



1 from fossil fuels, that can be converted to usable fuel for the  
2 production of energy, and that is available on a renewable basis,  
3 including, but not limited to, all of the following:

4 (i) Agricultural crops and crop wastes.

5 (ii) Short-rotation energy crops.

6 (iii) Herbaceous plants.

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

10 (v) Paper and pulp products.

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

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

14 (viii) Animal wastes.

15 (ix) Wastewater sludge or sewage.

16 (x) Aquatic plants.

17 (xi) Food production and processing waste.

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

19 (b) "Commission" means the Michigan public service commission.

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

25 (d) "Electronic waste" means any of the following discarded  
26 items:

27 (i) A computer, including a computer monitor or peripheral.

1 (ii) A television.

2 (iii) A telephone.

3 (iv) A personal digital assistant device.

4 (v) A radio.

5 (vi) A compact disc or digital video disc or a compact disc or  
6 digital video disc player.

7 (vii) Other similar items as determined by the commission.

8 (e) "Incremental costs of compliance" means the net revenue  
9 required by a provider to comply with the renewable energy  
10 portfolio standard, calculated as provided under section 27(2).

11 (f) "Industrial cogeneration" means the generation of  
12 electricity using industrial thermal energy.

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

18 (h) "Provider", subject to sections 7(1) and 9(1), means any  
19 of the following:

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

23 (ii) A municipally owned electric utility in this state.

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

25 (iv) An alternative electric supplier licensed in this state.

26 (i) "PURPA" means the public utility regulatory policies act  
27 of 1978, Public Law 95-617.

1 (j) "Qualifying cogeneration facility" means that term as  
2 defined in 16 USC 824a-3.

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

5 Sec. 5. As used in this part:

6 (a) "Renewable energy" means electricity generated using a  
7 renewable energy system.

8 (b) "Renewable energy contract" means a contract to acquire  
9 renewable energy and the associated renewable energy credits from 1  
10 or more renewable energy systems.

11 (c) "Renewable energy credit" means a credit certified under  
12 this part that represents generated renewable energy.

13 (d) "Renewable energy portfolio" for the years 2012 through  
14 2015 means the percentage determined as follows for a given  
15 provider and year:

16 (i) Determine the number of renewable energy credits used to  
17 comply with this part during that year.

18 (ii) Divide by 1 of the following at the option of the provider  
19 as specified in its renewable energy portfolio plan:

20 (A) The number of weather-normalized megawatt hours of  
21 electricity sold by the provider during the previous year to retail  
22 customers in this state.

23 (B) The average number of megawatt hours of electricity sold  
24 by the provider annually during the previous 3 years to retail  
25 customers in this state.

26 (iii) Multiply by 100.

27 (e) "Renewable energy portfolio" for the year 2016 and

1 thereafter means the number of renewable energy credits used to  
2 comply with this part during that year.

3 (f) "Renewable energy portfolio plan" or "plan" means a plan  
4 approved under section 7(3) or 9(3).

5 (g) "Renewable energy portfolio standard" means the minimum  
6 renewable energy portfolio required to be achieved under section  
7 13.

8 (h) "Renewable energy resource" means any of the following:

9 (i) Biomass.

10 (ii) Solar energy.

11 (iii) Wind energy.

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

14 (A) Waves, tides, or currents.

15 (B) Water released through a dam.

16 (C) Water released from a pumped storage facility to the  
17 extent that the water was pumped into the storage facility using  
18 renewable energy.

19 (v) Hydrogen synthesis gas produced from the plasma  
20 gasification of industrial by-products or electronic waste.

21 (vi) Geothermal energy.

22 (vii) Industrial thermal energy.

23 (viii) Municipal solid waste, including, but not limited to,  
24 landfilled municipal solid waste that produces landfill gas.

25 (i) "Renewable energy system" means a facility, electricity  
26 generation system, or integrated set of electricity generation  
27 systems that use 1 or more renewable energy resources to generate

1 electricity. Renewable energy system does not include any of the  
2 following:

3 (i) A hydroelectric facility that uses a dam constructed after  
4 the effective date of this act unless the dam is a repair or  
5 replacement of a dam in existence on the effective date of this  
6 act.

7 (ii) An incinerator unless the incinerator is a municipal solid  
8 waste incinerator as defined in section 11504 of the natural  
9 resources and environmental protection act, 1994 PA 451, MCL  
10 324.11504, and was brought into service before the effective date  
11 of this act.

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

16 (k) "Revenue recovery mechanism" means the mechanism for  
17 recovery of incremental costs of compliance established under  
18 section 7(4).

19 Sec. 7. (1) As used in this section, "provider" means a  
20 provider whose rates are regulated by the commission.

21 (2) Within 90 days after the commission issues a temporary  
22 order under section 37, each provider shall file a proposed  
23 renewable energy portfolio plan with the commission. The proposed  
24 plan shall meet all of the following requirements:

25 (a) Describe how the provider will meet the renewable energy  
26 portfolio standards.

27 (b) Specify whether the number of megawatt hours of

1 electricity used in the calculation of the renewable energy  
2 portfolio will be weather-normalized or based on a 3-year running  
3 average. Once the plan is approved by the commission, this option  
4 shall not be changed.

5 (c) Include the expected incremental cost of compliance with  
6 the renewable portfolio standard for a 20-year period beginning  
7 when the plan is approved by the commission.

8 (d) Include a nonvolumetric mechanism for the recovery of the  
9 incremental costs of compliance within the provider's customer  
10 rates.

11 (e) For a provider that is an electric utility with 1,000,000  
12 or more retail customers in this state as of January 1, 2008,  
13 describe the bidding process to be used by the provider under  
14 section 17(2). The description shall include measures to be  
15 employed in the preparation of requests for proposals and the  
16 handling and evaluation of proposals received to ensure that any  
17 bidder that is an affiliate of the electric utility is not afforded  
18 a competitive advantage over any other bidder and that each bidder,  
19 including any bidder that is an affiliate of the provider, is  
20 treated in a fair and nondiscriminatory manner.

21 (3) The commission shall conduct a contested case hearing on  
22 the proposed plan filed under subsection (2), pursuant to the  
23 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to  
24 24.328. If a renewable energy generator files a petition to  
25 intervene in the contested case in the manner prescribed by the  
26 commission's rules for interventions generally, the commission  
27 shall grant the petition. After the hearing and within 90 days

1 after the proposed plan is filed with the commission, the  
2 commission shall approve, with any changes consented to by the  
3 provider, or reject the plan. A provider shall not begin recovery  
4 of the incremental costs of compliance within its rates until the  
5 commission has approved its proposed plan.

6 (4) The plan, as approved by the commission, shall establish a  
7 nonvolumetric mechanism for the recovery of the incremental costs  
8 of compliance within the provider's customer rates. The revenue  
9 recovery mechanism shall not result in rate impacts that exceed the  
10 monthly maximum retail rate impacts specified under section 25. A  
11 customer participating in a commission-approved voluntary renewable  
12 energy program under an agreement in effect on the effective date  
13 of this act shall not incur charges under the revenue recovery  
14 mechanism except to the extent that the charges under the revenue  
15 recovery mechanism exceed the charges the customer is incurring for  
16 the voluntary renewable energy program. The limitation on charges  
17 applies only during the term of the agreement, not including  
18 automatic agreement renewals, or until 1 year after the effective  
19 date of this act, whichever is later. Before entering an agreement  
20 with a customer to participate in a commission-approved voluntary  
21 renewable energy program and before the last automatic monthly  
22 renewal of such an agreement that will occur less than 1 year after  
23 the effective date of this act, a provider shall notify the  
24 customer that the customer will be responsible for the full  
25 applicable charges under the revenue recovery mechanism as well as  
26 under the voluntary renewable energy program as provided under this  
27 subsection.

1 (5) If proposed by the provider in its proposed plan, the  
2 revenue recovery mechanism shall result in an accumulation of  
3 reserve funds in advance of expenditure and the creation of a  
4 regulatory liability that accrues interest at the average short-  
5 term borrowing rate available to the provider during the  
6 appropriate period. If proposed by the provider in its proposed  
7 plan, the commission shall establish a minimum balance of  
8 accumulated reserve funds for the purposes of section 27(4).

9 (6) A revenue recovery mechanism is subject to adjustment  
10 under sections 27(4) and 29.

11 (7) Every 2 years after initial approval of a renewable energy  
12 portfolio plan under subsection (3), the commission shall review  
13 the plan. The commission shall conduct a contested case hearing on  
14 the plan pursuant to the administrative procedures act of 1969,  
15 1969 PA 306, MCL 24.201 to 24.328. A renewable energy generator may  
16 intervene in the contested case as provided in subsection (3). The  
17 annual renewable cost reconciliation under section 29 for that year  
18 may be joined with the overall plan review in the same contested  
19 case hearing. After the hearing, the commission shall approve, with  
20 any changes consented to by the provider, or reject any proposed  
21 amendments to the plan.

