

HOUSE BILL No. 5524

December 4, 2007, Introduced by Reps. Accavitti, Angerer, Mayes, Hopgood, Gaffney, LaJoy and Hune and referred to the Committee on Energy and Technology.

A bill to amend 1939 PA 3, entitled

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

by amending sections 10, 10a, 10b, 10c, 10d, 10e, 10g, 10p, 10r, 10x, and 10y (MCL 460.10, 460.10a, 460.10b, 460.10c, 460.10d,

460.10e, 460.10g, 460.10p, 460.10r, 460.10x, and 460.10y), sections 10, 10b, 10c, 10e, 10p, 10r, 10x, and 10y as added by 2000 PA 141, section 10a as amended by 2004 PA 88, section 10d as amended by 2002 PA 609, and section 10g as amended by 2001 PA 48; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 10. (1) Sections 10 through 10bb shall be known and may
2 be cited as the "customer choice and electricity reliability act".

3 ~~(2) The purpose of sections 10a through 10bb is to do all of~~
4 ~~the following:~~

5 ~~(a) To ensure that all retail customers in this state of~~
6 ~~electric power have a choice of electric suppliers.~~

7 ~~(b) To allow and encourage the Michigan public service~~
8 ~~commission to foster competition in this state in the provision of~~
9 ~~electric supply and maintain regulation of electric supply for~~
10 ~~customers who continue to choose supply from incumbent electric~~
11 ~~utilities.~~

12 ~~(c) To encourage the development and construction of merchant~~
13 ~~plants which will diversify the ownership of electric generation in~~
14 ~~this state.~~

15 ~~(d) To ensure that all persons in this state are afforded~~
16 ~~safe, reliable electric power at a reasonable rate.~~

17 ~~(e) To improve the opportunities for economic development in~~
18 ~~this state and to promote financially healthy and competitive~~
19 ~~utilities in this state.~~

20 ~~(3) Subsection (2) does not apply after December 31, 2003.~~

21 **(2) WITHIN 90 DAYS OF THE EFFECTIVE DATE OF THE AMENDATORY ACT**

1 THAT ADDED THIS SENTENCE, ALL CUSTOMERS OF AN ELECTRIC UTILITY
2 SHALL ELECT WHETHER THEY WISH TO RECEIVE ELECTRIC GENERATION
3 SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER. ALL CUSTOMERS WHO
4 ELECT TO RECEIVE SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER
5 SHALL, WITHIN 60 DAYS OF THAT ELECTION, CERTIFY WITH THE COMMISSION
6 THAT THEY ARE IN FACT RECEIVING SERVICE OR HAVE CONTRACTED TO
7 RECEIVE SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER. A CUSTOMER
8 WHO FAILS TO CERTIFY WILL BE TREATED AS A RETURNING CUSTOMER UNDER
9 SUBSECTION (3). A CUSTOMER WHO DOES NOT ELECT TO RECEIVE ELECTRIC
10 GENERATION SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER IS
11 ENTITLED TO RECEIVE STANDARD TARIFF SERVICE FROM THE ELECTRIC
12 UTILITY AND IS NO LONGER ELIGIBLE TO RECEIVE ELECTRIC GENERATION
13 SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER. A CUSTOMER WHO
14 ELECTS TO RECEIVE ELECTRIC GENERATION SERVICE FROM AN ALTERNATIVE
15 ELECTRIC SUPPLIER SHALL, SUBJECT TO THIS SECTION, NO LONGER HAVE
16 THE RIGHT TO RECEIVE STANDARD TARIFF SERVICE FROM THE ELECTRIC
17 UTILITY. ANY CUSTOMER WHO BECOMES A CUSTOMER AFTER THE EFFECTIVE
18 DATE OF THE AMENDATORY ACT THAT ADDED THIS SENTENCE IS ENTITLED TO
19 RECEIVE STANDARD TARIFF SERVICE FROM AN ELECTRIC UTILITY AND IS NOT
20 ELIGIBLE TO RECEIVE ELECTRIC GENERATION SERVICE FROM AN ALTERNATIVE
21 ELECTRIC SUPPLIER.

22 (3) A CUSTOMER WHO, PURSUANT TO SUBSECTION (2), ELECTS TO
23 RECEIVE ELECTRIC GENERATION SERVICE FROM AN ALTERNATIVE ELECTRIC
24 SUPPLIER MAY SUBSEQUENTLY PROVIDE NOTICE TO THE ELECTRIC UTILITY OF
25 THE CUSTOMER'S DESIRE TO RECEIVE STANDARD TARIFF SERVICE FROM THE
26 ELECTRIC UTILITY. IF AN ADEQUATE AND RELIABLE AMOUNT OF ELECTRICITY
27 IS REASONABLY AVAILABLE TO THE ELECTRIC UTILITY TO SERVE THE

1 RETURNING LOAD, THAT ELECTRIC UTILITY SHALL PROVIDE STANDARD TARIFF
2 SERVICE TO THE CUSTOMER WITHIN 90 DAYS FROM THE DATE OF THE
3 CUSTOMER'S NOTICE. A CUSTOMER RETURNING TO UTILITY-SUPPLIED
4 GENERATION SERVICE WILL BE CHARGED THE STANDARD TARIFF SERVICE RATE
5 FOR GENERATION SERVICE OR THE MARKET PRICE, WHICHEVER IS HIGHER,
6 FOR 1 YEAR FROM THE DATE OF RETURN BEFORE BEING ELIGIBLE TO RECEIVE
7 STANDARD TARIFF SERVICE. ONCE A CUSTOMER RETURNS TO UTILITY-
8 SUPPLIED GENERATION SERVICE, IT IS NO LONGER ELIGIBLE TO RECEIVE
9 ELECTRIC GENERATION SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER.

10 (4) A CUSTOMER WHO IS RECEIVING ELECTRIC GENERATION SERVICE
11 FROM AN ALTERNATIVE ELECTRIC SUPPLIER ON THE EFFECTIVE DATE OF THE
12 AMENDATORY ACT THAT ADDED THIS SENTENCE PURSUANT TO A CONTRACT THAT
13 COMMENCED PRIOR TO AUGUST 1, 2007 AND THAT HAS A TERM THAT EXTENDS
14 MORE THAN 90 DAYS AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT
15 THAT ADDED THIS SENTENCE, MAY, WITHIN THAT PERIOD, NOTIFY THE
16 ELECTRIC UTILITY OF ITS ELECTION TO RECEIVE STANDARD TARIFF SERVICE
17 FROM THE ELECTRIC UTILITY AT THE CONCLUSION OF THE TERM OF ITS
18 EXISTING CONTRACT WITH THE ALTERNATIVE ELECTRIC SUPPLIER. IF AN
19 ADEQUATE AND RELIABLE AMOUNT OF ELECTRICITY IS REASONABLY AVAILABLE
20 TO THE ELECTRIC UTILITY TO SERVE THE RETURNING LOAD, AN ELECTRIC
21 UTILITY RECEIVING THAT NOTICE SHALL OFFER STANDARD TARIFF SERVICE
22 TO THAT CUSTOMER SUBJECT TO THE PROVISIONS SET FORTH IN SUBSECTION
23 (2), EFFECTIVE UPON THE CONCLUSION OF THE TERM OF THE CUSTOMER'S
24 EXISTING CONTRACT WITH THE ALTERNATIVE ELECTRIC SUPPLIER. ONCE A
25 CUSTOMER COMMENCES RECEIPT OF STANDARD TARIFF SERVICE FROM THE
26 UTILITY, IT IS NO LONGER ELIGIBLE TO RECEIVE ELECTRIC GENERATION
27 SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER.

