

**HOUSE SUBSTITUTE FOR
SENATE BILL NO. 437**

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 the title and sections 6a, 6j, 6k, 6l, 6m, 6s, 10, 10a, 10c, 10f, 10p, 10r, 10t, 10dd, and 11 (MCL 460.6a, 460.6j, 460.6k,

460.6l, 460.6m, 460.6s, 460.10, 460.10a, 460.10c, 460.10f, 460.10p, 460.10r, 460.10t, 460.10dd, and 460.11), the title as amended by 2005 PA 190, sections 6a, 10, 10a, 10p, and 10r as amended and sections 6s and 10dd as added by 2008 PA 286, section 6j as amended by 1987 PA 81, section 6k as added by 1982 PA 304, section 6l as amended and sections 10c, 10f, and 10t as added by 2000 PA 141, section 6m as amended by 2014 PA 170, and section 11 as amended by 2014 PA 169, and by adding sections 6t, 6u, 6v, 6w, 6x, 6z, 10ee, and 10ff; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE

2 An act to provide for the regulation and control of public and
 3 certain private utilities and other services affected with a public
 4 interest within this state; to provide for alternative energy
 5 suppliers; to provide for licensing; to include municipally owned
 6 utilities and other providers of energy under certain provisions of
 7 this act; to create a public service commission and to prescribe
 8 and define its powers and duties; to abolish the Michigan public
 9 utilities commission and to confer the powers and duties vested by
 10 law on the public service commission; **TO PROVIDE FOR THE POWERS AND**
 11 **DUTIES OF CERTAIN STATE GOVERNMENTAL OFFICERS AND ENTITIES;** to
 12 provide for the continuance, transfer, and completion of certain
 13 matters and proceedings; to abolish automatic adjustment clauses;
 14 to prohibit certain rate increases without notice and hearing; to
 15 qualify residential energy conservation programs permitted under
 16 state law for certain federal exemption; to create a fund; ~~to~~
 17 ~~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.

Sec. 6a. (1) A gas ~~or~~ **UTILITY**, electric utility, **OR STEAM UTILITY** shall not increase its rates and charges or alter, change, or amend any rate or rate schedules, the effect of which will be to increase the cost of services to its customers, without first receiving commission approval as provided in this section. **A UTILITY SHALL COORDINATE WITH THE COMMISSION STAFF IN ADVANCE OF FILING ITS GENERAL RATE CASE APPLICATION UNDER THIS SECTION TO AVOID RESOURCE CHALLENGES WITH APPLICATIONS BEING FILED AT THE SAME TIME AS APPLICATIONS FILED UNDER THIS SECTION BY OTHER UTILITIES. IN THE CASE OF ELECTRIC UTILITIES SERVING MORE THAN 1,000,000 CUSTOMERS IN THIS STATE, THE COMMISSION MAY, IF NECESSARY, ORDER A DELAY IN FILING AN APPLICATION TO ESTABLISH A 21-DAY SPACING BETWEEN FILINGS OF ELECTRIC UTILITIES SERVING MORE THAN 1,000,000 CUSTOMERS IN THIS STATE.** The utility shall place in evidence facts relied upon to support the utility's petition or application to increase its rates and charges, or to alter, change, or amend any rate or rate schedules. The commission shall require notice to be given to all interested parties within the service area to be affected, and all interested parties shall have a reasonable opportunity for a full and complete hearing. A utility may use

1 projected costs and revenues for a future consecutive 12-month
2 period in developing its requested rates and charges. The
3 commission shall notify the utility within 30 days ~~of~~ **AFTER** filing,
4 whether the utility's petition or application is complete. A
5 petition or application is considered complete if it complies with
6 the rate application filing forms and instructions adopted under
7 subsection ~~(6)~~. **(8)**. ~~A petition or application pending before the~~
8 ~~commission prior to the adoption of filing forms and instructions~~
9 ~~pursuant to subsection (6) shall be evaluated based upon the filing~~
10 ~~requirements in effect at the time the petition or application was~~
11 ~~filed.~~ If the application is not complete, the commission shall
12 notify the utility of all information necessary to make that filing
13 complete. If the commission has not notified the utility within 30
14 days of whether the utility's petition or application is complete,
15 the application is considered complete. **CONCURRENTLY WITH FILING A**
16 **COMPLETE APPLICATION, OR AT ANY TIME AFTER FILING A COMPLETE**
17 **APPLICATION, A GAS UTILITY SERVING FEWER THAN 1,000,000 CUSTOMERS**
18 **IN THIS STATE MAY FILE A MOTION SEEKING PARTIAL AND IMMEDIATE RATE**
19 **RELIEF. AFTER PROVIDING NOTICE TO THE INTERESTED PARTIES WITHIN THE**
20 **SERVICE AREA TO BE AFFECTED AND AFFORDING INTERESTED PARTIES A**
21 **REASONABLE OPPORTUNITY TO PRESENT WRITTEN EVIDENCE AND WRITTEN**
22 **ARGUMENTS RELEVANT TO THE MOTION SEEKING PARTIAL AND IMMEDIATE RATE**
23 **RELIEF, THE COMMISSION SHALL MAKE A FINDING AND ENTER AN ORDER**
24 **GRANTING OR DENYING PARTIAL AND IMMEDIATE RELIEF WITHIN 180 DAYS**
25 **AFTER THE MOTION SEEKING PARTIAL AND IMMEDIATE RATE RELIEF WAS**
26 **SUBMITTED. THE COMMISSION HAS 12 MONTHS TO ISSUE A FINAL ORDER IN A**
27 **CASE IN WHICH A GAS UTILITY HAS FILED A MOTION SEEKING PARTIAL AND**

1 **IMMEDIATE RATE RELIEF.**

2 (2) If the commission has not issued an order within 180 days
3 of the filing of a complete application, the utility may implement
4 up to the amount of the proposed annual rate request through equal
5 percentage increases or decreases applied to all base rates. ~~For a~~
6 ~~petition or application pending before the commission prior to the~~
7 ~~effective date of the amendatory act that added this sentence, the~~
8 ~~180-day period commences on the effective date of the amendatory~~
9 ~~act that added this sentence.~~ If the utility uses projected costs
10 and revenues for a future period in developing its requested rates
11 and charges, the utility may not implement the equal percentage
12 increases or decreases ~~prior to~~ **BEFORE** the calendar date
13 corresponding to the start of the projected 12-month period. For
14 good cause, the commission may issue a temporary order preventing
15 or delaying a utility from implementing its proposed rates or
16 charges. If a utility implements increased rates or charges under
17 this subsection before the commission issues a final order, that
18 utility shall refund to customers, with interest, any portion of
19 the total revenues collected through application of the equal
20 percentage increase that exceed the total that would have been
21 produced by the rates or charges subsequently ordered by the
22 commission in its final order. The commission shall allocate any
23 refund required by this ~~section~~ **SUBSECTION** among primary customers
24 based upon their pro rata share of the total revenue collected
25 through the applicable increase, and among secondary and
26 residential customers in a manner to be determined by the
27 commission. The rate of interest for refunds shall equal 5% plus

1 the London interbank offered rate (LIBOR) for the appropriate time
 2 period. For any portion of the refund ~~which, THAT~~, exclusive of
 3 interest, exceeds 25% of the annual revenue increase awarded by the
 4 commission in its final order, the rate of interest shall be the
 5 authorized rate of return on the common stock of the utility during
 6 the appropriate period. Any refund or interest awarded under this
 7 subsection shall not be included, in whole or in part, in any
 8 application for a rate increase by a utility. ~~Nothing in this~~ **THIS**
 9 **SUBSECTION ONLY APPLIES TO COMPLETED APPLICATIONS FILED WITH THE**
 10 **COMMISSION BEFORE THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT**
 11 **ADDED SECTION 6T.**

12 (3) **THIS** section ~~impairs~~ **DOES NOT IMPAIR** the commission's
 13 ability to issue a show cause order as part of its rate-making
 14 authority. An alteration or amendment in rates or rate schedules
 15 applied for by a public utility that will not result in an increase
 16 in the cost of service to its customers may be authorized and
 17 approved without notice or hearing. There shall be no increase in
 18 rates based upon changes in cost of fuel, ~~or~~ purchased gas, **OR**
 19 **PURCHASED STEAM** unless notice has been given within the service
 20 area to be affected, and there has been an opportunity for a full
 21 and complete hearing on the cost of fuel, ~~or~~ purchased gas, **OR**
 22 **PURCHASED STEAM**. The rates charged by any utility ~~pursuant to~~ **UNDER**
 23 an automatic fuel, ~~or~~ purchased gas, **OR PURCHASED STEAM** adjustment
 24 clause shall not be altered, changed, or amended unless notice has
 25 been given within the service area to be affected, and there has
 26 been an opportunity for a full and complete hearing on the cost of
 27 the fuel, ~~or~~ purchased gas, **OR PURCHASED STEAM**.

(4) ~~(2)~~ The commission shall adopt rules and procedures for the filing, investigation, and hearing of petitions or applications to increase or decrease utility rates and charges as the commission finds necessary or appropriate to enable it to reach a final decision with respect to petitions or applications within a period of ~~12 months from~~ **TIME ALLOTTED BY LAW TO ISSUE A FINAL ORDER AFTER** the filing of the complete petitions or applications. The commission shall not authorize or approve adjustment clauses that operate without notice and an opportunity for a full and complete hearing, and all such clauses ~~shall be~~ **ARE** abolished. The commission may hold a full and complete hearing to determine the cost of fuel, purchased gas, **PURCHASED STEAM**, or purchased power separately from a full and complete hearing on a general rate case and may ~~be held~~ **HOLD THAT HEARING** concurrently with the general rate case. The commission shall authorize a utility to recover the cost of fuel, purchased gas, **PURCHASED STEAM**, or purchased power only to the extent that the purchases are reasonable and prudent. ~~As used in this section:~~

~~—— (a) "Full and complete hearing" means a hearing that provides interested parties a reasonable opportunity to present and cross-examine evidence and present arguments relevant to the specific element or elements of the request that are the subject of the hearing.~~

~~—— (b) "General rate case" means a proceeding initiated by a utility in an application filed with the commission that alleges a revenue deficiency and requests an increase in the schedule of rates or charges based on the utility's total cost of providing~~

1 ~~service.~~

2 (5) ~~(3)~~ Except as otherwise provided in this subsection **AND**
 3 **SUBSECTION (1)**, if the commission fails to reach a final decision
 4 with respect to a completed petition or application to increase or
 5 decrease utility rates within the ~~12-month~~ **10-MONTH** period
 6 following the filing of the completed petition or application, the
 7 petition or application is considered approved. If a utility makes
 8 any significant amendment to its filing, the commission has an
 9 additional ~~12-10~~ months ~~from~~ **AFTER** the date of the amendment to
 10 reach a final decision on the petition or application. If the
 11 utility files for an extension of time, the commission shall extend
 12 the ~~12-month~~ **10-MONTH** period by the amount of additional time
 13 requested by the utility.

14 (6) ~~(4)~~ A utility shall not file a general rate case
 15 application for an increase in rates earlier than 12 months after
 16 the date of the filing of a complete prior general rate case
 17 application. A utility may not file a new general rate case
 18 application until the commission has issued a final order on a
 19 prior general rate case or until the rates are approved under
 20 subsection ~~(3)~~ **(5)**.

21 (7) ~~(5)~~ The commission shall, if requested by a gas utility,
 22 establish load retention transportation rate schedules or approve
 23 gas transportation contracts as required for the purpose of
 24 ~~retaining~~ **SERVING** industrial or commercial customers whose
 25 individual annual transportation volumes exceed 500,000 decatherms
 26 on the gas utility's system. The commission shall approve these
 27 rate schedules or approve transportation contracts entered into by

1 the utility in good faith if the industrial or commercial customer
2 has the installed capability to use an alternative fuel or
3 otherwise has a viable alternative to receiving natural gas
4 transportation service from the utility, the customer can obtain
5 the alternative fuel or gas transportation from an alternative
6 source at a price ~~which~~ **THAT** would cause them ~~to cease using~~ **NOT TO**
7 **USE** the gas utility's system, and the customer, as a result of
8 their use of the system and receipt of transportation service,
9 makes a significant contribution to the utility's fixed costs. The
10 commission shall adopt accounting and rate-making policies to
11 ensure that the discounts associated with the transportation rate
12 schedules and contracts are recovered by the gas utility through
13 charges applicable to other customers if the incremental costs
14 related to the discounts are no greater than the costs that would
15 be passed on to those customers as the result of a loss of the
16 industrial or commercial customer's contribution to a utility's
17 fixed costs.

18 **(8)** ~~(6) Within 90 days of the effective date of the amendatory~~
19 ~~act that added this subsection, the~~ **THE** commission shall adopt
20 standard rate application filing forms and instructions for use in
21 all general rate cases filed by utilities whose rates are regulated
22 by the commission. For cooperative electric utilities whose rates
23 are regulated by the commission, in addition to rate applications
24 filed under this section, the commission shall continue to allow
25 for rate filings based on the cooperative's times interest earned
26 ratio. The commission may ~~, in its discretion,~~ modify the standard
27 rate application forms and instructions adopted under this

1 subsection.