22 (8) If a provider proposes to amend its renewable energy  
23 portfolio plan at a time other than during the biennial review  
24 process under subsection (7), the provider shall file the proposed  
25 amendment with the commission. If the proposed amendment would  
26 modify the revenue recovery mechanism, the commission shall conduct  
27 a contested case hearing on the amendment pursuant to the

1 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to  
2 24.328. A renewable energy generator may intervene in the contested  
3 case as provided in subsection (3). The annual renewable cost  
4 reconciliation under section 29 may be joined with the plan  
5 amendment in the same contested case proceeding. After the hearing  
6 and within 90 days after the amendment is filed, the commission  
7 shall approve, with any changes consented to by the provider, or  
8 reject the amendment.

9       Sec. 9. (1) As used in this section, "provider" means a  
10 provider whose rates are not regulated by the commission.

11       (2) Within 90 days after the commission issues a temporary  
12 order under section 37, each provider shall file a proposed  
13 renewable energy portfolio plan with the commission. The proposed  
14 plan shall meet all of the following requirements:

15       (a) Describe how the provider will meet the renewable energy  
16 portfolio standards.

17       (b) Specify whether the number of megawatt hours of  
18 electricity used in the calculation of the renewable energy  
19 portfolio will be weather-normalized or based on a 3-year running  
20 average. Once the plan is approved by the commission, this option  
21 shall not be changed.

22       (c) Include the expected incremental cost of compliance with  
23 the renewable portfolio standard for a 20-year period beginning  
24 when the plan is approved by the commission.

25       (d) Describe the manner in which the provider will allocate  
26 costs, subject to section 25(1).

27       (3) The commission shall provide an opportunity for public

1 comment on the proposed plan filed under subsection (2). However,  
2 the commission need not provide an opportunity for public comment  
3 if the provider is a municipally owned electric utility and the  
4 governing body of the provider has already provided an opportunity  
5 for public comment and filed the comments with the commission along  
6 with the plan. After the applicable opportunity for public comment  
7 and within 90 days after the proposed plan is filed with the  
8 commission, the commission shall approve, with any changes  
9 consented to by the provider, or reject the plan. The provider  
10 shall not begin recovery of the incremental costs of compliance  
11 within its rates until the commission has approved its proposed  
12 plan. However, if the provider is a municipally owned electric  
13 utility, the provider may begin recovery of the incremental costs  
14 of compliance upon approval of its proposed plan by the governing  
15 body of the municipally owned electric utility.

16 (4) Every 2 years after initial approval of a renewable energy  
17 portfolio plan under subsection (3), the commission shall review  
18 the plan. The commission shall provide an opportunity for public  
19 comment on the plan. However, the commission need not provide an  
20 opportunity for public comment if the provider is a municipally  
21 owned electric utility and the governing body of the provider has  
22 already provided an opportunity for public comment and filed the  
23 comments with the commission. After the applicable opportunity for  
24 public comment, the commission shall approve, with any changes  
25 consented to by the provider, or reject any proposed amendments to  
26 the plan.

27 (5) If a provider proposes to amend its renewable energy

1 portfolio plan at a time other than during the biennial review  
2 process under subsection (4), the provider shall file the proposed  
3 amendment with the commission. The commission shall provide an  
4 opportunity for public comment on the amendment. However, the  
5 commission need not provide an opportunity for public comment if  
6 the provider is a municipally owned electric utility and the  
7 governing body of the provider has already provided an opportunity  
8 for public comment and filed the comments with the commission.  
9 After the opportunity for public comment and within 90 days after  
10 the amendment is filed, the commission shall approve, with any  
11 changes consented to by the provider, or reject the amendment.

12       Sec. 11. The commission shall ensure that plans submitted by  
13 providers serving customers in the same distribution territory do  
14 not create an unfair competitive advantage for any of those  
15 providers.

16       Sec. 13. Subject to sections 15 and 25, each provider shall do  
17 all of the following:

18       (a) In each of years 2012, 2013, and 2014, achieve a renewable  
19 energy portfolio of at least 4%.

20       (b) In 2015, achieve a renewable energy portfolio of at least  
21 10%.

22       (c) In 2016 and each year thereafter, maintain a renewable  
23 energy portfolio that consists of at least the same number of  
24 renewable energy credits as were required in 2015 under subdivision  
25 (b).

26       Sec. 15. (1) Upon petition by a provider, the commission may  
27 for good cause grant 2 extensions of renewable energy portfolio

1 standard deadlines under section 13. Each extension shall be for up  
2 to 1 year. Good cause includes, but is not limited to, the  
3 provider's inability, as determined by the commission, to meet the  
4 renewable energy portfolio standard because of a renewable energy  
5 system feasibility limitation including, but not limited to, any of  
6 the following:

7 (a) Renewable energy system site requirements, zoning, siting,  
8 land use issues, permits, including environmental permits, any  
9 certificate of need process under section 6r of 1939 PA 3, MCL  
10 460.6r, or any other necessary governmental approvals that  
11 effectively limit availability of renewable energy systems,  
12 including, if the provider has exercised reasonable diligence in  
13 securing the necessary governmental approvals. For purposes of this  
14 subdivision, "reasonable diligence" includes, but is not limited  
15 to, submitting timely applications for the necessary governmental  
16 approvals and making good faith efforts to ensure that the  
17 applications are administratively complete and technically  
18 sufficient.

19 (b) Equipment cost or availability issues including, but not  
20 limited to, electrical equipment or renewable energy system  
21 component shortages or costs that effectively limit availability of  
22 renewable energy systems.

23 (c) Cost, availability, or time requirements for electric  
24 transmission and interconnection.

25 (d) Projected or actual unfavorable electric system  
26 reliability or operational impacts.

27 (e) Labor shortages that effectively limit availability of

1 renewable energy systems.

2 (2) If 2 extensions of the 2015 renewable energy portfolio  
3 standard deadline have been granted under subsection (1), upon  
4 subsequent petition by a provider at least 6 months before the  
5 expiration of the second extended deadline, the provider shall be  
6 considered to be in compliance with this part at a renewable energy  
7 portfolio determined by the commission to be attainable by that  
8 provider.

9 (3) Any provider that makes a good faith effort to spend the  
10 full amount of incremental costs of compliance as outlined in its  
11 approved renewable energy portfolio plan, revised, subject to  
12 extensions under this section or revisions under section 29, shall  
13 be considered to be in compliance with this part.

14 Sec. 17. (1) A provider shall comply with the renewable energy  
15 portfolio standard by obtaining renewable energy credits by any of  
16 the following means:

17 (a) Producing electricity from renewable energy systems.

18 (b) Purchasing electricity through a renewable energy  
19 contract.

20 (c) Purchasing renewable energy credits apart from  
21 electricity.

22 (2) Subject to subsection (3), a provider that is an electric  
23 utility with 1,000,000 or more retail customers in this state as of  
24 January 1, 2008 shall obtain the renewable energy credits that are  
25 necessary to meet the renewable portfolio standard under section  
26 13(b) and (c) as follows:

27 (a) At the provider's option, up to but no more than 33-1/3%

1 of such renewable energy credits shall be from renewable energy  
2 systems that were developed by and are owned by the provider. A  
3 provider shall competitively bid any contract for engineering,  
4 procurement, or construction of any new renewable energy systems  
5 described in this subdivision.

6 (b) At the provider's option, up to but not more than 33-1/3%  
7 of such renewable energy credits shall be from renewable energy  
8 systems that were developed by 1 or more third parties pursuant to  
9 a contract with the provider under which the ownership of the  
10 renewable energy system may be transferred to the provider, but not  
11 before the renewable energy system begins commercial operation. A  
12 transfer of ownership resulting from such a contract does not count  
13 toward the new renewable energy systems ownership limit under  
14 subdivision (a). Any such contract shall be executed after a  
15 competitive bidding process conducted pursuant to guidelines issued  
16 by the commission. An affiliate of the provider may submit a  
17 proposal in response to a request for proposals, subject to the  
18 code of conduct under section 10a(4) of 1939 PA 3, MCL 460.10a, and  
19 the sanctions for violation thereof under section 10c of 1939 PA 3,  
20 MCL 460.10c.

