

HOUSE BILL No. 5260

January 29, 2014, Introduced by Rep. Shirkey 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 9 and 10a (MCL 460.9 and 460.10a), section 9 as added by 2002 PA 634 and section 10a as amended by 2008 PA 286.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 9. (1) As used in this section:

2 (a) "Alternative gas supplier" or "supplier" means a person
3 who sells natural gas at unregulated retail rates to customers
4 located in this state, where the gas is delivered to customers by a
5 natural gas utility that has a customer choice program. Retail
6 sales in a customer choice program by an alternative gas supplier
7 do not constitute public utility service.

8 (b) "Commission" means the Michigan public service commission
9 ~~CREATED in the department of consumer and industry services.~~**SECTION**
10 **1.**

11 (c) "Customer" means an end-user of natural gas.

12 (d) "Customer choice program" means a program approved by the
13 commission on application by a natural gas utility that allows
14 retail customers to choose an alternative gas supplier.

15 (e) "Natural gas utility" means an investor-owned business
16 engaged in the sale and distribution of natural gas within this
17 state whose rates are regulated by the commission.

18 (2) An alternative gas supplier or natural gas utility shall
19 not switch a customer to its gas supply without **THE** authorization
20 of the customer. A natural gas utility ~~shall not be found~~**IS NOT** in
21 violation of this subsection or a commission order issued under
22 subsection (3), if the customer's service was switched by the
23 natural gas utility under the applicable terms and conditions of a
24 commission approved gas customer choice program or as the result of
25 the default of an alternative gas supplier.

26 (3) The commission may issue orders to ensure that an

1 alternative gas supplier or natural gas utility does not switch a
2 customer to another supplier without the customer's written
3 confirmation, confirmation through an independent third party, or
4 other verification procedures subject to commission approval,
5 confirming the customer's intent to make a switch and that the
6 customer has approved the specific details of the switch.

7 (4) An alternative gas supplier or natural gas utility shall
8 not include or add optional services in a customer's service
9 package without the authorization of the customer.

10 (5) The commission may issue orders to ensure that an
11 alternative gas supplier or natural gas utility does not include or
12 add optional services in a customer's service package without the
13 customer's written confirmation, confirmation through an
14 independent third party, or other verification procedures approved
15 by the commission confirming the customer's intent to receive the
16 optional services.

17 (6) An alternative gas supplier or natural gas utility shall
18 not solicit or enter into contracts subject to this section with
19 customers in this state in a misleading, fraudulent, or deceptive
20 manner. **AT THE BEGINNING OF A TELEPHONE SOLICITATION TO A CUSTOMER
21 REGARDING NATURAL GAS SERVICE, A PERSON MAKING THE TELEPHONE
22 SOLICITATION SHALL STATE HIS OR HER NAME AND THE FULL NAME OF THE
23 ALTERNATIVE GAS SUPPLIER OR NATURAL GAS UTILITY ON WHOSE BEHALF THE
24 CALL WAS INITIATED.**

25 (7) The commission may by order establish minimum standards
26 for the form and content of all disclosures, explanations, or sales
27 information relating to the sale of a natural gas commodity in a

1 customer choice program and disseminated by an alternative gas
2 supplier or natural gas utility to ensure that the disclosures,
3 explanations, and sales information contain accurate and
4 understandable information and enable a customer to make an
5 informed decision relating to the purchase of a natural gas
6 commodity. Any standards established under this subsection shall be
7 developed to do all of the following:

8 (a) Not be unduly burdensome.

9 (b) Not unnecessarily delay or inhibit the initiation and
10 development of competition among alternative gas suppliers or
11 natural gas utilities in any market.

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

17 (8) The commission may adopt rules under the administrative
18 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to
19 implement this section.

20 (9) If after notice and hearing the commission finds a person
21 has violated this section, the commission may order remedies and
22 penalties to protect and make whole another person ~~who~~**THAT** has
23 suffered an economic loss as a result of the violation, including,
24 but not limited to, 1 or more of the following:

25 (a) Order the person to pay a fine for the first offense of
26 not less than \$20,000.00 or more than \$30,000.00. For a second and
27 any subsequent offense, the commission shall order the person to

1 pay a fine of not less than \$30,000.00 or more than \$50,000.00. If
2 the commission finds that the second or any of the subsequent
3 offenses were knowingly made in violation of subsection (2) or (4),
4 the commission shall order the person to pay a fine of not more
5 than \$70,000.00. Each switch made in violation of subsection (2) or
6 service added in violation of subsection (4) ~~shall be~~**IS** a separate
7 offense under this subdivision.

8 (b) Order an unauthorized supplier to refund to the customer
9 any amount greater than the customer would have paid to an
10 authorized supplier.