1 (5) WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THE AMENDATORY ACT
2 THAT ADDED THIS SUBSECTION, THE COMMISSION SHALL PREPARE AND
3 PROVIDE TO ELECTRIC UTILITIES A DESCRIPTION OF THE ELECTION
4 AVAILABLE TO CUSTOMERS UNDER THIS SECTION, INCLUDING A DESCRIPTION
5 OF THE CONSEQUENCES TO THE CUSTOMER OF THE ELECTION. EACH ELECTRIC
6 UTILITY SHALL PROVIDE THE DESCRIPTION PREPARED BY THE COMMISSION TO
7 EACH CUSTOMER. ANY INFORMATION PROVIDED BY ALTERNATIVE ELECTRIC
8 SUPPLIERS OR ELECTRIC UTILITIES TO INFLUENCE A CUSTOMER'S ELECTION
9 UNDER THIS SECTION SHALL BE CONSISTENT WITH THE DESCRIPTION
10 PREPARED BY THE COMMISSION.

11 (6) AS USED IN THIS SECTION:

12 (A) "CUSTOMER" MEANS THE BUILDING OR FACILITIES SERVED THROUGH
13 A SINGLE EXISTING ELECTRIC BILLING METER AND DOES NOT MEAN THE
14 PERSON, CORPORATION, PARTNERSHIP, ASSOCIATION, GOVERNMENTAL BODY,
15 OR OTHER ENTITY OWNING OR HAVING POSSESSION OF THE BUILDING OR
16 FACILITIES.

17 (B) "MARKET PRICE" MEANS THE PREVAILING PRICE FOR ELECTRIC
18 ENERGY AVAILABLE IN THE REGIONAL WHOLESALE MARKET AS DETERMINED BY
19 THE COMMISSION.

20 (C) "STANDARD TARIFF SERVICE" MEANS, FOR EACH REGULATED
21 ELECTRIC UTILITY, THE RETAIL RATES, TERMS, AND CONDITIONS OF
22 SERVICE APPROVED BY THE COMMISSION FOR SERVICE TO CUSTOMERS WHO DO
23 NOT ELECT TO RECEIVE ELECTRIC GENERATION SERVICE FROM ALTERNATIVE
24 ELECTRIC SUPPLIERS.

25 Sec. 10a. ~~(1) No later than January 1, 2002, the commission~~
26 ~~shall issue orders establishing the rates, terms, and conditions of~~
27 ~~service that allow all retail customers of an electric utility or~~

1 ~~provider to choose an alternative electric supplier. The orders~~
2 ~~shall provide for full recovery of a utility's net stranded costs~~
3 ~~and implementation costs as determined by the commission.~~

4 (1) ~~(2)~~—The commission shall issue orders establishing a
5 licensing procedure for all alternative electric suppliers. To
6 ensure adequate service to customers in this state, the commission
7 shall require that an alternative electric supplier maintain an
8 office within this state, shall assure that an alternative electric
9 supplier has the necessary financial, managerial, and technical
10 capabilities, shall require that an alternative electric supplier
11 maintain records which the commission considers necessary, and
12 shall ensure an alternative electric supplier's accessibility to
13 the commission, to consumers, and to electric utilities in this
14 state. The commission also shall require alternative electric
15 suppliers to agree that they will collect and remit to local units
16 of government all applicable users, sales, and use taxes. An
17 alternative electric supplier is not required to obtain any
18 certificate, license, or authorization from the commission other
19 than as required by this act.

20 (2) ~~(3)~~—The commission shall issue orders to ensure that
21 customers in this state are not switched to another supplier or
22 billed for any services without the customer's consent.

23 (3) **THE COMMISSION SHALL ALLOW AN ELECTRIC UTILITY THAT**
24 **PROVIDED RETAIL OPEN ACCESS SERVICE FROM 2002 THROUGH THE EFFECTIVE**
25 **DATE OF THE AMENDATORY ACT THAT ADDED THIS SENTENCE TO RECOVER ITS**
26 **RESTRUCTURING COSTS AND ANY ASSOCIATED ACCRUED REGULATORY ASSETS.**
27 **THIS INCLUDES, BUT IS NOT LIMITED TO, IMPLEMENTATION COSTS,**

1 STRANDED COSTS, AND COSTS AUTHORIZED PURSUANT TO SECTION 10D(4) AS
2 IT EXISTED PRIOR TO THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT
3 ADDED THIS SENTENCE, THAT HAVE BEEN AUTHORIZED FOR RECOVERY BY THE
4 COMMISSION IN ORDERS ISSUED PRIOR TO THE EFFECTIVE DATE OF THE
5 AMENDATORY ACT THAT ADDED THIS SENTENCE. THE RECOVERY SHALL BE
6 ACCOMPLISHED THROUGH A CONTINUATION OF THE CURRENTLY AUTHORIZED
7 SURCHARGES FOR THOSE COSTS, EXCEPT THAT THE COMMISSION SHALL ENSURE
8 THAT RECOVERY IS COMPLETED NO LATER THAN 60 MONTHS FOLLOWING THE
9 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SENTENCE.

10 (4) No later than December 2, 2000, the commission shall
11 establish a code of conduct that shall apply to all electric
12 utilities. The code of conduct shall include, but is not limited
13 to, measures to prevent cross-subsidization, information sharing,
14 and preferential treatment, between a utility's regulated and
15 unregulated services, whether those services are provided by the
16 utility or the utility's affiliated entities. The code of conduct
17 established under this subsection shall also be applicable to
18 electric utilities and alternative electric suppliers consistent
19 with section 10, this section, and sections 10b through 10cc.

20 (5) An electric utility may offer its customers an appliance
21 service program. Except as otherwise provided by this section, the
22 utility shall comply with the code of conduct established by the
23 commission under subsection (4). As used in this section,
24 "appliance service program" or "program" means a subscription
25 program for the repair and servicing of heating and cooling systems
26 or other appliances.

27 (6) A utility offering a program under subsection (5) shall do

1 all of the following:

2 (a) Locate within a separate department of the utility or
3 affiliate within the utility's corporate structure the personnel
4 responsible for the day-to-day management of the program.

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

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

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

26 (8) A utility may include charges for its appliance service
27 program on its monthly billings to its customers if the utility

1 complies with all of the following requirements:

2 (a) All costs associated with the billing process, including
3 the postage, envelopes, paper, and printing expenses, are allocated
4 as required under subsection (7).

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

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

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

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

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

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

27 (i) That appliance service programs may be available from

1 another provider.

2 (ii) That the appliance service program is not regulated by the
3 commission.

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

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

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

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

25 (11) Except as otherwise provided in this section, the code of
26 conduct with respect to an appliance service program shall not
27 require a utility to form a separate affiliate or division to

1 operate an appliance service program, impose further restrictions
2 on the sharing of employees, vehicles, equipment, office space, and
3 other facilities, or require the utility to provide other providers
4 of appliance repair service with access to utility employees,
5 vehicles, equipment, office space, or other facilities.