21 (c) At least 33-1/3% of such renewable energy credits shall be  
22 from renewable energy contracts that do not require transfer of  
23 ownership of the applicable renewable energy system to the provider  
24 or from contracts for the purchase of renewable energy credits  
25 alone. A renewable energy contract or contract for the purchase of  
26 renewable energy credits under this subdivision shall be executed  
27 after a competitive bidding process conducted pursuant to

1 guidelines issued by the commission. An affiliate of the provider  
2 may submit a proposal in response to a request for proposals,  
3 subject to the code of conduct under section 10a(4) of 1939 PA 3,  
4 MCL 460.10a, and the sanctions for violation thereof under section  
5 10c of 1939 PA 3, MCL 460.10c. Ownership of renewable energy  
6 systems by affiliates of the provider resulting from renewable  
7 energy contracts executed under this subdivision do not count  
8 toward the provider's new renewable energy systems ownership limit  
9 under subdivision (a). If a provider selects a bid other than the  
10 least price conforming bid from a qualified bidder, the provider  
11 shall promptly notify the commission. The commission shall  
12 determine under section 21 whether the provider had good cause for  
13 selecting that bid. If the commission determines that the provider  
14 did not have good cause, the commission shall disapprove the  
15 contract.

16 (3) The allocation formula in subsection (2) does not apply to  
17 either of the following:

18 (a) Renewable energy credits that are transferred to the  
19 provider pursuant to section 19(4).

20 (b) Renewable energy credits that are produced or obtained by  
21 the provider from renewable energy systems for which recovery in  
22 electric rates was approved as of the effective date of this act,  
23 including renewable energy credits resulting from biomass co-firing  
24 of, or use of industrial thermal energy in, electric generation  
25 facilities in existence on the effective date of this act, except  
26 to the extent the number of megawatt hours of electricity annually  
27 generated by biomass co-firing or industrial thermal energy exceeds

1 the number of megawatt hours generated during the 1-year period  
2 immediately preceding the effective date of this act.

3 (4) For purposes of subsection (2), the method of procuring  
4 the renewable energy credits generated from a renewable energy  
5 system that uses water released from a pumped storage facility  
6 shall be considered to be the method of procuring the renewable  
7 energy used to pump the water into the facility.

8 (5) A provider may submit a contract entered into pursuant to  
9 subsection (2) to the commission for review and approval. If the  
10 commission approves the contract, it shall be considered to be  
11 consistent with the provider's renewable energy portfolio plan.

12 Sec. 19. (1) A renewable energy system that is the source of  
13 renewable energy credits used to satisfy the requirements of  
14 section 13 shall be either located outside of this state in the  
15 retail electric customer service territory of any provider that is  
16 not an alternative electric supplier or located anywhere in this  
17 state. For the purposes of this subsection, retail electric  
18 customer service territories shall be considered to be those  
19 recognized by the commission on January 1, 2008 together with any  
20 expansions of retail electric customer service territory that may  
21 be recognized by the commission after January 1, 2008 for purposes  
22 of 1939 PA 3, MCL 460.1 to 460.10cc. The commission may also expand  
23 a service territory for the purposes of this subsection if a lack  
24 of transmission lines limits the ability to obtain sufficient  
25 renewable energy from renewable energy systems that meet the  
26 location requirement of this subsection.

27 (2) The requirements of subsection (1) do not apply if 1 or

1 more of the following requirements are met:

2 (a) The renewable energy system is a wind turbine or wind farm  
3 and the electricity generated from the wind, or the renewable  
4 energy credits associated with that electricity, is being purchased  
5 under a contract in effect on January 1, 2008. If electricity and  
6 associated renewable energy credits purchased under such a contract  
7 are used by a provider to meet renewable energy portfolio  
8 requirements established after January 1, 2008 by the legislature  
9 of the state in which the wind turbine or wind farm is located, the  
10 provider may, for the purpose of meeting the renewable energy  
11 portfolio standard under this part, obtain, by any means authorized  
12 under section 17(1), up to the same number of replacement renewable  
13 energy credits from any other wind farm or wind farms located in  
14 that state.

15 (b) The renewable energy system is a wind turbine or wind farm  
16 that was under construction and owned by a provider on January 1,  
17 2008.

18 (c) The renewable energy system is a wind farm, at least 1 of  
19 the wind turbines meets the requirements of subsection (1), and the  
20 remaining wind turbines are within 15 miles of a wind turbine that  
21 is part of that wind farm and that meets the requirements of  
22 subsection (1), as determined by the commission.

23 (d) Before January 1, 2008, a provider that serves not more  
24 than 75,000 retail electric customers in this state filed an  
25 application for a certificate of authority for the renewable energy  
26 system with a state regulatory commission in another state that is  
27 also served by that provider. However, renewable energy credits

1 shall not be granted for electricity generated using more than 10.0  
2 megawatts of nameplate capacity of the renewable energy system.

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

9 (f) Electricity generated from the renewable energy system is  
10 sold by a not-for-profit entity located in Ohio to a municipally  
11 owned electric utility in this state under a contract approved by  
12 resolution of the governing body of the municipally owned electric  
13 utility by January 1, 2008, and the electricity is not being used  
14 to meet another state's portfolio standard for renewable energy.  
15 However, renewable energy credits shall not be granted for  
16 electricity generated using more than 13.4 megawatts of nameplate  
17 capacity of the renewable energy system.

18 (3) Renewable energy from industrial cogeneration shall not  
19 constitute more than 1/10 of the renewable energy portfolio  
20 required by this part.

21 (4) If a provider obtains renewable energy for resale to  
22 retail or wholesale customers under an agreement under PURPA,  
23 ownership of the associated renewable energy credits shall be as  
24 provided by the PURPA agreement. If the PURPA agreement does not  
25 provide for ownership of the renewable energy credits, then:

26 (a) Except to the extent that a separate agreement governs  
27 under subdivision (b), for the duration of the PURPA agreement, for

1 every 5 renewable energy credits associated with the renewable  
2 energy, ownership of 4 of the renewable energy credits shall be  
3 considered to be transferred to the provider with the renewable  
4 energy, and ownership of 1 renewable energy credit shall be  
5 considered to remain with the qualifying cogeneration facility or  
6 qualifying small power production facility.

7 (b) If a separate agreement in effect on January 1, 2008  
8 provides for the ownership of the renewable attributes of the  
9 generated electricity, the separate agreement shall govern until  
10 January 1, 2013 or until expiration of the separate agreement,  
11 whichever occurs first.

12 (5) If an investor-owned electric utility with less than  
13 20,000 customers, a municipally owned electric utility, or  
14 cooperative electric utility obtains all or substantially all of  
15 its electricity for resale under a power purchase agreement or  
16 agreements in existence on the effective date of this act,  
17 ownership of any associated renewable energy credits shall be  
18 considered to be transferred to the provider purchasing the  
19 electricity. The number of renewable energy credits associated with  
20 the purchased electricity shall be determined by multiplying the  
21 total number of renewable energy credits associated with the total  
22 power supply of the seller during the term of the agreement by a  
23 fraction, the numerator of which is the amount of energy purchased  
24 under the agreement or agreements and the denominator of which is  
25 the total power supply of the seller during the term of the  
26 agreement. This subsection does not apply unless 1 or more of the  
27 following occur:

1 (a) The seller and the provider purchasing the electricity  
2 agree that this subsection applies.

3 (b) For a seller that is an independent investor-owned  
4 electric utility whose retail electric rates are regulated by the  
5 commission, the commission reduces the number of renewable energy  
6 credits required under the renewable energy portfolio standard for  
7 the seller by the number of renewable energy credits to be  
8 transferred to the provider purchasing the electricity under this  
9 subsection.

10 Sec. 21. If, after the effective date of this act, a provider  
11 whose rates are regulated by the commission enters a renewable  
12 energy contract or a contract to purchase renewable energy credits  
13 alone, the commission shall determine whether the contract provides  
14 reasonable terms and conditions that will ensure a favorable  
15 economic outcome for the provider and its customers. In making this  
16 determination, the commission shall consider the contract price and  
17 term. If the contract is a renewable energy contract, the  
18 commission shall also consider at least all of the following:

19 (a) The cost to the provider and its customers of the impacts  
20 of accounting treatment of debt and associated equity requirements  
21 imputed by credit rating agencies and lenders attributable to the  
22 renewable energy contract. The commission shall use standard rating  
23 agency, lender, and accounting practices for electric utilities in  
24 determining these costs, unless the impacts for the provider are  
25 known.

26 (b) The life-cycle cost of the renewable energy contract to  
27 the provider and customers including costs, after expiration of the

1 renewable energy contract, of maintaining the same renewable energy  
2 output in megawatt hours, whether by purchases from the  
3 marketplace, by extension or renewal of the renewable energy  
4 contract, or by the provider purchasing the renewable energy system  
5 and continuing its operation.

6 (c) Provider and customer price and cost risks if the  
7 renewable energy systems supporting the renewable energy contract  
8 move from contracted pricing to market-based pricing after  
9 expiration of the renewable energy contract.

10 Sec. 23. (1) The commission shall establish a renewable energy  
11 credit certification and tracking program. The certification and  
12 tracking program may be contracted to and performed by a third  
13 party through a system of competitive bidding. The renewable energy  
14 credit certification and tracking program shall include all of the  
15 following:

16 (a) A process to certify renewable energy systems, including  
17 all existing renewable energy systems operating on the effective  
18 date of this act, as eligible to receive renewable energy credits.

