021, A RENEWABLE ENERGY CREDIT PORTFOLIO OF AT LEAST 15%, AS CALCULATED UNDER SUBSECTION (2).

(2) AN ELECTRIC PROVIDER'S RENEWABLE ENERGY CREDIT PORTFOLIO SHALL BE CALCULATED AS FOLLOWS:

(A) DETERMINE THE NUMBER OF RENEWABLE ENERGY CREDITS USED TO COMPLY WITH THIS SUBPART DURING THE APPLICABLE YEAR.

(B) DIVIDE BY 1 OF THE FOLLOWING AT THE OPTION OF THE ELECTRIC PROVIDER AS SPECIFIED IN ITS RENEWABLE ENERGY PLAN:

(*i*) THE NUMBER OF WEATHER NORMALIZED MEGAWATT HOURS OF ELECTRICITY SOLD BY THE ELECTRIC PROVIDER DURING THE PREVIOUS YEAR TO RETAIL CUSTOMERS IN THIS STATE.

(*ii*) THE AVERAGE NUMBER OF MEGAWATT HOURS OF ELECTRICITY SOLD BY THE ELECTRIC PROVIDER ANNUALLY DURING THE PREVIOUS 3 YEARS TO RETAIL CUSTOMERS IN THIS STATE.

(C) MULTIPLY THE QUOTIENT UNDER SUBDIVISION (B) BY 100.

(3) SUBJECT TO SUBSECTION (5), EACH ELECTRIC PROVIDER SHALL MEET THE RENEWABLE ENERGY CREDIT STANDARDS WITH RENEWABLE ENERGY CREDITS OBTAINED BY 1 OR MORE OF THE FOLLOWING MEANS:

(A) GENERATING ELECTRICITY FROM RENEWABLE ENERGY SYSTEMS FOR SALE TO RETAIL CUSTOMERS.

(B) PURCHASING OR OTHERWISE ACQUIRING RENEWABLE ENERGY CREDITS WITH OR WITHOUT THE ASSOCIATED RENEWABLE ENERGY.

(4) FOR AN ELECTRIC PROVIDER WHOSE RATES ARE REGULATED BY THE COMMISSION, THE ELECTRIC PROVIDER SHALL SUBMIT A CONTRACT ENTERED INTO FOR THE PURPOSES OF SUBSECTION (3) TO THE COMMISSION FOR REVIEW AND APPROVAL. IF THE COMMISSION APPROVES THE CONTRACT, IT SHALL BE CONSIDERED CONSISTENT WITH THE ELECTRIC PROVIDER'S RENEWABLE ENERGY PLAN. THE COMMISSION SHALL NOT APPROVE A CONTRACT BASED ON AN UNSOLICITED PROPOSAL UNLESS THE COMMISSION DETERMINES THAT THE UNSOLICITED PROPOSAL PROVIDES OPPORTUNITIES THAT MAY NOT OTHERWISE BE AVAILABLE OR COMMERCIALLY PRACTICAL THROUGH A COMPETITIVE BID PROCESS.

(5) AN ELECTRIC PROVIDER MAY SUBSTITUTE ENERGY WASTE REDUCTION CREDITS FOR RENEWABLE ENERGY CREDITS OTHERWISE REQUIRED TO MEET THE RENEWABLE ENERGY CREDIT STANDARDS IF THE SUBSTITUTION IS APPROVED BY THE COMMISSION. UNDER THIS SUBSECTION, ENERGY WASTE REDUCTION CREDITS SHALL NOT BE USED BY A PROVIDER TO MEET MORE THAN 10% OF THE RENEWABLE ENERGY CREDIT STANDARD. ONE RENEWABLE ENERGY CREDIT SHALL BE AWARDED PER 1 ENERGY WASTE REDUCTION CREDIT.

Sec. 29. (1) Subject to subsection (2), a renewable energy system that is the source of renewable energy credits used to satisfy the renewable energy standards shall be either located outside of this state in the retail electric customer service territory of any provider that is not an alternative electric supplier or located anywhere in this state. For the purposes of this subsection, a retail electric customer service territory shall be considered to be the territory recognized by the commission on January 1, 2008 and any expansion of retail electric customer service territory recognized by the commission after January 1,

2008 under 1939 PA 3, MCL 460.1 to ~~460.10cc.~~ **460.11.** The commission may also expand a service territory for the purposes of this subsection if a lack of transmission lines limits the ability to obtain sufficient renewable energy from renewable energy systems that meet the location requirement of this subsection.

(2) The renewable energy system location requirements in subsection (1) do not apply if 1 or more of the following requirements are met:

(a) The renewable energy system is a wind energy conversion system and the electricity generated by the wind energy system, or the renewable energy credits associated with that electricity, is being purchased under a contract in effect on January 1, 2008. If the electricity and associated renewable energy credits purchased under such a contract are used by an electric provider to meet renewable energy requirements established after January 1, 2008 by the legislature of the state in which the wind energy conversion system is located, the electric provider may, for the purpose of meeting the renewable energy credit standard under this act, obtain, by any means authorized under section ~~27,~~ **28,** up to the same number of replacement renewable energy credits from any other wind energy conversion systems located in that state. This subdivision shall not be utilized by an alternative electric supplier unless the alternative electric supplier was licensed in this state on January 1, 2008. Renewable energy credits from a renewable energy system under a contract with an alternative electric supplier under this subdivision shall not be used by another electric provider to meet its requirements under this part.

(b) The renewable energy system is a wind energy conversion system that was under construction or operational and owned by an electric provider on January 1, 2008. This subdivision shall not be utilized by an alternative electric supplier.

(c) The renewable energy system is a wind energy conversion system that includes multiple wind turbines, at least 1 of the wind turbines meets the location requirements of this section, and the remaining wind turbines are within 15 miles of a wind turbine that is part of that wind energy conversion system and that meets the location requirements of this section.

(d) Before January 1, 2008, an electric provider serving not more than 75,000 retail electric customers in this state filed an application for a certificate of authority for the renewable energy system with a state regulatory commission in another state that is also served by the electric provider. However, renewable energy credits shall not be granted under this subdivision for electricity generated using more than 10.0 megawatts of nameplate capacity of the renewable energy system.

(e) Electricity generated from the renewable energy system is sold by a not-for-profit entity located in Indiana, **OHIO**, or Wisconsin to a municipally-owned electric utility in this state or cooperative electric utility in this state, ~~under a contract in effect on January 1, 2008,~~ and the electricity is not being used to meet another state's standard for renewable energy.

~~(f) Electricity generated from the renewable energy system is sold by a not-for-profit entity located in Ohio to a municipally-owned electric utility in this state under a contract approved by~~

~~resolution of the governing body of the municipally-owned electric utility by January 1, 2008, and the electricity is not being used to meet another state's standard for renewable energy. However, renewable energy credits shall not be granted for electricity generated using more than 13.4 megawatts of nameplate capacity of the renewable energy system.~~

(F) ~~(g)~~ All of the following requirements are met:

(*i*) The renewable energy system is a wind energy system, is interconnected to the electric provider's transmission system, and is located in a state in which the electric provider has service territory.

(*ii*) The electric provider competitively bid any contract for engineering, procurement, or construction of the renewable energy system, if the electric provider owns the renewable energy system, or for purchase of the renewable energy and associated renewable energy credits from the renewable energy system, if the provider does not own the renewable energy system, in a process open to renewable energy systems sited in this state.

(*iii*) The renewable energy credits from the renewable energy system are only used by that electric provider to meet the renewable energy standard.

(*iv*) The electric provider is not an alternative electric supplier.

~~(3) Advanced cleaner energy systems that are the source of the advanced cleaner energy credits used under section 27 shall be either located outside this state in the service territory of any electric provider that is not an alternative electric supplier or~~

~~located anywhere in this state.~~

Sec. 39. (1) Except as otherwise provided in section 35(1), 1 renewable energy credit shall be granted to the owner of a renewable energy system for each megawatt hour of electricity generated from the renewable energy system, subject to all of the following:

(a) If a renewable energy system uses both a renewable energy resource and a nonrenewable energy resource to generate electricity **OR STEAM,** the number of renewable energy credits granted shall be based on the percentage of the electricity **OR STEAM, OR BOTH,** generated from the renewable energy resource.

~~(b) A renewable energy credit shall not be granted for renewable energy generated from a municipal solid waste incinerator to the extent that the renewable energy was generated by operating the incinerator in excess of the greater of the following, as applicable:~~

~~(*i*) The incinerator's nameplate capacity rating on January 1, 2008.~~

~~(*ii*) If the incinerator is expanded after the effective date of this act to an approximate continuous design rated capacity of not more than 950 tons per day pursuant to the terms of a final request for proposals issued not later than October 1986, the nameplate capacity rating required to accommodate that expansion.~~

(B) ~~(c)~~ A renewable energy credit shall not be granted for renewable energy the renewable attributes of which are used by an electric provider in a commission-approved voluntary renewable energy program.

(2) ~~Subject to subsection (3), the~~ **THE** following additional renewable energy credits, to be known as Michigan incentive renewable energy credits, shall be granted under the following circumstances:

(a) 2 renewable energy credits for each megawatt hour of electricity from solar power **GENERATED BY A RENEWABLE ENERGY SYSTEM THAT WAS APPROVED IN A RENEWABLE ENERGY PLAN BEFORE THE EFFECTIVE DATE OF THE 2016 AMENDATORY ACT THAT AMENDED THIS SECTION.**

(b) 1/5 renewable energy credit for each megawatt hour of electricity generated from a renewable energy system, other than wind, at peak demand time as determined by the commission.

(c) 1/5 renewable energy credit for each megawatt hour of electricity generated from a renewable energy system during off-peak hours, stored using advanced electric storage technology or a hydroelectric pumped storage facility, and used during peak hours. However, the number of renewable energy credits shall be calculated based on the number of megawatt hours of renewable energy used to charge the advanced electric storage technology or fill the pumped storage facility, not the number of megawatt hours actually discharged or generated by discharge from the advanced energy storage facility or pumped storage facility.

(d) 1/10 renewable energy credit for each megawatt hour of electricity generated from a renewable energy system constructed using equipment made in this state as determined by the commission. The additional credit under this subdivision is available for the first 3 years after the renewable energy system first produces electricity on a commercial basis.

(e) 1/10 renewable energy credit for each megawatt hour of electricity from a renewable energy system constructed using a workforce composed of residents of this state as determined by the commission. The additional credit under this subdivision is available for the first 3 years after the renewable energy system first produces electricity on a commercial basis.

(3) A renewable energy credit expires at the earliest of the following times:

(a) When used by an electric provider to comply with its renewable energy ~~credit~~ standard.

(b) When substituted for an energy ~~optimization~~ **WASTE REDUCTION** credit under section 77.

(C) WHEN USED BY AN ELECTRIC PROVIDER WHOSE RATES ARE REGULATED BY THE COMMISSION TO CONTRIBUTE TO ACHIEVEMENT OF THE GOAL UNDER SECTION 1(3).

(D) ~~(c) Three~~ **FIVE** years after the end of the month in which the renewable energy credit was generated.

~~(4) A renewable energy credit associated with renewable energy generated within 120 days after the start of a calendar year may be used to satisfy the prior year's renewable energy standard and expires when so used.~~

Sec. 41. (1) Renewable energy credits may be traded, sold, or otherwise transferred.

(2) An electric provider is responsible for demonstrating that a renewable energy credit used to comply with a renewable energy credit standard is derived from a renewable energy source and that the electric provider has not previously used or traded, sold, or

otherwise transferred the renewable energy credit.

(3) The same renewable energy credit may be used by an electric provider to comply with both a federal standard for renewable energy and the renewable energy standard under this subpart. An electric provider that uses a renewable energy credit to comply with another state's standard for renewable energy shall not use the same renewable energy credit to comply with the renewable energy credit standard under this subpart.

(4) The commission shall establish a renewable energy credit certification and tracking program. The certification and tracking program may be contracted to and performed by a third party through a system of competitive bidding. The program shall include all of the following:

(a) A process to certify renewable energy systems, including all existing renewable energy systems operating on ~~the effective date of this act,~~ **OCTOBER 6, 2008** as eligible to receive renewable energy credits.

(b) A process for verifying that the operator of a renewable energy system is in compliance with state and federal law applicable to the operation of the renewable energy system when certification is granted. If a renewable energy system becomes noncompliant with state or federal law, renewable energy credits shall not be granted for renewable energy generated by that renewable energy system during the period of noncompliance.

(c) A method for determining the date on which a renewable energy credit is generated and valid for transfer.

(d) A method for transferring renewable energy credits.

(e) A method for ensuring that each renewable energy credit transferred under this act is properly accounted for under this act.

(f) If the system is established by the commission, allowance for issuance, transfer, and use of renewable energy credits in electronic form.

~~(g) A method for ensuring that both a renewable energy credit and an advanced cleaner energy credit are not awarded for the same megawatt hour of energy.~~

(5) A renewable energy credit purchased from a renewable energy system in this state is not required to be used in this state.

Sec. 45. (1) For an electric provider whose rates are regulated by the commission, the commission shall determine the appropriate charges for the electric provider's tariffs that permit recovery of the incremental cost of compliance subject to the retail rate impact limits set forth in subsection (2).

(2) An electric provider shall recover the incremental cost of compliance with the renewable energy standards. ~~by an itemized charge on the customer's bill for billing periods beginning not earlier than 90 days after the commission approves the electric provider's renewable energy plan under section 21 or 23 or determines under section 25 that the plan complies with this act.~~ An electric provider shall not comply with the renewable energy standards to the extent that, as determined by the commission, recovery of the incremental cost of compliance will have a retail rate impact that exceeds any of the following:

(a) $3.00 per month per residential customer meter.

(b) $16.58 per month per commercial secondary customer meter.

(c) $187.50 per month per commercial primary or industrial customer meter.

(3) The retail rate impact limits of subsection (2) apply only to the incremental costs of compliance and do not apply to costs approved for recovery by the commission other than as provided in this act.

(4) The incremental cost of compliance shall be calculated for a 20-year period beginning with approval of the renewable energy plan and shall be recovered on a levelized basis.