2 **(9)** ~~(7)~~—If, on or before January 1, 2008, a merchant plant
3 entered into a contract with an initial term of 20 years or more to
4 sell electricity to an electric utility whose rates are regulated
5 by the commission with 1,000,000 or more retail customers in this
6 state and if, ~~prior to~~ **BEFORE** January 1, 2008, the merchant plant
7 generated electricity under that contract, in whole or in part,
8 from wood or solid wood wastes, then the merchant plant shall, upon
9 petition by the merchant plant, and subject to the limitation set
10 forth in subsection ~~(8)~~, **(10)**, recover the amount, if any, by which
11 the merchant plant's reasonably and prudently incurred actual fuel
12 and variable operation and maintenance costs exceed the amount that
13 the merchant plant is paid under the contract for those costs. This
14 subsection does not apply to landfill gas plants, hydro plants,
15 municipal solid waste plants, or to merchant plants engaged in
16 litigation against an electric utility seeking higher payments for
17 power delivered pursuant to contract.

18 **(10)** ~~(8)~~—The total aggregate additional amounts recoverable by
19 merchant plants ~~pursuant to~~ **UNDER** subsection ~~(7)~~ **(9)** in excess of
20 the amounts paid under the contracts shall not exceed \$1,000,000.00
21 per month for each affected electric utility. The \$1,000,000.00 per
22 month limit specified in this subsection shall be reviewed by the
23 commission upon petition of the merchant plant filed no more than
24 once per year and may be adjusted if the commission finds that the
25 eligible merchant plants reasonably and prudently incurred actual
26 fuel and variable operation and maintenance costs exceed the amount
27 that those merchant plants are paid under the contract by more than

1 \$1,000,000.00 per month. The annual amount of the adjustments shall
2 not exceed a rate equal to the United States consumer price index.
3 ~~An~~ **THE COMMISSION SHALL NOT MAKE AN** adjustment ~~shall not be made by~~
4 ~~the commission~~ unless each affected merchant plant files a petition
5 with the commission. ~~As used in this subsection, "United States~~
6 ~~consumer price index" means the United States consumer price index~~
7 ~~for all urban consumers as defined and reported by the United~~
8 ~~States department of labor, bureau of labor statistics.~~ If the
9 total aggregate amount by which the eligible merchant plants
10 reasonably and prudently incurred actual fuel and variable
11 operation and maintenance costs determined by the commission exceed
12 the amount that the merchant plants are paid under the contract by
13 more than \$1,000,000.00 per month, the commission shall allocate
14 the additional \$1,000,000.00 per month payment among the eligible
15 merchant plants based upon the relationship of excess costs among
16 the eligible merchant plants. The \$1,000,000.00 limit specified in
17 this subsection, as adjusted, ~~shall~~ **DOES** not apply ~~with respect to~~
18 actual fuel and variable operation and maintenance costs that are
19 incurred due to changes in federal or state environmental laws or
20 regulations that are implemented after ~~the effective date of the~~
21 ~~amendatory act that added this subsection.~~ **OCTOBER 6, 2008.** The
22 \$1,000,000.00 per month payment limit under this subsection ~~shall~~
23 **DOES** not apply to merchant plants eligible under subsection ~~(7)~~ **(9)**
24 whose electricity is purchased by a utility that is using wood or
25 wood waste or fuels derived from those materials for fuel in their
26 power plants. **AS USED IN THIS SUBSECTION, "UNITED STATES CONSUMER**
27 **PRICE INDEX" MEANS THE UNITED STATES CONSUMER PRICE INDEX FOR ALL**

Senate Bill No. 437 as amended December 15, 2016

1 URBAN CONSUMERS AS DEFINED AND REPORTED BY THE UNITED STATES

2 DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS.

3 (11) ~~(9)~~—The commission shall issue orders to permit the
 4 recovery authorized under subsections ~~(7)~~—(9) and ~~(8)~~—(10) upon
 5 petition of the merchant plant. The merchant plant ~~shall~~ IS not be
 6 required to alter or amend the existing contract with the electric
 7 utility in order to obtain the recovery under subsections ~~(7)~~—(9)
 8 and ~~(8)~~—(10). The commission shall permit or require the electric
 9 utility whose rates are regulated by the commission to recover from
 10 its ratepayers all fuel and variable operation and maintenance
 11 costs that the electric utility is required to pay to the merchant
 12 plant as reasonably and prudently incurred costs.

13 (12) SUBJECT TO SUBSECTION (13), IF REQUESTED BY AN ELECTRIC
 14 UTILITY WITH LESS THAN 200,000 CUSTOMERS [IN THIS STATE], THE COMMISSION
 SHALL
 15 APPROVE AN APPROPRIATE REVENUE DECOUPLING MECHANISM THAT ADJUSTS
 16 FOR DECREASES IN ACTUAL SALES COMPARED TO THE PROJECTED LEVELS USED
 17 IN THAT UTILITY'S MOST RECENT RATE CASE THAT ARE THE RESULT OF
 18 IMPLEMENTED ENERGY WASTE REDUCTION, CONSERVATION, DEMAND-SIDE
 19 PROGRAMS, AND OTHER WASTE REDUCTION MEASURES, IF THE UTILITY FIRST
 20 DEMONSTRATES THE FOLLOWING TO THE COMMISSION:

21 (A) THAT THE PROJECTED SALES FORECAST IN THE UTILITY'S MOST
 22 RECENT RATE CASE IS REASONABLE.

23 (B) THAT THE ELECTRIC UTILITY HAS ACHIEVED ANNUAL INCREMENTAL
 24 ENERGY SAVINGS AT LEAST EQUAL TO THE LESSER OF THE FOLLOWING:

25 (i) ONE PERCENT OF ITS TOTAL ANNUAL RETAIL ELECTRICITY SALES
 26 IN THE PREVIOUS YEAR.

27 (ii) THE AMOUNT OF ANY INCREMENTAL SAVINGS YIELDED BY ENERGY

1 WASTE REDUCTION, CONSERVATION, DEMAND-SIDE PROGRAMS, AND OTHER
2 WASTE REDUCTION MEASURES APPROVED BY THE COMMISSION IN THAT
3 UTILITY'S MOST RECENT INTEGRATED RESOURCE PLAN.

4 (13) THE COMMISSION SHALL CONSIDER THE AGGREGATE REVENUES
5 ATTRIBUTABLE TO REVENUE DECOUPLING MECHANISMS, FINANCIAL
6 INCENTIVES, AND SHARED SAVINGS MECHANISMS THE COMMISSION HAS
7 APPROVED FOR AN ELECTRIC UTILITY RELATIVE TO ENERGY WASTE
8 REDUCTION, CONSERVATION, DEMAND-SIDE PROGRAMS, PEAK LOAD REDUCTION,
9 AND OTHER WASTE REDUCTION MEASURES. THE COMMISSION MAY APPROVE AN
10 ALTERNATIVE METHODOLOGY FOR A REVENUE DECOUPLING MECHANISM
11 AUTHORIZED UNDER SUBSECTION (12), A FINANCIAL INCENTIVE AUTHORIZED
12 UNDER SECTION 75 OF THE CLEAN AND RENEWABLE ENERGY AND ENERGY WASTE
13 REDUCTION ACT, 2008 PA 295, MCL 460.1075, OR A SHARED SAVINGS
14 MECHANISM AUTHORIZED UNDER SECTION 6X IF THE COMMISSION DETERMINES
15 THAT THE RESULTING AGGREGATE REVENUES FROM THOSE MECHANISMS WOULD
16 NOT RESULT IN A REASONABLE AND COST-EFFECTIVE METHOD TO ENSURE THAT
17 INVESTMENTS IN ENERGY WASTE REDUCTION, DEMAND-SIDE PROGRAMS, PEAK
18 LOAD REDUCTION, AND OTHER WASTE REDUCTION MEASURES ARE NOT
19 DISFAVORED WHEN COMPARED TO UTILITY SUPPLY-SIDE INVESTMENTS. THE
20 COMMISSION'S CONSIDERATION OF AN ALTERNATIVE METHODOLOGY UNDER THIS
21 SUBSECTION SHALL BE CONDUCTED AS A CONTESTED CASE PURSUANT TO
22 CHAPTER 4 OF THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA
23 306, MCL 24.271 TO 24.287.

24 (14) WITHIN 1 YEAR AFTER THE EFFECTIVE DATE OF THE AMENDATORY
25 ACT THAT ADDED THIS SUBSECTION, THE COMMISSION SHALL CONDUCT A
26 STUDY ON AN APPROPRIATE TARIFF REFLECTING EQUITABLE COST OF SERVICE
27 FOR UTILITY REVENUE REQUIREMENTS FOR CUSTOMERS WHO PARTICIPATE IN A

Senate Bill No. 437 as amended December 15, 2016

1 NET METERING PROGRAM OR DISTRIBUTED GENERATION PROGRAM UNDER THE
2 CLEAN AND RENEWABLE ENERGY AND ENERGY WASTE REDUCTION ACT, 2008 PA
3 295, MCL 460.1001 TO 460.1211. IN ANY RATE CASE FILED AFTER JUNE 1,
4 2018, THE COMMISSION SHALL APPROVE SUCH A TARIFF FOR INCLUSION IN
5 THE RATES OF ALL CUSTOMERS PARTICIPATING IN A NET METERING OR
6 DISTRIBUTED GENERATION PROGRAM UNDER THE CLEAN AND RENEWABLE ENERGY
7 AND ENERGY WASTE REDUCTION ACT, 2008 PA 295, MCL 460.1001 TO
8 460.1211. A [TARIFF] ESTABLISHED UNDER THIS SUBSECTION DOES NOT
APPLY
9 TO CUSTOMERS PARTICIPATING IN A NET METERING PROGRAM UNDER THE
10 CLEAN AND RENEWABLE ENERGY AND ENERGY WASTE REDUCTION ACT, 2008 PA
11 295, MCL 460.1001 TO 460.1211, BEFORE THE DATE THAT THE COMMISSION
12 ESTABLISHES A [TARIFF] UNDER THIS SUBSECTION, WHO CONTINUES TO
13 PARTICIPATE IN THE PROGRAM AT THEIR CURRENT SITE OR FACILITY.

14 (15) EXCEPT AS OTHERWISE PROVIDED IN THIS ACT, "UTILITY" AND
15 "ELECTRIC UTILITY" DO NOT INCLUDE A MUNICIPALLY OWNED ELECTRIC
16 UTILITY.

17 (16) AS USED IN THIS SECTION:

18 (A) "FULL AND COMPLETE HEARING" MEANS A HEARING THAT PROVIDES
19 INTERESTED PARTIES A REASONABLE OPPORTUNITY TO PRESENT AND CROSS-
20 EXAMINE EVIDENCE AND PRESENT ARGUMENTS RELEVANT TO THE SPECIFIC
21 ELEMENT OR ELEMENTS OF THE REQUEST THAT ARE THE SUBJECT OF THE
22 HEARING.

23 (B) "GENERAL RATE CASE" MEANS A PROCEEDING INITIATED BY A
24 UTILITY IN AN APPLICATION FILED WITH THE COMMISSION THAT ALLEGES A
25 REVENUE DEFICIENCY AND REQUESTS AN INCREASE IN THE SCHEDULE OF
26 RATES OR CHARGES BASED ON THE UTILITY'S TOTAL COST OF PROVIDING
27 SERVICE.

1 (C) "STEAM UTILITY" MEANS A STEAM DISTRIBUTION COMPANY
2 REGULATED BY THE COMMISSION.

3 Sec. 6j. (1) As used in this act:

4 (A) "LONG-TERM FIRM GAS TRANSPORTATION" MEANS A BINDING
5 AGREEMENT ENTERED INTO BETWEEN THE ELECTRIC UTILITY AND A NATURAL
6 GAS TRANSMISSION PROVIDER FOR A SET PERIOD OF TIME TO PROVIDE FIRM
7 DELIVERY OF NATURAL GAS TO AN ELECTRIC GENERATION FACILITY.

8 (B) ~~(a)~~ "Power supply cost recovery clause" means a clause in
9 the electric rates or rate schedule of ~~a~~ **AN ELECTRIC** utility ~~which~~
10 **THAT** permits the monthly adjustment of rates for power supply to
11 allow the utility to recover the booked costs, including
12 transportation costs, reclamation costs, and disposal and
13 reprocessing costs, of fuel burned by the utility for electric
14 generation and the booked costs of purchased and net interchanged
15 power transactions by the utility incurred under reasonable and
16 prudent policies and practices.

17 (C) ~~(b)~~ "Power supply cost recovery factor" means that element
18 of the rates to be charged for electric service to reflect power
19 supply costs incurred by an electric utility and made pursuant to a
20 power supply cost recovery clause incorporated in the rates or rate
21 schedule of an electric utility.

22 (2) ~~Pursuant to its authority under this act, the~~ **THE** public
23 service commission may incorporate a power supply cost recovery
24 clause in the electric rates or rate schedule of ~~a~~ **AN ELECTRIC**
25 utility. ~~, but is not required to do so.~~ Any order incorporating a
26 power supply cost recovery clause shall be as a result of a hearing
27 solely on the question of the inclusion of the clause in the rates

1 or rate schedule. ~~which~~ **A** hearing **UNDER THIS SUBSECTION** shall be
 2 conducted as a contested case pursuant to chapter 4 of the
 3 administrative procedures act of 1969, ~~Act No. 306 of the Public~~
 4 ~~Acts of 1969, being sections 24.271 to 24.287 of the Michigan~~
 5 ~~Compiled Laws, 1969 PA 306, MCL 24.271 TO 24.287,~~ or, pursuant to
 6 subsection (18), as a result of a general rate case. Any order
 7 incorporating a power supply cost recovery clause shall replace and
 8 rescind any previous fuel cost adjustment clause or purchased and
 9 net interchanged power adjustment clause incorporated in the
 10 electric rates of the utility upon the effective date of the first
 11 power supply cost recovery factor authorized for the utility under
 12 its power supply cost recovery clause.