19 (b) Certification that the operator of a renewable energy  
20 system is in compliance with state and federal law applicable to  
21 the operation of the renewable energy system when certification is  
22 granted. If a renewable energy system becomes noncompliant with  
23 state or federal law, renewable energy credits shall not be granted  
24 for renewable energy generated by that renewable energy system  
25 during the period of noncompliance.

26 (c) A method for the transferability of credits.

27 (d) Determining the date that a renewable energy credit is

1 valid for transfer under this part.

2 (e) A method for ensuring that each renewable energy credit  
3 traded and sold under this part is properly accounted for under  
4 this act.

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

8 (3) Except as provided in section 19(4), 1 renewable energy  
9 credit shall be granted to the owner of a renewable energy system  
10 for each megawatt hour of electricity generated from the renewable  
11 energy system subject to all of the following:

12 (a) If a renewable energy system uses both a renewable energy  
13 resource and a nonrenewable energy resource to generate  
14 electricity, the number of renewable energy credits granted shall  
15 be based on the percentage of the electricity generated from the  
16 renewable energy resource.

17 (b) Renewable energy credits shall not be granted for  
18 renewable energy generated from an incinerator to the extent that  
19 the renewable energy was generated by operating the incinerator in  
20 excess of its boilerplate capacity on January 1, 2008.

21 (c) Renewable energy credits shall not be granted for the  
22 generation of renewable energy, such as wind energy, used to pump  
23 water into a pumped storage facility or to fill other energy  
24 storage facilities, but shall be granted for renewable energy  
25 generated upon release from a pumped storage facility or other  
26 energy storage facility. However, the number of renewable energy  
27 credits shall be calculated based on the number of megawatt hours

1 of renewable energy used to fill a pumped storage facility or other  
2 energy storage facility, not the number of megawatt hours actually  
3 generated by discharge from the energy storage facility.

4 (d) Renewable energy credits shall not be granted for  
5 renewable energy whose renewable attributes are used by a provider  
6 in a commission-approved voluntary renewable energy program.

7 (4) Subject to subsection (3), the following additional  
8 renewable energy credits, to be known as Michigan incentive  
9 renewable energy credits, shall be granted under the following  
10 circumstances:

11 (a) 2 renewable energy credits for each megawatt hour of  
12 electricity from solar power.

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

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

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

1 (5) A renewable energy credit expires when used by a provider  
2 to comply with its renewable energy portfolio standard. If not  
3 already used, a renewable energy credit automatically expires 3  
4 years after the generation of the electricity associated with the  
5 renewable energy credit. A renewable energy credit associated with  
6 the generation of electricity within 120 days after the start of a  
7 calendar year may be used to satisfy the prior year's renewable  
8 energy portfolio standard and expires when so used.

9 Sec. 25. (1) A provider is not required to comply with the  
10 renewable portfolio standard to the extent that, as determined by  
11 the commission, recovery under section 27 of the incremental cost  
12 of compliance with the renewable energy portfolio standard pursuant  
13 to the renewable energy portfolio plan, as calculated over 20 years  
14 beginning when the plan is approved by the commission, subject to  
15 annual revision, will have a retail rate impact that exceeds any of  
16 the following:

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

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

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

21 (2) For a provider whose rates are regulated by the  
22 commission, the commission shall determine the appropriate charges  
23 for the provider's tariffs that permit recovery of the incremental  
24 cost of compliance subject to the limits set forth in subsection  
25 (1).

26 Sec. 27. (1) Notwithstanding any other provision of law, the  
27 commission shall consider all actual costs reasonably and prudently

1 incurred in good faith to implement a commission-approved renewable  
2 energy portfolio plan by a provider whose rates are regulated by  
3 the commission to be a cost of service to be recovered by the  
4 provider, whether or not those costs are incremental costs of  
5 compliance. Notwithstanding any other provision of law, a provider  
6 whose rates are regulated by the commission shall recover through  
7 its retail electric rates all of the provider's incremental costs  
8 of compliance during the 20-year period described in section 7(2)  
9 and all reasonable and prudent ongoing costs of compliance during  
10 and after that period. The recovery shall include, but is not  
11 limited to, the provider's authorized rate of return on equity,  
12 which shall remain fixed at the rate of return and debt to equity  
13 ratio that was in effect in a provider's base rates when the  
14 provider's renewable energy portfolio plan was approved. However,  
15 the costs of purchasing renewable energy credits under section  
16 31(1) are not a recoverable cost of service.

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

19 (a) Determine the sum of the following costs to the extent  
20 those costs are reasonable and prudent and not already approved for  
21 recovery in electric rates as of the effective date of this act:

22 (i) Capital, operating, and maintenance costs of renewable  
23 energy systems, including property taxes, insurance, and return on  
24 equity associated with a provider's renewable energy systems,  
25 including the provider's renewable energy portfolio initially  
26 established to achieve compliance with the renewable energy  
27 portfolio standard and any additional renewable energy systems that

1 are built or acquired by the provider to maintain compliance with  
2 the renewable energy portfolio standard during the 20-year period  
3 beginning when the provider's plan is approved by the commission.

4 (ii) Financing costs attributable to capital, operating, and  
5 maintenance costs of capital facilities associated with renewable  
6 energy systems.

7 (iii) Interconnection and substation costs associated with  
8 renewable energy systems.

9 (iv) Except to the extent the costs are allocated under a  
10 different subparagraph, all of the following:

11 (A) The costs of renewable energy credits purchased under this  
12 act other than those purchased under section 31(1).

13 (B) The costs of contracts described in section 17(2).

14 (v) Expenses incurred as a result of state or federal  
15 governmental actions related to renewable energy systems including,  
16 but not limited to, changes in tax or other law.

17 (vi) Any additional provider costs considered relevant by the  
18 commission.

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

22 (i) Revenue derived from the sale of environmental attributes  
23 associated with the generation of renewable energy. Such revenue  
24 shall not be considered in determining power supply cost recovery  
25 factors under section 6j of 1939 PA 3, MCL 460.6j.

26 (ii) Interest on regulatory liabilities as provided in section  
27 27(4).

1           (iii) Tax credits specifically designed to promote renewable  
2 energy.

3           (iv) Revenue derived from the provision of energy from  
4 renewable energy systems to retail electric customers subject to a  
5 power supply cost recovery clause under section 6j of 1939 PA 3,  
6 MCL 460.6j, of a provider whose retail electric rates are regulated  
7 by the commission. Beginning in 2008, after providing an  
8 opportunity for a contested case hearing for a provider whose rates  
9 are regulated by the commission, the commission shall annually  
10 establish a price per megawatt hour. In addition, a provider whose  
11 retail electric rates are regulated by the commission may at any  
12 time petition the commission to revise the price. In setting the  
13 price per megawatt hour under this subparagraph, the commission  
14 shall consider factors including, but not limited to, projected  
15 capacity, energy, maintenance, and operating costs; information  
16 filed under section 6j of 1939 PA 3, MCL 460.6j; and information  
17 from wholesale markets, including, but not limited to, locational  
18 marginal pricing. This price shall be multiplied by the number of  
19 megawatt hours of renewable energy. The resulting value shall be  
20 considered a booked cost of purchased and net interchanged power  
21 transactions under section 6j of 1939 PA 3, MCL 460.6j. For energy  
22 purchased by such a provider under a renewable energy agreement,  
23 the price shall be the lower of the amount established by the  
24 commission or the actual price paid and shall be multiplied by the  
25 number of megawatt hours of renewable energy purchased. The  
26 resulting value shall be considered a booked cost of purchased and  
27 net interchanged power under section 6j of 1939 PA 3, MCL 460.6j.

1           (v) Revenue from wholesale energy sales from a renewable  
2 energy system. Such revenue shall not be considered in determining  
3 power supply cost recovery factors under section 6j of 1939 PA 3,  
4 MCL 460.6j.

5           (vi) Any additional provider revenue considered relevant by the  
6 commission.

7           (3) The commission shall authorize a provider whose rates are  
8 regulated by the commission to spend in any given month more to  
9 comply with this part and implement an approved renewable energy  
10 portfolio plan than the revenue actually generated by the revenue  
11 recovery mechanism. A provider whose rates are regulated by the  
12 commission shall recover its commission approved pre-tax rate of  
13 return on regulatory assets during the appropriate period. A  
14 provider whose rates are regulated by the commission shall record  
15 interest on regulatory liabilities at the average short-term  
16 borrowing rate available to the provider during the appropriate  
17 period. Any regulatory assets or liabilities resulting from the  
18 recovery of renewable energy through the power supply cost recovery  
19 clause under section 6j of 1939 PA 3, MCL 460.6j, shall continue to  
20 be reconciled under that section.