~~(5) In its billing statements for a residential customer, each provider shall report to the residential customer all of the following in a format consistent with other information on the customer bill:~~

~~(a) An itemized monthly charge, expressed in dollars and cents, collected from the customer for implementing the renewable energy program requirements of this act. In the first bill issued after the close of the previous year, an electric provider shall notify each residential customer that the customer may be entitled to an income tax credit to offset some of the annual amounts collected for the renewable energy program.~~

~~(b) An itemized monthly charge, expressed in dollars and cents, collected from the customer for implementing the energy optimization program requirements of this act.~~

~~(c) An estimated monthly savings, expressed in dollars and cents, for that customer to reflect the reductions in the monthly~~

~~energy bill produced by the energy optimization program under this act.~~

~~(d) An estimated monthly savings, expressed in dollars and cents, for that customer to reflect the long-term, life-cycle, levelized costs of building and operating new conventional coal-fired electric generating power plants avoided under this act as determined by the commission.~~

~~(e) The website address at which the commission's annual report under section 51 is posted.~~

~~(6) For the first year of the programs under this part, the values reported under subsection (5) shall be estimates by the commission. The values in following years shall be based on the provider's actual customer experiences. If the provider is unable to provide customer-specific information under subsection (5)(b) or (c), it shall instead specify the state average itemized charge or savings, as applicable, for residential customers. The provider shall make this calculation based on a method approved by the commission.~~

~~(7) In determining long-term, life-cycle, levelized costs of building and operating and acquiring nonrenewable electric generating capacity and energy for the purpose of subsection (5)(d), the commission shall consider historic and predicted costs of financing, construction, operation, maintenance, fuel supplies, environmental protection, and other appropriate elements of energy production. For purposes of this comparison, the capacity of avoided new conventional coal-fired electric generating facilities shall be expressed in megawatts and avoided new conventional coal-~~

~~fired electricity generation shall be expressed in megawatt hours. Avoided costs shall be measured in cents per kilowatt hour.~~

Sec. 47. (1) Subject to the retail rate impact limits under section 45, the commission shall consider all actual costs reasonably and prudently incurred in good faith to implement a commission-approved renewable energy plan by an electric provider whose rates are regulated by the commission to be a cost of service to be recovered by the electric provider. Subject to the retail rate impact limits under section 45, an electric provider whose rates are regulated by the commission shall recover through its retail electric rates all of the electric provider's incremental costs of compliance during the 20-year period beginning when the electric provider's plan is approved by the commission and all reasonable and prudent ongoing costs of compliance during and after that period. The recovery shall include, but is not limited to, the electric provider's authorized rate of return on equity for costs approved under this section, which shall remain fixed at the rate of return and debt to equity ratio that was in effect in the electric provider's base rates when the electric provider's renewable energy plan was approved.

(2) Incremental costs of compliance shall be calculated as follows:

(a) Determine the sum of the following costs to the extent those costs are reasonable and prudent and not already approved for recovery in electric rates as of ~~the effective date of this act:~~**OCTOBER 6, 2008:**

(*i*) Capital, operating, and maintenance costs of renewable

energy systems or advanced cleaner energy systems, including property taxes, insurance, and return on equity associated with an electric provider's renewable energy systems or advanced cleaner energy systems, including the electric provider's renewable energy portfolio established to achieve compliance with the renewable energy standards and any additional renewable energy systems or advanced cleaner energy systems ~~,~~ that are built or acquired by the electric provider to maintain compliance with the renewable energy standards during the 20-year period beginning when the electric provider's plan is approved by the commission.

(*ii*) Financing costs attributable to capital, operating, and maintenance costs of capital facilities associated with renewable energy systems or advanced cleaner energy systems used to meet the renewable energy standard.

(*iii*) Costs that are not otherwise recoverable in rates approved by the ~~federal energy regulatory commission~~ **FEDERAL ENERGY REGULATORY COMMISSION** and that are related to the infrastructure required to bring renewable energy systems or advanced cleaner energy systems used to achieve compliance with the renewable energy standards on to the transmission system, including interconnection and substation costs for renewable energy systems or advanced cleaner energy systems used to meet the renewable energy standard.

(*iv*) Ancillary service costs determined by the commission to be necessarily incurred to ensure the quality and reliability of renewable energy or advanced cleaner energy used to meet the renewable energy standards, regardless of the ownership of a renewable energy system or advanced cleaner energy technology.

(*v*) Except to the extent the costs are allocated under a different subparagraph, all of the following:

(A) The costs of renewable energy credits purchased under this act.

(B) The costs of contracts described in **FORMER** section 33(1).

(*vi*) Expenses incurred as a result of state or federal governmental actions related to renewable energy systems or advanced cleaner energy systems attributable to the renewable energy standards, including changes in tax or other law.

(*vii*) Any additional electric provider costs determined by the commission to be necessarily incurred to ensure the quality and reliability of renewable energy or advanced cleaner energy used to meet the renewable energy standards.

(b) Subtract from the sum of costs not already included in electric rates determined under subdivision (a) the sum of the following revenues:

(*i*) Revenue derived from the sale of environmental attributes associated with the generation of renewable energy or advanced cleaner energy systems attributable to the renewable energy standards. Such revenue shall not be considered in determining power supply cost recovery factors under section 6j of 1939 PA 3, MCL 460.6j.

(*ii*) Interest on regulatory liabilities.

(*iii*) Tax credits specifically designed to promote renewable energy or advanced cleaner energy.

(*iv*) Revenue derived from the provision of renewable energy or advanced cleaner energy to retail electric customers subject to a

power supply cost recovery clause under section 6j of 1939 PA 3, MCL 460.6j, of an electric provider whose rates are regulated by the commission. After providing an opportunity for a contested case hearing for an electric provider whose rates are regulated by the commission, the commission shall annually establish a price per megawatt hour. ~~In addition, an~~ **AN** electric provider whose rates are regulated by the commission may at any time petition the commission to revise the price. In setting the price per megawatt hour under this subparagraph, the commission shall consider factors including, but not limited to, projected capacity, energy, maintenance, and operating costs; information filed under section 6j of 1939 PA 3, MCL 460.6j; and information from wholesale markets, including, but not limited to, locational marginal pricing. This price shall be multiplied by the sum of the number of megawatt hours of renewable energy and the number of megawatt hours of advanced cleaner energy used to maintain compliance with the renewable energy standard. The product shall be considered a booked cost of purchased and net interchanged power transactions under section 6j of 1939 PA 3, MCL 460.6j. For energy purchased by such an electric provider under a renewable energy contract or advanced cleaner energy contract, the price shall be the lower of the amount established by the commission or the actual price paid and shall be multiplied by the number of megawatt hours of renewable energy or advanced cleaner energy purchased. The resulting value shall be considered a booked cost of purchased and net interchanged power under section 6j of 1939 PA 3, MCL 460.6j.

(*v*) Revenue from wholesale renewable energy sales and advanced

cleaner energy sales. Such revenue shall not be considered in determining power supply cost recovery factors under section 6j of 1939 PA 3, MCL 460.6j.

(*vi*) Any additional electric provider revenue considered by the commission to be attributable to the renewable energy standards.

(*vii*) Any revenues recovered in rates for renewable energy costs that are included under subdivision (a).

(3) The commission shall authorize an electric provider whose rates are regulated by the commission to spend in any given month more to comply with this act and implement an approved renewable energy plan than the revenue actually generated by the revenue recovery mechanism. An electric provider whose rates are regulated by the commission shall recover its commission approved pre-tax rate of return on regulatory assets during the appropriate period. An electric provider whose rates are regulated by the commission shall record interest on regulatory liabilities at the average short-term borrowing rate available to the electric provider during the appropriate period. Any regulatory assets or liabilities resulting from the recovery **OF** costs of renewable energy or advanced cleaner energy attributable to renewable energy standards through the power supply cost recovery clause under section 6j of 1939 PA 3, MCL 460.6j, shall continue to be reconciled under that section.

(4) If an electric provider's incremental costs of compliance in any given month during the 20-year period beginning when the electric provider's plan is approved by the commission are in

excess of the revenue recovery mechanism as adjusted under section 49 and in excess of the balance of any accumulated reserve funds, subject to the minimum balance established under section ~~21,~~ **49**, the electric provider shall immediately notify the commission. The commission shall promptly commence a contested case hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, and modify the revenue recovery mechanism so that the minimum balance is restored. However, if the commission determines that recovery of the incremental costs of compliance would otherwise exceed the maximum retail rate impacts specified under section 45, it shall set the revenue recovery mechanism for that electric provider to correspond to the maximum retail rate impacts. Excess costs shall be accrued and deferred for recovery. Not later than the expiration of the 20-year period beginning when the electric provider's plan is approved by the commission, for an electric provider whose rates are regulated by the commission, the commission shall determine the amount of deferred costs to be recovered under the revenue recovery mechanism and the recovery period, which shall not extend more than 5 years beyond the expiration of the 20-year period beginning when the electric provider's plan is approved by the commission. The recovery of excess costs shall be proportional to the retail rate impact limits in section 45 for each customer class. The recovery of excess costs alone, or, if begun before the expiration of the 20-year period, in combination with the recovery of incremental costs of compliance under the revenue recovery mechanism, shall not exceed the retail rate impact limits of section 45 for each customer class.

(5) If, at the expiration of the 20-year period beginning when the electric provider's plan is approved by the commission, an electric provider whose rates are regulated by the commission has a regulatory liability, the refund to customer classes shall be proportional to the amounts paid by those customer classes under the revenue recovery mechanism.

(6) After achieving compliance with the renewable energy standard for 2015, the actual costs reasonably and prudently incurred to continue to comply with this subpart both during and after the conclusion of the 20-year period beginning when the electric provider's plan is approved by the commission shall be considered costs of service. The commission shall determine a mechanism for an electric provider whose rates are regulated by the commission to recover these costs in its retail electric rates, subject to the retail rate impact limits in section 45. Remaining and future regulatory assets shall be recovered consistent with subsections ~~(2) and~~ (3) **AND (4)** and section 49.

(7) AS USED IN THIS SECTION:

(A) "ADVANCED CLEANER ENERGY" MEANS ELECTRICITY GENERATED USING AN ADVANCED CLEANER ENERGY SYSTEM.

(B) "ADVANCED CLEANER ENERGY SYSTEM" MEANS ANY OF THE FOLLOWING:

(*i*) A GASIFICATION FACILITY.

(*ii*) A COGENERATION FACILITY.

(*iii*) A COAL-FIRED ELECTRIC GENERATING FACILITY IF 85% OR MORE OF THE CARBON DIOXIDE EMISSIONS ARE CAPTURED AND PERMANENTLY GEOLOGICALLY SEQUESTERED OR USED FOR OTHER COMMERCIAL OR INDUSTRIAL

PURPOSES THAT DO NOT RESULT IN RELEASE OF CARBON DIOXIDE TO THE ATMOSPHERE.

(*iv*) A HYDROELECTRIC PUMPED STORAGE FACILITY.

(*v*) AN ELECTRIC GENERATING FACILITY OR SYSTEM THAT USES TECHNOLOGIES NOT IN COMMERCIAL OPERATION ON OCTOBER 6, 2008 AND THAT THE COMMISSION DETERMINES HAS CARBON DIOXIDE EMISSIONS BENEFITS OR WILL SIGNIFICANTLY REDUCE OTHER REGULATED AIR EMISSIONS.

Sec. 49. (1) This section applies only to an electric provider whose rates are regulated by the commission. ~~Concurrent with the submission of each report under section 51, the~~ **THE** commission shall commence an annual proceeding, to be known as a renewable cost reconciliation, for each electric provider whose rates are regulated by the commission. The renewable cost reconciliation proceeding shall be conducted as a contested case pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Reasonable discovery shall be permitted before and during the reconciliation proceeding to assist in obtaining evidence concerning reconciliation issues including, but not limited to, the reasonableness and prudence of expenditures and the amounts collected pursuant to the revenue recovery mechanism.

(2) At the renewable cost reconciliation, an electric provider may propose any necessary modifications of the revenue recovery mechanism to ensure the electric provider's recovery of its incremental cost of compliance with the renewable energy standards.

(3) The commission shall reconcile the pertinent revenues recorded and the allowance for the nonvolumetric revenue recovery

mechanism with the amounts actually expensed and projected according to the electric provider's **RENEWABLE ENERGY** plan. ~~for compliance.~~ The commission shall consider any issue regarding the reasonableness and prudence of expenses for which customers were charged in the relevant reconciliation period. In its order, the commission shall do all of the following:

(a) Make a determination of an electric provider's compliance with the renewable energy standards.~~, subject to section 31.~~

(b) Adjust the revenue recovery mechanism for the incremental costs of compliance. The commission shall ensure that the retail rate impacts under this renewable cost reconciliation revenue recovery mechanism do not exceed the maximum retail rate impacts specified under section 45. The commission shall ensure that the recovery mechanism is projected to maintain a minimum balance of accumulated reserve so that a regulatory asset does not accrue.

(c) Establish the price per megawatt hour for renewable energy and advanced cleaner energy capacity and for renewable energy and advanced cleaner energy to be recovered through the power supply cost recovery clause under section 6j of 1939 PA 3, MCL 460.6j, as outlined in section 47(2)(b)(*iv*).

(d) Adjust, if needed, the minimum balance of accumulated reserve funds ~~established under section 21.~~**DESCRIBED IN SUBDIVISION (B).**

(4) If an electric provider has recorded a regulatory liability in any given month during the 20-year period beginning when the electric provider's **RENEWABLE ENERGY** plan ~~is~~ **WAS** approved by the commission, interest on the regulatory liability balance

shall be accrued at the average short-term borrowing rate available to the electric provider during the appropriate period, and shall be used to fund incremental costs of compliance incurred in subsequent periods within the 20-year period beginning when the electric provider's plan ~~is~~ **WAS** approved by the commission.

(5) AS USED IN THIS SECTION, "ADVANCED CLEANER ENERGY" MEANS THAT TERM AS DEFINED IN SECTION 47.

[SEC. 54. NOTHING IN THIS SUBPART ABROGATES THE POWERS GRANTED TO LOCAL UNITS OF GOVERNMENT UNDER THE MICHIGAN ZONING ENABLING ACT, 2006 PA 110, MCL 125.3101 TO 125.3702.]