11 (c) Order a portion between 10% to 50% of the fine assessed
12 under subdivision (a) be paid directly to the customer ~~who~~**THAT**
13 suffered the violation of subsection (2) or (4).

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

17 (e) If the person is licensed under this act, revoke the
18 license if the commission finds a pattern of violations of
19 subsection (2) or (4).

20 (f) Issue cease and desist orders.

21 (10) Notwithstanding subsection (9), a fine shall not be
22 imposed for a violation if the person shows that the violation was
23 an unintentional and bona fide error ~~which~~**THAT** occurred
24 notwithstanding the maintenance of procedures reasonably adopted to
25 avoid the error.

26 (11) A natural gas utility ~~shall not be found~~**IS NOT** in
27 violation of this section for switching a customer's supplier or

1 adding optional services to a customer's account if the switch or
2 addition was made pursuant to the request or notice of an
3 alternative gas supplier that is responsible under a customer
4 choice program for obtaining the customer's approval.

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

10 (a) Provide that no more than 10% of an electric utility's
11 average weather-adjusted retail sales for the preceding calendar
12 year may take service from an alternative electric supplier at any
13 time.

14 (b) Set forth procedures necessary to administer and allocate
15 the amount of load that will be allowed to be served by alternative
16 electric suppliers, through the use of annual energy allotments
17 awarded on a calendar year basis, and shall provide, among other
18 things, that existing customers who are taking electric service
19 from an alternative electric supplier at a facility on ~~the~~
20 ~~effective date of the amendatory act that added this subdivision~~
21 ~~shall be~~ **OCTOBER 6, 2008 ARE** given an allocated annual energy
22 allotment for that service at that facility, that customers seeking
23 to expand usage at a facility served through an alternative
24 electric supplier will be given next priority, with the remaining
25 available load, if any, allocated on a first-come first-served
26 basis. The procedures shall also provide how customer facilities
27 will be defined for the purpose of assigning the annual energy

1 allotments to be allocated under this section. The commission shall
2 not allocate additional annual energy allotments at any time when
3 the total annual energy allotments for the utility's distribution
4 service territory is greater than 10% of the utility's weather-
5 adjusted retail sales in the calendar year preceding the date of
6 allocation. If the sales of a utility are less in a subsequent year
7 or if the energy usage of a customer receiving electric service
8 from an alternative electric supplier exceeds its annual energy
9 allotment for that facility, that customer shall not be forced to
10 purchase electricity from a utility, but may purchase electricity
11 from an alternative electric supplier for that facility during that
12 calendar year.

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

22 (d) Notwithstanding any other provision of this section, any
23 customer operating an iron ore mining facility, iron ore processing
24 facility, or both, located in the Upper Peninsula of this state,
25 shall be permitted to purchase all or any portion of its
26 electricity from an alternative electric supplier, regardless of
27 whether the sales exceed 10% of the serving electric utility's

1 average weather-adjusted retail sales.

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

18 (3) The commission shall issue orders to ensure that customers
19 in this state are not switched to another supplier or billed for
20 any services without the customer's consent. **AT THE BEGINNING OF A
21 TELEPHONE SOLICITATION TO A CUSTOMER REGARDING ELECTRIC SERVICE, A
22 PERSON MAKING THE TELEPHONE SOLICITATION SHALL STATE HIS OR HER
23 NAME AND THE FULL NAME OF THE ALTERNATIVE ELECTRIC SUPPLIER OR
24 ELECTRIC UTILITY ON WHOSE BEHALF THE CALL WAS INITIATED.**

25 (4) ~~No later than December 2, 2000, the~~**THE** commission shall
26 establish a code of conduct that ~~shall apply~~**APPLIES** to all
27 electric utilities. The code of conduct shall include, but is not

1 limited to, measures to prevent cross-subsidization, information
2 sharing, and preferential treatment, between a utility's regulated
3 and unregulated services, whether those services are provided by
4 the utility or the utility's affiliated entities. The code of
5 conduct established under this subsection ~~shall also be applicable~~
6 **APPLIES** to electric utilities and alternative electric suppliers
7 consistent with section 10, this section, and sections 10b through
8 10cc.

9 (5) An electric utility may offer its customers an appliance
10 service program. Except as otherwise provided by this section, the
11 utility shall comply with the code of conduct established by the
12 commission under subsection (4). As used in this section,
13 "appliance service program" or "program" means a subscription
14 program for the repair and servicing of heating and cooling systems
15 or other appliances.

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

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

21 (b) Maintain separate books and records for the program,
22 access to which shall be made available to the commission upon
23 request.

24 (c) Not promote or market the program through the use of
25 utility billing inserts, printed messages on the utility's billing
26 materials, or other promotional materials included with customers'
27 utility bills.