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

19 (12) ~~(13)~~ This act does not prohibit or limit the right of a
20 person to obtain self-service power and does not impose a
21 transition, implementation, exit fee, or any other similar charge
22 on self-service power. A person using self-service power is not an
23 electric supplier, electric utility, or a person conducting an
24 electric utility business. As used in this subsection, "self-
25 service power" means any of the following:

26 (a) Electricity generated and consumed at an industrial site
27 or contiguous industrial site or single commercial establishment or

1 single residence without the use of an electric utility's
2 transmission and distribution system.

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

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

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

19 **(13)** ~~(14)~~—This act does not prohibit or limit the right of a
20 person to engage in affiliate wheeling and does not impose a
21 transition, implementation, exit fee, or any other similar charge
22 on a person engaged in affiliate wheeling. As used in this section:

23 (a) "Affiliate" means a person or entity that directly, or
24 indirectly through 1 or more intermediates, controls, is controlled
25 by, or is under common control with another specified entity. As
26 used in this subdivision, "control" means, whether through an
27 ownership, beneficial, contractual, or equitable interest, the

1 possession, directly or indirectly, of the power to direct or to
2 cause the direction of the management or policies of a person or
3 entity or the ownership of at least 7% of an entity either directly
4 or indirectly.

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

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

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

21 (14) ~~(15)~~—The rights of parties to existing contracts and
22 agreements in effect as of January 1, 2000 between electric
23 utilities and qualifying facilities, including the right to have
24 the charges recovered from the customers of an electric utility, or
25 its successor, shall not be abrogated, increased, or diminished by
26 this act, nor shall the receipt of any proceeds of the
27 securitization bonds by an electric utility be a basis for any

1 regulatory disallowance. Further, any securitization or financing
2 order issued by the commission that relates to a qualifying
3 facility's power purchase contract shall fully consider that
4 qualifying facility's legal and financial interests.

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

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

19 ~~—— (a) Evaluating the relationship of market value to the net~~
20 ~~book value of generation assets and purchased power contracts.~~

21 ~~—— (b) Evaluating net stranded costs based on the market price of~~
22 ~~power in relation to prices assumed by the commission in prior~~
23 ~~orders.~~

24 ~~—— (c) Any other method the commission considers appropriate.~~

25 ~~—— (18) The true up adjustment adopted under subsection (16)~~
26 ~~shall not result in a modification to the securitization charge.~~
27 ~~The commission shall not adjust or change in any manner~~

1 ~~securitization charges authorized by the commission in a financing~~
2 ~~order issued under section 10i as a result of its review and any~~
3 ~~action taken under subsection (16).~~

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

9 Sec. 10b. (1) The commission shall establish rates, terms, and
10 conditions of electric service that promote and enhance the
11 development of new generation, transmission, and distribution
12 technologies.

13 (2) No later than 1 year from ~~the effective date of the~~
14 ~~amendatory act that added this section~~ **JUNE 5, 2000**, each electric
15 utility shall file an application with the commission to unbundle
16 its existing commercial and industrial rate schedules and
17 separately identify and charge for their discrete services. No
18 earlier than 1 year from ~~the effective date of the amendatory act~~
19 ~~that added this section~~ **JUNE 5, 2000**, the commission may order the
20 electric utility to file an application to unbundle existing
21 residential rate schedules. The commission may allow the unbundled
22 rates to be expressed on residential billings in terms of
23 percentages in order to simplify residential billing. The
24 commission shall allow recovery by electric utilities of all just
25 and reasonable costs incurred by electric utilities to implement
26 and administer the provisions of this subsection.

27 (3) The orders issued under this act shall include, but are

1 not limited to, the providing of reliable and lower cost
2 competitive rates for all customers in this state.

3 (4) An electric utility is obligated, with commission
4 oversight, to provide standby generation service for open access
5 load on a best efforts basis until December 31, 2001 or the date
6 established under section 10d(2) **AS IT EXISTED PRIOR TO THE**
7 **EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SENTENCE,**
8 whichever is later. The pricing for the electric generation standby
9 service is equal to the retail market price of comparable standby
10 service allowed under subsection (5). An electric utility is not
11 required to interrupt firm off-system sales or firm service
12 customers to provide standby generation service. Until the date
13 established under section 10d(2) **AS IT EXISTED PRIOR TO THE**
14 **EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SENTENCE,**
15 standby generation service shall continue to be provided to nonopen
16 access customers under regulated tariffs.

17 (5) The methodology for identifying the retail market price
18 for electric generation service to be applied under this section
19 shall be determined by the commission based upon market indices
20 commonly relied upon in the electric generation industry, adjusted
21 as appropriate to reflect retail market prices in the relevant
22 market.

23 Sec. 10c. (1) Except for a violation under section ~~10a(3)~~
24 **10A(2)** and as otherwise provided under this section, upon a
25 complaint or on the commission's own motion, if the commission
26 finds, after notice and hearing, that an electric utility or an
27 alternative electric supplier has not complied with a provision or

1 order issued under sections 10 through 10bb, the commission shall
2 order such remedies and penalties as necessary to make whole a
3 customer or other person who has suffered damages as a result of
4 the violation, including, but not limited to, 1 or more of the
5 following:

6 (a) Order the electric utility or alternative electric
7 supplier to pay a fine for the first offense of not less than
8 \$1,000.00 or more than \$20,000.00. For a second offense, the
9 commission shall order the person to pay a fine of not less than
10 \$2,000.00 or more than \$40,000.00. For a third and any subsequent
11 offense, the commission shall order the person to pay a fine of not
12 less than \$5,000.00 or more than \$50,000.00.

13 (b) Order a refund to the customer of any excess charges.

14 (c) Order any other remedies that would make whole a person
15 harmed, including, but not limited to, payment of reasonable
16 attorney fees.

17 (d) Revoke the license of the alternative electric supplier if
18 the commission finds a pattern of violations.

19 (e) Issue cease and desist orders.

20 (2) Upon a complaint or the commission's own motion, the
21 commission may conduct a contested case to review allegations of a
22 violation under section ~~10a(3)~~ **10A(2)**.

23 (3) If the commission finds that a person has violated section
24 ~~10a(3)~~ **10A(2)**, the commission shall order remedies and penalties to
25 protect customers and other persons who have suffered damages as a
26 result of the violation, including, but not limited to, 1 or more
27 of the following:

1 (a) Order the person to pay a fine for the first offense of
2 not less than \$20,000.00 or more than \$30,000.00. For a second and
3 any subsequent offense, the commission shall order the person to
4 pay a fine of not less than \$30,000.00 or more than \$50,000.00. If
5 the commission finds that the second or any of the subsequent
6 offenses were knowingly made in violation of section ~~10a(3)~~**10A(2)**,
7 the commission shall order the person to pay a fine of not more
8 than \$70,000.00. Each unauthorized action made in violation of
9 section ~~10a(3)~~**10A(2)** shall be a separate offense under this
10 subdivision.

11 (b) Order an unauthorized supplier to refund to the customer
12 any amount greater than the customer would have paid to an
13 authorized supplier.

