

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 612

A bill to amend 1939 PA 3, entitled

"An act to provide for the regulation and control of public utilities and other services affected with a public interest within this state; to provide for alternative energy suppliers; to provide for licensing; to include municipally owned utilities and other providers of energy under certain provisions of this act; to create a public service commission and to prescribe and define its powers and duties; to abolish the Michigan public utilities commission and to confer the powers and duties vested by law on the public service commission; to provide for the continuance, transfer, and completion of certain matters and proceedings; to abolish automatic adjustment clauses; to prohibit certain rate increases without notice and hearing; to qualify residential energy conservation programs permitted under state law for certain federal exemption; to create a fund; to provide for a restructuring of the manner in which energy is provided in this state; to encourage the utilization of resource recovery facilities; to prohibit certain acts and practices of providers of energy; to allow for the securitization of stranded costs; to reduce rates; to provide for appeals; to provide appropriations; to declare the effect and purpose of this act; to prescribe remedies and penalties; and to repeal acts and parts of acts,"

by amending section 10a (MCL 460.10a), as amended by 2003 PA

214.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 10a. (1) No later than January 1, 2002, the commission
2 shall issue orders establishing the rates, terms, and conditions
3 of service that allow all retail customers of an electric utility
4 or provider to choose an alternative electric supplier. The
5 orders shall provide for full recovery of a utility's net
6 stranded costs and implementation costs as determined by the
7 commission.

8 (2) The commission shall issue orders establishing a
9 licensing procedure for all alternative electric suppliers. To
10 ensure adequate service to customers in this state, the
11 commission shall require that an alternative electric supplier
12 maintain an office within this state, shall assure that an
13 alternative electric supplier has the necessary financial,
14 managerial, and technical capabilities, shall require that an
15 alternative electric supplier maintain records which the
16 commission considers necessary, and shall ensure an alternative
17 electric supplier's accessibility to the commission, to
18 consumers, and to electric utilities in this state. The
19 commission also shall require alternative electric suppliers to
20 agree that they will collect and remit to local units of
21 government all applicable users, sales, and use taxes. An
22 alternative electric supplier is not required to obtain any
23 certificate, license, or authorization from the commission other
24 than as required by this act.

25 (3) The commission shall issue orders to ensure that
26 customers in this state are not switched to another supplier or
27 billed for any services without the customer's consent.

1 (4) ~~Within 180 days after June 5,~~ **No later than December 2,**
2 2000, the commission shall establish a code of conduct that shall
3 apply to all electric utilities. The code of conduct shall
4 include, but is not limited to, measures to prevent
5 cross-subsidization, information sharing, and preferential
6 treatment, between a utility's regulated and unregulated
7 services, whether those services are provided by the utility or
8 the utility's affiliated entities. The code of conduct
9 established under this subsection shall also be applicable to
10 electric utilities and alternative electric suppliers consistent
11 with section 10, this section, and sections 10b through 10cc.

12 (5) ~~Before December 31, 2003, the commission shall extend~~
13 ~~the temporary waiver for appliance service plans granted in case~~
14 ~~no. U-12134 issued February 20, 2003, to July 1, 2004, subject to~~
15 ~~the conditions imposed by that order. The enactment of this~~
16 ~~subsection shall not be deemed to prejudice, delay, or affect any~~
17 ~~pending legal case or legal proceeding.~~ **An electric utility may**
18 **offer its customers an appliance service program. Except as**
19 **otherwise provided by this section, the utility shall comply with**
20 **the code of conduct established by the commission under**
21 **subsection (4). As used in this section, "appliance service**
22 **program" or "program" means a subscription program for the repair**
23 **and servicing of heating and cooling systems or other**
24 **appliances.**

25 (6) **A utility offering a program under subsection (5) shall**
26 **do all of the following:**

27 (a) **Locate within a separate department of the utility or**

1 affiliate within the utility's corporate structure the personnel
2 responsible for the day-to-day management of the program.

3 (b) Maintain separate books and records for the program,
4 access to which shall be made available to the commission upon
5 request.

6 (c) Not promote or market the program through the use of
7 utility billing inserts, printed messages on the utility's
8 billing materials, or other promotional materials included with
9 customers' utility bills.