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

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

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

21 (b) A customer's regulated utility service is not terminated
22 for nonpayment of the appliance service program portion of the
23 bill.

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

27 (9) In marketing its appliance service program to the public,

1 a utility shall do all of the following:

2 (a) The list of customers receiving regulated service from the
3 utility shall be available to a provider of appliance repair
4 service upon request within 2 business days. The customer list
5 shall be provided in the same electronic format as ~~such~~**THE**
6 information is provided to the appliance service program. A new
7 customer shall be added to the customer list within 1 business day
8 of the date the customer requested to turn on service.

9 (b) Appropriately allocate costs as required under subsection
10 (7) when personnel employed at a utility's call center provide
11 appliance service program marketing information to a prospective
12 customer.

13 (c) ~~Prior to~~**BEFORE** enrolling a customer into the program, the
14 utility shall inform the potential customer of all of the
15 following:

16 (i) That appliance service programs may be available from
17 another provider.

18 (ii) That the appliance service program is not regulated by the
19 commission.

20 (iii) That a new customer ~~shall have~~**HAS** 10 days after
21 enrollment to cancel his or her appliance service program contract
22 without penalty.

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

27 (d) The utility name and logo may be used to market the

1 appliance service program provided that the program is not marketed
2 in conjunction with a regulated service. ~~To the extent that~~ **IF** a
3 program utilizes the utility's name and logo in marketing the
4 program, the program shall include language on all material
5 indicating that the program is not regulated by the commission.
6 Costs shall not be allocated to the program for the use of the
7 utility's name or logo.

8 (10) This section does not prohibit the commission from
9 requiring a utility to include revenues from an appliance service
10 program in establishing base rates. If the commission includes the
11 revenues of an appliance service program in determining a utility's
12 base rates, the commission shall also include all of the costs of
13 the program as determined under this section.

14 (11) Except as otherwise provided in this section, the code of
15 conduct with respect to an appliance service program shall not
16 require a utility to form a separate affiliate or division to
17 operate an appliance service program, impose further restrictions
18 on the sharing of employees, vehicles, equipment, office space, and
19 other facilities, or require the utility to provide other providers
20 of appliance repair service with access to utility employees,
21 vehicles, equipment, office space, or other facilities.

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

1 means any of the following:

2 (a) Electricity generated and consumed at an industrial site
3 or contiguous industrial site or single commercial establishment or
4 single residence without the use of an electric utility's
5 transmission and distribution system.

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

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

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

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

26 (a) "Affiliate" means a person or entity that directly, or
27 indirectly through 1 or more intermediates, controls, is controlled

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

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

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

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

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

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

8 (15) A customer ~~who~~**THAT** elects to receive service from an
9 alternative electric supplier may subsequently provide notice to
10 the electric utility of the customer's desire to receive standard
11 tariff service from the electric utility. The procedures in place
12 for each electric utility as of January 1, 2008 that set forth the
13 terms ~~pursuant to~~**UNDER** which a customer receiving service from an
14 alternative electric supplier may return to full service from the
15 electric utility are ratified, ~~and shall remain in effect~~, and may
16 be amended by the commission as needed. If an electric utility did
17 not have the procedures in place as of January 1, 2008, the
18 commission shall adopt those procedures.

19 (16) The commission shall authorize rates that will ensure
20 that an electric utility that offered retail open access service
21 from 2002 through ~~the effective date of the amendatory act that~~
22 ~~added this subsection~~**OCTOBER 6, 2008** fully recovers its
23 restructuring costs and any associated accrued regulatory assets.
24 This includes, but is not limited to, implementation costs,
25 stranded costs, and costs authorized ~~pursuant to~~**UNDER** section
26 10d(4) as it existed ~~prior to the effective date of the amendatory~~
27 ~~act that added this subsection~~,**BEFORE OCTOBER 6, 2008** that have

1 been authorized for recovery by the commission in orders issued
2 ~~prior to the effective date of the amendatory act that added this~~
3 ~~subsection.~~ **BEFORE OCTOBER 6, 2008.** The commission shall approve
4 surcharges that will ensure full recovery of all such costs ~~within~~
5 ~~5 years of the effective date of the amendatory act that added this~~
6 ~~subsection.~~ **BY OCTOBER 6, 2013.**

7 (17) As used in subsections (1) and (15):

8 (a) "Customer" means the building or facilities served through
9 a single existing electric billing meter and does not mean the
10 person, corporation, partnership, association, governmental body,
11 or other entity owning or having possession of the building or
12 facilities.

13 (b) "Standard tariff service" means, for each regulated
14 electric utility, the retail rates, terms, and conditions of
15 service approved by the commission for service to customers who do
16 not elect to receive generation service from alternative electric
17 suppliers.