14 (c) Order an unauthorized supplier to reimburse an authorized
15 supplier an amount equal to the amount paid by the customer that
16 should have been paid to the authorized supplier.

17 (d) Order the refund of any amounts paid by the customer for
18 unauthorized services.

19 (e) Order a portion between 10% to 50% of the fine ordered
20 under subdivision (a) be paid directly to the customer who suffered
21 the violation under section ~~10a(3)~~**10A(2)**.

22 (f) If the person is licensed under this act, revoke the
23 license if the commission finds a pattern of violations of section
24 ~~10a(3)~~**10A(2)**.

25 (g) Issue cease and desist orders.

26 (4) Notwithstanding subsection (3), a fine shall not be
27 imposed for a violation of section ~~10a(3)~~**10A(2)** if the supplier

1 has otherwise fully complied with section ~~10a(3)~~**10A(2)** and shows
2 that the violation was an unintentional and bona fide error which
3 occurred notwithstanding the maintenance of procedures reasonably
4 adopted to avoid the error. Examples of a bona fide error include
5 clerical, calculation, computer malfunction, programming, or
6 printing errors. An error in legal judgment with respect to a
7 supplier's obligations under section ~~10a(3)~~**10A(2)** is not a bona
8 fide error. The burden of proving that a violation was an
9 unintentional and bona fide error is on the supplier.

10 (5) If the commission finds that a party's position in a
11 complaint filed under subsection (2) is frivolous, the commission
12 shall award to the prevailing party their costs, including
13 reasonable attorney fees, against the nonprevailing party and their
14 attorney.

15 Sec. 10d. ~~(1) Except as otherwise provided under subsection~~
16 ~~(3) or unless otherwise reduced by the commission under subsection~~
17 ~~(5), the commission shall establish the residential rates for each~~
18 ~~electric utility with 1,000,000 or more retail customers in this~~
19 ~~state as of May 1, 2000 that will result in a 5% rate reduction~~
20 ~~from the rates that were authorized or in effect on May 1, 2000.~~
21 ~~Notwithstanding any other provision of law or commission order,~~
22 ~~rates for each electric utility with 1,000,000 or more retail~~
23 ~~customers established under this subsection become effective on~~
24 ~~June 5, 2000 and remain in effect until December 31, 2003 and all~~
25 ~~other electric retail rates of an electric utility with 1,000,000~~
26 ~~or more retail customers authorized or in effect as of May 1, 2000~~
27 ~~shall remain in effect until December 31, 2003.~~

1 ~~—— (2) On and after December 31, 2003, rates for an electric~~
2 ~~utility with 1,000,000 or more retail customers in this state as of~~
3 ~~May 1, 2000 shall not be increased until the earlier of December~~
4 ~~31, 2013 or until the commission determines, after notice and~~
5 ~~hearing, that the utility meets the market test under section 10f~~
6 ~~and has completed the transmission expansion provided for in the~~
7 ~~plan required under section 10v. The rates for commercial or~~
8 ~~manufacturing customers of an electric utility with 1,000,000 or~~
9 ~~more retail customers with annual peak demands of less than 15~~
10 ~~kilowatts shall not be increased before January 1, 2005. There~~
11 ~~shall be no cost shifting from customers with capped rates to~~
12 ~~customers without capped rates as a result of this section. In no~~
13 ~~event shall residential rates be increased before January 1, 2006~~
14 ~~above the rates established under subsection (1).~~

15 ~~—— (3) Subsections (1) and (2) do not apply to rates or charges~~
16 ~~authorized by the commission under subsection (13).~~

17 ~~—— (4) Beginning January 1, 2004, annual return of and on capital~~
18 ~~expenditures in excess of depreciation levels incurred during and~~
19 ~~before the time period described in subsection (2), and expenses~~
20 ~~incurred as a result of changes in taxes, laws, or other state or~~
21 ~~federal governmental actions incurred by electric utilities during~~
22 ~~the period described in subsection (2), shall be accrued and~~
23 ~~deferred for recovery. After notice and hearing, the commission~~
24 ~~shall determine the amount of reasonable and prudent costs, if any,~~
25 ~~to be recovered and the recovery period, which shall not exceed 5~~
26 ~~years, and shall not commence until after the expiration of the~~
27 ~~period described in subsection (2).~~

1 ~~—— (5) If the commission authorizes an electric utility to use~~
2 ~~securitization financing under section 10i, any savings resulting~~
3 ~~from securitization shall be used to reduce retail electric rates~~
4 ~~from those authorized or in effect as of May 1, 2000 as required~~
5 ~~under subsection (1). A rate reduction under this subsection shall~~
6 ~~not be less than the 5% required under subsection (1). The~~
7 ~~financing order may provide that a utility shall only issue~~
8 ~~securitization bonds in an amount equal to or less than requested~~
9 ~~by the utility, but the commission shall not preclude the issuance~~
10 ~~of an amount of securitization bonds sufficient to fund the rate~~
11 ~~reduction required under subsection (1).~~

12 ~~—— (6) Except for savings assigned to the low income and energy~~
13 ~~efficiency fund under subsection (7), securitization savings~~
14 ~~greater than those used to achieve the 5% rate reduction under~~
15 ~~subsection (1) shall be allocated by the commission to further rate~~
16 ~~reductions or to reduce the level of any charges authorized by the~~
17 ~~commission to recover an electric utility's stranded costs. The~~
18 ~~commission shall allocate approved securitization, transition,~~
19 ~~stranded, and other related charges and credits in a manner that~~
20 ~~does not result in a reallocation of cost responsibility among the~~
21 ~~different customer classes.~~

22 ~~—— (7) If securitization savings exceed the amount needed to~~
23 ~~achieve a 5% rate reduction for all customers, then, for a period~~
24 ~~of 6 years, 100% of the excess savings, up to 2% of the electric~~
25 ~~utility's commercial and industrial revenues, shall be allocated to~~
26 ~~the low income and energy efficiency fund administered by the~~
27 ~~commission. The commission shall establish standards for the use of~~

1 ~~the fund to provide shut off and other protection for low income~~
2 ~~customers and to promote energy efficiency by all customer classes.~~
3 ~~The commission shall issue a report to the legislature and the~~
4 ~~governor every 2 years regarding the effectiveness of the fund.~~

5 ~~—— (8) Except as provided under subsection (3), until the end of~~
6 ~~the period described in subsection (2), the commission shall not~~
7 ~~authorize any fees or charges that will cause the residential rate~~
8 ~~reduction required under subsection (1) to be less than 5%.~~

9 (1) ~~(9)~~—If an electric utility serving less than 1,000,000
10 retail customers in this state as of May 1, 2000 issues
11 securitization bonds as allowed under this act, it shall have the
12 same rights, duties, and obligations under this section as an
13 electric utility serving 1,000,000 or more retail customers in this
14 state as of May 1, 2000.

15 (2) ~~(10)~~—The commission shall take the necessary steps to
16 ensure that all electrical power generating facilities in this
17 state comply with all rules, regulations, and standards of the
18 federal environmental protection agency regarding mercury
19 emissions.