21           (4) If the incremental costs of compliance for a provider  
22 whose rates are regulated by the commission in any given month  
23 during the 20-year period described in section 7(2) are in excess  
24 of the revenue recovery mechanism as adjusted under section 29 and  
25 in excess of the balance of any accumulated reserve funds, subject  
26 to the minimum balance established under section 7(5), the provider  
27 shall immediately notify the commission. The commission shall

1 promptly commence a contested case hearing pursuant to the  
2 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to  
3 24.328, and modify the revenue recovery mechanism so that the  
4 minimum balance is restored. However, if the commission determines  
5 that recovery of the incremental costs of compliance would  
6 otherwise exceed the maximum retail rate impacts specified under  
7 section 25, it shall set the revenue recovery mechanism for that  
8 provider to correspond to the maximum retail rate impacts. Excess  
9 costs shall be accrued and deferred for recovery. Not later than  
10 the expiration of the 20-year period described in section 7(3), for  
11 a provider whose rates are regulated by the commission, the  
12 commission shall determine the amount of deferred costs to be  
13 recovered under section 7 and the recovery period, which shall not  
14 exceed 5 years and shall not commence until after the expiration of  
15 the 20-year period described in section 7(3). The recovery shall be  
16 proportional to the retail rate impacts set forth in section 25 for  
17 each customer class. However, if the retail rate impact is below  
18 the limits set forth in section 25, the recovery shall begin  
19 immediately but, until the expiration of the 20-year period  
20 described in section 7(3), shall occur only to the extent allowed  
21 by the limits of section 25.

22 (5) If, at the expiration of the 20-year period described in  
23 section 7(3), a provider whose rates are regulated by the  
24 commission has a regulatory liability, the refund to customer  
25 classes shall be proportional to the amounts paid by those customer  
26 classes under the revenue recovery mechanism.

27 (6) After achieving compliance with the renewable energy

1 portfolio standard for 2015, the actual costs reasonably and  
2 prudently incurred to continue to comply with this part both during  
3 and after the conclusion of the 20-year period described in section  
4 7(3) shall be considered costs of service. The commission shall  
5 determine a mechanism for a provider whose rates are regulated by  
6 the commission to recover these costs in its retail electric rates.  
7 Remaining and future regulatory assets shall be recovered  
8 consistent with subsections (3) and (4) and section 29.

9       Sec. 29. (1) Concurrent with the submission of each report  
10 under section 33(1), the commission shall commence an annual  
11 proceeding, to be known as a renewable cost reconciliation, for  
12 each provider whose rates are regulated by the commission. The  
13 renewable cost reconciliation proceeding shall be conducted as a  
14 contested case pursuant to the administrative procedures act of  
15 1969, 1969 PA 306, MCL 24.201 to 24.328. Reasonable discovery shall  
16 be permitted before and during the reconciliation proceeding to  
17 assist in obtaining evidence concerning reconciliation issues  
18 including, but not limited to, the reasonableness and prudence of  
19 expenditures and the amounts collected pursuant to the revenue  
20 recovery mechanism.

21       (2) At the renewable cost reconciliation, a provider whose  
22 rates are regulated by the commission may propose any necessary  
23 modifications of the revenue recovery mechanism to ensure the  
24 provider's recovery of its incremental cost of compliance with the  
25 renewable portfolio standard during the 20-year period described in  
26 section 7(3).

27       (3) The commission shall reconcile the pertinent revenues

1 recorded and the allowance for the nonvolumetric revenue recovery  
2 mechanism with the amounts actually expensed and projected  
3 according to the renewable energy portfolio plan of the provider  
4 whose rates are regulated by the commission. The commission shall  
5 consider any issue regarding the reasonableness and prudence of  
6 expenses for which customers were charged in the relevant  
7 reconciliation period. In its order, the commission shall do all of  
8 the following:

9 (a) Make a determination of a provider's compliance with the  
10 renewable energy portfolio standard, subject to sections 15 and 25.

11 (b) Adjust the revenue recovery mechanism for the incremental  
12 costs of compliance. The commission shall ensure that the retail  
13 rate impacts under this renewable cost reconciliation revenue  
14 recovery mechanism do not exceed the maximum retail rate impacts  
15 specified under section 25. The commission shall ensure that the  
16 recovery mechanism is projected to maintain a minimum balance of  
17 accumulated reserve so that a regulatory asset does not accrue.

18 (c) Establish the price per megawatt hour for renewable  
19 capacity and renewable energy to be recovered through the power  
20 supply cost recovery clause under section 6j of 1939 PA 3, MCL  
21 460.6j, as outlined in section 27(2)(b)(iv).

22 (d) Adjust, if needed, the minimum balance of accumulated  
23 reserve funds established under section 7(5).

24 (4) If a provider whose rates are regulated by the commission  
25 has recorded a regulatory liability in any given month during the  
26 20-year period described in section 7(3), interest on the  
27 regulatory liability balance shall be accrued at the average short-

1 term borrowing rate available to the provider during the  
2 appropriate period, and shall be used to fund incremental costs of  
3 compliance incurred in subsequent periods within the 20-year period  
4 described in section 7(3).

5 Sec. 31. (1) If a provider whose rates are regulated by the  
6 commission fails to meet the renewable energy portfolio standard by  
7 the applicable deadline under section 13, subject to sections 15  
8 and 25, both of the following apply:

9 (a) The provider shall purchase sufficient renewable energy  
10 credits to meet the renewable energy portfolio standard.

11 (b) The provider shall not recover from its ratepayers the  
12 cost of purchasing renewable energy credits under subdivision (a).

13 (2) The attorney general or any customer of a municipally  
14 owned electric utility or a cooperative electric utility that has  
15 elected to become member-regulated under the electric cooperative  
16 member-regulation act may commence a civil action for injunctive  
17 relief against a municipally owned electric utility or such a  
18 cooperative electric utility if the provider fails to meet the  
19 applicable requirements of this part.

20 (3) An action under subsection (2) shall be commenced in the  
21 circuit court for the circuit in which the principal office of the  
22 provider is located. An action shall not be filed under subsection  
23 (2) unless the prospective plaintiff has given the prospective  
24 defendant and the commission at least 60 days' written notice of  
25 the prospective plaintiff's intent to sue, the basis for the suit,  
26 and the relief sought. Within 30 days after the prospective  
27 defendant receives written notice of the prospective plaintiff's

1 intent to sue, the prospective defendant and plaintiff shall meet  
2 and make a good faith attempt to determine if there is a credible  
3 basis for the action. If both parties agree that there is a  
4 credible basis for the action, the prospective defendant shall take  
5 all reasonable steps necessary to comply with applicable  
6 requirements of this part within 90 days of the meeting.

7 (4) In issuing a final order in an action brought under  
8 subsection (2), the court may award costs of litigation, including  
9 reasonable attorney and expert witness fees, to the prevailing or  
10 substantially prevailing party.

11 (5) Upon a complaint of an alternative electric supplier's  
12 customer or the commission's own motion, the commission may conduct  
13 a contested case to review allegations that the alternative  
14 electric supplier has violated this part, including an order issued  
15 or rule promulgated under this part. If the commission finds, after  
16 notice and hearing, that an alternative electric supplier has  
17 violated this part, the commission shall do 1 or more of the  
18 following:

19 (a) Revoke the license of the alternative electric supplier.

20 (b) Issue a cease and desist order.

21 (c) Order the alternative electric supplier to pay a civil  
22 fine of not less than \$5,000.00 or more than \$50,000.00 for each  
23 violation.

24 Sec. 33. (1) By a time determined by the commission, each  
25 provider shall submit to the commission an annual report that  
26 provides information relating to the actions taken by the provider  
27 to comply with the renewable energy portfolio standard. By that

1 same time, a municipally owned electric utility shall submit a copy  
2 of the report to the governing body of the municipally owned  
3 electric utility, and a cooperative electric utility shall submit a  
4 copy of the report to its board of directors.

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

7 (a) The amount of electricity and renewable energy credits  
8 that the provider generated or acquired from renewable energy  
9 systems during the reporting period and the amount of renewable  
10 energy credits that the provider acquired, sold, or traded during  
11 the reporting period.

12 (b) The capacity of each renewable energy system owned,  
13 operated, or controlled by the provider, the total amount of  
14 electricity generated by each renewable energy system during the  
15 reporting period, and the percentage of that total amount that was  
16 generated directly from renewable energy.

17 (c) Whether, during the reporting period, the provider began  
18 construction on, acquired, or placed into operation a renewable  
19 energy system.

20 (d) Expenditures made in the past year and anticipated future  
21 expenditures to comply with this part.

22 (e) Any other information that the commission determines  
23 necessary.