10 (7) All costs directly attributable to an appliance service
11 program allowed under subsection (5) shall be allocated to the
12 program as required by this subsection. The direct and indirect
13 costs of employees, vehicles, equipment, office space, and other
14 facilities used in the appliance service program shall be
15 allocated to the program based upon the amount of use by the
16 program as compared to the total use of the employees, vehicles,
17 equipment, office space, and other facilities. The cost of the
18 program shall include administrative and general expense loading
19 to be determined in the same manner as the utility determines
20 administrative and general expense loading for all of the
21 utility's regulated and unregulated activities. A subsidy by a
22 utility does not exist if costs allocated as required by this
23 subsection do not exceed the revenue of the program.

24 (8) A utility may include charges for its appliance service
25 program on its monthly billings to its customers if the utility
26 complies with all of the following requirements:

27 (a) All costs associated with the billing process, including

1 the postage, envelopes, paper, and printing expenses, are
2 allocated as required under subsection (7).

3 (b) A customer's regulated utility service is not terminated
4 for nonpayment of the appliance service program portion of the
5 bill.

6 (c) Unless the customer directs otherwise in writing, a
7 partial payment by a customer is applied first to the bill for
8 regulated service.

9 (9) In marketing its appliance service program to the public,
10 a utility shall do all of the following:

11 (a) The list of customers receiving regulated service from
12 the utility shall be available to a provider of appliance repair
13 service upon request within 2 business days. The customer list
14 shall be provided in the same electronic format as such
15 information is provided to the appliance service program. A new
16 customer shall be added to the customer list within 1 business
17 day of the date the customer requested to turn on service.

18 (b) Appropriately allocate costs as required under subsection
19 (7) when personnel employed at a utility's call center provide
20 appliance service program marketing information to a prospective
21 customer.

22 (c) Prior to enrolling a customer into the program, the
23 utility shall inform the potential customer of all of the
24 following:

25 (i) That appliance service programs may be available from
26 another provider.

27 (ii) That the appliance service program is not regulated by

1 the commission.

2 (iii) That a new customer shall have 10 days after enrollment
3 to cancel his or her appliance service program contract without
4 penalty.

5 (iv) That the customer's regulated rates and conditions of
6 service provided by the utility are not affected by enrollment in
7 the program or by the decision of the customer to use the
8 services of another provider of appliance repair service.

9 (d) The utility name and logo may be used to market the
10 appliance service program provided that the program is not
11 marketed in conjunction with a regulated service. To the extent
12 that a program utilizes the utility's name and logo in marketing
13 the program, the program shall include language on all material
14 indicating that the program is not regulated by the commission.
15 Costs shall not be allocated to the program for the use of the
16 utility's name or logo.

17 (10) This section does not prohibit the commission from
18 requiring a utility to include revenues from an appliance service
19 program in establishing base rates. If the commission includes
20 the revenues of an appliance service program in determining a
21 utility's base rates, the commission shall also include all of
22 the costs of the program as determined under this section.

23 (11) Except as otherwise provided in this section, the code
24 of conduct with respect to an appliance service program shall not
25 require a utility to form a separate affiliate or division to
26 operate an appliance service program, impose further restrictions
27 on the sharing of employees, vehicles, equipment, office space,

1 and other facilities, or require the utility to provide other
2 providers of appliance repair service with access to utility
3 employees, vehicles, equipment, office space, or other
4 facilities.

5 (12) ~~—(6)—~~ The orders issued by the commission before June 5,
6 2000 that allow customers of an electric utility to choose an
7 alternative electric supplier, including orders that determine
8 and authorize recovery of net stranded costs and implementation
9 costs and that confirm any voluntary commitments of electric
10 utilities, are in compliance with this act and enforceable by the
11 commission. An electric utility that has not had voluntary
12 commitments to provide customer choice previously approved by
13 orders of the commission shall file a restructuring plan to allow
14 customers to choose an alternative electric supplier no later
15 than the date ordered by the commission. The plan shall propose
16 a methodology to determine the electric utility's net stranded
17 costs and implementation costs.

18 (13) ~~—(7)—~~ This act does not prohibit or limit the right of a
19 person to obtain self-service power and does not impose a
20 transition, implementation, exit fee, or any other similar charge
21 on self-service power. A person using self-service power is not
22 an electric supplier, electric utility, or a person conducting an
23 electric utility business. As used in this subsection,
24 "self-service power" means any of the following:

25 (a) Electricity generated and consumed at an industrial site
26 or contiguous industrial site or single commercial establishment
27 or single residence without the use of an electric utility's

1 transmission and distribution system.

2 (b) Electricity generated primarily by the use of by-product
3 fuels, including waste water solids, which electricity is
4 consumed as part of a contiguous facility, with the use of an
5 electric utility's transmission and distribution system, but only
6 if the point or points of receipt of the power within the
7 facility are not greater than 3 miles distant from the point of
8 generation.