20 (3) ~~(11)~~—A covered utility may apply to the commission to
21 recover enhanced security costs for an electric generating facility
22 through a security recovery factor. If the commission action under
23 subsection ~~(13)~~—(5) is approval of a security recovery factor, the
24 covered utility may recover those enhanced security costs.

25 (4) ~~(12)~~—The commission shall require that notice of the
26 application filed under subsection ~~(11)~~—(3) be published by the
27 covered utility within 30 days from the date the application was

1 filed. The initial hearing by the commission shall be held within
2 20 days of the date the notice was published in newspapers of
3 general circulation in the service territory of the covered
4 utility.

5 (5) ~~(13)~~—The commission may issue an order approving,
6 rejecting, or modifying the security recovery factor. If the
7 commission issues an order approving a security recovery factor,
8 that order shall be issued within 120 days of the initial hearing
9 required under subsection ~~(12)~~—(4). In determining the security
10 recovery factor, the commission shall only include costs that the
11 commission determines are reasonable and prudent and that are
12 jurisdictionally assigned to retail customers of the covered
13 utility in this state. The costs included shall be net of any
14 proceeds that have been or will be received from another source,
15 including, but not limited to, any applicable insurance settlements
16 received by the covered utility or any grants or other emergency
17 relief from federal, state, or local governmental agencies for the
18 purpose of defraying enhanced security costs. In its order, the
19 commission shall designate a period for recovery of enhanced
20 security costs, including a reasonable return on the unamortized
21 balance, over a period not to exceed 5 years. The security recovery
22 factor shall not be less than zero.

23 (6) ~~(14)~~—Within 60 days of ~~the effective date of the~~
24 ~~amendatory act that added this subsection~~ **DECEMBER 20, 2002**, the
25 commission shall by order prescribe the form for the filing of an
26 application for a security recovery factor under subsection ~~(11)~~
27 (3). If the commission or its designee determines that a filing is

1 incomplete, it shall notify the covered utility within 10 days of
2 the filing.

3 (7) ~~(15)~~—Records or other information supplied by the covered
4 utility in an application for recovery of security costs under
5 subsection ~~(11)~~—(3) that describe security measures, including, but
6 not limited to, emergency response plans, risk planning documents,
7 threat assessments, domestic preparedness strategies, and other
8 plans for responding to acts of terrorism are not subject to the
9 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and
10 shall be treated as confidential by the commission.

11 (8) ~~(16)~~—The commission shall issue protective orders as are
12 necessary to protect the information found by the commission to be
13 confidential under this section.

14 (9) ~~(17)~~—As used in this section:

15 (a) "Act of terrorism" means a willful and deliberate act that
16 is all of the following:

17 (i) An act that would be a violent felony under the laws of
18 this state, whether or not committed in this state.

19 (ii) An act that the person knows or has reason to know is
20 dangerous to human life.

21 (iii) An act that is intended to intimidate or coerce a civilian
22 population or influence or affect the conduct of government or a
23 unit of government through intimidation or coercion.

24 (b) "Covered utility" means an electric utility ~~subject to the~~
25 ~~rate freeze provisions of subsection (1), the rate cap provisions~~
26 ~~of subsection (2),~~ **WITH 1,000,000 OR MORE RETAIL CUSTOMERS IN THIS**
27 **STATE AS OF MAY 1, 2000** or **AN ELECTRIC UTILITY SUBJECT TO** the rate

1 provisions of commission orders in case numbers U-11181-R and U-
2 12204.

3 (c) "Enhanced security costs" means reasonable and prudent
4 costs of new and enhanced security measures incurred before January
5 1, 2006 for an electric generating facility by a covered utility
6 that are required by federal or state regulatory security
7 requirements issued after September 11, 2001 or determined to be
8 necessary by the commission to provide reasonable security from an
9 act of terrorism. Enhanced security costs include increases in the
10 cost of insurance that are attributable to an increased terror
11 related risk and the costs of maintaining or restoring electric
12 service as the result of an act of terrorism.

13 (d) "Security recovery factor" means an unbundled charge for
14 all retail customers, except for customers of alternative electric
15 suppliers, to recover enhanced security costs that have been
16 approved by the commission.

17 Sec. 10e. (1) An electric utility shall take all necessary
18 steps to ensure that merchant plants are connected to the
19 transmission and distribution systems within their operational
20 control. If the commission finds, after notice and hearing, that an
21 electric utility has prevented or unduly delayed the ability of the
22 plant to connect to the facilities of the utility, the commission
23 shall order remedies designed to make whole the merchant plant,
24 including, but not limited to, reasonable attorney fees. The
25 commission may also order fines of not more than \$50,000.00 per day
26 that the electric utility is in violation of this subsection.

27 (2) A merchant plant may sell its capacity to alternative

1 electric suppliers, electric utilities, municipal electric
2 utilities, retail customers, or other persons. A merchant plant
3 making sales to retail customers is an alternative electric
4 supplier and shall obtain a license under section ~~10a(2)~~**10A(1)**.

5 (3) The commission shall establish standards for the
6 interconnection of merchant plants with the transmission and
7 distribution systems of electric utilities. The standards shall not
8 require an electric utility to interconnect with generating
9 facilities with a capacity of less than 100 kilowatts for parallel
10 operations. The standards shall be consistent with generally
11 accepted industry practices and guidelines and shall be established
12 to ensure the reliability of electric service and the safety of
13 customers, utility employees, and the general public. The merchant
14 plant will be responsible for all costs associated with the
15 interconnection unless the commission has otherwise allocated the
16 costs and provided for cost recovery.

17 (4) This section does not apply to interconnections or
18 transactions that are subject to the jurisdiction of the federal
19 energy regulatory commission.

20 Sec. 10g. (1) As used in sections 10 through 10bb:

21 (a) "Alternative electric supplier" means a person selling
22 electric generation service to retail customers in this state.
23 Alternative electric supplier does not include a person who
24 physically delivers electricity directly to retail customers in
25 this state. An alternative electric supplier is not a public
26 utility.

27 (b) "Commission" means the Michigan public service commission

1 ~~in the department of consumer and industry services~~ **CREATED IN**
2 **SECTION 1.**

3 (c) "Electric utility" means that term as defined in section 2
4 of the electric transmission line certification act, 1995 PA 30,
5 MCL 460.562.

6 (d) "Merchant plant" means electric generating equipment and
7 associated facilities with a capacity of more than 100 kilowatts
8 located in this state that are not owned and operated by an
9 electric utility.

10 (e) "Relevant market" means either the Upper Peninsula or the
11 Lower Peninsula of this state.

12 (f) "Renewable energy source" means energy generated by solar,
13 wind, geothermal, biomass, including waste-to-energy and landfill
14 gas, or hydroelectric.

15 (2) A school district aggregating electricity for school
16 properties or an exclusive aggregator for public or private school
17 properties is not an electric utility or a public utility for the
18 purpose of that aggregation.

19 Sec. 10p. (1) Each electric utility operating in this state
20 shall establish an industry worker transition program that shall,
21 in consultation with employees or applicable collective bargaining
22 representatives, provide skills upgrades, apprenticeship and
23 training programs, voluntary separation packages consistent with
24 reasonable business practices, and job banks to coordinate and
25 assist placement of employees into comparable employment at no less
26 than the wage rates and substantially equivalent fringe benefits
27 received before the transition.