SUBPART B. CUSTOMER-REQUESTED RENEWABLE ENERGY

SEC. 61. AN ELECTRIC PROVIDER SHALL OFFER TO ITS CUSTOMERS THE OPPORTUNITY TO PARTICIPATE IN A VOLUNTARY GREEN PRICING PROGRAM UNDER WHICH THE CUSTOMER MAY SPECIFY, FROM THE OPTIONS MADE AVAILABLE BY THE ELECTRIC PROVIDER, THE AMOUNT OF ELECTRICITY ATTRIBUTABLE TO THE CUSTOMER THAT WILL BE RENEWABLE ENERGY. IF THE ELECTRIC PROVIDER'S RATES ARE REGULATED BY THE COMMISSION, THE PROGRAM, INCLUDING THE RATES PAID FOR RENEWABLE ENERGY, MUST BE APPROVED BY THE COMMISSION. THE CUSTOMER IS RESPONSIBLE FOR ANY ADDITIONAL COSTS INCURRED AND SHALL ACCRUE ANY ADDITIONAL SAVINGS REALIZED BY THE ELECTRIC PROVIDER AS A RESULT OF THE CUSTOMER'S PARTICIPATION IN THE PROGRAM. IF AN ELECTRIC PROVIDER HAS NOT YET FULLY RECOVERED THE INCREMENTAL COSTS OF COMPLIANCE, BOTH OF THE FOLLOWING APPLY:

(A) A CUSTOMER THAT RECEIVES AT LEAST 50% OF THE CUSTOMER'S AVERAGE MONTHLY ELECTRICITY CONSUMPTION THROUGH THE PROGRAM IS EXEMPT FROM PAYING SURCHARGES FOR INCREMENTAL COSTS OF COMPLIANCE.

(B) BEFORE ENTERING INTO AN AGREEMENT TO PARTICIPATE IN A COMMISSION-APPROVED VOLUNTARY GREEN PRICING PROGRAM WITH A CUSTOMER THAT WILL NOT RECEIVE AT LEAST 50% OF THE CUSTOMER'S AVERAGE

MONTHLY ELECTRICITY CONSUMPTION THROUGH THE PROGRAM, THE ELECTRIC PROVIDER SHALL NOTIFY THE CUSTOMER THAT THE CUSTOMER WILL BE RESPONSIBLE FOR THE FULL APPLICABLE CHARGES FOR THE INCREMENTAL COSTS OF COMPLIANCE AND FOR PARTICIPATION IN THE VOLUNTARY RENEWABLE ENERGY PROGRAM AS PROVIDED UNDER THIS SECTION.

SUBPART ~~B.~~ **C.** ENERGY ~~OPTIMIZATION~~ **WASTE REDUCTION**

Sec. 71. (1) A provider shall file a proposed energy optimization plan with the commission within the following time period:

(a) For a provider whose rates are regulated by the commission, ~~90 days after the commission enters a temporary order under section 171.~~**BY MARCH 3, 2009.**

(b) For a cooperative electric utility that has elected to become member-regulated under the electric cooperative ~~member regulation~~ **MEMBER-REGULATION** act, 2008 PA 167, MCL 460.31 to 460.39, or a ~~municipally-owned~~ **MUNICIPALLY OWNED** electric utility, ~~120 days after the commission enters a temporary order under section 171.~~**BY APRIL 2, 2009.**

(2) ENERGY OPTIMIZATION PLANS FILED UNDER SUBSECTION (1) REMAIN IN EFFECT, SUBJECT TO ANY AMENDMENTS, AS ENERGY WASTE REDUCTION PLANS.

(3) ~~(2)~~ The overall goal of an energy ~~optimization~~ **WASTE REDUCTION** plan shall be to **HELP THE PROVIDER'S CUSTOMERS REDUCE ENERGY WASTE AND TO** reduce the future costs of provider service to customers. In particular, an ~~EO~~ **ELECTRIC PROVIDER'S ENERGY WASTE REDUCTION** plan shall be designed to delay the need for constructing new electric generating facilities and thereby protect consumers

from incurring the costs of such construction. ~~The proposed energy optimization plan shall be subject to approval in the same manner as an electric provider's renewable energy plan under subpart A. A provider may combine its energy optimization plan with its renewable energy plan.~~

(4) ~~(3)~~ An energy ~~optimization~~ **WASTE REDUCTION** plan shall do all of the following:

(a) Propose a set of energy ~~optimization~~ **WASTE REDUCTION** programs that include offerings for each customer class, including ~~low income~~ **LOW-INCOME** residential. The commission shall allow ~~providers~~ **A PROVIDER** flexibility to tailor the relative amount of effort devoted to each customer class based on the specific characteristics of ~~their~~ **THE PROVIDER'S** service territory.

(b) Specify necessary funding levels.

(c) Describe how energy ~~optimization~~ **WASTE REDUCTION** program costs will be recovered as provided in section 89(2).

(d) Ensure, to the extent feasible, that charges collected from a particular customer rate class are spent on energy ~~optimization~~ **WASTE REDUCTION** programs ~~for~~ **THAT BENEFIT** that rate class.

(e) Demonstrate that the proposed energy ~~optimization~~ **WASTE REDUCTION** programs and funding are sufficient to ensure the achievement of applicable energy ~~optimization~~ **WASTE REDUCTION** standards.

(f) Specify whether the number of megawatt hours of electricity or decatherms or MCFs of natural gas used in the calculation of incremental energy savings under section 77 will be

weather-normalized or based on the average number of megawatt hours of electricity or decatherms or MCFs of natural gas sold by the provider annually during the previous 3 years to retail customers in this state. Once the plan is approved by the commission, this option shall not be changed.

(g) Demonstrate that the provider's energy ~~optimization~~ **WASTE REDUCTION** programs, excluding program offerings to ~~low income~~ **LOW-INCOME** residential customers, will collectively be cost-effective.

(h) Provide for the practical and effective administration of the proposed energy ~~optimization~~ **WASTE REDUCTION** programs. The commission shall allow providers flexibility in designing their energy ~~optimization~~ **WASTE REDUCTION** programs and administrative approach, **INCLUDING THE FLEXIBILITY TO DETERMINE THE RELATIVE AMOUNT OF EFFORT TO BE DEVOTED TO EACH CUSTOMER CLASS BASED ON THE SPECIFIC CHARACTERISTICS OF THE PROVIDER'S SERVICE TERRITORY**. A provider's energy ~~optimization~~ **WASTE REDUCTION** programs or any part thereof, may be administered, at the provider's option, by the provider, alone or jointly with other providers, by a state agency, or by an appropriate experienced nonprofit organization selected after a competitive bid process.

(i) Include a process for obtaining an independent expert evaluation of the actual energy ~~optimization~~ **WASTE REDUCTION** programs to verify the incremental energy savings from each energy ~~optimization~~ **WASTE REDUCTION** program for purposes of section 77. All such evaluations ~~shall be~~ **ARE** subject to public review and commission oversight.

(5) ~~(4)~~ Subject to subsection ~~(5),~~ **(6),** an energy ~~optimization~~

WASTE REDUCTION plan may do 1 or more of the following:

(a) Utilize educational programs designed to alter consumer behavior or any other measures that can reasonably be used to meet the goals set forth in subsection ~~(2).~~**(3).**

(b) Propose to the commission measures that are designed to meet the goals set forth in subsection ~~(1)~~ **(3)** and that provide additional customer benefits.

(6) ~~(5)~~ Expenditures under subsection ~~(4)~~ **(5)** shall not exceed 3% of the costs of implementing the energy ~~optimization~~ **WASTE REDUCTION** plan.

Sec. 73. (1) A provider's energy ~~optimization~~ **WASTE REDUCTION** plan shall be filed **WITH,** reviewed **BY,** and approved or rejected by the commission. ~~and enforced subject to the same procedures that apply to a renewable energy plan.~~**FOR A PROVIDER WHOSE RATES ARE REGULATED BY THE COMMISSION, THE PLAN SHALL BE ENFORCED BY THE COMMISSION. FOR A PROVIDER WHOSE RATES ARE NOT REGULATED BY THE COMMISSION, THE PLAN SHALL BE ENFORCED AS PROVIDED IN SECTION 99. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBPART, THE COMMISSION SHALL ALLOW MUNICIPALLY OWNED ELECTRIC UTILITIES TO DESIGN AND ADMINISTER ENERGY WASTE REDUCTION PLANS IN A MANNER CONSISTENT WITH THE ADMINISTRATIVE CHANGES APPROVED IN THE COMMISSION'S APRIL 17, 2012 ORDER IN CASE NOS. U-16688 TO U-16728 AND U-17008.**

(2) The commission shall not approve a proposed energy ~~optimization~~ **WASTE REDUCTION** plan unless the commission determines that the ~~EO~~ **ENERGY WASTE REDUCTION** plan meets the utility system resource cost test and, **SUBJECT TO SECTION 78,** is reasonable and prudent. In determining whether the ~~EO~~ **ENERGY WASTE REDUCTION** plan

is reasonable and prudent, the commission shall review each element and consider whether it would reduce the future cost of service for the provider's customers. In addition, the commission shall consider at least all of the following:

(a) The specific changes in customers' consumption patterns that the proposed ~~EO~~ **ENERGY WASTE REDUCTION** plan is attempting to influence.

(b) The cost and benefit analysis and other justification for specific programs and measures included in a proposed ~~EO~~ **ENERGY WASTE REDUCTION** plan.

(c) Whether the proposed ~~EO~~ **ENERGY WASTE REDUCTION** plan is consistent with any long-range resource plan filed by the provider with the commission.

(d) Whether the proposed ~~EO~~ **ENERGY WASTE REDUCTION** plan will result in any unreasonable prejudice or disadvantage to any class of customers.

(e) The extent to which the ~~EO~~ **ENERGY WASTE REDUCTION** plan provides programs that are available, affordable, and useful to all customers.

(3) EVERY 2 YEARS AFTER INITIAL APPROVAL OF AN ENERGY WASTE REDUCTION PLAN UNDER SUBSECTION (2), THE COMMISSION SHALL REVIEW THE PLAN. FOR A PROVIDER WHOSE RATES ARE REGULATED BY THE COMMISSION, THE COMMISSION SHALL CONDUCT A CONTESTED CASE HEARING ON THE PLAN PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO 24.328. AFTER THE HEARING, THE COMMISSION SHALL APPROVE, WITH ANY CHANGES CONSENTED TO BY THE PROVIDER, OR REJECT THE PLAN AND ANY PROPOSED AMENDMENTS TO THE

PLAN.

(4) IF A PROVIDER PROPOSES TO AMEND ITS PLAN AT A TIME OTHER THAN DURING THE BIENNIAL REVIEW PROCESS UNDER SUBSECTION (3), THE PROVIDER SHALL FILE THE PROPOSED AMENDMENT WITH THE COMMISSION. AFTER THE HEARING AND WITHIN 90 DAYS AFTER THE AMENDMENT IS FILED, THE COMMISSION SHALL APPROVE, WITH ANY CHANGES CONSENTED TO BY THE PROVIDER, OR REJECT THE PLAN AND THE PROPOSED AMENDMENT OR AMENDMENTS TO THE PLAN.

(5) IF THE COMMISSION REJECTS A PROPOSED PLAN OR AMENDMENT UNDER THIS SECTION, THE COMMISSION SHALL EXPLAIN IN WRITING THE REASONS FOR ITS DETERMINATION.

(6) AFTER DECEMBER 31, 2021, THIS SECTION DOES NOT APPLY TO AN ELECTRIC PROVIDER WHOSE RATES ARE NOT REGULATED BY THE COMMISSION.

SEC. 74. (1) THIS SECTION APPLIES ONLY TO A PROVIDER WHOSE RATES ARE REGULATED BY THE COMMISSION. CONCURRENT WITH THE SUBMISSION OF EACH REPORT UNDER SECTION 97, THE COMMISSION SHALL COMMENCE AN ANNUAL PROCEEDING, TO BE KNOWN AS AN ENERGY WASTE REDUCTION COST RECONCILIATION, FOR EACH PROVIDER WHOSE RATES ARE REGULATED BY THE COMMISSION. THE ENERGY WASTE REDUCTION COST RECONCILIATION SHALL BE CONDUCTED AS A CONTESTED CASE PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO 24.328. REASONABLE DISCOVERY SHALL BE PERMITTED BEFORE AND DURING THE ENERGY WASTE REDUCTION COST RECONCILIATION TO ASSIST IN OBTAINING EVIDENCE CONCERNING RECONCILIATION ISSUES INCLUDING, BUT NOT LIMITED TO, THE REASONABLENESS AND PRUDENCE OF EXPENDITURES AND THE AMOUNTS COLLECTED PURSUANT TO ENERGY WASTE REDUCTION CHARGES SET BY THE COMMISSION.

(2) AT THE ENERGY WASTE REDUCTION COST RECONCILIATION, A PROVIDER MAY PROPOSE ANY NECESSARY MODIFICATIONS OF THE ENERGY WASTE REDUCTION CHARGES PREVIOUSLY SET BY THE COMMISSION TO ENSURE THE PROVIDER'S RECOVERY OF ITS COSTS TO COMPLY WITH THE ENERGY WASTE REDUCTION STANDARDS.

(3) THE COMMISSION SHALL RECONCILE THE PERTINENT REVENUES RECORDED WITH THE AMOUNTS ACTUALLY EXPENSED AND PROJECTED ACCORDING TO THE PROVIDER'S PLAN FOR COMPLIANCE. THE COMMISSION SHALL CONSIDER ANY ISSUE REGARDING THE REASONABLENESS AND PRUDENCE OF EXPENSES FOR WHICH CUSTOMERS WERE CHARGED IN THE RELEVANT RECONCILIATION PERIOD. IN ITS ORDER, THE COMMISSION SHALL DO BOTH OF THE FOLLOWING:

(A) MAKE A DETERMINATION OF A PROVIDER'S COMPLIANCE WITH THE ENERGY WASTE REDUCTION STANDARDS.

(B) ADJUST, IF NECESSARY, THE ENERGY WASTE REDUCTION CHARGES PREVIOUSLY SET BY THE COMMISSION.

Sec. 75. **(1)** An energy ~~optimization~~ **WASTE REDUCTION** plan of a provider whose rates are regulated by the commission may authorize a commensurate financial incentive for the provider for exceeding the energy ~~optimization performance~~ **WASTE REDUCTION** standard. Payment of any financial incentive authorized in the ~~EO~~ **ENERGY WASTE REDUCTION** plan is subject to the approval of the commission.