13 (3) In order to implement the power supply cost recovery
 14 clause established ~~pursuant to~~ **UNDER** subsection (2), ~~a~~ **AN ELECTRIC**
 15 utility annually shall file, pursuant to procedures established by
 16 the commission, if any, a complete power supply cost recovery plan
 17 describing the expected sources of electric power supply and
 18 changes in the cost of power supply anticipated over a future 12-
 19 month period specified by the commission and requesting for each of
 20 those 12 months a specific power supply cost recovery factor. The
 21 **UTILITY SHALL FILE THE** plan ~~shall be filed not less~~ **LATER** than 3
 22 months before the beginning of the 12-month period covered by the
 23 plan. The plan shall describe all major contracts and power supply
 24 arrangements entered into by the utility for providing power supply
 25 during the specified 12-month period. The description of the major
 26 contracts and arrangements shall include the price of fuel, the
 27 duration of the contract or arrangement, and an explanation or

1 description of any other term or provision as required by the
2 commission. **FOR GAS FUEL SUPPLY CONTRACTS OR ARRANGEMENTS, THE**
3 **DESCRIPTION SHALL INCLUDE WHETHER THE SUPPLY CONTRACTS OR**
4 **ARRANGEMENTS INCLUDE LONG-TERM FIRM GAS TRANSPORTATION AND, IF NOT,**
5 **AN EXPLANATION OF HOW THE UTILITY PROPOSES TO ENSURE RELIABLE AND**
6 **REASONABLY PRICED GAS FUEL SUPPLY TO ITS GENERATION FACILITIES**
7 **DURING THE SPECIFIED 12-MONTH PERIOD.** The plan shall also include
8 the utility's evaluation of the reasonableness and prudence of its
9 decisions to provide power supply in the manner described in the
10 plan, in light of its existing sources of electrical generation,
11 and an explanation of the actions taken by the utility to minimize
12 the cost of fuel to the utility.

13 (4) In order to implement the power supply cost recovery
14 clause established ~~pursuant to~~ **UNDER** subsection (2), a utility
15 shall file, contemporaneously with the power supply cost recovery
16 plan required by subsection (3), a 5-year forecast of the power
17 supply requirements of its customers, its anticipated sources of
18 supply, and projections of power supply costs, in light of its
19 existing sources of electrical generation and sources of electrical
20 generation under construction. The forecast shall include a
21 description of all relevant major contracts and power supply
22 arrangements entered into or contemplated by the utility, and ~~such~~
23 **ANY** other information ~~as~~ the commission may require.

24 (5) If ~~a~~ **AN ELECTRIC** utility files a power supply cost
25 recovery plan **UNDER SUBSECTION (3)** and a 5-year forecast ~~as~~
26 ~~provided in subsections (3) and~~ **UNDER SUBSECTION (4)**, the
27 commission shall conduct a proceeding, to be known as a power

1 supply and cost review, for the purpose of evaluating the
2 reasonableness and prudence of the power supply cost recovery plan
3 filed by a utility ~~pursuant to~~ **UNDER** subsection (3), and
4 establishing the power supply cost recovery factors to implement a
5 power supply cost recovery clause incorporated in the electric
6 rates or rate schedule of the utility. The power supply and cost
7 review shall be conducted as a contested case pursuant to chapter 4
8 of the administrative procedures act of 1969, ~~Act No. 306 of the~~
9 ~~Public Acts of 1969.~~ **1969 PA 306, MCL 24.271 TO 24.287.**

10 (6) In its final order in a power supply and cost review, the
11 commission shall evaluate the reasonableness and prudence of the
12 decisions underlying the power supply cost recovery plan filed by
13 ~~the~~ **AN ELECTRIC** utility ~~pursuant to~~ **UNDER** subsection (3), and shall
14 approve, disapprove, or amend the power supply cost recovery plan
15 accordingly. In evaluating the decisions underlying the power
16 supply cost recovery plan, the commission shall consider the cost
17 and availability of the electrical generation available to the
18 utility; the cost of short-term firm purchases available to the
19 utility; the availability of interruptible service; the ability of
20 the utility to reduce or to eliminate any firm sales to out-of-
21 state customers if the utility is not a multi-state utility whose
22 firm sales are subject to other regulatory authority; whether the
23 utility has taken all appropriate actions to minimize the cost of
24 fuel; and other relevant factors. The commission shall approve,
25 reject, or amend the 12 monthly power supply cost recovery factors
26 requested by the utility in its power supply cost recovery plan.
27 The factors shall not reflect items the commission could reasonably

1 anticipate would be disallowed under subsection (13). The factors
2 ordered shall be described in fixed dollar amounts per unit of
3 electricity, but may include specific amounts contingent on future
4 events.

5 (7) In its final order in a power supply and cost review, the
6 commission shall evaluate the decisions underlying the 5-year
7 forecast filed by a utility ~~pursuant to~~ **UNDER** subsection (4). The
8 commission may also indicate any cost items in the 5-year forecast
9 that, on the basis of present evidence, the commission would be
10 unlikely to permit the utility to recover from its customers in
11 rates, rate schedules, or power supply cost recovery factors
12 established in the future.

13 (8) The commission, on its own motion or the motion of any
14 party, may make a finding and enter a temporary order granting
15 approval or partial approval of a power supply cost recovery plan
16 in a power supply and cost recovery review, after first ~~having~~
17 ~~given~~ **GIVING** notice to the parties to the review, and after ~~having~~
18 ~~afforded to~~ **GIVING** the parties to the review a reasonable
19 opportunity for a full and complete hearing. A temporary order made
20 ~~pursuant to~~ **UNDER** this subsection ~~shall be~~ **IS** considered a final
21 order for purposes of judicial review.

22 (9) If the commission has made a final or temporary order in a
23 power supply and cost review, ~~the~~ **AN ELECTRIC** utility may each
24 month incorporate in its rates for the period covered by the order
25 any amounts up to the power supply cost recovery factors permitted
26 in that order. If the commission has not made a final or temporary
27 order within 3 months ~~of~~ **AFTER** the submission of a complete power

1 supply cost recovery plan, or by the beginning of the period
2 covered in the plan, whichever comes later, or if a temporary order
3 has expired without being extended or replaced, then pending an
4 order ~~which~~ **THAT** determines the power supply cost recovery factors,
5 a utility may each month adjust its rates to incorporate all or a
6 part of the power supply cost recovery factors requested in its
7 plan. Any amounts collected under the power supply cost recovery
8 factors before the commission makes its final order ~~shall be~~ **IS**
9 subject to prompt refund with interest to the extent that the total
10 amounts collected exceed the total amounts determined in the
11 commission's final order to be reasonable and prudent for the same
12 period of time.

13 (10) Not ~~less~~ **LATER** than 3 months before the beginning of the
14 third quarter of the 12-month period ~~, the~~ **DESCRIBED IN SUBSECTION**
15 **(3), AN ELECTRIC** utility may file a revised power supply cost
16 recovery plan ~~which shall cover~~ **THAT COVERS** the remainder of the
17 12-month period. Upon receipt of the revised power supply cost
18 recovery plan, the commission shall reopen the power supply and
19 cost review. In addition, the commission may reopen the power
20 supply and cost review on its own motion or on the showing of good
21 cause by any party if at least 6 months have elapsed since the
22 utility submitted its complete filing and if there are at least 60
23 days remaining in the 12-month period under consideration. A
24 reopened power supply and cost review shall be conducted as a
25 contested case pursuant to chapter 4 of the administrative
26 procedures act of 1969, ~~Act No. 306 of the Public Acts of 1969,~~
27 **1969 PA 306, MCL 24.271 TO 24.287,** and in accordance with

1 subsections (3), (6), (8), and (9).

2 (11) Not ~~more~~**LATER** than 45 days ~~following~~**AFTER** the last day
3 of each billing month in which a power supply cost recovery factor
4 has been applied to customers' bills, ~~the~~**AN ELECTRIC** utility shall
5 file with the commission a detailed statement for that month of the
6 revenues recorded pursuant to the power supply cost recovery factor
7 and the allowance for cost of power supply included in the base
8 rates established in the latest commission order for the utility,
9 and the cost of power supply. The detailed statement shall be in
10 the manner and form prescribed by the commission. The commission
11 shall establish procedures for insuring that the detailed statement
12 is promptly verified and corrected if necessary.

13 (12) Not less than once a year, and not later than 3 months
14 after the end of the 12-month period covered by ~~a~~**AN ELECTRIC**
15 utility's power supply cost recovery plan, the commission shall
16 commence a proceeding, to be known as a power supply cost
17 reconciliation, as a contested case pursuant to chapter 4 of the
18 administrative procedures act of 1969, ~~Act No. 306 of the Public~~
19 ~~Acts of 1969. Reasonable~~**1969 PA 306, MCL 24.271 TO 24.287. THE**
20 **COMMISSION SHALL PERMIT REASONABLE** discovery ~~shall be permitted~~
21 before and during the reconciliation proceeding in order to assist
22 parties and interested persons in obtaining evidence concerning
23 reconciliation issues including, but not limited to, the
24 reasonableness and prudence of expenditures and the amounts
25 collected pursuant to the clause. At the power supply cost
26 reconciliation the commission shall reconcile the revenues recorded
27 pursuant to the power supply cost recovery factors and the

1 allowance for cost of power supply included in the base rates
 2 established in the latest commission order for the utility with the
 3 amounts actually expensed and included in the cost of power supply
 4 by the utility. The commission shall consider any issue regarding
 5 the reasonableness and prudence of expenses for which customers
 6 were charged if the issue was not considered adequately at a
 7 previously conducted power supply and cost review.

8 (13) In its order in a power supply cost reconciliation, the
 9 commission shall **DO ALL OF THE FOLLOWING:**

10 (a) Disallow cost increases resulting from changes in
 11 accounting or rate-making expense treatment not previously approved
 12 by the commission. The commission may order the utility to pay a
 13 penalty **OF** not ~~to exceed~~ **MORE THAN** 25% of the amount improperly
 14 collected. Costs incurred by the utility for penalty payments shall
 15 not be charged to customers.

16 ~~(b) Disallow any capacity charges associated with power~~
 17 ~~purchased for periods in excess of 6 months unless the utility has~~
 18 ~~obtained the prior approval of the commission. If~~ **NOT DISALLOW THE**
 19 **CAPACITY CHARGES FOR ANY FACILITIES FOR WHICH THE ELECTRIC UTILITY**
 20 **WOULD OTHERWISE HAVE A PURCHASE OBLIGATION IF** the commission has
 21 approved capacity charges in a contract with a qualifying facility,
 22 as **THAT TERM IS** defined by the ~~federal energy regulatory commission~~
 23 **FEDERAL ENERGY REGULATORY COMMISSION** pursuant to the public
 24 utilities regulatory policies act of 1978, Public Law 95-617, 92
 25 Stat. **STAT** 3117, ~~the commission shall not disallow the capacity~~
 26 ~~charges for the facility in the power supply cost reconciliation~~
 27 unless the commission has ordered revised capacity charges upon

1 reconsideration ~~pursuant to~~ **UNDER** this subsection. A contract ~~shall~~
2 ~~be~~ **IS** valid and binding in accordance with its terms, and capacity
3 charges paid pursuant to ~~such a~~ **THAT** contract ~~shall be~~ **ARE**
4 recoverable costs of the utility for rate-making purposes
5 notwithstanding that the order approving ~~such a~~ **THAT** contract is
6 later vacated, modified, or otherwise held to be invalid in whole
7 or in part if the order approving the contract has not been stayed
8 or suspended by a competent court within 30 days after the date of
9 the order, or ~~within 30 days of the effective date of the 1987~~
10 ~~amendatory act that added subsection (19)~~ **BY JULY 29, 1987** if the
11 order was issued after September 1, 1986 ~~and before the effective~~
12 ~~date of the 1987 amendatory act that added subsection (19).~~ **JUNE**
13 **29, 1987.** The **COMMISSION SHALL DETERMINE THE** scope and manner of
14 the review of capacity charges for a qualifying facility. ~~shall be~~
15 ~~determined by the commission.~~ Except as to approvals for qualifying
16 facilities granted by the commission ~~prior to~~ **BEFORE** June 1, 1987,
17 proceedings before the commission seeking ~~such~~ **THOSE** approvals
18 shall be conducted as a contested case pursuant to chapter 4 of the
19 administrative procedures act of 1969, ~~Act No. 306 of the Public~~
20 ~~Acts of 1969.~~ **1969 PA 306, MCL 24.271 TO 24.287.** The commission,
21 upon its own motion or upon application of any person, may
22 reconsider its approval of capacity charges **FOR A QUALIFYING**
23 **FACILITY** in a contested case hearing after passage of a period
24 necessary for financing the qualifying facility, ~~provided that:~~ **IF**
25 **BOTH OF THE FOLLOWING APPLY:**

26 (i) The commission has first issued an order making a finding
27 based on evidence presented in a contested case that there has been

1 a substantial change in circumstances since the commission's
2 initial approval. ~~and~~

3 (ii) ~~Such a~~ **THE** commission finding ~~shall be~~ **IS** set forth in a
4 commission order subject to immediate judicial review.