1 ~~—— (2) Stranded costs shall include audited and verified~~
2 ~~employee-related restructuring costs that are incurred as a result~~
3 ~~of the amendatory act that added this section or as a result of~~
4 ~~prior commission restructuring orders, including employee severance~~
5 ~~costs, employee retraining programs, early retirement programs,~~
6 ~~outplacement programs, and similar costs and programs, that have~~
7 ~~been approved and found to be prudently incurred by the commission.~~

8 (2) ~~(3)~~—In the event of a sale, purchase, or any other
9 transfer of ownership of 1 or more Michigan divisions or business
10 units, or generating stations or generating units, of an electric
11 utility, to either a third party or a utility subsidiary, the
12 electric utility's contract and agreements with the acquiring
13 entity or persons shall require all of the following for a period
14 of at least 30 months:

15 (a) That the acquiring entity or persons hire a sufficient
16 number of nonsupervisory employees to safely and reliably operate
17 and maintain the station, division, or unit by making offers of
18 employment to the nonsupervisory workforce of the electric
19 utility's division, business unit, generating station, or
20 generating unit.

21 (b) That the acquiring entity or persons not employ
22 nonsupervisory employees from outside the electric utility's
23 workforce unless offers of employment have been made to all
24 qualified nonsupervisory employees of the acquired business unit or
25 facility.

26 (c) That the acquiring entity or persons have a dispute
27 resolution mechanism culminating in a final and binding decision by

1 a neutral third party for resolving employee complaints or disputes
2 over wages, fringe benefits, and working conditions.

3 (d) That the acquiring entity or persons offer employment at
4 no less than the wage rates and substantially equivalent fringe
5 benefits and terms and conditions of employment that are in effect
6 at the time of transfer of ownership of the division, business
7 unit, generating station, or generating unit. The wage rates and
8 substantially equivalent fringe benefits and terms and conditions
9 of employment shall continue for at least 30 months from the time
10 of the transfer of ownership unless the employees, or where
11 applicable collective bargaining representative, and the new
12 employer mutually agree to different terms and conditions of
13 employment within that 30-month period.

14 (3) ~~(4)~~—The electric utility shall offer a transition plan to
15 those employees who are not offered jobs by the entity because the
16 entity has a need for fewer workers. If there is litigation
17 concerning the sale, or other transfer of ownership of the electric
18 utility's divisions, business units, generating stations, or
19 generating units, the 30-month period under subsection ~~(3)~~ ~~will~~
20 ~~begin~~ **(2) BEGINS** on the date the acquiring entity or persons take
21 control or management of the divisions, business units, generating
22 stations, or generating units of the electric utility.

23 (4) ~~(5)~~—The commission shall adopt generally applicable
24 service quality and reliability standards for the transmission and
25 distribution systems of electric utilities and other entities
26 subject to its jurisdiction, including, but not limited to,
27 standards for service outages, distribution facility upgrades,

1 repairs and maintenance, telephone service, billing service,
2 operational reliability, and public and worker safety. In setting
3 service quality and reliability standards, the commission shall
4 consider safety, costs, local geography and weather, applicable
5 codes, national electric industry practices, sound engineering
6 judgment, and experience. The commission shall also include
7 provisions to upgrade the service quality of distribution circuits
8 that historically have experienced significantly below-average
9 performance in relationship to similar distribution circuits.

10 (5) ~~(6)~~ Annually, each jurisdictional utility or entity shall
11 file its report with the commission detailing actions to be taken
12 to comply with the service quality and reliability standards during
13 the next calendar year and its performance in relation to the
14 service quality and reliability standards during the prior calendar
15 year. The annual reports shall contain that data as required by the
16 commission.

17 (6) ~~(7)~~ The commission shall analyze the data to determine
18 whether the jurisdictional entities are properly operating and
19 maintaining their systems, assess the impact of deregulation on
20 reliability, and take corrective action if needed.

21 (7) ~~(8)~~ The commission ~~shall be~~ **IS** authorized to levy
22 financial incentives and penalties upon any jurisdictional entity
23 which exceeds or fails to meet the service quality and reliability
24 standards.

25 Sec. 10r. (1) The commission shall establish minimum standards
26 for the form and content of all disclosures, explanations, or sales
27 information disseminated by a person selling electric service to

1 ensure that the person provides adequate, accurate, and
2 understandable information about the service that enables a
3 customer to make an informed decision relating to the source and
4 type of electric service purchased. The standards shall be
5 developed to do all of the following:

6 (a) Not be unduly burdensome.

7 (b) Not unnecessarily delay or inhibit the initiation and
8 development of competition for electric generation service in any
9 market.

10 (c) Establish different requirements for disclosures,
11 explanations, or sales information relating to different services
12 or similar services to different classes of customers, whenever
13 ~~such~~ **THE** different requirements are appropriate to carry out the
14 purposes of this section.

15 ~~—— (2) Before January 1, 2002, the commission shall establish a~~
16 ~~funding mechanism for electric utilities and alternative electric~~
17 ~~suppliers to carry out an educational program for customers to do~~
18 ~~all of the following:~~

19 ~~—— (a) Inform customers of the changes in the provision of~~
20 ~~electric service, including, but not limited to, the availability~~
21 ~~of alternative electric suppliers.~~

22 ~~—— (b) Inform customers of the requirements relating to~~
23 ~~disclosures, explanations, or sales information for alternative~~
24 ~~electric suppliers.~~

25 ~~—— (c) Provide assistance to customers in understanding and using~~
26 ~~the information to make reasonably informed choices about which~~
27 ~~service to purchase and from whom to purchase it.~~

1 (2) ~~(3)~~—The commission shall require that, starting January 1,
2 2002, all electric suppliers disclose in standardized, uniform
3 format on the customer's bill with a bill insert, on customer
4 contracts, or, for cooperatives, **IN** periodicals issued by an
5 association of rural electric cooperatives, information about the
6 environmental characteristics of electricity products purchased by
7 the customer, including all of the following:

8 (a) The average fuel mix, including categories for oil, gas,
9 coal, solar, hydroelectric, wind, biofuel, nuclear, solid waste
10 incineration, biomass, and other fuel sources. If a source fits
11 into the other category, the specific source must be disclosed. A
12 regional average, determined by the commission, may be used only
13 for that portion of the electricity purchased by the customer for
14 which the fuel mix cannot be discerned. For the purposes of this
15 subdivision, "biomass" means dedicated crops grown for energy
16 production and organic waste.

17 (b) The average emissions, in pounds per megawatt hour, sulfur
18 dioxide, carbon dioxide, and oxides of nitrogen. An emissions
19 default, determined by the commission, may be used if the regional
20 average fuel mix is being disclosed.

21 (c) The average of the high-level nuclear waste generated in
22 pounds per megawatt hour.

23 (d) The regional average fuel mix and emissions profile as
24 referenced in ~~subsection (3)(a)~~ **SUBDIVISIONS (A)**, (b), and (c).

25 (3) ~~(4)~~—The information required by subsection ~~(3)~~ **(2)** shall
26 be provided no more than twice annually, and be based on a rolling
27 annual average. Emissions factors will be based on annual publicly

1 available data by generation source.

2 (4) ~~(5)~~—All of the information required to be provided under
3 subsection (1) shall also be provided to the commission to be
4 included on the commission's internet site.