(2) The total amount of a financial incentive **FOR AN ELECTRIC PROVIDER THAT ACHIEVES ANNUAL INCREMENTAL SAVINGS OF GREATER THAN 1.5% OF ITS TOTAL ANNUAL RETAIL ELECTRICITY SALES IN MEGAWATT HOURS IN THE PRECEDING YEAR OR A NATURAL GAS PROVIDER THAT ACHIEVES ANNUAL INCREMENTAL SAVINGS OF GREATER THAN 1% OF ITS TOTAL ANNUAL**

RETAIL NATURAL GAS SALES IN DECATHERMS IN THE PRECEDING YEAR shall not exceed the lesser of the following amounts:

(a) ~~25%~~ **30%** of the net **PRESENT VALUE OF LIFE-CYCLE** cost reductions experienced by the provider's customers as a result of implementation, **DURING THE YEAR FOR WHICH THE FINANCIAL INCENTIVE IS PAID,** of the energy ~~optimization~~ **WASTE REDUCTION** plan.

(b) ~~15% percent~~ **20%** of the provider's actual energy [~~efficiency~~**WASTE REDUCTION**] program expenditures for the year.

(3) THE TOTAL AMOUNT OF THE FINANCIAL INCENTIVE FOR AN ELECTRIC PROVIDER THAT ACHIEVES ANNUAL INCREMENTAL SAVINGS OF GREATER THAN 1.25% BUT NOT GREATER THAN 1.5% OF ITS TOTAL ANNUAL RETAIL ELECTRICITY SALES IN MEGAWATT HOURS IN THE PRECEDING YEAR OR A NATURAL GAS PROVIDER THAT ACHIEVES ANNUAL INCREMENTAL SAVINGS OF GREATER THAN 0.875% BUT NOT GREATER THAN 1% OF ITS TOTAL ANNUAL RETAIL NATURAL GAS SALES IN DECATHERMS IN THE PRECEDING YEAR SHALL NOT EXCEED THE LESSER OF THE FOLLOWING AMOUNTS:

(A) 27.5% OF THE NET PRESENT VALUE OF LIFE-CYCLE COST REDUCTIONS EXPERIENCED BY THE PROVIDER'S CUSTOMERS AS A RESULT OF IMPLEMENTATION, DURING THE YEAR FOR WHICH THE FINANCIAL INCENTIVE IS PAID, OF THE ENERGY WASTE REDUCTION PLAN.

(B) 17.5% OF THE PROVIDER'S ACTUAL ENERGY [WASTE REDUCTION] PROGRAM EXPENDITURES FOR THE YEAR.

(4) THE TOTAL AMOUNT OF A FINANCIAL INCENTIVE FOR AN ELECTRIC PROVIDER THAT ACHIEVES ANNUAL INCREMENTAL SAVINGS OF AT LEAST 1.0% BUT NOT GREATER THAN 1.25% OF ITS TOTAL ANNUAL RETAIL ELECTRICITY SALES IN MEGAWATT HOURS IN THE PRECEDING YEAR OR A NATURAL GAS PROVIDER THAT ACHIEVES ANNUAL INCREMENTAL SAVINGS OF AT LEAST 0.75%

BUT NOT GREATER THAN 0.875% OF ITS TOTAL ANNUAL RETAIL NATURAL GAS SALES IN DECATHERMS IN THE PRECEDING YEAR SHALL NOT EXCEED THE LESSER OF THE FOLLOWING AMOUNTS:

(A) 25% OF THE NET PRESENT VALUE OF LIFE-CYCLE COST REDUCTIONS EXPERIENCED BY THE PROVIDER'S CUSTOMERS AS A RESULT OF IMPLEMENTATION, DURING THE YEAR FOR WHICH THE FINANCIAL INCENTIVE IS PAID, OF THE ENERGY [WASTE REDUCTION] PLAN.

(B) 15% OF THE PROVIDER'S ACTUAL ENERGY [WASTE REDUCTION] PROGRAM EXPENDITURES FOR THE YEAR.

Sec. 77. (1) Except as provided in section 81 and subject to ~~the sales revenue expenditure limits in section 89,~~ **SECTION 97,** an electric provider's energy ~~optimization~~ **WASTE REDUCTION** programs under this subpart shall collectively achieve ~~the following minimum energy savings:~~

~~(a) Biennial incremental energy savings in 2008-2009 equivalent to 0.3% of total annual retail electricity sales in megawatt hours in 2007.~~

~~(b) Annual incremental energy savings in 2010 equivalent to 0.5% of total annual retail electricity sales in megawatt hours in 2009.~~

~~(c) Annual incremental energy savings in 2011 equivalent to 0.75% of total annual retail electricity sales in megawatt hours in 2010.~~

~~(d) Annual incremental energy savings in 2012, 2013, 2014, and 2015 and, subject to section 97, each year thereafter~~ **INCREMENTAL ENERGY SAVINGS EACH YEAR THROUGH 2021** equivalent to 1.0% of total annual retail electricity sales in megawatt hours in the preceding

year.

(2) If an electric provider uses load management to achieve energy savings under its energy ~~optimization~~ **WASTE REDUCTION** plan, the minimum energy savings required under subsection (1) shall be adjusted by an amount such that the ratio of the minimum energy savings to the sum of ~~maximum~~ **ACTUAL** expenditures ~~under section 89~~ **FOR IMPLEMENTING ITS APPROVED ENERGY WASTE REDUCTION PLAN** and the load management expenditures remains constant.

~~(3) A natural gas provider shall meet the following minimum energy optimization standards using energy efficiency programs under this subpart:~~

~~(a) Biennial incremental energy savings in 2008-2009 equivalent to 0.1% of total annual retail natural gas sales in decatherms or equivalent MCFs in 2007.~~

~~(b) Annual incremental energy savings in 2010 equivalent to 0.25% of total annual retail natural gas sales in decatherms or equivalent MCFs in 2009.~~

~~(c) Annual incremental energy savings in 2011 equivalent to 0.5% of total annual retail natural gas sales in decatherms or equivalent MCFs in 2010.~~

(3) ~~(d) Annual~~ **SUBJECT TO SECTION 97, A NATURAL GAS PROVIDER'S ENERGY WASTE REDUCTION PROGRAM UNDER THIS SUBPART SHALL ACHIEVE ANNUAL** incremental energy savings ~~in 2012, 2013, 2014, and 2015 and, subject to section 97,~~ each year ~~thereafter~~ equivalent to 0.75% of total annual retail natural gas sales in decatherms or equivalent MCFs in the preceding year.

(4) Incremental energy savings under subsection (1) or (3) for

~~the 2008-2009 biennium or any year thereafter~~ **A YEAR** shall be determined for a provider by adding the energy savings expected to be achieved ~~during a 1-year period~~ by energy ~~optimization~~ **WASTE REDUCTION** measures implemented during ~~the 2008-2009 biennium or any year thereafter~~ **THAT YEAR** under any energy ~~efficiency~~ **WASTE REDUCTION** programs consistent with the provider's energy ~~efficiency~~ **WASTE REDUCTION** plan. **THE ENERGY SAVINGS EXPECTED TO BE ACHIEVED SHALL BE DETERMINED USING A SAVINGS DATABASE OR OTHER SAVINGS MEASUREMENT APPROACH AS DETERMINED REASONABLE BY THE COMMISSION.**

(5) For purposes of calculations under subsection (1) or (3), total annual retail electricity or natural gas sales in a year shall be based on 1 of the following at the option of the provider as specified in its energy ~~optimization~~ **WASTE REDUCTION** plan:

(a) The number of weather-normalized megawatt hours or decatherms or equivalent MCFs sold by the provider to retail customers in this state during the year preceding the ~~biennium or~~ year for which incremental energy savings are being calculated.

(b) The average number of megawatt hours or decatherms or equivalent MCFs sold by the provider during the 3 years preceding the ~~biennium or~~ year for which incremental energy savings are being calculated.

(6) For any year after 2012, an electric provider may substitute renewable energy credits associated with renewable energy generated that year from a renewable energy system constructed after ~~the effective date of this act, advanced cleaner energy credits other than credits from industrial cogeneration using industrial waste energy,~~ **OCTOBER 6, 2008,** load management

that reduces overall energy usage, or a combination thereof for energy ~~optimization~~ **WASTE REDUCTION** credits otherwise required to meet the energy ~~optimization performance~~ **WASTE REDUCTION** standard, if the substitution is approved by the commission. The commission shall not approve a substitution unless the commission determines that the substitution is cost-effective. ~~and, if the substitution involves advanced cleaner energy credits, that the advanced cleaner energy system provides carbon dioxide emissions benefits. In determining whether the substitution of advanced cleaner energy credits is cost-effective compared to other available energy optimization measures, the commission shall consider the environmental costs related to the advanced cleaner energy system, including the costs of environmental control equipment or greenhouse gas constraints or taxes. The commission's determinations shall be made after a contested case hearing that includes consultation with the department of environmental quality on the issue of carbon dioxide emissions benefits, if relevant, and environmental costs.~~

(7) Renewable energy credits, ~~advanced cleaner energy credits,~~ load management that reduces overall energy usage, or a combination thereof shall not be used by a provider to meet more than 10% of the energy ~~optimization~~ **WASTE REDUCTION** standard. Substitutions for energy ~~optimization~~ **WASTE REDUCTION** credits shall be made at the ~~following rates~~ **RATE OF 1 RENEWABLE ENERGY CREDIT** per energy ~~optimization~~ **WASTE REDUCTION** credit. ~~:~~

~~(a) 1 renewable energy credit.~~

~~(b) 1 advanced cleaner energy credit from plasma arc~~

~~gasification.~~

~~(c) 4 advanced cleaner energy credits other than from plasma arc gasification.~~

SEC. 78. (1) BY JANUARY 1, 2022, AND EVERY 2 YEARS THEREAFTER, AN ELECTRIC PROVIDER WHOSE RATES ARE REGULATED BY THE COMMISSION SHALL FILE AN ENERGY WASTE REDUCTION PLAN AMENDMENT WITH THE COMMISSION UNDER SECTION 73 PURSUANT TO A FILING SCHEDULE ESTABLISHED BY THE COMMISSION. THE AMENDMENT SHALL DETAIL THE AMOUNT OF ENERGY WASTE REDUCTION THE ELECTRIC PROVIDER PROPOSES TO ACHIEVE FOR THE SUCCEEDING 2-YEAR PERIOD. IF THE ELECTRIC PROVIDER WHOSE RATES ARE REGULATED BY THE COMMISSION PROPOSES A LEVEL OF ENERGY WASTE REDUCTION THAT IS HIGHER THAN THE LEVEL SPECIFIED IN THE PROVIDER'S CURRENT ENERGY WASTE REDUCTION PLAN, THE COMMISSION MAY APPROVE THE PROPOSED HIGHER LEVEL IF THE COMMISSION FINDS THAT IT IS THE MOST REASONABLE AND PRUDENT. IF THE ELECTRIC PROVIDER WHOSE RATES ARE REGULATED BY THE COMMISSION PROPOSES A LEVEL OF ENERGY WASTE REDUCTION THAT IS LOWER THAN THE LEVEL SPECIFIED IN THE PROVIDER'S CURRENT ENERGY WASTE REDUCTION PLAN, THE COMMISSION MAY APPROVE THE PROPOSED LOWER LEVEL IF THE COMMISSION FINDS THAT IT IS THE MOST REASONABLE AND PRUDENT. IF THE COMMISSION FINDS THAT THE PROPOSED LOWER LEVEL OF ENERGY WASTE REDUCTION IS NOT THE MOST REASONABLE AND PRUDENT, THE LEVEL OF ENERGY WASTE REDUCTION TO BE ACHIEVED BY THE ELECTRIC PROVIDER WHOSE RATES ARE REGULATED BY THE COMMISSION FOR THE SUCCEEDING 2-YEAR PERIOD UNDER THE ENERGY WASTE REDUCTION PLAN SHALL BE THE SAME AS THE LEVEL SPECIFIED IN THE PROVIDER'S CURRENT ENERGY WASTE REDUCTION PLAN.

(2) IF OVER A 2-YEAR PERIOD AN ELECTRIC PROVIDER WHOSE RATES

ARE REGULATED BY THE COMMISSION CANNOT ACHIEVE THE LEVEL OF ENERGY WASTE REDUCTION PROVIDED FOR IN THE ENERGY WASTE REDUCTION PLAN PURSUANT TO SUBSECTION (1) IN A COST-EFFECTIVE MANNER, THE PROVIDER MAY PETITION THE COMMISSION IN A CONTESTED CASE HEARING UNDER SECTION 73 TO ESTABLISH AN ALTERNATIVE ENERGY WASTE REDUCTION LEVEL FOR THAT PROVIDER.

(3) IF OVER A 2-YEAR PERIOD A NATURAL GAS PROVIDER CANNOT ACHIEVE THE ENERGY WASTE REDUCTION STANDARD IN A COST-EFFECTIVE MANNER, THE NATURAL GAS PROVIDER MAY PETITION THE COMMISSION TO ESTABLISH AN ALTERNATIVE ENERGY WASTE REDUCTION STANDARD FOR THAT PROVIDER.

(4) A PETITION FILED PURSUANT TO SUBSECTION (3) SHALL DO ALL OF THE FOLLOWING:

(A) IDENTIFY THE EFFORTS TAKEN BY THE NATURAL GAS PROVIDER TO MEET THE ENERGY WASTE REDUCTION STANDARD.

(B) EXPLAIN WHY THE ENERGY WASTE REDUCTION STANDARD CANNOT REASONABLY AND COST-EFFECTIVELY BE ACHIEVED.

(C) PROPOSE A REVISED ENERGY WASTE REDUCTION STANDARD TO BE ACHIEVED BY THE NATURAL GAS PROVIDER.

(5) IF, BASED ON A REVIEW OF THE PETITION FILED UNDER SUBSECTION (3), THE COMMISSION DETERMINES THAT THE NATURAL GAS PROVIDER HAS BEEN UNABLE TO REASONABLY AND COST-EFFECTIVELY ACHIEVE THE ENERGY WASTE REDUCTION STANDARD, THE COMMISSION SHALL REVISE THE ENERGY WASTE REDUCTION STANDARD AS APPLIED TO THE NATURAL GAS PROVIDER TO A LEVEL THAT CAN REASONABLY AND COST-EFFECTIVELY BE ACHIEVED.

Sec. 81. (1) This section applies to electric providers that

meet both of the following requirements:

(a) Serve not more than 200,000 customers in this state.