5 The financing period for a qualifying facility during which
6 previously approved capacity charges ~~shall~~ **ARE** not ~~be~~ subject to
7 commission reconsideration ~~shall be~~ **IS** 17.5 years, beginning with
8 the date of commercial operation, for all qualifying facilities,
9 except that the minimum financing period before reconsideration of
10 the previously approved capacity charges ~~shall be~~ **IS** for the
11 duration of the financing for a qualifying facility ~~which~~ **THAT**
12 produces electric energy by the use of biomass, waste, wood,
13 hydroelectric, wind, and other renewable resources, or any
14 combination of renewable resources, as the primary energy source.

15 (c) Disallow net increased costs attributable to a generating
16 plant outage of more than 90 days in duration unless the utility
17 demonstrates by clear and satisfactory evidence that the outage, or
18 any part of the outage, was not caused or prolonged by the
19 utility's negligence or by unreasonable or imprudent management.

20 (d) Disallow transportation costs attributable to capital
21 investments to develop a utility's capability to transport fuel or
22 relocate fuel at the utility's facilities and disallow unloading
23 and handling expenses incurred after receipt of fuel by the
24 utility.

25 (e) Disallow the cost of fuel purchased from an affiliated
26 company to the extent that ~~such~~ **THE** fuel is more costly than fuel
27 of requisite quality available at or about the same time from other

1 suppliers with whom it would be comparably cost beneficial to deal.

2 (f) Disallow charges unreasonably or imprudently incurred for
3 fuel not taken.

4 (g) Disallow additional costs resulting from unreasonably or
5 imprudently renegotiated fuel contracts.

6 (h) Disallow penalty charges unreasonably or imprudently
7 incurred.

8 (i) Disallow demurrage charges.

9 (j) Disallow increases in charges for nuclear fuel disposal
10 unless the utility has received the prior approval of the
11 commission.

12 (14) In its order in a power supply cost reconciliation, the
13 commission shall require a ~~an~~ **ELECTRIC** utility to refund to
14 customers or credit to customers' bills any net amount determined
15 to have been recovered over the period covered in excess of the
16 amounts determined to have been actually expensed by the utility
17 for power supply, and to have been incurred through reasonable and
18 prudent actions not precluded by the commission order in the power
19 supply and cost review. ~~Such~~ **THE COMMISSION SHALL APPORTION THE**
20 ~~refunds or credits shall be apportioned~~ among the customers of the
21 utility utilizing procedures that the commission determines to be
22 reasonable. The commission may adopt different procedures with
23 respect to customers served under the various rate schedules of the
24 utility and may, in appropriate circumstances, order refunds or
25 credits in proportion to the excess amounts actually collected from
26 each such customer during the period covered.

27 (15) In its order in a power supply cost reconciliation, the

1 commission shall authorize ~~a~~**AN ELECTRIC** utility to recover from
2 customers any net amount by which the amount determined to have
3 been recovered over the period covered was less than the amount
4 determined to have been actually expensed by the utility for power
5 supply, and to have been incurred through reasonable and prudent
6 actions not precluded by the commission order in the power supply
7 and cost review. For excess costs incurred through management
8 actions contrary to the commission's power supply and cost review
9 order, the commission shall authorize a utility to recover costs
10 incurred for power supply in the reconciliation period in excess of
11 the amount recovered over the period only if the utility
12 demonstrates by clear and convincing evidence that the excess
13 expenses were beyond the ability of the utility to control through
14 reasonable and prudent actions. For excess costs incurred through
15 management actions consistent with the commission's power supply
16 and cost review order, the commission shall authorize a utility to
17 recover costs incurred for power supply in the reconciliation
18 period in excess of the amount recovered over the period only if
19 the utility demonstrates that the level of ~~such~~**THOSE** expenses
20 resulted from reasonable and prudent management actions. ~~Such~~**THE**
21 amounts in excess of the amounts actually recovered by the utility
22 for power supply shall be apportioned among and charged to the
23 customers of the utility utilizing procedures that the commission
24 determines to be reasonable. The commission may adopt different
25 procedures with respect to customers served under the various rate
26 schedules of the utility and may, in appropriate circumstances,
27 order charges to be made in proportion to the amounts ~~which~~**THAT**

1 would have been paid by ~~such~~ **THOSE** customers if the amounts in
2 excess of the amounts actually recovered by the utility for cost of
3 power supply had been included in the power supply cost recovery
4 factors with respect to ~~such~~ **THOSE** customers during the period
5 covered. Charges for ~~such~~ **THE** excess amounts shall be spread over a
6 period that the commission determines to be appropriate.

7 (16) If the commission orders refunds or credits ~~pursuant to~~
8 **UNDER** subsection (14), or additional charges to customers ~~pursuant~~
9 ~~to~~ **UNDER** subsection (15), in its final order in a power supply cost
10 reconciliation, the refunds, credits, or additional charges shall
11 include interest. In determining the interest included in a refund,
12 credit, or additional charge ~~pursuant to~~ **UNDER** this subsection, the
13 commission shall consider, to the extent material and practicable,
14 the time at which the excess recoveries or insufficient recoveries,
15 or both occurred. The commission shall determine a rate of interest
16 for excess recoveries, refunds, and credits equal to the greater of
17 the average short-term borrowing rate available to the utility
18 during the appropriate period, or the authorized rate of return on
19 the common stock of the utility during that same period. Costs
20 incurred by the utility for refunds and interest on refunds shall
21 not be charged to customers. The commission shall determine a rate
22 of interest for insufficient recoveries and additional charges
23 equal to the average short-term borrowing rate available to the
24 utility during the appropriate period.

25 (17) To avoid undue hardship or unduly burdensome or excessive
26 cost, the commission may **DO BOTH OF THE FOLLOWING:**

27 (a) Exempt an electric utility with fewer than 200,000

1 customers in ~~the~~ **THIS** state ~~of Michigan~~ from 1 or more of the
 2 procedural provisions of this section or may modify the filing
 3 requirements of this section.

4 (b) Exempt an energy utility organized as a cooperative
 5 corporation ~~pursuant to~~ **UNDER** sections 98 to 109 of ~~Act No. 327 of~~
 6 ~~the Public Acts of 1931, being sections 450.98 to 450.109 of the~~
 7 ~~Michigan Compiled Laws, 1931 PA 327, MCL 450.98 TO 450.109,~~ from 1
 8 or more of the provisions of this section.

9 (18) Notwithstanding any other provision of this act, the
 10 commission may, upon application by an electric utility, set power
 11 supply cost recovery factors, in a manner otherwise consistent with
 12 this act, in an order resulting from a general rate case. ~~Within~~
 13 ~~120 days following the effective date of this section,~~ **BY OCTOBER**
 14 **27, 1987,** for the purpose of setting power supply cost recovery
 15 factors, the commission shall permit an electric utility to reopen
 16 a general rate case in which a final order was issued within 120
 17 days before or after ~~the effective date of this section~~ **JUNE 29,**
 18 **1987** or to amend an application or reopen the evidentiary record in
 19 a pending general rate case. If the commission sets power supply
 20 cost recovery factors in an order resulting from a general rate
 21 case, **ALL OF THE FOLLOWING APPLY:**

22 (a) The power supply cost recovery factors shall cover a
 23 future period of 48 months or the number of months ~~which~~ **THAT**
 24 elapse until the commission orders new power supply cost recovery
 25 factors in a general rate case, whichever is the shorter period.

26 (b) ~~Annual~~ **THE COMMISSION SHALL CONDUCT ANNUAL** reconciliation
 27 proceedings ~~shall be conducted pursuant to~~ **UNDER** subsection (12)

1 and if an annual reconciliation proceeding shows a recoverable
 2 amount ~~pursuant to~~ **UNDER** subsection (15), the commission shall
 3 authorize the electric utility to defer the amount and to
 4 accumulate interest on the amount ~~pursuant to~~ **UNDER** subsection
 5 (16), and in the next order resulting from a general rate case
 6 authorize the utility to recover the amount and interest from its
 7 customers in the manner provided in subsection (15).

8 (c) The power supply cost recovery factors ~~shall~~ **ARE** not be
 9 subject to revision ~~pursuant to~~ **UNDER** subsection (10).

10 ~~— (19) Five years after the effective date of the amendatory act~~
 11 ~~that added this subsection, and every 5 years thereafter, the~~
 12 ~~standing committees of the house and senate that deal with public~~
 13 ~~utilities shall review the amendatory act that added this~~
 14 ~~subsection.~~

15 Sec. 6k. (1) This section ~~shall govern~~ **GOVERNS** the initial
 16 filing and implementation of a power supply cost recovery plan
 17 under section 6j(3).

18 (2) The initial power supply cost recovery plan may be for a
 19 period of less than 12 months and shall be filed **AS FOLLOWS:**

20 (a) By an electric utility subject to commission rate
 21 jurisdiction with at least 200,000 residential customers in the
 22 state of Michigan, ~~within 4 months after the effective date of this~~
 23 ~~section.~~ **BY FEBRUARY 13, 1983.**

24 (b) By all other electric utilities subject to commission rate
 25 jurisdiction, ~~within 15 months after the effective date of this~~
 26 ~~section.~~ **BY JANUARY 13, 1984** in accordance with the provisions of
 27 this act which the commission determines to be appropriate for the

1 individual utility.

2 (3) Notwithstanding section ~~6a(3)~~, **6A(5)**, until the expiration
 3 of 3 months plus the remainder of the then current billing month
 4 following the last day on which a utility is required to file its
 5 first power supply cost recovery plan ~~pursuant to~~ **UNDER** subsection
 6 (2), ~~of this section~~, the utility may alter its rate schedule in
 7 accordance with an existing fuel cost adjustment clause or
 8 purchased and net interchanged power adjustment clause. Thereafter,
 9 the utility may make charges in excess of base rates for the cost
 10 of power supply pursuant only to subsections (2) and (4). ~~of this~~
 11 ~~section. After the effective date of this section, OCTOBER 13,~~
 12 **1982**, any revenues resulting from an existing fuel cost adjustment
 13 clause or purchased and net interchanged power adjustment clause
 14 and recorded for an annual reconciliation period ending ~~prior to~~
 15 **BEFORE** January 1, 1983, by an electric utility ~~shall be~~ **ARE** subject
 16 to the existing reconciliation proceeding established by the
 17 commission for the utility. In this proceeding, the commission
 18 shall consider the reasonableness and prudence of expenditures
 19 charged pursuant to an existing fuel cost adjustment clause or
 20 purchased and net interchanged power adjustment clause after ~~the~~
 21 ~~effective date of this section. OCTOBER 13, 1982.~~ On and after
 22 January 1, 1983, all fuel cost and purchased and net interchanged
 23 power revenues received by an electric utility, whether included in
 24 base rates or collected pursuant to a fuel or purchased and net
 25 interchanged power adjustment clause or a power supply cost
 26 recovery clause, ~~shall be~~ **ARE** subject to annual reconciliation with
 27 the cost of fuel and purchased and net interchanged power. ~~Such~~ **THE**

1 annual reconciliations shall be conducted in accordance with the
 2 reconciliation procedures described in section 6j(12) to (18),
 3 including the provisions for refunds, additional charges, deferral
 4 and recovery, and shall include consideration by the commission of
 5 the reasonableness and prudence of expenditures charged pursuant to
 6 any fuel or purchased and net interchanged power adjustment clause
 7 in existence during the period being reconciled. If the utility has
 8 a lag correction provision included in its existing adjustment
 9 clauses, the commission shall allow any adjustment to rates
 10 attributable to ~~such~~ **THAT** lag correction provision to be
 11 implemented for the 3 billing months immediately succeeding the
 12 final billing month in which the existing adjustment clauses as
 13 operative.

14 (4) Until the commission approves or disapproves a power
 15 supply cost recovery clause in a final commission order in a
 16 contested case required by section 6j(2), a utility ~~which~~ **THAT** had
 17 a fuel cost adjustment clause or purchased and net interchanged
 18 power adjustment clause on ~~the effective date of this section~~
 19 **OCTOBER 13, 1982** and which has applied for a power supply cost
 20 recovery clause under section 6j may adjust its rates ~~pursuant to~~
 21 **UNDER** section 6j(3) to (18), to include power supply cost recovery
 22 factors.

23 Sec. 6l. (1) For purposes of implementing sections **6A**, 6h, ~~6i~~,
 24 6j, and ~~6k~~, **6S, AND 6T**, this section and section 6m shall provide **A**
 25 means of insuring equitable representation of the interests of
 26 energy utility customers.

27 (2) As used in this section and section 6m:

(a) "Annual receipts" means the payments received by the fund under section 6m(2)(a), ~~and (b)~~, **(C), AND (D)** during a calendar year.

(b) "Board" means the utility consumer participation board created under subsection (3).

(C) "COMMISSION" MEANS THE MICHIGAN PUBLIC SERVICE COMMISSION.