24 (3) Concurrent with the submission of each report under  
25 subsection (1), a municipally owned electric utility shall submit a  
26 summary of the report to its customers in their bills with a bill  
27 insert and to its governing body. Concurrent with the submission of

1 each report under subsection (1), a cooperative electric utility  
2 shall submit a summary of the report to its members in a periodical  
3 issued by an association of rural electric cooperatives and to its  
4 board of directors. A municipally owned electric utility or  
5 cooperative electric provider shall make a copy of the report  
6 available at its office and shall post a copy of the report on its  
7 website. A summary under this section shall indicate that a copy of  
8 the report is available at the office or website.

9 (4) The commission shall monitor reports submitted under  
10 subsection (1) and ensure that actions taken under this part by  
11 providers serving customers in the same distribution territory do  
12 not create an unfair competitive advantage for any of those  
13 providers.

14 (5) Biennially, the commission shall submit to the legislature  
15 a report that does all of the following:

16 (a) Summarizes data collected under this section.

17 (b) Discusses the status of renewable energy in this state and  
18 the effect of this part on electricity prices.

19 (c) For each of the different types of renewable energy sold  
20 at retail in this state, specifies the difference between the cost  
21 of the renewable energy and the cost of electricity generated from  
22 conventional sources.

23 (d) Provides a comparison of the cost effectiveness of the  
24 methods of an electric utility with 1,000,000 or more retail  
25 customers in this state as of January 1, 2008 obtaining renewable  
26 energy credits under the options described in section 17(2).

27 (e) Describes the impact of this part on employment in this

1 state. The commission shall consult with other appropriate agencies  
2 of the department of labor and economic growth in the development  
3 of this information.

4 (f) Discuss how the commission is fulfilling the requirements  
5 of subsection (4).

6 (g) Makes any recommendations the commission may have  
7 concerning amendments to this part, including changes in the  
8 definition of renewable energy resource or renewable energy system  
9 to reflect environmentally preferable technology.

10 Sec. 35. (1) A person may file commercially or financially  
11 sensitive information or trade secrets with the commission under  
12 section 7 or 9, or with the commission or a third party contractor  
13 under section 23, confidentially. To be filed confidentially, the  
14 information shall be accompanied by an affidavit that sets forth  
15 both the reasons for the confidentiality and a public synopsis of  
16 the information.

17 (2) Information filed confidentially is exempt from the  
18 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and  
19 shall remain confidential, except under the terms of a mandatory  
20 protective order. If information is disclosed under a mandatory  
21 protective order, then the commission may use the information for  
22 the purpose for which it is required, but the information shall  
23 remain confidential.

24 (3) There is a rebuttable presumption that any information  
25 filed confidentially under subsection (1) is commercially or  
26 financially sensitive information or trade secrets entitled to  
27 protection under subsection (1).



1 transmission company.

2 (d) "Energy efficiency" means a decrease in the consumption of  
3 electricity or natural gas achieved through measures or programs  
4 that target customer behavior, equipment, devices, or materials  
5 without reducing the quality of energy services. Energy efficiency  
6 does not include load management.

7 (e) "Energy efficiency plan" means an energy efficiency plan  
8 under section 55.

9 (f) "Large customer", with respect to a natural gas utility,  
10 means a customer at a single premises with an annual natural gas  
11 billing demand greater than 100,000 decatherms.

12 (g) "Large customer", with respect to an electric utility,  
13 means either of the following:

14 (i) A customer at a single premises with an annual electric  
15 billing demand greater than the following:

16 (A) 5 megawatts, until 3 years after the applicable utility  
17 begins implementation of its energy efficiency plan.

18 (B) 2 megawatts, beginning 3 years after the applicable  
19 utility begins implementation of its energy efficiency plan.

20 (ii) A customer with an aggregate annual electric billing  
21 demand of at least 10 megawatts at all facilities within that  
22 electric utility's service territory.

23 (h) "Load management" means measures or programs that decrease  
24 peak electricity demand or shift demand from peak to off-peak  
25 periods.

26 (i) "Natural gas utility" means an investor-owned business  
27 engaged in the sale and distribution of natural gas within this

1 state whose rates are regulated by the commission.

2 (j) "Premises" means a contiguous site, regardless of the  
3 number of meters at that site. A site that would be contiguous but  
4 for the presence of a street, road, or highway shall be considered  
5 to be contiguous for the purposes of this subdivision.

6 (k) "Utility", except as used in section 67, means an electric  
7 utility or natural gas utility.

8 (l) "Utility system resource cost test" means a standard that  
9 is met if, for an investment in energy efficiency, on a life-cycle  
10 basis the total avoided supply-side costs to the utility, including  
11 representative values for electricity or natural gas supply,  
12 transmission, distribution, and other associated costs to the  
13 utility, are greater than the total costs to the utility of  
14 administering and delivering the energy efficiency program,  
15 including any costs for incentives paid to customers.

16 Sec. 55. (1) Within 60 days after the effective date of this  
17 act, the commission shall issue a temporary order specifying the  
18 procedure for a utility to develop and submit an energy efficiency  
19 plan to meet energy efficiency performance standards set forth in  
20 section 57. Pursuant to the administrative procedures act of 1969,  
21 1969 PA 306, MCL 24.201 to 24.328, the commission shall promulgate  
22 rules specifying such a procedure. Within 120 days after the  
23 effective date of this act and biennially thereafter, a utility  
24 shall file an energy efficiency plan with the commission.

25 (2) An energy efficiency plan shall do all of the following:

26 (a) Propose a set of energy efficiency programs that include  
27 offerings for each customer class, including low income

1 residential. The commission shall allow utilities flexibility to  
2 tailor the relative amount of effort devoted to each customer class  
3 based on the specific characteristics of their service territory.

4 (b) Specify necessary funding levels.

5 (c) Describe how energy efficiency program costs will be  
6 recovered from residential customers by volumetric charges, from  
7 all other metered customers by per-meter charges, and from  
8 unmetered customers by an appropriate charge.

9 (d) Demonstrate that the proposed energy efficiency programs  
10 and funding are sufficient to ensure the achievement of applicable  
11 energy efficiency performance standards under section 57.

12 (e) Demonstrate that the utility's energy efficiency programs,  
13 excluding program offerings to low income residential customers,  
14 will collectively be cost-effective.

15 (f) Include a plan for the practical and effective  
16 administration of the proposed energy efficiency programs. The  
17 commission shall allow utilities flexibility in designing their  
18 energy efficiency programs and administrative approach. A utility's  
19 energy efficiency programs may be administered by the utility,  
20 alone or jointly with other utilities, by a state agency, or by an  
21 appropriate experienced nonprofit organization selected after a  
22 competitive bid process.

23 (g) Include a process for obtaining an independent expert  
24 evaluation of the actual energy efficiency programs to verify the  
25 incremental energy savings from each energy efficiency program for  
26 purposes of section 57. All such evaluations shall be subject to  
27 public review and commission oversight.

1 (h) Allow for the coordination of energy efficiency programs  
2 with the energy efficiency programs of other utilities under the  
3 direction of the commission pursuant to subsection (5).

4 (i) Provide funding equal to 1% of the utility's total program  
5 spending each year to partially fund a rebate program under the  
6 general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, for  
7 appliances that meet or exceed energy efficiency guidelines  
8 developed by the United States environmental protection agency and  
9 the United States department of energy. For the purposes of this  
10 act, all utility expenditures under this subdivision shall be  
11 considered reasonable, shall be recovered by the utility, and shall  
12 be considered to save energy cost effectively and in the amount of  
13 1% of the applicable energy efficiency performance standard under  
14 section 57.

15 (3) An energy efficiency plan may provide for the utility to  
16 facilitate third-party loans to customers to finance energy  
17 efficiency measures.

18 (4) Within 120 days of receiving an energy efficiency plan  
19 from a utility and after an opportunity for public comment, the  
20 commission shall approve, approve with changes consented to by the  
21 utility, or reject the plan. If the commission rejects the plan,  
22 the commission shall state the reasons for its action. Within 30  
23 days after the commission rejects a plan, the utility shall submit  
24 a revised plan that addresses the reasons for rejection cited by  
25 the commission. Within 30 days after receiving a revised plan and  
26 after an opportunity for public comment, the commission shall  
27 approve, approve with changes consented to by the utility, or

1 reject the revised plan. If the commission rejects the revised  
2 plan, the commission shall state the reasons for the rejection. The  
3 procedure for rejected plans shall be repeated until a revised plan  
4 is approved or approved with changes consented to by the utility.  
5 The commission's action under this subsection does not affect the  
6 applicability of the requirements of section 57.

7 (5) The commission shall coordinate energy efficiency programs  
8 among consenting utilities to maximize energy savings on a  
9 statewide basis. However, money spent by a utility to comply with  
10 this part shall only be used to fund energy efficiency programs in  
11 that utility's service territory.