(b) Had average electric rates for residential customers using 1,000 kilowatt hours per month that ~~are~~ **WERE** less than 75% of the average electric rates for residential customers using 1,000 kilowatt hours per month for all electric utilities in this state, according to the January 1, 2007, "comparison of average rates for MPSC-regulated electric utilities in Michigan" compiled by the commission.

(2) Beginning 2 years after a provider described in subsection (1) begins implementation of its energy ~~optimization~~ **WASTE REDUCTION** plan, the provider may petition the commission to establish alternative energy ~~optimization~~ **WASTE REDUCTION** standards. The petition shall identify the efforts taken by the provider to meet the electric provider energy ~~optimization~~ **WASTE REDUCTION** standards and demonstrate why the energy ~~optimization~~ **WASTE REDUCTION** standards cannot reasonably be met with energy ~~optimization~~ **WASTE REDUCTION** programs that are collectively cost-effective. If the commission finds that the petition meets the requirements of this subsection, the commission shall revise the energy ~~optimization~~ **WASTE REDUCTION** standards as applied to that electric provider to a level that can reasonably be met with energy ~~optimization~~ **WASTE REDUCTION** programs that are collectively cost-effective.

(3) THIS SECTION IS REPEALED EFFECTIVE JANUARY 1, 2022.

Sec. 83. (1) One energy ~~optimization~~ **WASTE REDUCTION** credit shall be granted to a provider for each megawatt hour of annual

incremental energy savings achieved through energy ~~optimization.~~**WASTE REDUCTION.**

(2) An energy ~~optimization~~ **WASTE REDUCTION** credit expires as follows:

(a) When used by a provider to comply with its energy ~~optimization performance~~ **WASTE REDUCTION** standard.

(b) When substituted for a renewable energy credit under section ~~27.~~**28.**

(c) As provided in subsection (3).

(3) If a provider's incremental energy savings in ~~the 2008-2009 biennium or~~ any year ~~thereafter~~ exceed the applicable energy ~~optimization~~ **WASTE REDUCTION** standard, the associated energy ~~optimization~~ **WASTE REDUCTION** credits may be carried forward and applied to the next year's energy ~~optimization~~ **WASTE REDUCTION** standard. However, all of the following apply:

(a) The number of energy ~~optimization~~ **WASTE REDUCTION** credits carried forward shall not exceed 1/3 of the next year's standard. Any energy ~~optimization~~ **WASTE REDUCTION** credits carried forward to the next year shall expire that year. Any remaining energy ~~optimization~~ **WASTE REDUCTION** credits shall expire at the end of the year in which the incremental energy savings were achieved, unless substituted, by an electric provider, for renewable energy credits under section ~~27.~~**28.**

(b) Energy ~~optimization~~ **WASTE REDUCTION** credits shall not be carried forward if, for its performance during the same ~~biennium or~~ year, the provider accepts a financial incentive under section 75. The excess energy ~~optimization~~ **WASTE REDUCTION** credits shall expire

at the end of the year in which the incremental energy savings were achieved, unless substituted, by an electric provider, for renewable energy credits under section ~~27.~~**28.**

Sec. 85. ~~(1)~~ An energy ~~optimization~~ **WASTE REDUCTION** credit is not transferable to another entity.

~~(2) The commission, in the 2011 report under section 97, shall make recommendations concerning a program for transferability of energy optimization credits.~~

Sec. 87. **(1)** The commission shall establish an energy ~~optimization~~ **WASTE REDUCTION** credit certification and tracking program. The certification and tracking program may be contracted to and performed by a third party through a system of competitive bidding. The program shall include all of the following:

(a) A determination of the date after which energy ~~optimization~~ **WASTE REDUCTION** must be achieved to be eligible for an energy ~~optimization~~ **WASTE REDUCTION** credit.

(b) A method for ensuring that each energy ~~optimization~~ **WASTE REDUCTION** credit substituted for a renewable energy credit under section ~~27~~ **28** or carried forward under section 83 is properly accounted for.

(c) If the system is established by the commission, allowance for issuance and use of energy ~~optimization~~ **WASTE REDUCTION** credits in electronic form.

(2) ONE ENERGY WASTE REDUCTION CREDIT SHALL BE GRANTED TO AN ELECTRIC PROVIDER FOR EACH MEGAWATT HOUR OF ANNUAL INCREMENTAL ENERGY SAVINGS ACHIEVED THROUGH ENERGY WASTE REDUCTION.

Sec. 89. (1) The commission shall allow a provider whose rates

are regulated by the commission to recover the actual costs of implementing its approved energy ~~optimization~~ **WASTE REDUCTION** plan. However, costs exceeding the overall funding levels specified in the energy ~~optimization~~ **WASTE REDUCTION** plan are not recoverable unless those costs are reasonable and prudent and meet the utility system resource cost test. Furthermore, costs for load management undertaken **BY AN ELECTRIC PROVIDER** pursuant to an energy ~~optimization~~ **WASTE REDUCTION** plan are not recoverable as energy ~~optimization~~ **WASTE REDUCTION** program costs under this section, but may be recovered as described in section 95.

(2) Under subsection (1), costs shall be recovered from all natural gas customers and from residential electric customers by volumetric charges, from all other metered electric customers by per-meter charges, and from unmetered electric customers by an appropriate charge. ~~, applied to utility bills as an itemized charge.~~**FIXED, PER-METER CHARGES UNDER THIS SUBSECTION MAY VARY BY RATE CLASS. CHARGES UNDER THIS SUBSECTION MAY BE ITEMIZED ON UTILITY BILLS BUT SHALL NOT BE ITEMIZED ON OR AFTER JANUARY 1, 2021.**

~~(3) For the electric primary customer rate class customers of electric providers and customers of natural gas providers with an aggregate annual natural gas billing demand of more than 100,000 decatherms or equivalent MCFs for all sites in the natural gas utility's service territory, the cost recovery under subsection (1) shall not exceed 1.7% of total retail sales revenue for that customer class. For electric secondary customers and for residential customers, the cost recovery shall not exceed 2.2% of~~

~~total retail sales revenue for those customer classes.~~

(3) ~~(4)~~ Upon petition by a provider whose rates are regulated by the commission, the commission shall authorize the provider to capitalize all energy efficiency and energy conservation equipment, materials, and installation costs with an expected economic life greater than 1 year incurred in implementing its energy ~~optimization~~ **WASTE REDUCTION** plan, including such costs paid to third parties, such as customer rebates and customer incentives. The provider shall also propose depreciation treatment with respect to its capitalized costs in its energy ~~optimization~~ **WASTE REDUCTION** plan, and the commission shall order reasonable depreciation treatment related to these capitalized costs. A provider shall not capitalize payments made to an independent energy ~~optimization~~ **WASTE REDUCTION** program administrator under section 91.

(4) ~~(5)~~ The established funding level for low income residential programs shall be provided from each customer rate class in proportion to that customer rate class's funding of the provider's total energy ~~optimization~~ **WASTE REDUCTION** programs. Charges shall be applied to distribution customers regardless of the source of their electricity or natural gas supply.

(5) ~~(6)~~ The commission shall authorize a natural gas provider that spends a minimum of 0.5% of total natural gas retail sales revenues, including natural gas commodity costs, in a year on commission-approved energy ~~optimization~~ **WASTE REDUCTION** programs to implement a symmetrical revenue decoupling true-up mechanism that adjusts for sales ~~volumes~~ that are above or below the projected levels that were used to determine the revenue requirement

authorized in the natural gas provider's most recent rate case. In determining the symmetrical revenue decoupling true-up mechanism utilized for each provider, the commission shall give deference to the proposed mechanism submitted by the provider. The commission may approve an alternative mechanism if the commission determines that the alternative mechanism is reasonable and prudent. The commission shall authorize the natural gas provider to decouple rates regardless of whether the natural gas provider's energy ~~optimization~~ **WASTE REDUCTION** programs are administered by the provider or an independent energy ~~optimization~~ **WASTE REDUCTION** program administrator under section 91.

~~(7) A natural gas provider or an electric provider shall not spend more than the following percentage of total utility retail sales revenues, including electricity or natural gas commodity costs, in any year to comply with the energy optimization performance standard without specific approval from the commission:~~

~~(a) In 2009, 0.75% of total retail sales revenues for 2007.~~

~~(b) In 2010, 1.0% of total retail sales revenues for 2008.~~

~~(c) In 2011, 1.5% of total retail sales revenues for 2009.~~

~~(d) In 2012 and each year thereafter, 2.0% of total retail sales revenues for the 2 years preceding.~~

Sec. 91. (1) Except for section ~~89(6),~~ **89(5),** sections 71 to 89 do not apply to a provider that ~~pays the following percentage~~ **EACH YEAR PAYS NOT LESS THAN 2.0%** of total utility sales revenues **FOR THE SECOND YEAR PRECEDING,** including electricity or natural gas commodity costs, ~~each year~~ to an independent energy ~~optimization~~ **WASTE REDUCTION** program administrator selected by the commission. ~~:~~

~~(a) In 2009, 0.75% of total retail sales revenues for 2007.~~

~~(b) In 2010, 1.0% of total retail sales revenues for 2008.~~

~~(c) In 2011, 1.5% of total retail sales revenues for 2009.~~

~~(d) In 2012 and each year thereafter, 2.0% of total retail sales revenues for the 2 years preceding.~~

(2) An alternative compliance payment received from a provider by the energy ~~optimization~~ **WASTE REDUCTION** program administrator under subsection (1) shall be used to administer energy efficiency programs for the provider. ~~Money unspent in a year shall be carried forward to be spent in the subsequent year.~~

(3) The commission shall allow a provider to recover an alternative compliance payment under subsection (1). This cost shall be recovered from residential customers by volumetric charges, from all other metered customers by per-meter charges, and from unmetered customers by an appropriate charge. ~~, applied to~~ **FIXED, PER-METER CHARGES UNDER THIS SUBSECTION MAY VARY BY RATE CLASS. CHARGES UNDER THIS SUBSECTION MAY BE ITEMIZED ON** utility bills**, BUT SHALL NOT BE ITEMIZED ON OR AFTER JANUARY 1, 2021.**

(4) ~~An~~ **A PROVIDER'S** alternative compliance payment under subsection (1) shall only be used to fund energy ~~optimization~~ **WASTE REDUCTION** programs for that provider's customers. To the extent feasible, charges collected from a particular customer rate class and paid to the energy ~~optimization~~ **WASTE REDUCTION** program administrator under subsection (1) shall be devoted to energy ~~optimization~~ **WASTE REDUCTION** programs and services for that rate class.

(5) Money paid to the energy ~~optimization~~ **WASTE REDUCTION**

program administrator under subsection (1) and not spent by the administrator that year shall remain available for expenditure the following year, subject to the requirements of subsection (4).

(6) The commission shall select a qualified nonprofit organization to serve as an energy ~~optimization~~ **WASTE REDUCTION** program administrator under this section, through a competitive bid process.

(7) The commission shall arrange for a biennial independent audit of the energy ~~optimization~~ **WASTE REDUCTION** program administrator.

Sec. 93. (1) An eligible electric customer is exempt from charges the customer would otherwise incur as an electric customer under section 89 or 91 if the customer files with its electric provider and implements a self-directed energy ~~optimization~~ **WASTE REDUCTION** plan as provided in this section.

(2) Subject to subsection (3), an electric customer is not eligible under subsection (1) unless it is a commercial or industrial electric customer and ~~meets all of the following requirements:~~

~~(a) In 2009 or 2010, the customer must have had an annual peak demand in the preceding year of at least 2 megawatts at each site to be covered by the self-directed plan or 10 megawatts in the aggregate at all sites to be covered by the plan.~~

~~(b) In 2011, 2012, or 2013, the customer or customers must have had an annual peak demand in the preceding year of at least 1 megawatt at each site to be covered by the self-directed plan or 5 megawatts in the aggregate at all sites to be covered by the plan.~~

~~(c) In 2014 or any year thereafter, the customer or customers must have~~ had an annual peak demand in the preceding year of at least 1 megawatt in the aggregate at all sites to be covered by the self-directed plan.

(3) The eligibility requirements of subsection (2) do not apply to a commercial or industrial customer that installs or modifies an electric energy efficiency improvement under a property assessed clean energy program pursuant to the property assessed clean energy act, **2010 PA 270, MCL 460.931 TO 460.949.**

(4) The commission shall by order establish the rates, terms, and conditions of service for customers related to this subpart.

(5) The commission shall by order do all of the following:

(a) Require a customer to utilize the services of an energy ~~optimization~~ **WASTE REDUCTION** service company to develop and implement a self-directed plan. This subdivision does not apply to a customer that had an annual peak demand in the preceding year of at least 2 megawatts at each site to be covered by the self-directed plan or 10 megawatts in the aggregate at all sites to be covered by the self-directed plan.

(b) Provide a mechanism to recover from customers under subdivision (a) the costs for provider level review and evaluation.

(c) Provide a mechanism to cover the costs of the ~~low income~~ **LOW-INCOME** energy ~~optimization~~ **WASTE REDUCTION** program under section 89.

(6) All of the following apply to a self-directed energy ~~optimization~~ **WASTE REDUCTION** plan under subsection (1):

(a) The self-directed plan shall be a multiyear plan for an

ongoing energy ~~optimization~~ **WASTE REDUCTION** program.

(b) The self-directed plan shall provide for aggregate energy savings that each year meet or exceed the energy ~~optimization~~ **WASTE REDUCTION** standards based on the electricity purchases in the previous year for the site or sites covered by the self-directed plan.

(c) Under the self-directed plan, energy ~~optimization~~ **WASTE REDUCTION** shall be calculated based on annual electricity usage. Annual electricity usage shall be normalized so that none of the following are included in the calculation of the percentage of incremental energy savings:

(*i*) Changes in electricity usage because of changes in business activity levels not attributable to energy ~~optimization.~~**WASTE REDUCTION.**

(*ii*) Changes in electricity usage because of the installation, operation, or testing of pollution control equipment.

(d) The self-directed plan shall specify whether electricity usage will be weather-normalized or based on the average number of megawatt hours of electricity sold by the electric provider annually during the previous 3 years to retail customers in this state. Once the self-directed plan is submitted to the provider, this option shall not be changed.

(e) The self-directed plan shall outline how the customer intends to achieve the incremental energy savings specified in the self-directed plan.

