

SENATE BILL No. 1317

May 6, 2010, Introduced by Senators KUIPERS, BROWN, VAN WOERKOM, HARDIMAN, GEORGE, JANSEN, JELINEK, SANBORN and KAHN and referred to the Committee on Energy Policy and Public Utilities.

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 section 10a (MCL 460.10a), as amended by 2008 PA 286.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 10a. (1) The commission shall issue orders establishing
2 the rates, terms, and conditions of service that allow all retail
3 customers of an electric utility or provider to choose an
4 alternative electric supplier. The orders shall do all of the
5 following:

6 (a) Provide that no more than ~~10%~~**25%** of an electric utility's
7 average weather-adjusted retail sales for the preceding calendar
8 year may take service from an alternative electric supplier at any
9 time.

10 (b) Set forth procedures necessary to administer and allocate
11 the amount of load that will be allowed to be served by alternative
12 electric suppliers, through the use of annual energy allotments
13 awarded on a calendar year basis, and shall provide, among other
14 things, that existing customers who are taking electric service
15 from an alternative electric supplier at a facility on ~~the~~
16 ~~effective date of the amendatory act that added this subdivision~~
17 **OCTOBER 6, 2008** shall be given an allocated annual energy allotment
18 for that service at that facility, that customers seeking to expand
19 usage at a facility served through an alternative electric supplier
20 will be given next priority, with the remaining available load, if
21 any, allocated on a first-come first-served basis. The procedures
22 shall also provide how customer facilities will be defined for the
23 purpose of assigning the annual energy allotments to be allocated
24 under this section. The commission shall not allocate additional
25 annual energy allotments at any time when the total annual energy
26 allotments for the utility's distribution service territory is
27 greater than ~~10%~~**25%** of the utility's weather-adjusted retail sales

1 in the calendar year preceding the date of allocation. If the sales
2 of a utility are less in a subsequent year or if the energy usage
3 of a customer receiving electric service from an alternative
4 electric supplier exceeds its annual energy allotment for that
5 facility, that customer shall not be forced to purchase electricity
6 from a utility, but may purchase electricity from an alternative
7 electric supplier for that facility during that calendar year.

8 (c) Notwithstanding any other provision of this section,
9 customers seeking to expand usage at a facility that has been
10 continuously served through an alternative electric supplier since
11 April 1, 2008 shall be permitted to purchase electricity from an
12 alternative electric supplier for both the existing and any
13 expanded load at that facility as well as any new facility
14 constructed or acquired after ~~the effective date of the amendatory~~
15 ~~act that added this subdivision~~ **OCTOBER 6, 2008** that is similar in
16 nature if the customer owns more than 50% of the new facility.

17 (d) Notwithstanding any other provision of this section, any
18 customer operating an iron ore mining facility, iron ore processing
19 facility, or both, located in the Upper Peninsula of this state,
20 shall be permitted to purchase all or any portion of its
21 electricity from an alternative electric supplier, regardless of
22 whether the sales exceed ~~10%~~ **25%** of the serving electric utility's
23 average weather-adjusted retail sales.

24 (2) The commission shall issue orders establishing a licensing
25 procedure for all alternative electric suppliers. To ensure
26 adequate service to customers in this state, the commission shall
27 require that an alternative electric supplier maintain an office

1 within this state, shall assure that an alternative electric
2 supplier has the necessary financial, managerial, and technical
3 capabilities, shall require that an alternative electric supplier
4 maintain records which the commission considers necessary, and
5 shall ensure an alternative electric supplier's accessibility to
6 the commission, to consumers, and to electric utilities in this
7 state. The commission also shall require alternative electric
8 suppliers to agree that they will collect and remit to local units
9 of government all applicable users, sales, and use taxes. An
10 alternative electric supplier is not required to obtain any
11 certificate, license, or authorization from the commission other
12 than as required by this act.

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

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

26 (5) An electric utility may offer its customers an appliance
27 service program. Except as otherwise provided by this section, the

1 utility shall comply with the code of conduct established by the
2 commission under subsection (4). ~~As used in this section,~~
3 ~~"appliance service program" or "program" means a subscription~~
4 ~~program for the repair and servicing of heating and cooling systems~~
5 ~~or other appliances.~~

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

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

11 (b) Maintain separate books and records for the program,
12 access to which shall be made available to the commission upon
13 request.