(D) ~~(c)~~"Department" means the department of ~~management and budget~~. **LICENSING AND REGULATORY AFFAIRS.**

(E) ~~(d)~~"Energy cost recovery proceeding" means any proceeding to establish or implement a gas cost recovery clause or a power supply cost recovery clause as provided in ~~sections~~ **SECTION 6h** ~~7, 6i, OR 6j, or 6k,~~ to set gas cost recovery factors pursuant to **UNDER** section 6h(17), or to set power supply cost recovery factors pursuant to **UNDER** section 6j(18).

(F) ~~(e)~~"Energy utility" means each electric or gas company regulated by the ~~public service~~ commission.

(G) ~~(f)~~"Fund" means the utility consumer representation fund created in section 6m.

(H) ~~(g)~~"Household" means a single-family home, duplex, mobile home, seasonal dwelling, farm home, cooperative, condominium, or apartment ~~which~~ **THAT** has normal household facilities such as a bathroom, individual cooking facilities, and kitchen sink facilities. Household does not include a penal or corrective institution, or a motel, hotel, or other similar structure if used as a transient dwelling.

(I) ~~(h)~~"Jurisdictional" means subject to rate regulation by the ~~Michigan public service~~ commission.

1 (J) ~~(i)~~ "Net grant proceeds" means the annual receipts of the
 2 fund less the amounts reserved for the attorney general's use and
 3 the amounts expended for board expenses and operation.

4 (K) ~~(j)~~ "Residential energy utility consumer" or "consumer"
 5 means a customer of an energy utility who receives utility service
 6 for use within an individual household or an improvement reasonably
 7 appurtenant to and normally associated with an individual
 8 household.

9 (L) ~~(k)~~ "Residential tariff sales" means those sales by an
 10 energy utility ~~which~~ **THAT** are subject to residential tariffs on
 11 file with the commission.

12 (M) ~~(l)~~ "Utility consuming industry" means a person, sole
 13 proprietorship, partnership, association, corporation, or other
 14 entity ~~which~~ **THAT** receives utility service ordinarily and primarily
 15 for use in connection with the manufacture, sale, or distribution
 16 of goods or the provision of services, but does not include a
 17 nonprofit organization representing residential utility customers.

18 (3) The utility consumer participation board is created within
 19 the department and shall exercise its powers and duties under this
 20 act independently of the department. The procurement and related
 21 management functions of the ~~commission~~ **BOARD** shall be performed
 22 under the direction and supervision of the department. The board
 23 shall consist of 5 members appointed by the governor, 1 of whom
 24 shall be chosen from 1 or more lists of qualified persons submitted
 25 by the attorney general.

26 (4) For the purposes of subsection (5) only, "utility" means
 27 an electric or gas company located in or outside of this state.

1 (5) Each member of the board shall meet the following
2 requirements:

3 (a) Shall be an advocate for the interests of residential
4 utility consumers, as demonstrated by the member's knowledge of and
5 support for consumer interests and concerns in general or
6 specifically related to utility matters.

7 (b) Shall not be, or shall not have been within the 5 years
8 preceding appointment, a member of a governing body of, or employed
9 in a managerial or professional or consulting capacity by a utility
10 or an association representing utilities; an enterprise or
11 professional practice ~~which~~**THAT** received over \$1,500.00 in the
12 year preceding the appointment as a supplier of goods or services
13 to a utility or association representing utilities; or an
14 organization representing employees of such a utility, association,
15 enterprise, or professional practice, or an association ~~which~~**THAT**
16 represents such an organization.

17 (c) Shall not have, or shall not have had within 1 year
18 preceding appointment, a financial interest exceeding \$1,500.00 in
19 a utility, an association representing utilities, or an enterprise
20 or professional practice ~~which~~**THAT** received over \$1,500.00 in the
21 year preceding the appointment as a supplier of goods or services
22 to a utility or association representing utilities.

23 (d) Shall not be an officer or director of an applicant for a
24 grant under section 6m.

25 (e) Shall not be a member of the immediate family of ~~a person~~
26 **AN INDIVIDUAL** who would be ineligible under ~~subdivisions~~
27 **SUBDIVISION** (a), (b), (c), or (d).

1 (6) The members of the board shall be appointed for 2-year
2 terms beginning with the first day of a legislative session in an
3 odd-numbered year and ending on the day before the first day of the
4 legislative session in the next odd-numbered year or when the
5 members' successors are appointed, whichever occurs later. The
6 governor shall not appoint a member to the board for a term
7 commencing after the governor's term of office has ended. A vacancy
8 shall be filled in the same manner as the original appointment. If
9 the vacancy is created other than by expiration of a term, the
10 member shall be appointed for the balance of the unexpired term of
11 the member to be succeeded.

12 (7) The governor shall remove a member of the board if that
13 member is absent for any reason from either 3 consecutive board
14 meetings or more than 50% of the meetings held by the board in a
15 calendar year. However, ~~a person~~ **AN INDIVIDUAL** who is removed due
16 to absenteeism is eligible for reappointment to fill a vacancy
17 ~~which~~ **THAT** occurs in the board membership. The governor also shall
18 remove a member of the board if the member is subsequently
19 determined to be ineligible under subsection (5).

20 (8) The board shall hold bimonthly meetings and additional
21 meetings as necessary. A quorum consists of 3 members. A majority
22 vote of the members appointed and serving is necessary for a
23 decision. At its first meeting following the appointment of new
24 members, or as soon as possible after the first meeting, the board
25 shall elect biennially from its membership a chairperson and a
26 vice-chairperson.

27 (9) The board shall not act directly to represent the

1 interests of residential utility consumers except through
2 administration of the fund and grant program under this section.

3 (10) The business ~~which~~ **THAT** the board may perform shall be
4 conducted at a public meeting of the board held in compliance with
5 the open meetings act, ~~Act No. 267 of the Public Acts of 1976,~~
6 ~~being sections 15.261 to 15.275 of the Michigan Compiled Laws. 1976~~
7 **PA 267, MCL 15.261 TO 15.275.** Public notice of the time, date, and
8 place of the meeting shall be given in the manner required by ~~Act~~
9 ~~No. 267 of the Public Acts of 1976.~~ **THE OPEN MEETINGS ACT, 1976 PA**
10 **267, MCL 15.261 TO 15.275.**

11 (11) A writing prepared, owned, used, in the possession of, or
12 retained by the board in the performance of an official function
13 shall be made available to the public in compliance with the
14 freedom of information act, ~~Act No. 442 of the Public Acts of 1976,~~
15 ~~being sections 15.231 to 15.246 of the Michigan Compiled Laws. 1976~~
16 **PA 442, MCL 15.231 TO 15.246.**

17 (12) A member of the board may be reimbursed for actual and
18 necessary expenses, including travel expenses to and from each
19 meeting held by the board, incurred in discharging the member's
20 duties under this section and section 6m. In addition to expense
21 reimbursement, a board member may receive remuneration from the
22 board of \$100.00 per meeting attended, not to exceed \$1,000.00 in a
23 calendar year. These limits shall be adjusted proportionately to an
24 adjustment in the remittance amounts under section 6m(4) to allow
25 for changes in the cost of living.

26 ~~—— (13) Until the board certifies that it is operating and ready~~
27 ~~to perform all duties under this act, the director of the energy~~

~~administration created by executive directives 1976-2 and 1976-5 shall serve as temporary administrator of the fund and exercise all duties and powers of the board.~~

Sec. 6m. (1) The utility consumer representation fund is created as a special fund. The state treasurer shall be the custodian of the fund and shall maintain a separate account of the money in the fund. The money in the fund shall be invested in the bonds, notes, and other evidences of indebtedness issued or insured by the United States government and its agencies, and in prime commercial paper. The state treasurer shall release money from the fund, including interest earned, in the manner and at the time directed by the board.

(2) Except as provided in subsection ~~(6)~~, **(5)**, each energy utility that has applied to the ~~public service~~ commission for the initiation of an energy cost recovery proceeding shall remit to the fund before or upon filing its initial application for that proceeding, and on or before the first anniversary of that application, an amount of money determined by the board in the following manner:

(a) In the case of an energy utility company serving at least 100,000 customers in this state, ~~an amount that bears to \$300,000.00, multiplied~~ **ITS PROPORTIONAL SHARE OF \$900,000.00 ADJUSTED ANNUALLY** by a factor as provided in subsection (4). ~~the same proportion as~~ **THIS ADJUSTED AMOUNT SHALL BECOME THE NEW BASE AMOUNT TO WHICH THE FACTOR PROVIDED IN SUBSECTION (4) IS APPLIED IN THE SUCCEEDING YEAR. A UTILITY'S PROPORTIONAL SHARE SHALL BE CALCULATED BY DIVIDING** the company's jurisdictional ~~1981~~ total

1 operating revenues **FOR THE PRECEDING YEAR**, as stated in its annual
 2 report, ~~bear to the jurisdictional 1981~~ **BY THE** total operating
 3 revenues **FOR THE PRECEDING YEAR** of all energy utility companies
 4 serving at least 100,000 customers in this state. This amount shall
 5 be made available by the board for use by the attorney general for
 6 the purposes described in subsection ~~(17)~~. **(16)**.

7 (b) In the case of an energy utility company serving at least
 8 100,000 residential customers in this state, ~~an amount that bears~~
 9 ~~to \$300,000.00, multiplied~~ **ITS PROPORTIONAL SHARE OF \$650,000.00**
 10 **ADJUSTED ANNUALLY** by a factor as provided in subsection (4). ~~the~~
 11 ~~same proportion as~~ **THIS ADJUSTED AMOUNT SHALL BECOME THE NEW BASE**
 12 **AMOUNT TO WHICH THE FACTOR PROVIDED IN SUBSECTION (4) IS APPLIED IN**
 13 **THE SUCCEEDING YEAR. A UTILITY'S PROPORTIONAL SHARE SHALL BE**
 14 **CALCULATED BY DIVIDING** the company's jurisdictional ~~1981~~ gross
 15 revenues from residential tariff sales ~~bear to the jurisdictional~~
 16 ~~1981~~ **FOR THE PRECEDING YEAR BY THE** gross revenues from residential
 17 tariff sales **FOR THE PRECEDING YEAR** of all energy utility companies
 18 serving at least 100,000 residential customers in this state. This
 19 amount shall be used for grants under subsection ~~(11)~~. **(10)**.

20 (c) **IN THE CASE OF AN ENERGY UTILITY COMPANY SERVING FEWER**
 21 **THAN 100,000 CUSTOMERS IN THIS STATE, ITS PROPORTIONAL SHARE OF**
 22 **\$100,000.00 ADJUSTED ANNUALLY BY A FACTOR AS PROVIDED IN SUBSECTION**
 23 **(4). THIS ADJUSTED AMOUNT SHALL BECOME THE NEW BASE AMOUNT TO WHICH**
 24 **THE FACTOR PROVIDED IN SUBSECTION (4) IS APPLIED IN THE SUCCEEDING**
 25 **YEAR. A UTILITY'S PROPORTIONAL SHARE SHALL BE CALCULATED BY**
 26 **DIVIDING THE COMPANY'S JURISDICTIONAL TOTAL OPERATING REVENUES FOR**
 27 **THE PRECEDING YEAR, AS STATED IN ITS ANNUAL REPORT, BY THE TOTAL**

1 OPERATING REVENUES FOR THE PRECEDING YEAR OF ALL ENERGY UTILITY
2 COMPANIES SERVING FEWER THAN 100,000 CUSTOMERS IN THIS STATE. THIS
3 AMOUNT SHALL BE MADE AVAILABLE BY THE BOARD FOR USE BY THE ATTORNEY
4 GENERAL FOR THE PURPOSES DESCRIBED IN SUBSECTION (16) .

5 (D) IN THE CASE OF AN ENERGY UTILITY COMPANY SERVING FEWER
6 THAN 100,000 RESIDENTIAL CUSTOMERS IN THIS STATE, ITS PROPORTIONAL
7 SHARE OF \$100,000.00 ADJUSTED ANNUALLY BY A FACTOR AS PROVIDED IN
8 SUBSECTION (4) . THIS ADJUSTED AMOUNT SHALL BECOME THE NEW BASE
9 AMOUNT TO WHICH THE FACTOR PROVIDED IN SUBSECTION (4) IS APPLIED IN
10 THE SUCCEEDING YEAR. A UTILITY'S PROPORTIONAL SHARE SHALL BE
11 CALCULATED BY DIVIDING THE COMPANY'S JURISDICTIONAL GROSS REVENUES
12 FROM RESIDENTIAL TARIFF SALES FOR THE PRECEDING YEAR BY THE GROSS
13 REVENUES FROM RESIDENTIAL TARIFF SALES FOR THE PRECEDING YEAR OF
14 ALL ENERGY UTILITY COMPANIES SERVING FEWER THAN 100,000 RESIDENTIAL
15 CUSTOMERS IN THIS STATE. THIS AMOUNT SHALL BE USED FOR GRANTS UNDER
16 SUBSECTION (10) .

17 (3) Payments made by an energy utility under subsection (2) (a)
18 OR (C) are operating expenses of the utility that the public
19 service commission shall permit the utility to charge to its
20 customers. Payments made by a utility under subsection (2) (b) OR
21 (D) are operating expenses of the utility that the public service
22 commission shall permit the utility to charge to its residential
23 customers.