(7) A self-directed energy ~~optimization~~ **WASTE REDUCTION** plan shall be incorporated into the relevant electric provider's energy

~~optimization~~ **WASTE REDUCTION** plan. The self-directed plan and information submitted by the customer under subsection (10) are confidential and exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. Projected energy savings from measures implemented under a self-directed plan shall be attributed to the relevant provider's energy ~~optimization~~ **WASTE REDUCTION** programs for the purposes of determining annual incremental energy savings achieved by the provider under section 77 or 81, as applicable.

(8) Once a customer begins to implement a self-directed plan at a site covered by the self-directed plan, that site is exempt from energy ~~optimization~~ **WASTE REDUCTION** program charges under section 89 or 91 and is not eligible to participate in the relevant electric provider's energy ~~optimization~~ **WASTE REDUCTION** programs.

(9) A customer implementing a self-directed energy ~~optimization~~ **WASTE REDUCTION** plan under this section shall annually submit to the customer's electric provider a brief report documenting the energy efficiency measures taken under the self-directed plan during the previous year, and the corresponding energy savings that will result. The report shall provide sufficient information for the provider and the commission to monitor progress toward the goals in the self-directed plan and to develop reliable estimates of the energy savings that are being achieved from self-directed plans. The customer report shall indicate the level of incremental energy savings achieved for the year covered by the report and whether that level of incremental energy savings meets the goal set forth in the customer's self-

directed plan. If a customer submitting a report under this subsection wishes to amend its self-directed plan, the customer shall submit with the report an amended self-directed plan. A report under this subsection shall be accompanied by an affidavit from a knowledgeable official of the customer that the information in the report is true and correct to the best of the official's knowledge and belief. If the customer has retained an independent energy ~~optimization~~ **WASTE REDUCTION** service company, the requirements of this subsection shall be met by the energy ~~optimization~~ **WASTE REDUCTION** service company.

(10) An electric provider shall provide an annual report to the commission that identifies customers implementing self-directed energy ~~optimization~~ **WASTE REDUCTION** plans and summarizes the results achieved cumulatively under those self-directed plans. The commission may request additional information from the electric provider. If the commission has sufficient reason to believe the information is inaccurate or incomplete, it may request additional information from the customer to ensure accuracy of the report.

(11) If the commission determines after a contested case hearing that the minimum energy ~~optimization~~ **WASTE REDUCTION** goals under subsection (6)(b) have not been achieved at the sites covered by a self-directed plan, in aggregate, the commission shall order the customer or customers collectively to pay to this state an amount calculated as follows:

(a) Determine the proportion of the shortfall in achieving the minimum energy ~~optimization~~ **WASTE REDUCTION** goals under subsection (6)(b).

(b) Multiply the figure under subdivision (a) by the energy ~~optimization~~ **WASTE REDUCTION** charges from which the customer or customers collectively were exempt under subsection (1).

(c) Multiply the product under subdivision (b) by a number not less than 1 or greater than 2, as determined by the commission based on the reasons for failure to meet the minimum energy ~~optimization~~ **WASTE REDUCTION** goals.

(12) If a customer has submitted a self-directed plan to an electric provider, the customer, the customer's energy ~~optimization~~ **WASTE REDUCTION** service company, if applicable, or the electric provider shall provide a copy of the self-directed plan to the commission upon request.

(13) By September 1, 2010, following a public hearing, the commission shall establish an approval process for energy ~~optimization~~ **WASTE REDUCTION** service companies. The approval process shall ensure that energy ~~optimization~~ **WASTE REDUCTION** service companies have the expertise, resources, and business practices to reliably provide energy ~~optimization~~ **WASTE REDUCTION** services that meet the requirements of this section. The commission may adopt by reference the past or current standards of a national or regional certification or licensing program for energy ~~optimization~~ **WASTE REDUCTION** service companies. However, the approval process shall also provide an opportunity for energy ~~optimization~~ **WASTE REDUCTION** service companies that are not recognized by such a program to be approved by posting a bond in an amount determined by the commission and meeting any other requirements adopted by the commission for the purposes of this

subsection. The approval process for energy ~~optimization~~ **WASTE REDUCTION** service companies shall require adherence to a code of conduct governing the relationship between energy ~~optimization~~ **WASTE REDUCTION** service companies and electric providers.

(14) The department of ~~energy, labor, and economic growth~~ **LICENSING AND REGULATORY AFFAIRS** shall maintain on the department's website a list of energy ~~optimization~~ **WASTE REDUCTION** service companies approved under subsection (13).

Sec. 95. (1) ~~The~~ **SUBJECT TO SUBSECTION (2), THE** commission shall do all of the following:

(a) Promote load management in appropriate circumstances, **INCLUDING EXPANSION OF EXISTING AND ESTABLISHMENT OF NEW LOAD MANAGEMENT PROGRAMS IN WHICH AN ELECTRIC PROVIDER MAY MANAGE THE OPERATION OF ENERGY CONSUMING DEVICES AND REMOTELY SHUT DOWN AIR CONDITIONING OR OTHER ENERGY INTENSIVE SYSTEMS OF PARTICIPATING CUSTOMERS, DEMAND RESPONSE PROGRAMS THAT USE TIME OF DAY PRICING AND DYNAMIC RATE PRICING, AND SIMILAR PROGRAMS, FOR UTILITY CUSTOMERS THAT HAVE ADVANCED METERING INFRASTRUCTURE. ELECTRIC PROVIDER PARTICIPATION AND CUSTOMER ENROLLMENT IN SUCH PROGRAMS ARE VOLUNTARY. HOWEVER, ELECTRIC PROVIDERS WHOSE RATES ARE REGULATED BY THE COMMISSION AND WHOSE RATES INCLUDE THE COST OF ADVANCED METERING INFRASTRUCTURE SHALL OFFER COMMISSION-APPROVED DEMAND RESPONSE PROGRAMS. THE PROGRAMS MAY PROVIDE INCENTIVES FOR CUSTOMER PARTICIPATION AND SHALL INCLUDE CUSTOMER PROTECTION PROVISIONS AS REQUIRED BY THE COMMISSION. TO PARTICIPATE IN A PROGRAM, A CUSTOMER SHALL AGREE TO REMAIN IN THE PROGRAM FOR AT LEAST 1 YEAR.**

(b) Actively pursue increasing public awareness of load

management techniques.

(c) Engage in regional load management efforts to reduce the annual demand for energy whenever possible.

(d) Work with residential, commercial, and industrial customers to reduce annual demand and conserve energy through load management techniques and other activities it considers appropriate. ~~The commission shall file a report with the legislature by December 31, 2010 on the effort to reduce peak demand. The report shall also include any recommendations for legislative action concerning load management that the commission considers necessary.~~

(2) SUBSECTION (1) SHALL NOT BE CONSTRUED TO PREVENT AN ELECTRIC UTILITY FROM DOING ANY OF THE FOLLOWING:

(A) RECOVERING THE FULL COST ASSOCIATED WITH PROVIDING ELECTRIC SERVICE AND LOAD MANAGEMENT PROGRAMS.

(B) INSTALLING METERING AND RETRIEVING METERING DATA NECESSARY TO PROPERLY, ACCURATELY, AND EFFICIENTLY BILL FOR THE ELECTRIC UTILITY'S SERVICES WITHOUT MANUAL INTERVENTION OR MANUAL CALCULATION.

(3) ~~(2)~~ The commission may allow a provider whose rates are regulated by the commission to recover costs for load management ~~undertaken pursuant to an energy optimization plan~~ through base rates as part of a proceeding under section ~~6~~ **6A** of 1939 PA 3, MCL ~~460.6,~~ **460.6A**, if the costs are reasonable and prudent and meet the utility systems resource cost test.

(4) ~~(3)~~ The ~~commission~~ **MICHIGAN AGENCY FOR ENERGY** shall do all of the following:

(a) Promote energy efficiency and energy conservation.

(b) Actively pursue increasing public awareness of energy conservation and energy efficiency.

(c) Actively engage in energy conservation and energy efficiency efforts with providers.

(d) Engage in regional efforts to reduce demand for energy through energy conservation and energy efficiency.

~~(e) By November 30, 2009, and each year thereafter, submit to the standing committees of the senate and house of representatives with primary responsibility for energy and environmental issues a report on the effort to implement energy conservation and energy efficiency programs or measures. The report may include any recommendations of the commission for energy conservation legislation.~~

(5) ~~(4)~~ This subpart does not limit the authority of the commission, following an integrated resource plan proceeding and as part of a rate-making process, to allow a provider whose rates are regulated by the commission to recover for additional prudent energy efficiency and energy conservation measures not included in the provider's energy ~~optimization~~ **WASTE REDUCTION** plan if the provider has met the requirements of the energy ~~optimization~~ **WASTE REDUCTION** program.

Sec. 97. (1) By a time determined by the commission, each provider shall submit to the commission an annual report that provides information relating to the actions taken by the provider to comply with the energy ~~optimization~~ **WASTE REDUCTION** standards. By that same time, a ~~municipally-owned~~ **MUNICIPALLY OWNED** electric

utility shall submit a copy of the report to the governing body of the ~~municipally-owned~~ **MUNICIPALLY OWNED** electric utility, and a cooperative electric utility shall submit a copy of the report to its board of directors.

(2) An annual report under subsection (1) shall include all of the following information:

(a) The ~~number of energy optimization credits that the provider generated~~ **AMOUNT OF ENERGY WASTE REDUCTION ACHIEVED** during the reporting period.

(b) Expenditures made in the past year and anticipated future expenditures to comply with this subpart.

(c) Any other information that the commission determines necessary.

(3) Concurrent with the submission of each report under subsection (1), a ~~municipally-owned~~ **MUNICIPALLY OWNED** electric utility shall submit a summary of the report to its customers in their bills with a bill insert and to its governing body. Concurrent with the submission of each report under subsection (1), a cooperative electric utility shall submit a summary of the report to its members in a periodical issued by an association of rural electric cooperatives and to its board of directors. A ~~municipally-owned~~ **MUNICIPALLY OWNED** electric utility or cooperative electric provider shall make a copy of the report available at its office and shall post a copy of the report on its website. A summary under this section shall indicate that a copy of the report is available at the office or website.

~~(4) Not later than 1 year after the effective date of this~~

~~act, the commission shall submit a report on the potential rate impacts on all classes of customers if the electric providers whose rates are regulated by the commission decouple rates. The report shall be submitted to the standing committees of the senate and house of representatives with primary responsibility for energy and environmental issues. The commission's report shall review whether decoupling would be cost-effective and would reduce the overall consumption of fossil fuels in this state.~~

~~(5) By October 1, 2010, the commission shall submit to the committees described in subsection (4) any recommendations for legislative action to increase energy conservation and energy efficiency based on reports under subsection (1), the energy optimization plans approved under section 89, and the commission's own investigation. By March 1, 2013, the commission shall submit to those committees a report on the progress of electric providers in achieving reductions in energy use. The commission may use an independent evaluator to review the submissions by electric providers.~~

(4) ~~(6) By February 15, 2011 and each year thereafter and by September 30, 2015, the~~ **THE** commission shall submit to the **STANDING** committees ~~described in subsection (4) a~~ **OF THE SENATE AND HOUSE OF REPRESENTATIVES WITH PRIMARY RESPONSIBILITY FOR ENERGY ISSUES AN ANNUAL** report that evaluates and determines whether this subpart ~~and subpart A have each~~ **HAS** been cost-effective and makes recommendations to the legislature. The report ~~shall~~ **MAY** be combined with ~~any concurrent report by the commission under section 51.~~**THE ANNUAL REPORT UNDER SECTION 5A OF 1939 PA 3, MCL 460.5A.**

~~(7) The report required by September 30, 2015 under subsection (6) shall also review the opportunities for additional cost-effective energy optimization programs and make any recommendations the commission may have for legislation providing for the continuation, expansion, or reduction of energy optimization standards. That report shall also include the commission's determinations of all of the following:~~

~~(a) The percentage of total energy savings required by the energy optimization standards that have actually been achieved by each electric provider and by all electric providers cumulatively.~~

~~(b) The percentage of total energy savings required by the energy optimization standards that have actually been achieved by each natural gas provider and by all natural gas providers cumulatively.~~

~~(c) For each provider, whether that provider's program under this subpart has been cost-effective.~~

(5) ~~(8) If~~ **SUBJECT TO SUBSECTION (6), IF** the commission determines ~~in its report required by September 30, 2015 under subsection (6) or determines subsequently~~ that a provider's energy ~~optimization~~ **WASTE REDUCTION** program under this subpart has not been cost-effective, the provider's program is suspended beginning 180 days after the date of the ~~report or subsequent~~ determination. If a provider's energy ~~optimization~~ **WASTE REDUCTION** program is suspended under this subsection, both of the following apply:

(a) The provider shall maintain cumulative incremental energy savings in megawatt hours or decatherms or equivalent MCFs in subsequent years at the level actually achieved during the year

preceding the year in which the commission's determination is made.

(b) The provider shall not impose energy ~~optimization~~ **WASTE REDUCTION** charges in subsequent years except to the extent necessary to recover unrecovered energy ~~optimization~~ **WASTE REDUCTION** expenses incurred under this subpart before suspension of the provider's program.

(6) SUBSECTION (5) DOES NOT APPLY TO AN ELECTRIC PROVIDER ON OR AFTER JANUARY 1, 2022.