14 (c) Not promote or market the program through the use of
15 utility billing inserts, printed messages on the utility's billing
16 materials, or other promotional materials included with customers'
17 utility bills.

18 (7) All costs directly attributable to an appliance service
19 program allowed under subsection (5) shall be allocated to the
20 program as required by this subsection. The direct and indirect
21 costs of employees, vehicles, equipment, office space, and other
22 facilities used in the appliance service program shall be allocated
23 to the program based upon the amount of use by the program as
24 compared to the total use of the employees, vehicles, equipment,
25 office space, and other facilities. The cost of the program shall
26 include administrative and general expense loading to be determined
27 in the same manner as the utility determines administrative and

1 general expense loading for all of the utility's regulated and
2 unregulated activities. A subsidy by a utility does not exist if
3 costs allocated as required by this subsection do not exceed the
4 revenue of the program.

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

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

11 (b) A customer's regulated utility service is not terminated
12 for nonpayment of the appliance service program portion of the
13 bill.

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

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

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

26 (b) Appropriately allocate costs as required under subsection
27 (7) when personnel employed at a utility's call center provide

1 appliance service program marketing information to a prospective
2 customer.

3 (c) Prior to enrolling a customer into the program, the
4 utility shall inform the potential customer of all of the
5 following:

6 (i) That appliance service programs may be available from
7 another provider.

8 (ii) That the appliance service program is not regulated by the
9 commission.

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

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

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

25 (10) This section does not prohibit the commission from
26 requiring a utility to include revenues from an appliance service
27 program in establishing base rates. If the commission includes the

1 revenues of an appliance service program in determining a utility's
2 base rates, the commission shall also include all of the costs of
3 the program as determined under this section.

4 (11) Except as otherwise provided in this section, the code of
5 conduct with respect to an appliance service program shall not
6 require a utility to form a separate affiliate or division to
7 operate an appliance service program, impose further restrictions
8 on the sharing of employees, vehicles, equipment, office space, and
9 other facilities, or require the utility to provide other providers
10 of appliance repair service with access to utility employees,
11 vehicles, equipment, office space, or other facilities.

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

19 (a) Electricity generated and consumed at an industrial site
20 or contiguous industrial site or single commercial establishment or
21 single residence without the use of an electric utility's
22 transmission and distribution system.

23 (b) Electricity generated primarily by the use of by-product
24 fuels, including waste water solids, which electricity is consumed
25 as part of a contiguous facility, with the use of an electric
26 utility's transmission and distribution system, but only if the
27 point or points of receipt of the power within the facility are not

greater than 3 miles distant from the point of generation.

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

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

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

~~—— (a) "Affiliate" means a person or entity that directly, or indirectly through 1 or more intermediates, controls, is controlled by, or is under common control with another specified entity. As used in this subdivision, "control" means, whether through an ownership, beneficial, contractual, or equitable interest, the possession, directly or indirectly, of the power to direct or to cause the direction of the management or policies of a person or entity or the ownership of at least 7% of an entity either directly or indirectly.~~

~~—— (b) "Affiliate wheeling" means a person's use of direct access service where an electric utility delivers electricity generated at a person's industrial site to that person or that person's~~

~~affiliate at a location, or general aggregated locations, within this state that was either 1 of the following:~~

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

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

(14) The rights of parties to existing contracts and agreements in effect as of January 1, 2000 between electric utilities and qualifying facilities, including the right to have the charges recovered from the customers of an electric utility, or its successor, shall not be abrogated, increased, or diminished by this act, nor shall the receipt of any proceeds of the securitization bonds by an electric utility be a basis for any regulatory disallowance. Further, any securitization or financing order issued by the commission that relates to a qualifying facility's power purchase contract shall fully consider that qualifying facility's legal and financial interests.

(15) A customer who elects to receive service from an alternative electric supplier may subsequently provide notice to the electric utility of the customer's desire to receive standard

1 tariff service from the electric utility. The procedures in place
2 for each electric utility as of January 1, 2008 that set forth the
3 terms pursuant to which a customer receiving service from an
4 alternative electric supplier may return to full service from the
5 electric utility are ratified and shall remain in effect and may be
6 amended by the commission as needed. If an electric utility did not
7 have the procedures in place as of January 1, 2008, the commission
8 shall adopt those procedures.