12 Sec. 57. (1) Except as provided in section 59, an electric  
13 utility's energy efficiency programs shall collectively meet the  
14 following minimum energy efficiency performance standards:

15 (a) Biennial incremental energy savings in 2008-2009  
16 equivalent to 0.3% of total annual weather-normalized retail  
17 electricity sales in kilowatt hours in 2007.

18 (b) Annual incremental energy savings in 2010 equivalent to  
19 0.5% of total annual weather-normalized retail electricity sales in  
20 kilowatt hours in 2009.

21 (c) Annual incremental energy savings in 2011 equivalent to  
22 0.75% of total annual weather-normalized retail electricity sales  
23 in kilowatt hours in 2010.

24 (d) Annual incremental energy savings in 2012 and each year  
25 thereafter equivalent to 1.0% of total annual weather-normalized  
26 retail electricity sales in kilowatt hours in the preceding year.

27 (2) A natural gas utility shall meet the following minimum

1 energy efficiency performance standards using energy efficiency  
2 programs:

3 (a) Biennial incremental energy savings in 2008-2009  
4 equivalent to 0.1% of total annual weather-normalized retail  
5 natural gas sales in therms in 2007.

6 (b) Annual incremental energy savings in 2010 equivalent to  
7 0.25% of total annual weather-normalized retail natural gas sales  
8 in therms in 2009.

9 (c) Annual incremental energy savings in 2011 equivalent to  
10 0.5% of total annual weather-normalized retail natural gas sales in  
11 therms in 2010.

12 (d) Annual incremental energy savings in 2012 and each year  
13 thereafter equivalent to 0.75% of total annual weather-normalized  
14 retail natural gas sales in therms in the preceding year.

15 (3) If a utility's incremental energy savings in the 2008-2009  
16 biennium or any year thereafter exceed the applicable energy  
17 efficiency performance standard in subsection (1) or (2), those  
18 savings may be carried forward and credited to the next year's  
19 standard. However, both of the following apply:

20 (a) The amount of those savings carried forward shall not  
21 exceed 1/3 of the next year's standard.

22 (b) Savings shall not be carried forward if, for its  
23 performance during the same biennium or year, the utility accepts a  
24 financial incentive under section 61(5).

25 (4) Incremental energy savings under subsection (1) or (2) for  
26 the 2008-2009 biennium or any year thereafter shall be determined  
27 for a utility by adding the energy savings expected to be achieved

1 during a 1-year period by energy efficiency measures installed  
2 during the 2008-2009 biennium or year thereafter under any energy  
3 efficiency programs consistent with the utility's energy efficiency  
4 plan.

5 Sec. 59. (1) This section applies to electric utilities that  
6 meet both of the following requirements:

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

8 (b) Had average electric rates for residential customers using  
9 1,000 kilowatt-hours per month that are less than 75% of the  
10 average electric rates for residential customers using 1,000  
11 kilowatt-hours per month for all electric utilities in this state,  
12 according to the January 1, 2007, "comparison of average rates for  
13 MPSC-regulated electric utilities in Michigan" compiled by the  
14 commission.

15 (2) Beginning 2 years after a utility described in subsection  
16 (1) begins implementation of its energy efficiency plan, the  
17 utility may petition the commission to establish alternative energy  
18 efficiency performance standards. The petition shall identify the  
19 efforts taken by the utility to meet the energy efficiency  
20 performance standards under section 57(1) and demonstrate why the  
21 performance standards cannot reasonably be met with energy  
22 efficiency programs that are collectively cost-effective. If the  
23 commission finds that the petition meets the requirements of this  
24 subsection, the commission shall revise the energy efficiency  
25 performance standards in section 57(1) to a level that can  
26 reasonably be met with energy efficiency programs that are  
27 collectively cost-effective.

1           Sec. 61. (1) The commission shall allow a utility that  
2 undertakes approved energy efficiency programs to recover the  
3 actual costs of implementing the programs. However, costs exceeding  
4 the overall funding levels specified in the energy efficiency plan  
5 are not recoverable unless those costs are prudent and reasonable.  
6 Costs shall be recovered from all gas customers and from  
7 residential electric customers by volumetric charges, from all  
8 other metered electric customers by per-meter charges, and from  
9 unmetered electric customers by an appropriate charge, applied to  
10 utility bills. For the electric primary customer rate class  
11 customers of electric utilities and large customers of natural gas  
12 utilities, the cost recovery shall not exceed 1.7% of utility  
13 revenue.

14           (2) Upon petition by a utility and after an opportunity for  
15 public comment, the commission may authorize the utility to  
16 capitalize certain costs of implementing approved energy efficiency  
17 programs. To the extent feasible, charges collected from a  
18 particular customer rate class shall be devoted to energy  
19 efficiency programs and services for that rate class. However, the  
20 established funding level for section 55(2)(i) and low income  
21 residential programs shall be provided from each customer rate  
22 class in proportion to that customer rate class's funding of the  
23 utility's total energy efficiency programs. Charges shall be  
24 applied to distribution customers regardless of the source of their  
25 electricity or natural gas supply.

26           (3) A natural gas utility that spends a minimum of 0.5% of  
27 total natural gas revenues, including natural gas commodity costs,

1 per year on commission approved energy efficiency programs shall be  
2 allowed to implement a symmetrical revenue decoupling true-up  
3 mechanism that adjusts for sales volumes that are above or below  
4 forecasted levels.

5 (4) A natural gas utility or an electric utility shall not  
6 spend more than the following percentage of total utility sales  
7 revenues, including electricity or natural gas commodity costs, in  
8 any year on energy efficiency programs without specific approval  
9 from the commission:

10 (a) In 2009, 0.75% of total utility sales revenues for 2007.

11 (b) In 2010, 1.0% of total utility sales revenues for 2008.

12 (c) In 2011, 1.5% of total utility sales revenues for 2009.

13 (d) In 2012 and each year thereafter, 2.0% of total utility  
14 sales revenues for the preceding year.

15 (5) If a utility exceeds the energy performance standards  
16 under section 57 or alternative standards under section 59(2)  
17 during the 2008-2009 biennium or any year thereafter, as documented  
18 through a commission-approved program evaluation, the commission  
19 upon application and after a hearing may allow the utility to  
20 receive a financial incentive for that performance. The incentive  
21 mechanism shall be proposed in the utility's energy efficiency plan  
22 and may include a methodology whereby the utility incentive is  
23 calculated as a percentage of the net savings customers receive  
24 from the energy efficiency programs. As a general principle, the  
25 highest incentives should be associated with success that  
26 demonstrates extraordinary benefits to customers. Any financial  
27 incentive under this subsection shall be in an amount up to 15% of

1 the utility's actual energy efficiency program expenditures for  
2 that year.

3 (6) If a utility implements an energy efficiency plan using  
4 products or services of companies headquartered in this state, as  
5 documented through a commission-approved program evaluation, the  
6 commission, upon application and after a hearing, may allow the  
7 utility to receive a financial incentive. The financial incentive  
8 under this subsection shall be in an amount up to 2% of the  
9 utility's actual energy efficiency program expenditures for that  
10 year.

11 (7) If approved, a financial incentive shall be added to the  
12 total energy efficiency program costs to be recovered by the  
13 utility. A financial incentive is subject to the requirement that  
14 the utility's energy efficiency programs, excluding program  
15 offerings to low income residential customers, collectively be  
16 cost-effective.

17 Sec. 63. (1) Sections 55 to 61 do not apply to a utility that  
18 pays the following minimum percentage of total utility sales  
19 revenues, including electricity or natural gas commodity costs,  
20 each year to an independent energy efficiency program administrator  
21 selected by the commission:

22 (a) In 2009, 0.75% of total utility sales revenues for 2007.

23 (b) In 2010, 1.0% of total utility sales revenues for 2008.

24 (c) In 2011, 1.5% of total utility sales revenues for 2009.

25 (d) In 2012 and each year thereafter, 2.0% of total utility  
26 sales revenues for the preceding year.

27 (2) Money received from a utility by the energy efficiency

1 program administrator under subsection (1) shall be used to  
2 administer energy efficiency programs for the utility. Money  
3 unspent in any given year shall be carried forward to be spent in  
4 the subsequent year.

5 (3) The commission shall allow a utility that complies with  
6 subsection (1) to recover the amount of money transferred. This  
7 cost shall be recovered from residential customers by volumetric  
8 charges, from all other metered customers by per-meter charges, and  
9 from unmetered customers by an appropriate charge, applied to  
10 utility bills.

11 (4) Money paid by a utility to the energy efficiency program  
12 administrator under subsection (1) shall only be used to fund  
13 energy efficiency programs in that utility's service territory. To  
14 the extent feasible, charges collected from a particular customer  
15 rate class and paid to the energy efficiency program administrator  
16 under subsection (1) shall be devoted to energy efficiency programs  
17 and services for that rate class.