SEC. 99. THE ATTORNEY GENERAL OR ANY CUSTOMER OF A MUNICIPALLY OWNED ELECTRIC UTILITY OR A COOPERATIVE ELECTRIC UTILITY THAT IS MEMBER-REGULATED UNDER THE ELECTRIC COOPERATIVE MEMBER-REGULATION ACT, 2008 PA 167, MCL 460.31 TO 460.39, MAY COMMENCE A CIVIL ACTION FOR INJUNCTIVE RELIEF AGAINST THAT MUNICIPALLY OWNED ELECTRIC UTILITY OR COOPERATIVE ELECTRIC UTILITY IF THE MUNICIPALLY OWNED ELECTRIC UTILITY OR COOPERATIVE ELECTRIC UTILITY FAILS TO MEET THE APPLICABLE REQUIREMENTS OF THIS SUBPART OR AN ORDER ISSUED OR RULE PROMULGATED UNDER THIS SUBPART. THE ATTORNEY GENERAL OR CUSTOMER SHALL COMMENCE AN ACTION UNDER THIS SUBSECTION IN THE CIRCUIT COURT FOR THE CIRCUIT IN WHICH THE PRINCIPAL OFFICE OF THE MUNICIPALLY OWNED ELECTRIC UTILITY OR COOPERATIVE ELECTRIC UTILITY IS LOCATED. THE ATTORNEY GENERAL OR CUSTOMER SHALL NOT FILE AN ACTION UNDER THIS SUBSECTION UNLESS THE ATTORNEY GENERAL OR CUSTOMER HAS GIVEN THE MUNICIPALLY OWNED ELECTRIC UTILITY OR COOPERATIVE ELECTRIC UTILITY AT LEAST 60 DAYS' WRITTEN NOTICE OF THE INTENT TO SUE, THE BASIS FOR THE SUIT, AND THE RELIEF SOUGHT. WITHIN 30 DAYS AFTER THE MUNICIPALLY OWNED ELECTRIC UTILITY OR COOPERATIVE ELECTRIC UTILITY RECEIVES WRITTEN NOTICE OF THE INTENT TO SUE, THE MUNICIPALLY OWNED

ELECTRIC UTILITY OR COOPERATIVE ELECTRIC UTILITY AND THE ATTORNEY GENERAL OR CUSTOMER SHALL MEET AND MAKE A GOOD-FAITH ATTEMPT TO DETERMINE IF THERE IS A CREDIBLE BASIS FOR THE ACTION. THE MUNICIPALLY OWNED ELECTRIC UTILITY OR COOPERATIVE ELECTRIC UTILITY SHALL TAKE ALL REASONABLE AND PRUDENT STEPS NECESSARY TO COMPLY WITH THE APPLICABLE REQUIREMENTS OF THIS SUBPART OR AN ORDER ISSUED OR RULE PROMULGATED UNDER THIS SUBPART WITHIN 90 DAYS AFTER THE MEETING IF THERE IS A CREDIBLE BASIS FOR THE ACTION. IF THE PARTIES DO NOT AGREE AS TO WHETHER THERE IS A CREDIBLE BASIS FOR THE ACTION, THE ATTORNEY GENERAL OR CUSTOMER MAY PROCEED TO FILE THE SUIT.

SUBPART ~~C.~~**D.** MISCELLANEOUS

Sec. 113. **(1)** Notwithstanding any other provision of this part, ~~electricity or~~ natural gas used in the installation, operation, or testing of any pollution control equipment is exempt from the requirements of, and calculations of compliance required under, this part.

(2) THIS SECTION, AS AMENDED BY THE ACT THAT ADDED THIS SUBSECTION, TAKES EFFECT JANUARY 1, 2021.

PART 5.

~~NET METERING~~**DISTRIBUTED GENERATION**

Sec. 173. (1) The commission shall establish a ~~statewide net metering~~ **DISTRIBUTED GENERATION** program by order issued not later than ~~180~~ **90** days after the effective date of ~~this act. No later than 180 days after the effective date of this act, the commission shall promulgate rules regarding any time limits on the submission of net metering applications or inspections of net metering~~

~~equipment and any other matters the commission considers necessary to implement this part.~~ **THE 2016 ACT THAT AMENDED THIS SECTION. THE COMMISSION MAY PROMULGATE RULES THE COMMISSION CONSIDERS NECESSARY TO IMPLEMENT THIS PROGRAM.** Any rules adopted regarding time limits for approval of parallel operation shall recognize reliability and safety complications including those arising from equipment saturation, use of multiple technologies, and proximity to synchronous motor loads. The program shall apply to all electric utilities **WHOSE RATES ARE REGULATED BY THE COMMISSION** and alternative electric suppliers in this state.

(2) Except as otherwise provided under this part, ~~customers~~ **AN ELECTRIC CUSTOMER** of any class ~~are~~ **IS** eligible to interconnect **AN** eligible electric ~~generators~~ **GENERATOR** with the customer's local electric utility and operate the ~~generators~~ **ELIGIBLE ELECTRIC GENERATOR** in parallel with the distribution system. The program shall be designed for a period of not less than 10 years and limit each customer to generation capacity designed to meet ~~only the customer's electric needs.~~ **UP TO 100% OF THE CUSTOMER'S ELECTRICITY CONSUMPTION FOR THE PREVIOUS 12 MONTHS.** The commission may waive the application, interconnection, and installation requirements of this part for customers participating in the net metering program under the commission's March 29, 2005 order in case no. U-14346.

(3) ~~(2)~~ An electric utility or alternative electric supplier is not required to allow for ~~net metering~~ **A DISTRIBUTED GENERATION PROGRAM** that is greater than 1% of its **AVERAGE** in-state peak load for the preceding **5** calendar ~~year.~~ **YEARS.** The **ELECTRIC** utility or **ALTERNATIVE ELECTRIC** supplier shall notify the commission if its

~~net metering~~ **DISTRIBUTED GENERATION** program reaches the 1% ~~requirement~~ **LIMIT** under this subsection. The 1% limit under this subsection shall be allocated as follows:

(a) No more than 0.5% for customers with ~~a system~~ **AN ELIGIBLE ELECTRIC GENERATOR** capable of generating 20 kilowatts or less.

(b) No more than 0.25% for customers with ~~a system~~ **AN ELIGIBLE ELECTRIC GENERATOR** capable of generating more than 20 kilowatts but not more than 150 kilowatts.

(c) No more than 0.25% for customers with a ~~system~~ **METHANE DIGESTER** capable of generating more than 150 kilowatts.

(4) ~~(3)~~ Selection of customers for participation in the ~~net metering~~ **DISTRIBUTED GENERATION** program shall be based on the order in which the applications for participation in the ~~net metering~~ program are received by the electric utility or alternative electric supplier.

(5) ~~(4)~~ An electric utility or alternative electric supplier shall not **DISCONTINUE OR** refuse to provide ~~or discontinue~~ electric service to a customer solely ~~for the reason that~~ **BECAUSE** the customer participates in the ~~net metering~~ **DISTRIBUTED GENERATION** program.

(6) ~~(5)~~ The **DISTRIBUTED GENERATION** program created under subsection (1) shall include all of the following:

(a) Statewide uniform interconnection requirements for all eligible electric generators. The interconnection requirements shall be designed to protect electric utility workers and equipment and the general public.

(b) ~~Net metering~~ **DISTRIBUTED GENERATION** equipment and its

installation ~~must~~ **SHALL** meet all current local and state electric and construction code requirements. Any equipment that is certified by a nationally recognized testing laboratory to IEEE 1547.1 testing standards and in compliance with UL 1741 scope 1.1A, effective May 7, 2007, and installed in compliance with this part is considered to be ~~eligible equipment.~~ **COMPLIANT.** Within the time provided by the commission in rules promulgated under subsection (1) and consistent with good utility practice, **AND THE** protection of electric utility workers, ~~protection of~~ electric utility equipment, and ~~protection of~~ the general public, an electric utility may study, confirm, and ensure that an eligible electric generator installation at the customer's site meets the IEEE 1547 anti-islanding requirements ~~. Utility testing and approval of the interconnection and execution of a parallel operating agreement~~ **OR ANY APPLICABLE SUCCESSOR ANTI-ISLANDING REQUIREMENTS DETERMINED BY THE COMMISSION TO BE REASONABLE AND CONSISTENT WITH THE PURPOSES OF THIS SUBDIVISION. IF NECESSARY TO PROMOTE RELIABILITY OR SAFETY, THE COMMISSION MAY PROMULGATE RULES THAT REQUIRE THE USE OF INVERTERS THAT PERFORM SPECIFIC AUTOMATED GRID-BALANCING FUNCTIONS TO INTEGRATE DISTRIBUTED GENERATION ONTO THE ELECTRIC GRID. INVERTERS THAT INTERCONNECT DISTRIBUTED GENERATION RESOURCES MAY BE OWNED AND OPERATED BY ELECTRIC UTILITIES. BOTH OF THE FOLLOWING** must be completed ~~prior to~~ **BEFORE** the equipment ~~operating~~ **IS OPERATED** in parallel with the distribution system of the utility: ~~.~~

(*i*) UTILITY TESTING AND APPROVAL OF THE INTERCONNECTION, INCLUDING ALL METERING.

(*ii*) EXECUTION OF A PARALLEL OPERATING AGREEMENT.

(c) A uniform application form and process to be used by all electric utilities and alternative electric suppliers in this state. Customers who are served by an alternative electric supplier shall submit a copy of the application to the electric utility for the customer's service area.

(d) ~~Net metering~~ **DISTRIBUTED GENERATION** customers with a system capable of generating 20 kilowatts or less qualify for true net metering.

(e) ~~Net metering~~ **DISTRIBUTED GENERATION** customers with a system capable of generating more than 20 kilowatts qualify for modified net metering.

(7) ~~(6)~~ Each electric utility and alternative electric supplier shall maintain records of all applications and up-to-date records of all active eligible electric generators located within their service area.

Sec. 175. (1) An electric utility or alternative electric supplier may charge a fee not to exceed ~~$100.00~~ **$50.00** to process an application ~~for net metering. A customer with a system capable of generating more than 20 kilowatts~~ **TO PARTICIPATE IN THE DISTRIBUTED GENERATION PROGRAM. THE CUSTOMER** shall pay all interconnection costs. ~~A customer with a system capable of generating more than 150 kilowatts shall pay standby costs.~~ The commission shall recognize the reasonable cost for each electric utility and alternative electric supplier to operate a ~~net metering~~ **DISTRIBUTED GENERATION** program. For an electric utility with 1,000,000 or more retail customers in this state, the commission shall include in that **ELECTRIC** utility's nonfuel base rates all

costs of meeting all program requirements except that all energy costs of the program shall be recovered through the utility's power supply cost recovery mechanism under ~~sections~~ **SECTION** 6j ~~and 6k~~ of 1939 PA 3, MCL 460.6j. ~~and 460.6k.~~ For an electric utility with ~~less~~ **FEWER** than 1,000,000 base distribution customers in this state, the commission shall allow that **ELECTRIC** utility to recover all energy costs of the program through the power supply cost recovery mechanism under ~~sections~~ **SECTION** 6j ~~and 6k~~ of 1939 PA 3, MCL 460.6j, ~~and 460.6k,~~ and shall develop a cost recovery mechanism for that utility to contemporaneously recover all other costs of meeting the program requirements.

(2) The interconnection requirements of the ~~net metering~~ **DISTRIBUTED GENERATION** program shall provide that an electric utility or alternative electric supplier shall, subject to any time requirements imposed by the commission and upon reasonable written notice to the ~~net metering~~ **DISTRIBUTED GENERATION** customer, perform testing and inspection of an interconnected eligible electric generator as is necessary to determine that the system complies with all applicable electric safety, power quality, and interconnection, **INCLUDING METERING**, requirements. The costs of testing and inspection are considered a cost of operating a ~~net metering~~ **DISTRIBUTED GENERATION** program and shall be recovered under subsection (1).

(3) The interconnection requirements shall require all eligible electric generators, alternative electric suppliers, and electric utilities to comply with all applicable federal, state, and local laws, rules, or regulations, and any national standards

as determined by the commission.

Sec. 177. (1) Electric meters shall be used to determine the amount of the customer's energy use in each billing period, net of any excess energy the customer's generator delivers to the utility distribution system during that same billing period. For a customer with a generation system capable of generating more than 20 kilowatts, the utility shall install and utilize a generation meter and a meter or meters capable of measuring the flow of energy in both directions. A customer with a system capable of generating more than 150 kilowatts shall pay the costs of installing any new meters.

(2) An electric utility serving over 1,000,000 customers in this state may provide its customers participating in the ~~net metering~~ **DISTRIBUTED GENERATION** program, at no additional charge, a meter or meters capable of measuring the flow of energy in both directions.

(3) An electric utility serving fewer than 1,000,000 customers in this state shall provide a meter or meters described in subsection (2) to customers participating in the ~~net metering~~ **DISTRIBUTED GENERATION** program at cost. Only the incremental cost above that for meters provided by the electric utility to similarly situated nongenerating customers shall be paid by the eligible customer.

(4) If the quantity of electricity generated and delivered to the utility distribution system by an eligible electric generator during a billing period exceeds the quantity of electricity supplied from the electric utility or alternative electric supplier

during the billing period, the eligible customer shall be credited by their supplier of electric generation service for the excess kilowatt hours generated during the billing period. The credit shall appear on the bill for the following billing period and shall be limited to the total power supply charges on that bill. Any excess kilowatt hours not used to offset electric generation charges in the next billing period will be carried forward to subsequent billing periods. Notwithstanding any law or regulation, ~~net metering~~ **DISTRIBUTED GENERATION** customers shall not receive credits for electric utility transmission or distribution charges. The credit per kilowatt hour for kilowatt hours delivered into the utility's distribution system shall be either of the following:

(a) The monthly average real-time locational marginal price for energy at the commercial pricing node within the electric utility's distribution service territory, or for ~~net metering~~ **DISTRIBUTED GENERATION** customers on a time-based rate schedule, the monthly average real-time locational marginal price for energy at the commercial pricing node within the electric utility's distribution service territory during the time-of-use pricing period.

(b) The electric utility's or alternative electric supplier's power supply component, **EXCLUDING TRANSMISSION CHARGES**, of the full retail rate during the billing period or time-of-use pricing period.

(5) A CHARGE FOR NET METERING AND DISTRIBUTED GENERATION CUSTOMERS ESTABLISHED PURSUANT TO SECTION 6A OF 1939 PA 3, MCL 460.6A, SHALL NOT BE REDUCED BY ANY CREDIT OR OTHER RATEMAKING

MECHANISM FOR DISTRIBUTED GENERATION UNDER THIS SECTION.

Sec. 179. ~~An eligible electric generator~~ **A CUSTOMER** shall own any renewable energy credits granted for electricity generated **ON THE CUSTOMER'S SITE** under the ~~net metering~~ **DISTRIBUTED GENERATION** program created in this part.

SEC. 183. (1) A CUSTOMER PARTICIPATING IN A NET METERING PROGRAM APPROVED BY THE COMMISSION BEFORE THE COMMISSION ESTABLISHES A TARIFF PURSUANT TO SECTION 6A(14) OF 1939 PA 3, MCL 460.6A, MAY ELECT TO CONTINUE TO RECEIVE SERVICE UNDER THE TERMS AND CONDITIONS OF THAT PROGRAM FOR UP TO 10 YEARS FROM THE DATE OF ENROLLMENT.

(2) SUBSECTION (1) DOES NOT APPLY TO AN INCREASE IN THE GENERATION CAPACITY OF THE CUSTOMER'S ELIGIBLE ELECTRIC GENERATOR BEYOND THE CAPACITY ON THE EFFECTIVE DATE OF THIS SECTION.