9 (16) The commission shall authorize rates that will ensure
10 that an electric utility that offered retail open access service
11 from 2002 through ~~the effective date of the amendatory act that~~
12 ~~added this subsection~~ **OCTOBER 6, 2008** fully recovers its
13 restructuring costs and any associated accrued regulatory assets.
14 This includes, but is not limited to, implementation costs,
15 stranded costs, and costs authorized pursuant to section 10d(4) as
16 it existed prior to ~~the effective date of the amendatory act that~~
17 ~~added this subsection~~ **OCTOBER 6, 2008**, that have been authorized
18 for recovery by the commission in orders issued prior to ~~the~~
19 ~~effective date of the amendatory act that added this subsection~~
20 **OCTOBER 6, 2008**. The commission shall approve surcharges that will
21 ensure full recovery of all such costs within 5 years of ~~the~~
22 ~~effective date of the amendatory act that added this subsection~~
23 **OCTOBER 6, 2008**.

24 (17) AS USED IN THIS SECTION:

25 (A) "AFFILIATE" MEANS A PERSON OR ENTITY THAT DIRECTLY, OR
26 INDIRECTLY THROUGH 1 OR MORE INTERMEDIATES, CONTROLS, IS CONTROLLED
27 BY, OR IS UNDER COMMON CONTROL WITH ANOTHER SPECIFIED ENTITY. AS

1 USED IN THIS SUBDIVISION, "CONTROL" MEANS, WHETHER THROUGH AN
2 OWNERSHIP, BENEFICIAL, CONTRACTUAL, OR EQUITABLE INTEREST, THE
3 POSSESSION, DIRECTLY OR INDIRECTLY, OF THE POWER TO DIRECT OR TO
4 CAUSE THE DIRECTION OF THE MANAGEMENT OR POLICIES OF A PERSON OR
5 ENTITY OR THE OWNERSHIP OF AT LEAST 7% OF AN ENTITY EITHER DIRECTLY
6 OR INDIRECTLY.

7 (B) "AFFILIATE WHEELING" MEANS A PERSON'S USE OF DIRECT ACCESS
8 SERVICE WHERE AN ELECTRIC UTILITY DELIVERS ELECTRICITY GENERATED AT
9 A PERSON'S INDUSTRIAL SITE TO THAT PERSON OR THAT PERSON'S
10 AFFILIATE AT A LOCATION, OR GENERAL AGGREGATED LOCATIONS, WITHIN
11 THIS STATE THAT WAS EITHER 1 OF THE FOLLOWING:

12 (i) FOR AT LEAST 90 DAYS DURING THE PERIOD FROM JANUARY 1, 1996
13 TO OCTOBER 1, 1999, SUPPLIED BY SELF-SERVICE POWER, BUT ONLY TO THE
14 EXTENT OF THE CAPACITY RESERVED OR LOAD SERVED BY SELF-SERVICE
15 POWER DURING THE PERIOD.

16 (ii) CAPABLE OF BEING SUPPLIED BY A PERSON'S COGENERATION
17 CAPACITY WITHIN THIS STATE THAT HAS HAD SINCE JANUARY 1, 1996 A
18 RATED CAPACITY OF 15 MEGAWATTS OR LESS, WAS PLACED IN SERVICE
19 BEFORE DECEMBER 31, 1975, AND HAS BEEN IN CONTINUOUS SERVICE SINCE
20 THAT DATE. A PERSON ENGAGING IN AFFILIATE WHEELING IS NOT AN
21 ELECTRIC SUPPLIER, AN ELECTRIC UTILITY, OR CONDUCTING AN ELECTRIC
22 UTILITY BUSINESS WHEN A PERSON ENGAGES IN AFFILIATE WHEELING.

23 (C) "APPLIANCE SERVICE PROGRAM" OR "PROGRAM" MEANS A
24 SUBSCRIPTION PROGRAM FOR THE REPAIR AND SERVICING OF HEATING AND
25 COOLING SYSTEMS OR OTHER APPLIANCES.

26 (18) ~~(17)~~As used in subsections (1) and (15):

27 (a) "Customer" means the building or facilities served through

1 a single existing electric billing meter and does not mean the
2 person, corporation, partnership, association, governmental body,
3 or other entity owning or having possession of the building or
4 facilities.

5 (b) "Standard tariff service" means, for each regulated
6 electric utility, the retail rates, terms, and conditions of
7 service approved by the commission for service to customers who do
8 not elect to receive generation service from alternative electric
9 suppliers.