9 (c) A site or facility with load existing on June 5, 2000
10 that is divided by an inland body of water or by a public
11 highway, road, or street but that otherwise meets this definition
12 meets the contiguous requirement of this subdivision regardless
13 of whether self-service power was being generated on June 5,
14 2000.

15 (d) A commercial or industrial facility or single residence
16 that meets the requirements of subdivision (a) or (b) meets this
17 definition whether or not the generation facility is owned by an
18 entity different from the owner of the commercial or industrial
19 site or single residence.

20 **(14)** ~~—(8)—~~ This act does not prohibit or limit the right of a
21 person to engage in affiliate wheeling and does not impose a
22 transition, implementation, exit fee, or any other similar charge
23 on a person engaged in affiliate wheeling. As used in this
24 section:

25 (a) "Affiliate" means a person or entity that directly, or
26 indirectly through 1 or more intermediates, controls, is
27 controlled by, or is under common control with another specified

1 entity. As used in this subdivision, "control" means, whether
2 through an ownership, beneficial, contractual, or equitable
3 interest, the possession, directly or indirectly, of the power to
4 direct or to cause the direction of the management or policies of
5 a person or entity or the ownership of at least 7% of an entity
6 either directly or indirectly.

7 (b) "Affiliate wheeling" means a person's use of direct
8 access service where an electric utility delivers electricity
9 generated at a person's industrial site to that person or that
10 person's affiliate at a location, or general aggregated
11 locations, within this state that was either 1 of the following:

12 (i) For at least 90 days during the period from January 1,
13 1996 to October 1, 1999, supplied by self-service power, but only
14 to the extent of the capacity reserved or load served by
15 self-service power during the period.

16 (ii) Capable of being supplied by a person's cogeneration
17 capacity within this state that has had since January 1, 1996 a
18 rated capacity of 15 megawatts or less, was placed in service
19 before December 31, 1975, and has been in continuous service
20 since that date. A person engaging in affiliate wheeling is not
21 an electric supplier, an electric utility, or conducting an
22 electric utility business when a person engages in affiliate
23 wheeling.

24 (15) ~~—(9)—~~ The rights of parties to existing contracts and
25 agreements in effect as of January 1, 2000 between electric
26 utilities and qualifying facilities, including the right to have
27 the charges recovered from the customers of an electric utility,

1 or its successor, shall not be abrogated, increased, or
2 diminished by this act, nor shall the receipt of any proceeds of
3 the securitization bonds by an electric utility be a basis for
4 any regulatory disallowance. Further, any securitization or
5 financing order issued by the commission that relates to a
6 qualifying facility's power purchase contract shall fully
7 consider that qualifying facility's legal and financial
8 interests.

9 **(16)** ~~—(10)—~~ The commission shall, after a contested case
10 proceeding, issue annually an order approving for each electric
11 utility a true-up adjustment to reconcile any overcollections or
12 undercollections of the preceding 12 months to ensure the
13 recovery of all amounts of net stranded costs. The rates for
14 customers remaining with an incumbent electric utility will not
15 be affected by the true-up process under this subsection. The
16 commission shall review the electric utility's stranded cost
17 recovery charges and securitization charges implemented for the
18 preceding 12 months, and adjust the stranded cost recovery
19 charge, by way of supplemental surcharges or credits, to allow
20 the netting of stranded costs.

21 **(17)** ~~—(11)—~~ The commission shall consider the reasonableness
22 and appropriateness of various methods to determine net stranded
23 costs, including, but not limited to, all of the following:

24 (a) Evaluating the relationship of market value to the net
25 book value of generation assets and purchased power contracts.

26 (b) Evaluating net stranded costs based on the market price
27 of power in relation to prices assumed by the commission in prior

1 orders.

2 (c) Any other method the commission considers appropriate.

3 (18) ~~—(12)—~~ The true-up adjustment adopted under subsection
4 ~~—(10)—~~ (16) shall not result in a modification to the
5 securitization charge. The commission shall not adjust or change
6 in any manner securitization charges authorized by the commission
7 in a financing order issued under section 10i as a result of its
8 review and any action taken under subsection ~~—(10)—~~ (16).

9 (19) ~~—(13)—~~ After the time period described in section
10 10d(2), the rates for retail customers that remain with or leave
11 and later return to the incumbent electric utility shall be
12 determined in the same manner as the rates were determined before
13 the effective date of this section.