18 (5) Money paid to the energy efficiency program administrator  
19 and not spent by the administrator that year shall remain available  
20 for expenditure the following year, subject to the requirements of  
21 subsection (4).

22 (6) The commission shall select a qualified nonprofit  
23 organization to serve as energy efficiency program administrator  
24 under this section, through a competitive bid process.

25 (7) The commission shall arrange for a biennial independent  
26 audit of the energy efficiency program administrator.

27 Sec. 65. (1) The commission shall monitor utility performance

1 to ensure compliance with the requirements of this part.

2 (2) If a utility violates this part, the commission shall  
3 investigate the reasons for the violation. If the commission  
4 determines that the violation is a result of a lack of good faith  
5 effort by the utility, the commission shall impose regulatory  
6 sanctions on the utility. Such sanctions may include a reduction in  
7 the authorized rate of return.

8 (3) If a utility fails to meet the applicable energy  
9 efficiency performance standard under section 57 or 59, as  
10 applicable, in any particular year, the utility shall achieve  
11 additional energy savings, equal to the shortfall, within the  
12 following 2 years, and the additional energy savings shall be added  
13 to the energy efficiency performance standards that apply in those  
14 years. However, upon petition of the utility, the commission shall  
15 waive or reduce the requirement to achieve additional energy  
16 savings under this subsection if the commission determines that the  
17 performance standards could not reasonably be met with energy  
18 efficiency programs that are collectively cost-effective.

19 Sec. 67. (1) A municipally owned utility or a cooperative  
20 electric utility that has elected to become member-regulated under  
21 the electric cooperative member-regulation act shall comply with  
22 the requirements of section 55(1). The commission may recommend  
23 changes to the energy efficiency plan of the municipally owned  
24 utility or the cooperative electric utility that has elected to  
25 become member-regulated under the electric cooperative member-  
26 regulation act.

27 (2) A municipally owned utility or a cooperative electric

1 utility that has elected to become member-regulated under the  
2 electric cooperative member-regulation act shall comply with the  
3 requirements of at least 1 of the following:

4 (a) Section 57 or, if applicable, section 65(3).

5 (b) Section 63.

6 (3) The attorney general or any customer of a municipally  
7 owned utility or member of a cooperative electric utility that has  
8 elected to become member-regulated under the electric cooperative  
9 member-regulation act may commence a civil action for injunctive  
10 relief against the municipally owned utility or cooperative  
11 electric utility, respectively, if it fails to meet the  
12 requirements of subsection (2).

13 (4) An action under subsection (3) shall be commenced in the  
14 circuit court for the circuit in which the alleged violation  
15 occurred. An action shall not be filed under subsection (3) unless  
16 the plaintiff has given the governing body of the prospective  
17 defendant and the commission at least 60 days' written notice of  
18 the plaintiff's intent to sue, the basis for the suit, and the  
19 relief sought. Within 30 days after the governing body of the  
20 prospective defendant receives written notice of the plaintiff's  
21 intent to sue, the governing body and the plaintiff shall meet and  
22 make a good faith attempt to determine if a credible basis for such  
23 action exists. If both parties agree that a basis for the action is  
24 credible, the municipally owned utility or cooperative electric  
25 utility that has elected to become member-regulated under the  
26 electric cooperative member-regulation act must take all reasonable  
27 steps necessary to comply with applicable requirements of this part

1 within 90 days of the meeting.

2 (5) In issuing a final order in an action brought under  
3 subsection (3), the court may award costs of litigation, including  
4 reasonable attorney and expert witness fees, to the prevailing or  
5 substantially prevailing party.

6 (6) By 1 year after the effective date of this act, and every  
7 2 years thereafter, a municipally owned utility or cooperative  
8 electric utility that has elected to become member-regulated under  
9 the electric cooperative member-regulation act shall report to its  
10 customers or members, the commission, and the governing body of the  
11 municipality or cooperative electric utility the expenditures of  
12 the municipally owned utility or cooperative electric utility on  
13 energy efficiency programs during the preceding calendar year,  
14 details of each program, and the overall effectiveness of each  
15 program.

16 Sec. 69. (1) A large customer may submit to the commission a  
17 plan for a self-directed energy efficiency program. If the large  
18 customer plan meets the requirements of this section, the  
19 commission shall approve the large customer plan. After the plan is  
20 approved, the large customer is exempt from charges the large  
21 customer would otherwise incur under section 61 or 63 as long as  
22 the plan's goals are achieved, the plan has not expired and is  
23 still being implemented, or the plan has been succeeded by a new  
24 approved plan.

25 (2) All of the following apply to a large customer plan:

26 (a) The plan shall be an annual or multiyear plan for an  
27 ongoing energy efficiency program.

1 (b) If the large customer wishes, the plan may document that  
2 the company achieved over the previous years the equivalent of the  
3 energy efficiency goals in this part. The plan shall use the  
4 definition of energy efficiency as set forth in this part. Energy  
5 efficiency shall be calculated based on weather-normalized retail  
6 sales.

7 (c) The plan shall apply to all premises owned by the customer  
8 and its subsidiaries in the relevant utility's service territory.

9 (3) All owned premises in the large customer plan shall be  
10 grouped by the serving utility.

11 (4) If the aggregate energy efficiency reductions of the plan  
12 meet or exceed the goals of this part, then all premises covered by  
13 the plan shall be exempt from the energy efficiency program  
14 charges.

15 (5) A large customer shall submit to the commission every 2  
16 years verification of the completion of the large customer plan and  
17 sufficient information to determine if the plan's annual goals have  
18 been achieved. Along with submission of the verification, the large  
19 customer shall also submit an updated plan that outlines how the  
20 large customer intends to continue to meet the goals of this part.

21 (6) If the commission determines after providing an  
22 opportunity for an evidentiary hearing that a large customer failed  
23 to complete an energy efficiency project for which it obtained  
24 commission approval, the large customer shall pay the relevant  
25 utility the amount of any charges from which it was exempted for  
26 that project under subsection (1), prorated to reflect any energy  
27 savings that were achieved by that project. The utility shall use

1 the payment for the utility's energy efficiency programs under this  
2 act.

3 (7) A facility of a large customer that is included in its  
4 plan is prohibited from participating in the relevant utility's  
5 energy efficiency program.

6 (8) Upon request of the large customer, all submissions to the  
7 commission by the customer are confidential and exempt from  
8 disclosure under the freedom of information act, 1976 PA 442, MCL  
9 15.231 to 15.246.

10 (9) A large customer plan shall be submitted by a  
11 knowledgeable official of the large customer along with an  
12 affidavit that the information in the plan is true and correct to  
13 the best of the official's knowledge and belief.

14 (10) A large customer's projected energy savings under a  
15 commission-approved energy efficiency project or plan under this  
16 section shall count as the relevant utility's incremental energy  
17 savings under section 57 or 59, as applicable.

18 (11) A large customer shall pay to the commission costs  
19 incurred by the commission under this section in conjunction with a  
20 proposed energy efficiency plan of the large customer.

21 (12) As used in this section, "large customer plan" or "plan"  
22 means a large customer's plan for a self-directed energy efficiency  
23 program under subsection (1).

24 Sec. 71. The commission shall promote load management in  
25 appropriate circumstances, including allowing rate recovery for  
26 prudent load management expenditures.

27 Sec. 73. (1) A utility shall annually submit to its customers

Senate Bill No. 213 (H-2) as amended July 23, 2008

1 in their bills a statement specifying the reduction in electricity  
2 or natural gas usage in this state attributable to this part during  
3 the previous year. The statement shall also encourage each customer  
4 to compare the customer's energy usage during the current and  
5 preceding year. The statement shall indicate that it is being made  
6 to comply with the requirements of this part. A cooperative  
7 electric utility required to submit a statement to its members  
8 under this subsection shall submit the statement in a periodical  
9 issued by an association of rural electric cooperatives.

10 (2) By 1 year after the effective date of this act, and every  
11 2 years thereafter, the commission shall report to the legislature  
12 on the progress and results from the implementation of the energy  
13 efficiency programs required to be implemented by utilities under  
14 this part, including the net benefit to customers. The commission  
15 shall make copies of the report available for distribution to the  
16 public. The department of labor and economic growth shall post the  
17 report on its website.

18 (3) By March 31 of every odd-numbered year, beginning in 2009,  
19 the commission shall submit to the legislature a report that  
20 evaluates this part and makes any recommendations the commission  
21 may have for amendments to this part.

22 Enacting section 1. As provided in section 5 of 1846 RS 1, MCL  
23 8.5, this act is severable.

[Enacting section 2. This amendatory act does not take effect  
unless House Bill No. 5524 of the 94th Legislature is enacted into law.]