5 (5) ~~(6)~~—The commission shall establish the Michigan renewables
6 energy program. The program shall be designed to inform customers
7 in this state of the availability and value of using renewable
8 energy generation and the potential of reduced pollution. The
9 program shall also be designed to promote the use of existing
10 renewable energy sources and encourage the development of new
11 facilities.

12 Sec. 10x. (1) The commission shall not require a cooperative
13 electric utility to provide its retail customers the ability to
14 choose an alternative electric supplier before January 1, 2005, nor
15 unbundle its rates as required under section 10b before July 1,
16 2004. Any retail customer of a cooperative with a peak load of 1
17 megawatt or greater shall be provided the opportunity to choose an
18 alternative electric supplier ~~no later than January 1, 2002~~ **AS**
19 **PROVIDED IN SECTION 10.**

20 (2) The commission shall not require a cooperative electric
21 utility or an independent investor-owned utility with fewer than 60
22 employees to maintain separate facilities, operations, or
23 personnel, used to deliver electricity to retail customers, provide
24 retail electric service, or to be an alternative electric supplier.

25 (3) Any debt service recovery charge, or other charge approved
26 by the commission for a cooperative electric utility serving
27 primarily at wholesale may, upon application by its member

1 cooperative or cooperatives, be assessed by and collected through
2 its member cooperative or cooperatives.

3 (4) The commission shall not prohibit a cooperative electric
4 utility from metering and billing its customers for electric
5 services provided by the cooperative electric utility.

6 ~~(5) A cooperative electric utility shall not be required to~~
7 ~~provide funding under section 10r(2) until July 1, 2004 or such~~
8 ~~time as it is providing choice to all of its retail customers,~~
9 ~~whichever is earlier.~~

10 Sec. 10y. (1) The governing body of a municipally owned
11 utility shall determine whether it will permit retail customers
12 receiving delivery service from the municipally owned utility the
13 opportunity of choosing an alternative electric supplier, subject
14 to the implementation of rates, charges, terms, and conditions
15 referred to in subsection ~~(7)~~ (5).

16 (2) Except with the written consent of the municipally owned
17 utility, a person shall not provide delivery service or customer
18 account service to a retail customer that was receiving that
19 service from a municipally owned utility as of ~~the effective date~~
20 ~~of the amendatory act that added this section~~ **JUNE 5, 2000**, or is
21 receiving the service from a municipally owned utility. ~~and has the~~
22 ~~opportunity to choose an alternative electric supplier under terms~~
23 ~~consistent with this section.~~ For purposes of this subsection,
24 "customer" means the building or facilities served rather than the
25 individual, association, partnership, corporation, governmental
26 body, or any other entity taking service.

27 ~~(3) After December 31, 2007, subsection (2) does not apply if~~

~~1 the governing body of the municipally owned utility does not permit
2 all of its retail customers receiving delivery service from the
3 municipally owned utility located outside of the boundaries of the
4 municipality that owns the utility the opportunity to choose an
5 alternative electric supplier.~~

~~6 — (4) If a municipally owned utility elects to provide electric
7 generation service to retail customers receiving delivery service
8 from an electric utility, all of the following apply:~~

~~9 — (a) The municipally owned utility shall provide all of its
10 retail customers receiving delivery service from the municipally
11 owned utility located outside of the boundaries of the municipality
12 that owns the utility the opportunity of choosing an alternative
13 electric supplier. The rates, charges, terms, and conditions of
14 delivery service for customers choosing an alternative electric
15 supplier shall be established by the governing body of the
16 municipally owned utility as provided under subsection (7).~~

~~17 — (b) If a municipally owned utility and an electric utility
18 both provide delivery service to retail customers in the same
19 municipality located outside of the boundaries of the municipality
20 that owns the municipal utility, then the municipally owned utility
21 shall do 1 of the following:~~

~~22 — (i) Make a filing as provided under subsection (5).~~

~~23 — (ii) Enter into a written agreement as provided under
24 subsection (6).~~

~~25 — (c) The municipally owned utility shall comply with orders
26 issued pursuant to sections 10a(3), 10q, 10r, and 10t with respect
27 to customers located outside of the municipality that owns the~~

1 municipally owned utility. Upon a complaint or on the commission's
2 own motion, if the commission finds, after notice and hearing, that
3 the municipally owned utility has not complied with a provision or
4 order issued under sections 10a(3), 10q, 10r, and 10t the
5 commission shall order such remedies and penalties as necessary to
6 make whole a customer or other person who has suffered damages as a
7 result of the violation, including, but not limited to, 1 or more
8 of the following:

9 ——— (i) Order the municipally owned utility to pay a fine of not
10 less than \$1,000.00 or more than \$20,000.00 for the first offense
11 and not less than \$40,000.00 for a second and any subsequent
12 offense.

13 ——— (ii) Order a refund to the customer of any excess charges.

14 ——— (iii) Order any other remedies that would make whole a person
15 harmed, including, but not limited to, payment of reasonable
16 attorney fees.

17 ——— (iv) Revoke the license of the municipally owned utility if the
18 commission finds a pattern of violations.

19 ——— (v) Issue cease and desist orders.

20 ——— (d) The municipally owned utility may provide electric
21 generation service to serve electric retail customers receiving
22 delivery service from an electric utility up to an amount equal to
23 the municipally owned utility's retail customer load that has the
24 opportunity of choosing from an alternative electric supplier.

25 ——— (e) The municipally owned utility shall obtain a license under
26 section 10a(2). The commission shall issue a license unless it
27 determines that the municipally owned utility has adopted rates,

1 ~~charges, terms, and conditions for delivery service that are unduly~~
2 ~~discriminatory or reflect recovery of stranded costs in an amount~~
3 ~~considered unjust and unreasonable by the commission. A municipally~~
4 ~~owned utility operating under a license issued by the commission~~
5 ~~shall notify the commission before modifying rates, charges, terms,~~
6 ~~and conditions for delivery services. This subsection does not~~
7 ~~grant the commission authority to set rates for a municipally owned~~
8 ~~utility. The commission, after notice and opportunity for hearing,~~
9 ~~may revoke a license issued to a municipally owned utility if it~~
10 ~~determines that the municipally owned utility is not in compliance~~
11 ~~with this subsection.~~

12 (3) ~~(5)~~ With respect to any electric utility regarding
13 delivery service to customers located outside of the municipal
14 boundaries of the municipality that owns the utility, a governing
15 body of a municipally owned utility may elect to operate in
16 compliance with R 460.3411 of the Michigan administrative code, as
17 in effect on ~~the effective date of the amendatory act that added~~
18 ~~this section~~ **JUNE 5, 2000**. However, compliance with R 460.3411(13)
19 of the Michigan administrative code is not required for the
20 municipally owned utility. Concurrent with the filing of an
21 election under this subsection with the commission, the municipally
22 owned utility shall serve a copy of the election on the electric
23 utility. Beginning 30 days after service of the copy of the
24 election, the electric utility shall, as to the electing
25 municipally owned utility, be subject to the terms of R 460.3411 of
26 the Michigan administrative code as in effect on ~~the effective date~~
27 ~~of the amendatory act that added this section~~ **JUNE 5, 2000**. The

1 commission shall decide disputes arising under this subsection
2 subject to judicial review and enforcement.