SEC. 185. NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT, THIS ACT DOES NOT LIMIT OR RESTRICT AN INDUSTRIAL CUSTOMER'S ABILITY TO BUILD, OWN, [OR OPERATE, OR HAVE A THIRD PARTY BUILD, OWN, OR] OPERATE 1 OR MORE SELF-GENERATION OR COGENERATION FACILITIES[, AND NONE OF THE PROVISIONS OF PART 5 SHALL BE CONSTRUED OR INTERPRETED TO APPLY TO SUCH FACILITIES].

PART 7.

RESIDENTIAL ENERGY IMPROVEMENTS

SEC. 201. AS USED IN THIS PART:

(A) "ENERGY PROJECT" MEANS THE INSTALLATION OR MODIFICATION OF AN ENERGY WASTE REDUCTION IMPROVEMENT OR THE ACQUISITION, INSTALLATION, OR IMPROVEMENT OF A RENEWABLE ENERGY SYSTEM.

(B) "ENERGY WASTE REDUCTION IMPROVEMENT" MEANS EQUIPMENT, DEVICES, OR MATERIALS INTENDED TO DECREASE ENERGY CONSUMPTION, INCLUDING, BUT NOT LIMITED TO, ALL OF THE FOLLOWING:

(*i*) INSULATION IN WALLS, ROOFS, FLOORS, FOUNDATIONS, OR HEATING AND COOLING DISTRIBUTION SYSTEMS.

(*ii*) STORM WINDOWS AND DOORS; MULTI-GLAZED WINDOWS AND DOORS; HEAT-ABSORBING OR HEAT-REFLECTIVE GLAZED AND COATED WINDOW AND DOOR SYSTEMS; AND ADDITIONAL GLAZING, REDUCTIONS IN GLASS AREA, AND OTHER WINDOW AND DOOR MODIFICATIONS THAT REDUCE ENERGY CONSUMPTION.

(*iii*) AUTOMATED ENERGY CONTROL SYSTEMS.

(*iv*) HEATING, VENTILATING, OR AIR-CONDITIONING AND DISTRIBUTION SYSTEM MODIFICATIONS OR REPLACEMENTS.

(*v*) AIR SEALING, CAULKING, AND WEATHER-STRIPPING.

(*vi*) LIGHTING FIXTURES THAT REDUCE THE ENERGY USE OF THE LIGHTING SYSTEM.

(*vii*) ENERGY RECOVERY SYSTEMS.

(*viii*) DAY LIGHTING SYSTEMS.

(*ix*) ELECTRICAL WIRING OR OUTLETS TO CHARGE A MOTOR VEHICLE THAT IS FULLY OR PARTIALLY POWERED BY ELECTRICITY.

(*x*) MEASURES TO REDUCE THE USAGE OF WATER OR INCREASE THE EFFICIENCY OF WATER USAGE.

(*xi*) ANY OTHER INSTALLATION OR MODIFICATION OF EQUIPMENT, DEVICES, OR MATERIALS APPROVED AS A UTILITY COST-SAVINGS MEASURE BY THE GOVERNING BODY.

(C) "HOME ENERGY AUDIT" MEANS AN EVALUATION OF THE ENERGY PERFORMANCE OF A RESIDENTIAL STRUCTURE THAT MEETS ALL OF THE FOLLOWING REQUIREMENTS:

(*i*) IS PERFORMED BY A QUALIFIED PERSON USING BUILDING-PERFORMANCE DIAGNOSTIC EQUIPMENT.

(*ii*) COMPLIES WITH AMERICAN NATIONAL STANDARDS INSTITUTE-

APPROVED HOME ENERGY AUDIT STANDARDS.

(*iii*) DETERMINES HOW BEST TO OPTIMIZE ENERGY PERFORMANCE WHILE MAINTAINING OR IMPROVING HUMAN COMFORT, HEALTH, AND SAFETY AND THE DURABILITY OF THE STRUCTURE.

(*iv*) INCLUDES A BASELINE ENERGY MODEL AND COST-BENEFIT ANALYSIS FOR RECOMMENDED ENERGY WASTE REDUCTION IMPROVEMENTS.

(D) "PROPERTY" MEANS PRIVATELY OWNED RESIDENTIAL REAL PROPERTY.

(E) "RECORD OWNER" MEANS THE PERSON OR PERSONS POSSESSED OF THE MOST RECENT FEE TITLE OR LAND CONTRACT VENDEE'S INTEREST IN PROPERTY AS SHOWN BY THE RECORDS OF THE COUNTY REGISTER OF DEEDS.

(F) "RESIDENTIAL ENERGY PROJECTS PROGRAM" OR "PROGRAM" MEANS A PROGRAM AS DESCRIBED IN SECTION 203(2).

SEC. 203. (1) PURSUANT TO SECTION 205, A PROVIDER WHOSE RATES ARE REGULATED BY THE COMMISSION MAY ESTABLISH A RESIDENTIAL ENERGY PROJECTS PROGRAM.

(2) UNDER A RESIDENTIAL ENERGY PROJECTS PROGRAM, IF A RECORD OWNER OF PROPERTY IN THE PROVIDER'S SERVICE TERRITORY OBTAINS FINANCING OR REFINANCING OF AN ENERGY PROJECT ON THE PROPERTY FROM A COMMERCIAL LENDER OR OTHER LEGAL ENTITY, INCLUDING AN INDEPENDENT SUBSIDIARY OF THE PROVIDER, THE LOAN IS REPAID THROUGH ITEMIZED CHARGES ON THE PROVIDER'S UTILITY BILL FOR THAT PROPERTY. THE ITEMIZED CHARGES MAY COVER THE COST OF MATERIALS AND LABOR NECESSARY FOR INSTALLATION, HOME ENERGY AUDIT COSTS, PERMIT FEES, INSPECTION FEES, APPLICATION AND ADMINISTRATIVE FEES, BANK FEES, AND ALL OTHER FEES THAT MAY BE INCURRED BY THE RECORD OWNER FOR THE INSTALLATION ON A SPECIFIC OR PRO RATA BASIS, AS DETERMINED BY THE

PROVIDER.

(3) THIS ACT DOES NOT LIMIT THE RIGHT OF A PROVIDER TO PROPOSE A RESIDENTIAL ENERGY IMPROVEMENT PROGRAM WITH ELEMENTS THAT DIFFER FROM THOSE REQUIRED FOR A RESIDENTIAL ENERGY PROJECTS PROGRAM UNDER THIS PART OR THE AUTHORITY OF THE COMMISSION TO APPROVE SUCH A RESIDENTIAL ENERGY IMPROVEMENT PROGRAM AS REASONABLE AND PRUDENT.

SEC. 205. (1) A RESIDENTIAL ENERGY PROJECTS PROGRAM MAY ONLY BE ESTABLISHED AND IMPLEMENTED PURSUANT TO A PLAN APPROVED BY THE COMMISSION. A PROVIDER SEEKING TO ESTABLISH A RESIDENTIAL ENERGY PROJECTS PROGRAM SHALL FILE A PROPOSED PLAN WITH THE COMMISSION.

(2) A PLAN UNDER SUBSECTION (1) SHALL INCLUDE ALL OF THE FOLLOWING:

(A) THE ESTIMATED COSTS OF ADMINISTRATION OF THE RESIDENTIAL ENERGY PROJECTS PROGRAM.

(B) WHETHER THE RESIDENTIAL ENERGY PROJECTS PROGRAM WILL BE ADMINISTERED BY A THIRD PARTY.

(C) AN APPLICATION PROCESS AND ELIGIBILITY REQUIREMENTS FOR A RECORD OWNER TO PARTICIPATE IN THE RESIDENTIAL ENERGY PROJECTS PROGRAM.

(D) AN APPLICATION FORM GOVERNING THE TERMS AND CONDITIONS FOR A RECORD OWNER'S PARTICIPATION IN THE PROGRAM, INCLUDING AN EXPLANATION OF BILLING UNDER SUBDIVISION (F) AND OF THE PROVISIONS OF SECTION 207.

(E) A DESCRIPTION OF ANY FEES TO COVER APPLICATION, ADMINISTRATION, OR OTHER PROGRAM COSTS TO BE CHARGED TO A RECORD OWNER PARTICIPATING IN THE PROGRAM, INCLUDING THE AMOUNT OF EACH FEE, IF KNOWN, OR PROCEDURES TO DETERMINE THE AMOUNT. A FEE SHALL

NOT EXCEED THE COSTS INCURRED BY THE PROVIDER FOR THE ACTIVITY FOR WHICH THE FEE IS CHARGED.

(F) PROVISIONS FOR BILLING CUSTOMERS OF THE PROVIDER ANY FEES UNDER SUBDIVISION (E) AND THE MONTHLY INSTALLMENT PAYMENTS AS A PER-METER CHARGE ON THE BILL FOR ELECTRIC OR NATURAL GAS SERVICES.

(G) PROVISIONS FOR MARKETING AND PARTICIPANT EDUCATION.

(3) THE COMMISSION SHALL NOT APPROVE A PROVIDER'S PROPOSED RESIDENTIAL ENERGY PROJECTS PLAN UNLESS THE COMMISSION DETERMINES THAT THE PLAN IS REASONABLE AND PRUDENT.

(4) IF THE COMMISSION REJECTS A PROPOSED PLAN OR AMENDMENT UNDER THIS SECTION, THE COMMISSION SHALL EXPLAIN IN WRITING THE REASONS FOR ITS DETERMINATION.

(5) EVERY 4 YEARS AFTER INITIAL APPROVAL OF A PLAN UNDER SUBSECTION (1), THE COMMISSION SHALL REVIEW THE PLAN.

SEC. 207. (1) A BASELINE HOME ENERGY AUDIT SHALL BE CONDUCTED BEFORE AN ENERGY PROJECT THAT WILL BE PAID FOR THROUGH CHARGES ON THE UTILITY BILL UNDER THIS PART IS UNDERTAKEN. AFTER THE ENERGY PROJECT IS COMPLETED, THE PROVIDER SHALL OBTAIN VERIFICATION THAT THE ENERGY PROJECT WAS PROPERLY INSTALLED AND IS OPERATING AS INTENDED.

(2) ELECTRIC OR NATURAL GAS SERVICE MAY BE SHUT OFF FOR NONPAYMENT OF THE PER-METER CHARGE DESCRIBED UNDER SECTION 205 IN THE SAME MANNER AND PURSUANT TO THE SAME PROCEDURES AS USED TO ENFORCE NONPAYMENT OF OTHER CHARGES FOR THE PROVIDER'S ELECTRIC OR NATURAL GAS SERVICE. IF NOTICE OF A LOAN UNDER THE PROGRAM IS RECORDED WITH THE REGISTER OF DEEDS FOR THE COUNTY IN WHICH THE PROPERTY IS LOCATED, THE OBLIGATION TO PAY THE PER-METER CHARGE

SHALL RUN WITH THE LAND AND BE BINDING ON FUTURE CUSTOMERS CONTRACTING FOR ELECTRIC SERVICE OR NATURAL GAS SERVICE, AS APPLICABLE, TO THE PROPERTY.

SEC. 209. (1) THE TERM OF A LOAN PAID THROUGH A RESIDENTIAL ENERGY PROJECTS PROGRAM SHALL NOT EXCEED THE ANTICIPATED USEFUL LIFE OF THE ENERGY PROJECT FINANCED BY THE LOAN OR 180 MONTHS, WHICHEVER IS LESS. THE LOAN SHALL BE REPAID IN MONTHLY INSTALLMENTS.

(2) THE LENDER SHALL COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO THE EXTENSION OF CREDIT FOR HOME IMPROVEMENTS.

(3) IF A NONPROFIT CORPORATION MAKES LOANS TO OWNERS OF PROPERTY TO BE REPAID UNDER A RESIDENTIAL ENERGY PROJECTS PROGRAM, INTEREST SHALL BE CHARGED ON THE UNPAID BALANCE AT A RATE OF NOT MORE THAN THE ADJUSTED PRIME RATE AS DETERMINED UNDER SECTION 23 OF 1941 PA 122, MCL 205.23, PLUS 4%.

SEC. 211. (1) PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO 24.328, THE COMMISSION SHALL PROMULGATE RULES TO IMPLEMENT THIS PART WITHIN 1 YEAR AFTER THE EFFECTIVE DATE OF THIS SECTION.

(2) EVERY 5 YEARS AFTER THE PROMULGATION OF RULES UNDER SUBSECTION (1), THE COMMISSION SHALL SUBMIT A REPORT TO THE STANDING COMMITTEES OF THE SENATE AND HOUSE OF REPRESENTATIVES WITH PRIMARY RESPONSIBILITY FOR ENERGY ISSUES ON THE IMPLEMENTATION OF THIS PART AND ANY RECOMMENDATIONS FOR LEGISLATION TO AMEND THIS PART. THE REPORT MAY BE COMBINED WITH THE ANNUAL REPORT UNDER SECTION 5A OF 1939 PA 3, MCL 460.5A.

(3) THIS ACT DOES NOT LIMIT THE RIGHT OF A PROVIDER TO PROPOSE

A RESIDENTIAL ENERGY IMPROVEMENT PROGRAM WITH ELEMENTS THAT DIFFER FROM THOSE REQUIRED FOR A RESIDENTIAL ENERGY PROJECTS PROGRAM UNDER THIS PART OR THE AUTHORITY OF THE COMMISSION TO APPROVE SUCH A RESIDENTIAL ENERGY IMPROVEMENT PROGRAM AS REASONABLE AND PRUDENT.

Enacting section 1. Sections 21, 23, 25, 27, 31, 33, 37, 43, 53, 79, and 155 of the clean, renewable, and efficient energy act, 2008 PA 295, MCL 460.1021, 460.1023, 460.1025, 460.1027, 460.1031, 460.1033, 460.1037, 460.1043, 460.1053, 460.1079, and 460.1155, are repealed.

Enacting section 2. Section 51 of the clean, renewable, and efficient energy act, 2008 PA 295, MCL 460.1051, is repealed effective January 1, 2023.

Enacting section 3. Except as otherwise provided in this amendatory act, this amendatory act takes effect 120 days after the date it is enacted into law.

Enacting section 4. This amendatory act does not take effect unless Senate Bill No. 437 of the 98th Legislature is enacted into law.