24 (4) For purposes of subsection (2), the **BOARD SHALL SET THE**
25 factor ~~shall be set by the board~~ at a level not to exceed the
26 percentage increase in the index known as the consumer price index
27 for urban wage earners and clerical workers, select areas, all

1 items indexed, for the Detroit standard metropolitan statistical
 2 area, compiled by the ~~bureau of labor statistics~~ **BUREAU OF LABOR**
 3 **STATISTICS** of the United States ~~department of labor,~~ **DEPARTMENT OF**
 4 **LABOR**, or any successor agency, that has occurred between January
 5 ~~1981~~ **OF THE PRECEDING YEAR** and January of the year in which the
 6 payment is required to be made. In the event that more than 1 such
 7 index is compiled, the index yielding the largest payment shall be
 8 the maximum allowable factor. The board shall advise utilities of
 9 the factor.

10 ~~— (5) On or before the second and succeeding anniversaries of~~
 11 ~~its initial application for an energy cost recovery proceeding, an~~
 12 ~~energy utility shall remit to the board amounts equal to 5/6 of the~~
 13 ~~amounts required under subsection (2).~~

14 **(5)** ~~(6)~~ The remittance requirements of this section do not
 15 apply to an energy utility organized as a cooperative corporation
 16 under sections 98 to 109 of 1931 PA 327, MCL 450.98 to 450.109, and
 17 grants from the fund shall not be used to participate in an energy
 18 cost recovery proceeding primarily affecting such a utility.

19 **(6)** ~~(7)~~ In the event of a dispute between the board and an
 20 energy utility about the amount of payment due, the utility shall
 21 pay the undisputed amount and, if the utility and the board cannot
 22 agree, the board may initiate civil action in the circuit court for
 23 Ingham ~~county~~ **COUNTY** for recovery of the disputed amount. The
 24 commission shall not accept or take action on an application for an
 25 energy cost recovery proceeding from an energy utility subject to
 26 this section that has not fully paid undisputed remittances
 27 required by this section.

1 (7) ~~(8)~~ The commission shall not accept or take action on an
2 application for an energy cost recovery proceeding from an energy
3 utility subject to this section until 30 days after it has been
4 notified by the board ~~or the director of the energy administration,~~
5 ~~if section 61(13) is applicable,~~ that the board ~~or the director~~ is
6 ready to process grant applications, will transfer funds payable to
7 the attorney general immediately upon the receipt of those funds,
8 and will within 30 days approve grants and remit funds to qualified
9 grant applicants.

10 (8) ~~(9)~~ The board may accept a gift or grant from any source
11 to be deposited in the fund if the conditions or purposes of the
12 gift or grant are consistent with this section.

13 (9) ~~(10)~~ The costs of operation and expenses incurred by the
14 board in performing its duties under this section and section 61,
15 including remuneration to board members, shall be paid from the
16 fund. A maximum of 5% of the annual receipts of the fund may be
17 budgeted and used to pay expenses other than grants made under
18 subsection ~~(11)~~. (10).

19 (10) ~~(11)~~ The net grant proceeds shall finance a grant program
20 from which the board may award to an applicant an amount that the
21 board determines shall be used for the purposes set forth in this
22 section.

23 (11) ~~(12)~~ The board shall create and make available to
24 applicants an application form. Each applicant shall indicate on
25 the application how the applicant meets the eligibility
26 requirements provided for in this section and how the applicant
27 proposes to use a grant from the fund to participate in 1 or more

1 proceedings as authorized in subsection ~~(17)~~ **(16)** that have been or
2 are expected to be filed. **EACH APPLICANT SHALL ALSO IDENTIFY ON THE**
3 **APPLICATION ANY ADDITIONAL FUNDS OR RESOURCES, OTHER THAN THE GRANT**
4 **FUNDS BEING REQUESTED, THAT ARE TO BE USED TO PARTICIPATE IN THE**
5 **PROCEEDING FOR WHICH THE GRANT IS BEING REQUESTED AND HOW THOSE**
6 **FUNDS OR RESOURCES WILL BE UTILIZED.** The board shall receive an
7 application requesting a grant from the fund only from a nonprofit
8 organization or a unit of local government in this state. The board
9 shall consider only applications for grants containing proposals
10 that are consistent with subsections ~~(17)~~ **(16)** and ~~(18)~~ **(17)** and
11 that serve the interests of residential utility consumers. For
12 purposes of making grants, the board may consider ~~protection of the~~
13 ~~environment, energy conservation, the creation of employment and a~~
14 ~~healthy economy in the state, and~~ **ENERGY WASTE REDUCTION, DEMAND**
15 **RESPONSE, AND RATE DESIGN OPTIONS TO ENCOURAGE ENERGY CONSERVATION,**
16 **ENERGY WASTE REDUCTION, AND DEMAND RESPONSE, AS WELL AS** the
17 maintenance of adequate energy resources. The board shall not
18 consider an application that primarily benefits the applicant or a
19 service provided or administered by the applicant. The board shall
20 not consider an application from a nonprofit organization if 1 of
21 the organization's principal interests or unifying principles is
22 the welfare of a utility or its investors or employees, or the
23 welfare of 1 or more businesses or industries, other than farms not
24 owned or operated by a corporation, that receive utility service
25 ordinarily and primarily for use in connection with the profit-
26 seeking manufacture, sale, or distribution of goods or services.
27 Mere ownership of securities by a nonprofit organization or its

1 members does not disqualify an application submitted by that
2 organization.

3 **(12)** ~~(13)~~—The board shall encourage the representation of the
4 interests of identifiable types of residential utility consumers
5 whose interests may differ, including various social and economic
6 classes and areas of the state, and if necessary, may make grants
7 to more than 1 applicant whose applications are related to a
8 similar issue to achieve this type of representation. In addition,
9 the board shall consider and balance the following criteria in
10 determining whether to make a grant to an applicant:

11 (a) Evidence of the applicant's competence, experience, and
12 commitment to advancing the interests of residential utility
13 consumers.

14 **(B) THE ANTICIPATED INVOLVEMENT OF THE ATTORNEY GENERAL IN A**
15 **PROCEEDING AND WHETHER ACTIVITIES OF THE APPLICANT WILL BE**
16 **DUPLICATIVE OR SUPPLEMENTAL TO THOSE OF THE ATTORNEY GENERAL.**

17 **(C)** ~~(b)~~—In the case of a nongovernmental applicant, the extent
18 to which the applicant is representative of or has a previous
19 history of advocating the interests of citizens, especially
20 residential utility consumers.

21 **(D)** ~~(c)~~—The anticipated effect of the proposal contained in
22 the application on residential utility consumers, including the
23 immediate and long-term impacts of the proposal.

24 **(E)** ~~(d)~~—Evidence demonstrating the potential for continuity of
25 effort and the development of expertise in relation to the proposal
26 contained in the application.

27 **(F)** ~~(e)~~—The uniqueness or innovativeness of an applicant's

position or point of view **AS IT RELATES TO ADVOCATING FOR RESIDENTIAL UTILITY CONSUMERS CONCERNING ENERGY COSTS OR RATES**, and the probability and desirability of that position or point of view prevailing.

(13) ~~(14)~~—As an alternative to choosing between 2 or more applications that have similar proposals, the board may invite 2 or more of the applicants to file jointly and award a grant to be managed cooperatively.

(14) ~~(15)~~—The board shall make disbursements pursuant to a grant in advance of an applicant's proposed actions as set forth in the application if necessary to enable the applicant to initiate, continue, or complete the proposed actions.

(15) ~~(16)~~—Any notice to utility customers and the general public of hearings or other state proceedings in which grants from the fund may be used shall contain a notice of the availability of the fund and the address of the board.

(16) ~~(17)~~—The annual receipts and interest earned, less administrative costs, may be used only for participation in administrative and judicial proceedings under sections **6A, 6h, 6i, 6j, and 6k, 6S, AND 6T, AND** in federal administrative and judicial proceedings that directly affect the energy costs **OR RATES** paid by Michigan energy utilities, and in cost allocation and rate design proceedings initiated under section 11(3). **UTILITY CUSTOMERS IN THIS STATE.** Amounts that have been in the fund more than 12 months may be retained in the fund for future grants, **PROCEEDINGS AND ANY UNEXPENDED MONEY IN THE FUND SHALL BE RESERVED TO FULFILL THE PURPOSES FOR WHICH IT WAS APPROPRIATED** or may be returned to energy

1 utility companies or used to offset their future remittances in
 2 proportion to their previous remittances to the fund, as the board
 3 ~~determines~~ **AND ATTORNEY GENERAL DETERMINE** will best serve the
 4 interests of consumers.

5 **(17)** ~~(18)~~ The following conditions ~~shall~~ apply to all grants
 6 from the fund:

7 (a) Disbursements from the fund may be used only to advocate
 8 the interests of **RESIDENTIAL** energy utility customers ~~or classes of~~
 9 ~~energy utility customers,~~ **CONCERNING ENERGY COSTS OR RATES** and not
 10 for representation of merely individual interests.

11 (b) The board shall attempt to maintain a reasonable
 12 relationship between the payments from a particular energy utility
 13 and the benefits to consumers of that utility.

14 (c) The board shall coordinate the funded activities of grant
 15 recipients with those of the attorney general to avoid duplication
 16 of effort, **PARTICULARLY AS IT RELATES TO THE HIRING OF EXPERT**
 17 **WITNESSES**, to promote supplementation of effort, and to maximize
 18 the number of hearings and proceedings with intervenor
 19 participation.

20 **(18)** ~~(19)~~ A recipient of a grant under subsection ~~(11)~~ **(10)**
 21 may use the grant only for the advancement of the proposed action
 22 approved by the board, including, but not limited to, costs of
 23 staff, hired consultants and counsel, and research.

24 **(19) A RECIPIENT OF A GRANT UNDER SUBSECTION (10) SHALL**
 25 **PREPARE FOR AND PARTICIPATE IN ALL DISCUSSIONS AMONG THE PARTIES**
 26 **DESIGNED TO FACILITATE SETTLEMENT OR NARROWING OF THE CONTESTED**
 27 **ISSUES BEFORE A HEARING IN ORDER TO MINIMIZE LITIGATION COSTS FOR**

1 **ALL PARTIES.**

2 (20) A recipient of a grant under subsection ~~(11)~~ **(10)** shall
 3 file a report with the board within 90 days following the end of
 4 the year or a shorter period for which the grant is made. The
 5 report shall be made in a form prescribed by the board and is
 6 subject to audit by the board. **THE BOARD SHALL INCLUDE EACH REPORT**
 7 **RECEIVED UNDER THIS SUBSECTION AS PART OF THE BOARD'S ANNUAL REPORT**
 8 **REQUIRED UNDER SUBSECTION (22).** The report **UNDER THIS SUBSECTION**
 9 shall include the following information:

10 (a) An account of all grant expenditures made by the grant
 11 recipient. Expenditures shall be reported within the following
 12 categories:

13 (i) Employee and contract for services costs.

14 (ii) Costs of materials and supplies.

15 (iii) Filing fees and other costs required to effectively
 16 represent residential utility consumers as provided in this
 17 section.

18 **(B) A DETAILED LIST OF THE REGULATORY ISSUES RAISED BY THE**
 19 **GRANT RECIPIENT AND HOW EACH ISSUE WAS DETERMINED BY THE**
 20 **COMMISSION, COURT, OR OTHER TRIBUNAL.**

21 **(C)** ~~(b)~~ Any additional information concerning uses of the
 22 grant required by the board.

23 (21) ~~The~~ **ON OR BEFORE JULY 1 OF EACH YEAR, THE** attorney
 24 general shall file a report with the house and senate committees on
 25 appropriations ~~within 90 days following the end of each fiscal~~
 26 ~~year.~~ **AND THE HOUSE AND SENATE COMMITTEES WITH JURISDICTION OVER**
 27 **ENERGY AND UTILITY POLICY ISSUES.** The report shall include the

1 following information:

2 (a) An account of all expenditures made by the attorney
3 general of ~~funds~~ **MONEY** received under this section. Expenditures
4 shall be reported within the following categories:

5 (i) Employee and contract for services costs.

6 (ii) Costs of materials and supplies.

7 (iii) Filing fees and other costs required to effectively
8 represent utility consumers as provided in this section.

9 (b) Any additional information concerning uses of the ~~funds~~
10 **MONEY** received under this section required by the committees.

11 (22) On or before July 1 of each calendar year, the board
12 shall submit a detailed report to the ~~legislature~~ **HOUSE AND SENATE**
13 **COMMITTEES WITH JURISDICTION OVER ENERGY AND UTILITY POLICY ISSUES**
14 regarding the discharge of duties and responsibilities under this
15 section and section 6l during the preceding calendar year.