3 (4) ~~(6)~~—A municipally owned utility and an electric utility
4 that provides delivery service in the same municipality as the
5 municipally owned utility may enter into a written agreement to
6 define the territorial boundaries of each utility's delivery
7 service area and any other terms and conditions as necessary to
8 provide delivery service. The agreement is not effective unless
9 approved by the governing body of the municipally owned utility and
10 the commission. The governing body of the municipally owned utility
11 and the commission shall annually review and supervise compliance
12 with the terms of the agreement. At the request of a party to the
13 agreement, disputes arising under the agreement shall be decided by
14 the commission subject to judicial review and enforcement.

15 (5) ~~(7)~~—If the governing body of a municipally owned utility
16 establishes a program to permit any of its customers the
17 opportunity to choose an alternative electric supplier, the
18 governing body of the municipally owned utility shall have
19 exclusive jurisdiction to do all of the following:

20 (a) Set delivery service rates applicable to services provided
21 by the municipally owned utility that shall not be unduly
22 discriminatory.

23 (b) Determine the amount and types of, and recovery mechanism
24 for, stranded and transition costs that will be charged.

25 (c) Establish rules, terms of access, and conditions that it
26 considers appropriate for the implementation of a program to allow
27 customers the opportunity of choosing an alternative electric

1 supplier.

2 (6) ~~(8)~~—Complaints alleging unduly discriminatory rates or
3 other noncompliance arising under subsection ~~(7)~~—(5) shall be filed
4 in the circuit court for the county in which the municipally owned
5 utility is located. ~~Complaints arising under subsection (4) shall~~
6 ~~be decided by the commission subject to judicial review and~~
7 ~~enforcement.~~

8 (7) ~~(9)~~—This section does not prevent or limit a municipally
9 owned utility from selling electricity at wholesale. A municipally
10 owned utility selling at wholesale is not considered to be an
11 alternative electric supplier and is not subject to regulation by
12 the commission.

13 ~~—— (10) If a municipally owned utility complies with subsection~~
14 ~~(4) (a), (b), and (c) and is a member of a joint agency established~~
15 ~~under the Michigan energy employment act of 1976, 1976 PA 448, MCL~~
16 ~~460.801 to 460.848, it may with the consent of the joint agency~~
17 ~~assign to the joint agency an amount of load up to the amount that~~
18 ~~it is allowed to serve as an electric supplier under subsection~~
19 ~~(4) (d), for the purpose of allowing the joint agency the~~
20 ~~opportunity to sell retail electric generation as an electric~~
21 ~~supplier, if the joint agency complies with sections 10a(3), 10q,~~
22 ~~10r, and 10t and obtains a license under section 10a(2).~~

23 (8) ~~(11)~~—This section shall not be construed to impair the
24 contractual rights of a municipally owned utility or customer under
25 an existing contract.

26 (9) ~~(12)~~—Contracts or other records pertaining to the sale of
27 electricity by a municipally owned utility that are in the

1 possession of a public body and that contain specific pricing or
2 other confidential or proprietary information may be exempted from
3 public disclosure requirements by the governing body of a
4 municipally owned utility. Upon showing of good cause, disclosure
5 subject to appropriate confidentiality provisions may be ordered by
6 a court or the commission.

7 (10) ~~(13)~~—This section does not affect the validity of the
8 order relating to the terms and conditions of service in the
9 Traverse City area that was issued August 25, 1994, by the
10 commission at the request of consumers power company and the light
11 and power board of the city of Traverse City.

12 (11) ~~(14)~~ ~~Except as otherwise provided under subsections~~
13 ~~(4)(e), (4)(e), and (10), sections~~ **SECTIONS** 6l, 10 through 10x, and
14 10z through 10bb do not apply to a municipally owned utility.

15 (12) ~~(15)~~—As used in this section:

16 (a) "Delivery service" means the providing of electric
17 transmission or distribution to a retail customer.

18 (b) "Municipality" means any city, village, or township.

19 (c) "Customer account services" means billing and collection,
20 provision of a meter, meter maintenance and testing, meter reading,
21 and other administrative activity associated with maintaining a
22 customer account.

23 (13) ~~(16)~~—In the event that an entity purchases 1 or more
24 divisions or business units, or generating stations or generating
25 units, of a municipal electric utility, the acquiring entity's
26 contract and agreements with the selling municipality shall require
27 all of the following for a period of at least 30 months:

1 (a) That the acquiring entity or persons hires a sufficient
2 number of employees to safely and reliably operate and maintain the
3 station, division, or unit by first making offers of employment to
4 the workforce of the municipal electric utility's division,
5 business unit, or generating unit.

6 (b) That the acquiring entity or persons not employ employees
7 from outside the municipal electric utility's workforce unless
8 offers of employment have been made to all qualified employees of
9 the acquired business unit or facility.

10 (c) That the acquiring entity or persons have a dispute
11 resolution mechanism culminating in a final and binding decision by
12 a neutral third party for resolving employee complaints or disputes
13 over wages, fringe benefits, and working conditions.

14 (d) That the acquiring entity or persons offer employment at
15 no less than the wage rates and substantially equivalent fringe
16 benefits and terms and conditions of employment that are in effect
17 at the time of transfer of ownership of the division, business
18 unit, generating station, or generating unit. The wage rates and
19 substantially equivalent fringe benefits and terms and conditions
20 of employment shall continue for at least 30 months from the time
21 of the transfer of ownership unless the employees, or where
22 applicable collective bargaining representative, and the new
23 employer mutually agree to different terms and conditions of the
24 employment within that 30-month period.

25 (e) An acquiring entity is exempt from the obligations in this
26 subsection if the selling municipality transfers all displaced
27 municipal electric utility employees to positions of employment

1 within the municipality at no less than the wage rates and
2 substantially equivalent fringe benefits and terms and conditions
3 of employment that are in effect at the time of transfer. The wage
4 rates and substantially equivalent fringe benefits and terms and
5 conditions of employment shall continue for at least 30 months from
6 the time of the transfer unless the employees, or where applicable
7 collective bargaining representative, and the municipality mutually
8 agree to different terms and conditions of the employment within
9 that 30-month period.

10 Enacting section 1. Section 10v of 1939 PA 3, MCL 460.10v, is
11 repealed.

12 Enacting section 2. This amendatory act does not take effect
13 unless all of the following bills of the 94th Legislature are
14 enacted into law:

15 (a) Senate Bill No.____ or House Bill No. 5521(request no.
16 04883'07 *).

17 (b) Senate Bill No.____ or House Bill No. 5522(request no.
18 04884'07 *).

19 (c) Senate Bill No.____ or House Bill No. 5520(request no.
20 04885'07 *).

21 (d) Senate Bill No.____ or House Bill No. 5523(request no.
22 05023'07 *).

23 (e) Senate Bill No.____ or House Bill No.____ (request no.
24 05570'07).

25 (f) Senate Bill No.____ or House Bill No.____ (request no.
26 05919'07).

27 (g) Senate Bill No.____ or House Bill No. 5525(request no.

1 05920'07).

2 (h) House Bill No. 5383.

3 (i) House Bill No. 5384.