16 ~~— (23) By October 13, 1985, and at 3-year intervals thereafter,~~
17 ~~a senate committee chosen by the majority leader of the senate and~~
18 ~~a house committee chosen by the speaker of the house of~~
19 ~~representatives shall review the relationship between costs and~~
20 ~~benefits resulting from this section and sections 6h through 6l,~~
21 ~~and may recommend changes to the legislature.~~

22 Sec. 6s. (1) An electric utility that proposes to construct an
23 electric generation facility, make a significant investment in an
24 existing electric generation facility, purchase an existing
25 electric generation facility, or enter into a power purchase
26 agreement for the purchase of electric capacity for a period of 6
27 years or longer may submit an application to the commission seeking

1 a certificate of necessity for that construction, investment, or
 2 purchase if that construction, investment, or purchase costs
 3 ~~\$500,000,000.00~~ **\$100,000,000.00** or more and a portion of the costs
 4 would be allocable to retail customers in this state. A significant
 5 investment in an electric generation facility includes a group of
 6 investments reasonably planned to be made over a multiple year
 7 period not to exceed 6 years for a singular purpose such as
 8 increasing the capacity of an existing electric generation plant.
 9 The commission shall not issue a certificate of necessity under
 10 this section for any environmental upgrades to existing electric
 11 generation facilities. ~~or for a renewable energy system.~~ **IF THE**
 12 **APPLICATION IS FOR THE CONSTRUCTION OF AN ELECTRIC GENERATION**
 13 **FACILITY OF 225 MEGAWATTS OR MORE OR FOR THE CONSTRUCTION OF AN**
 14 **ADDITIONAL GENERATING UNIT OR UNITS TOTALING 225 MEGAWATTS OR MORE**
 15 **AT AN EXISTING ELECTRIC GENERATION FACILITY SUBMITTED AS REQUIRED**
 16 **UNDER SECTION 6T(13), THE COMMISSION SHALL CONSOLIDATE ITS**
 17 **PROCEEDINGS UNDER SECTION 6T AND THIS SECTION. IF THE COMMISSION**
 18 **APPROVES OR DENIES AN APPLICATION FOR AN ELECTRIC GENERATION**
 19 **FACILITY UNDER THIS SECTION THAT HAS BEEN SUBMITTED AS REQUIRED**
 20 **UNDER SECTION 6T(13), THE PROVISIONS OF THIS SECTION PREVAIL IN A**
 21 **CONFLICT WITH SECTION 6T.**

22 (2) The commission may implement separate review criteria and
 23 approval standards for electric utilities with less than 1,000,000
 24 retail customers ~~who~~ **THAT** seek a certificate of necessity for
 25 projects costing less than ~~\$500,000,000.00~~ **\$100,000,000.00**.

26 (3) An electric utility submitting an application under this
 27 section may request 1 or more of the following:

1 (a) A certificate of necessity that the power to be supplied
2 as a result of the proposed construction, investment, or purchase
3 is needed.

4 (b) A certificate of necessity that the size, fuel type, and
5 other design characteristics of the existing or proposed electric
6 generation facility or the terms of the power purchase agreement
7 represent the most reasonable and prudent means of meeting that
8 power need.

9 (c) A certificate of necessity that the price specified in the
10 power purchase agreement will be recovered in rates from the
11 electric utility's customers.

12 (d) A certificate of necessity that the estimated purchase or
13 capital costs of and the financing plan for the existing or
14 proposed electric generation facility, including, but not limited
15 to, the costs of siting and licensing a new facility and the
16 estimated cost of power from the new or proposed electric
17 generation facility, will be recoverable in rates from the electric
18 utility's customers subject to subsection (4)(c).

19 (4) Within 270 days ~~of~~ **AFTER** the filing of an application
20 under this section, **OR, FOR AN APPLICATION FOR AN ELECTRIC**
21 **GENERATION FACILITY SUBMITTED AS REQUIRED UNDER SECTION 6T(13),**
22 **CONCURRENTLY WITH A FINAL ORDER ISSUED UNDER SECTION 6T,** the
23 commission shall issue an order granting or denying the requested
24 certificate of necessity. The commission shall hold a hearing on
25 the application. The hearing shall be conducted as a contested case
26 pursuant to chapter 4 of the administrative procedures act of 1969,
27 1969 PA 306, MCL 24.271 to 24.287. The commission **MAY ALLOW**

1 INTERVENTION BY PERSONS UNDER THE RULES OF PRACTICE AND PROCEDURE
2 OF THE COMMISSION AND shall allow intervention by **EXISTING**
3 **SUPPLIERS OF ELECTRIC GENERATION CAPACITY UNDER SUBSECTION (13) ,**
4 **PERSONS ALLOWED TO INTERVENE IN THE CONTESTED CASE UNDER SECTION**
5 **6T, AND** interested persons. ~~Reasonable~~ **THE COMMISSION SHALL PERMIT**
6 **REASONABLE** discovery ~~shall be permitted before and during the~~
7 hearing in order to assist parties and interested persons in
8 obtaining evidence concerning the application, including, but not
9 limited to, the reasonableness and prudence of the construction,
10 investment, or purchase for which the certificate of necessity has
11 been requested. The commission shall grant the request if it
12 determines all of the following:

13 (a) That the electric utility has demonstrated a need for the
14 power that would be supplied by the existing or proposed electric
15 generation facility or pursuant to the proposed power purchase
16 agreement through its approved integrated resource plan ~~that~~
17 ~~complies with~~ **UNDER SECTION 6T OR** subsection (11).

18 (b) The information supplied indicates that the existing or
19 proposed electric generation facility will comply with all
20 applicable state and federal environmental standards, laws, and
21 rules.

22 (c) The estimated cost of power from the existing or proposed
23 electric generation facility or the price of power specified in the
24 proposed power purchase agreement is reasonable. The commission
25 shall find that the cost is reasonable if, in the construction or
26 investment in a new or existing facility, to the extent it is
27 commercially practicable, the estimated costs are the result of

1 competitively bid engineering, procurement, and construction
2 contracts, or in a power purchase agreement, the cost is the result
3 of a competitive solicitation. Up to 150 days after an electric
4 utility makes its initial filing, it may file to update its cost
5 estimates if they have materially changed. No other aspect of the
6 initial filing may be modified unless the application is withdrawn
7 and refiled. A utility's filing updating its cost estimates does
8 not extend the period for the commission to issue an order granting
9 or denying a certificate of necessity. An affiliate of an electric
10 utility that serves customers in this state and at least 1 other
11 state may participate in the competitive bidding to provide
12 engineering, procurement, and construction services to that
13 electric utility for a project covered by this section.

14 (d) The existing or proposed electric generation facility or
15 proposed power purchase agreement represents the most reasonable
16 and prudent means of meeting the power need relative to other
17 resource options for meeting power demand, including energy
18 efficiency programs, ~~and~~ electric transmission efficiencies, **AND**
19 **ANY ALTERNATIVE PROPOSALS SUBMITTED UNDER THIS SECTION BY EXISTING**
20 **SUPPLIERS OF ELECTRIC GENERATION CAPACITY UNDER SUBSECTION (13) OR**
21 **OTHER INTERVENORS.**

22 (e) To the extent practicable, the construction or investment
23 in a new or existing facility in this state is completed using a
24 workforce composed of residents of this state as determined by the
25 commission. This subdivision does not apply to a facility that is
26 located in a county that lies on the border with another state.

27 (5) The commission may consider any other costs or information

1 related to the costs associated with the power that would be
2 supplied by the existing or proposed electric generation facility
3 or pursuant to the proposed purchase agreement or alternatives to
4 the proposal raised by intervening parties.

5 (6) In a certificate of necessity under this section, the
6 commission shall specify the costs approved for the construction of
7 or significant investment in the electric generation facility, the
8 price approved for the purchase of the existing electric generation
9 facility, or the price approved for the purchase of power pursuant
10 to the terms of the power purchase agreement. **FOR POWER PURCHASE**
11 **AGREEMENTS THAT AN ELECTRIC UTILITY ENTERS INTO WITH AN ENTITY THAT**
12 **IS NOT AFFILIATED WITH THAT ELECTRIC UTILITY AFTER THE EFFECTIVE**
13 **DATE OF THE AMENDATORY ACT THAT ADDED SECTION 6T, THE COMMISSION**
14 **SHALL CONSIDER AND MAY AUTHORIZE A FINANCIAL INCENTIVE FOR THAT**
15 **UTILITY THAT DOES NOT EXCEED THE ELECTRIC UTILITY'S WEIGHTED**
16 **AVERAGE COST OF CAPITAL.**

17 (7) The utility shall annually file, or more frequent if
18 required by the commission, reports to the commission regarding the
19 status of any project for which a certificate of necessity has been
20 granted under subsection (4), including an update concerning the
21 cost and schedule of that project.

22 (8) If the commission denies any of the relief requested by an
23 electric utility, the electric utility may withdraw its application
24 or proceed with the proposed construction, purchase, investment, or
25 power purchase agreement without a certificate and the assurances
26 granted under this section.

27 (9) Once the electric generation facility or power purchase

1 agreement is considered used and useful or as otherwise provided in
2 subsection (12), the commission shall include in an electric
3 utility's retail rates all reasonable and prudent costs for an
4 electric generation facility or power purchase agreement for which
5 a certificate of necessity has been granted. The commission shall
6 not disallow recovery of costs an electric utility incurs in
7 constructing, investing in, or purchasing an electric generation
8 facility or in purchasing power pursuant to a power purchase
9 agreement for which a certificate of necessity has been granted, if
10 the costs do not exceed the costs approved by the commission in the
11 certificate. **THE PORTION OF THE COST OF A PLANT, FACILITY, OR POWER**
12 **PURCHASE AGREEMENT THAT EXCEEDS THE COST APPROVED BY THE COMMISSION**
13 **IS PRESUMED TO HAVE BEEN INCURRED DUE TO A LACK OF PRUDENCE.** Once
14 the electric generation facility or power purchase agreement is
15 considered used and useful or as otherwise provided in subsection
16 (12), the commission shall include in the electric utility's retail
17 rates costs actually incurred by the electric utility that exceed
18 the costs approved by the commission only if the commission finds
19 **BY A PREPONDERANCE OF THE EVIDENCE** that the additional costs ~~are~~
20 ~~reasonable and prudent. If the actual costs incurred by the~~
21 ~~electric utility exceed the costs approved by the commission, the~~
22 ~~electric utility has the burden of proving by a preponderance of~~
23 ~~the evidence that the costs are reasonable and prudent. The portion~~
24 ~~of the cost of a plant, facility, or power purchase agreement which~~
25 ~~exceeds 110% of the cost approved by the commission is presumed to~~
26 ~~have been incurred due to a lack of prudence. The commission may~~
27 ~~include any or all of the portion of the cost in excess of 110% of~~

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~~the cost approved by the commission if the commission finds by a
preponderance of the evidence that the costs were prudently~~

incurred. **THE COMMISSION SHALL DISALLOW COSTS THE COMMISSION FINDS**

HAVE BEEN INCURRED AS THE RESULT OF FRAUD, CONCEALMENT, GROSS

MISMANAGEMENT, OR LACK OF QUALITY CONTROLS AMOUNTING TO GROSS

MISMANAGEMENT. THE COMMISSION SHALL ALSO REQUIRE REFUNDS WITH

INTEREST TO RATEPAYERS OF ANY OF THESE COSTS ALREADY RECOVERED

THROUGH THE ELECTRIC UTILITY'S RATES AND CHARGES. IF THE

**ASSUMPTIONS UNDERLYING AN APPROVED CERTIFICATE OF NECESSITY [, OTHER THAN
A CERTIFICATE OF NECESSITY APPROVED FOR A POWER PURCHASE AGREEMENT FOR
THE PURCHASE OF ELECTRIC CAPACITY,]**

MATERIALLY CHANGE, AN ELECTRIC UTILITY MAY REQUEST, OR THE

COMMISSION ON ITS OWN MOTION MAY INITIATE, A PROCEEDING TO REVIEW

WHETHER IT IS REASONABLE AND PRUDENT TO COMPLETE AN UNFINISHED

PROJECT FOR WHICH A CERTIFICATE OF NECESSITY HAS BEEN GRANTED. IF

THE COMMISSION FINDS THAT COMPLETION OF THE PROJECT IS NO LONGER

REASONABLE AND PRUDENT, THE COMMISSION MAY MODIFY OR CANCEL

APPROVAL OF THE CERTIFICATE OF NECESSITY. EXCEPT FOR COSTS THE

COMMISSION FINDS AN ELECTRIC UTILITY HAS INCURRED AS THE RESULT OF

FRAUD, CONCEALMENT, GROSS MISMANAGEMENT, OR LACK OF QUALITY

CONTROLS AMOUNTING TO GROSS MISMANAGEMENT, IF COMMISSION APPROVAL

IS MODIFIED OR CANCELED, THE COMMISSION SHALL NOT DISALLOW

REASONABLE AND PRUDENT COSTS ALREADY INCURRED OR COMMITTED TO BY

CONTRACT BY AN ELECTRIC UTILITY. ONCE THE COMMISSION FINDS THAT

COMPLETION OF THE PROJECT IS NO LONGER REASONABLE AND PRUDENT, THE

COMMISSION MAY LIMIT FUTURE COST RECOVERY TO THOSE COSTS THAT COULD

NOT BE REASONABLY AVOIDED.

~~(10) Within 90 days of the effective date of the amendatory~~

~~act that added this section, the~~ **THE** commission shall adopt

1 standard application filing forms and instructions for use in all
2 requests for a certificate of necessity under this section. The
3 commission may ~~, in its discretion,~~ modify the standard application
4 filing forms and instructions adopted under this section.

5 (11) The commission shall establish standards for an
6 integrated resource plan that shall be filed by an electric utility
7 requesting a certificate of necessity under this section. **THIS**
8 **SUBSECTION DOES NOT APPLY TO AN ELECTRIC UTILITY THAT HAS AN**
9 **APPROVED INTEGRATED RESOURCE PLAN UNDER SECTION 6T.** An integrated
10 resource plan shall include all of the following:

11 (a) A long-term forecast of the electric utility's load growth
12 under various reasonable scenarios.

13 (b) The type of generation technology proposed for the
14 generation facility and the proposed capacity of the generation
15 facility, including projected fuel and regulatory costs under
16 various reasonable scenarios.

17 (c) Projected energy and capacity purchased or produced by the
18 electric utility ~~pursuant to~~ **UNDER** any renewable portfolio
19 standard.

20 (d) Projected energy efficiency program savings under any
21 energy efficiency program requirements and the projected costs for
22 that program.

23 (e) Projected load management and demand response savings for
24 the electric utility and the projected costs for those programs.

25 (f) An analysis of the availability and costs of other
26 electric resources that could defer, displace, or partially
27 displace the proposed generation facility or purchased power

1 agreement, including additional renewable energy, energy efficiency
2 programs, load management, and demand response, beyond those
3 amounts contained in subdivisions (c) to (e).

4 (g) Electric transmission options for the electric utility.

5 (12) The commission ~~shall~~ **MAY** allow financing interest cost
6 recovery in an electric utility's base rates on construction work
7 in progress for capital improvements approved under this section
8 prior to the assets being considered used and useful. Regardless of
9 whether or not the commission authorizes base rate treatment for
10 construction work in progress financing interest expense, an
11 electric utility shall be allowed to recognize, accrue, and defer
12 the allowance for funds used during construction. ~~related to equity~~
13 ~~capital.~~

14 (13) ~~As used in this section, "renewable energy system" means~~
15 ~~that term as defined in the clean, renewable, and efficient energy~~
16 ~~act.~~ **AN EXISTING SUPPLIER OF ELECTRIC GENERATION CAPACITY CURRENTLY**
17 **PRODUCING AT LEAST 200 MEGAWATTS OF FIRM ELECTRIC GENERATION**
18 **CAPACITY RESOURCES LOCATED IN THE INDEPENDENT SYSTEM OPERATOR'S**
19 **ZONE IN WHICH THE UTILITY'S LOAD IS SERVED THAT SEEKS TO PROVIDE**
20 **ELECTRIC GENERATION CAPACITY RESOURCES TO THE UTILITY MAY SUBMIT A**
21 **WRITTEN PROPOSAL DIRECTLY TO THE COMMISSION AS AN ALTERNATIVE TO**
22 **THE CONSTRUCTION, INVESTMENT, OR PURCHASE FOR WHICH THE CERTIFICATE**
23 **OF NECESSITY IS SOUGHT UNDER THIS SECTION. THE ENTITY SUBMITTING AN**
24 **ALTERNATIVE PROPOSAL UNDER THIS SUBSECTION HAS STANDING TO**
25 **INTERVENE AND THE COMMISSION SHALL ALLOW REASONABLE DISCOVERY IN**
26 **THE CONTESTED CASE PROCEEDING CONDUCTED UNDER THIS SECTION. IN**
27 **EVALUATING AN ALTERNATIVE PROPOSAL, THE COMMISSION SHALL CONSIDER**

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1 THE COST OF THE ALTERNATIVE PROPOSAL AND THE SUBMITTING ENTITY'S
2 QUALIFICATIONS, TECHNICAL COMPETENCE, CAPABILITY, RELIABILITY,
3 CREDITWORTHINESS, AND PAST PERFORMANCE. IN REVIEWING AN
4 APPLICATION, THE COMMISSION MAY CONSIDER ANY ALTERNATIVE PROPOSALS
5 SUBMITTED UNDER THIS SUBSECTION. THIS SUBSECTION DOES NOT LIMIT THE
6 ABILITY OF ANY OTHER PERSON TO SUBMIT TO THE COMMISSION AN
7 ALTERNATIVE PROPOSAL TO THE CONSTRUCTION, INVESTMENT, OR PURCHASE
8 FOR WHICH A CERTIFICATE OF NECESSITY IS SOUGHT UNDER THIS SECTION
9 AND TO PETITION FOR AND BE GRANTED LEAVE TO INTERVENE IN THE
10 CONTESTED CASE PROCEEDING CONDUCTED UNDER THIS SECTION UNDER THE
11 RULES OF PRACTICE AND PROCEDURE OF THE COMMISSION. THIS SUBSECTION
12 DOES NOT AUTHORIZE THE COMMISSION TO ORDER OR OTHERWISE REQUIRE AN
13 ELECTRIC UTILITY TO ADOPT ANY ALTERNATIVE PROPOSAL SUBMITTED UNDER
14 THIS SUBSECTION.

15 (14) AN ORDER OF THE COMMISSION FOLLOWING A HEARING UNDER THIS
16 SECTION IS SUBJECT TO JUDICIAL REVIEW AS PROVIDED UNDER SECTION 28
17 OF ARTICLE VI OF THE STATE CONSTITUTION OF 1963 AND CHAPTER 6 OF
18 THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.301
19 TO 24.306, EXCEPT THAT THE FILING OF A PETITION FOR REVIEW MUST BE
20 FILED IN THE COURT OF APPEALS WITHIN 30 DAYS AFTER THE ORDER OF THE
21 COMMISSION IS ISSUED AND THE COURT SHALL CONDUCT THE REVIEW AS
22 EXPEDITIOUSLY AS POSSIBLE WITH LAWFUL PRECEDENCE OVER OTHER
23 MATTERS.

24 [
25
26
27

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]

SEC. 6T. (1) THE COMMISSION SHALL, WITHIN 120 DAYS OF THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION AND EVERY 5 YEARS THEREAFTER, COMMENCE A PROCEEDING AND, IN CONSULTATION WITH THE MICHIGAN AGENCY FOR ENERGY, THE DEPARTMENT OF ENVIRONMENTAL QUALITY, AND OTHER INTERESTED PARTIES, DO ALL OF THE FOLLOWING AS PART OF THE PROCEEDING:

(A) CONDUCT AN ASSESSMENT OF THE POTENTIAL FOR ENERGY WASTE REDUCTION IN THIS STATE, BASED ON WHAT IS ECONOMICALLY AND TECHNOLOGICALLY FEASIBLE, AS WELL AS WHAT IS REASONABLY ACHIEVABLE.

(B) CONDUCT AN ASSESSMENT FOR THE USE OF DEMAND RESPONSE PROGRAMS IN THIS STATE, BASED ON WHAT IS ECONOMICALLY AND TECHNOLOGICALLY FEASIBLE, AS WELL AS WHAT IS REASONABLY ACHIEVABLE. THE ASSESSMENT SHALL EXPRESSLY ACCOUNT FOR ADVANCED METERING INFRASTRUCTURE THAT HAS ALREADY BEEN INSTALLED IN THIS STATE AND SEEK TO FULLY MAXIMIZE POTENTIAL BENEFITS TO RATEPAYERS IN LOWERING UTILITY BILLS.

(C) IDENTIFY SIGNIFICANT STATE OR FEDERAL ENVIRONMENTAL REGULATIONS, LAWS, OR RULES AND HOW EACH REGULATION, LAW, OR RULE WOULD AFFECT ELECTRIC UTILITIES IN THIS STATE.

(D) IDENTIFY ANY FORMALLY PROPOSED STATE OR FEDERAL ENVIRONMENTAL REGULATION, LAW, OR RULE THAT HAS BEEN PUBLISHED IN THE MICHIGAN REGISTER OR THE FEDERAL REGISTER AND HOW THE PROPOSED REGULATION, LAW, OR RULE WOULD AFFECT ELECTRIC UTILITIES IN THIS STATE.

(E) IDENTIFY ANY REQUIRED PLANNING RESERVE MARGINS AND LOCAL CLEARING REQUIREMENTS IN AREAS OF THIS STATE.

1 (F) ESTABLISH THE MODELING SCENARIOS AND ASSUMPTIONS EACH
2 ELECTRIC UTILITY SHOULD INCLUDE IN ADDITION TO ITS OWN SCENARIOS
3 AND ASSUMPTIONS IN DEVELOPING ITS INTEGRATED RESOURCE PLAN FILED
4 UNDER SUBSECTION (3), INCLUDING, BUT NOT LIMITED TO, ALL OF THE
5 FOLLOWING:

6 (i) ANY REQUIRED PLANNING RESERVE MARGINS AND LOCAL CLEARING
7 REQUIREMENTS.

8 (ii) ALL APPLICABLE STATE AND FEDERAL ENVIRONMENTAL
9 REGULATIONS, LAWS, AND RULES IDENTIFIED IN THIS SUBSECTION.

10 (iii) ANY SUPPLY-SIDE AND DEMAND-SIDE RESOURCES THAT
11 REASONABLY COULD ADDRESS ANY NEED FOR ADDITIONAL GENERATION
12 CAPACITY, INCLUDING, BUT NOT LIMITED TO, THE TYPE OF GENERATION
13 TECHNOLOGY FOR ANY PROPOSED GENERATION FACILITY, PROJECTED ENERGY
14 WASTE REDUCTION SAVINGS, AND PROJECTED LOAD MANAGEMENT AND DEMAND
15 RESPONSE SAVINGS.

16 (iv) ANY REGIONAL INFRASTRUCTURE LIMITATIONS IN THIS STATE.

17 (v) THE PROJECTED COSTS OF DIFFERENT TYPES OF FUEL USED FOR
18 ELECTRIC GENERATION.

19 (G) ALLOW OTHER STATE AGENCIES TO PROVIDE INPUT REGARDING ANY
20 OTHER REGULATORY REQUIREMENTS THAT SHOULD BE INCLUDED IN MODELING
21 SCENARIOS OR ASSUMPTIONS.

22 (H) PUBLISH A COPY OF THE PROPOSED MODELING SCENARIOS AND
23 ASSUMPTIONS TO BE USED IN INTEGRATED RESOURCE PLANS ON THE
24 COMMISSION'S WEBSITE.

25 (I) BEFORE ISSUING THE FINAL MODELING SCENARIOS AND
26 ASSUMPTIONS EACH ELECTRIC UTILITY SHOULD INCLUDE IN DEVELOPING ITS
27 INTEGRATED RESOURCE PLAN, RECEIVE WRITTEN COMMENTS AND HOLD

1 HEARINGS TO SOLICIT PUBLIC INPUT REGARDING THE PROPOSED MODELING
2 SCENARIOS AND ASSUMPTIONS.

3 (2) A PROCEEDING COMMENCED UNDER SUBSECTION (1) SHALL BE
4 COMPLETED WITHIN 120 DAYS, AND SHALL NOT BE A CONTESTED CASE UNDER
5 CHAPTER 4 OF THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA
6 306, MCL 24.271 TO 24.287. THE DETERMINATION OF THE MODELING
7 ASSUMPTIONS FOR INTEGRATED RESOURCE PLANS MADE UNDER SUBSECTION (1)
8 IS NOT CONSIDERED A FINAL ORDER FOR PURPOSES OF JUDICIAL REVIEW.
9 THE DETERMINATIONS MADE UNDER SUBSECTION (1) ARE ONLY SUBJECT TO
10 JUDICIAL REVIEW AS PART OF THE FINAL COMMISSION ORDER APPROVING AN
11 INTEGRATED RESOURCE PLAN UNDER THIS SECTION.

12 (3) NOT LATER THAN 2 YEARS AFTER THE EFFECTIVE DATE OF THE
13 AMENDATORY ACT THAT ADDED THIS SECTION, EACH ELECTRIC UTILITY WHOSE
14 RATES ARE REGULATED BY THE COMMISSION SHALL FILE WITH THE
15 COMMISSION AN INTEGRATED RESOURCE PLAN THAT PROVIDES A 5-YEAR, 10-
16 YEAR, AND 15-YEAR PROJECTION OF THE UTILITY'S LOAD OBLIGATIONS AND
17 A PLAN TO MEET THOSE OBLIGATIONS, TO MEET THE UTILITY'S
18 REQUIREMENTS TO PROVIDE GENERATION RELIABILITY, INCLUDING MEETING
19 PLANNING RESERVE MARGIN AND LOCAL CLEARING REQUIREMENTS DETERMINED
20 BY THE COMMISSION OR THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR,
21 AND TO MEET ALL APPLICABLE STATE AND FEDERAL RELIABILITY AND
22 ENVIRONMENTAL REGULATIONS OVER THE ENSUING TERM OF THE PLAN. THE
23 COMMISSION SHALL ISSUE AN ORDER ESTABLISHING FILING REQUIREMENTS,
24 INCLUDING APPLICATION FORMS AND INSTRUCTIONS, AND FILING DEADLINES
25 FOR AN INTEGRATED RESOURCE PLAN FILED BY AN ELECTRIC UTILITY WHOSE
26 RATES ARE REGULATED BY THE COMMISSION. THE ELECTRIC UTILITY'S PLAN
27 MAY INCLUDE ALTERNATIVE MODELING SCENARIOS AND ASSUMPTIONS IN

1 ADDITION TO THOSE IDENTIFIED UNDER SUBSECTION (1).

2 (4) FOR AN ELECTRIC UTILITY WITH FEWER THAN 1,000,000
3 CUSTOMERS IN THIS STATE WHOSE RATES ARE REGULATED BY THE
4 COMMISSION, THE COMMISSION MAY ISSUE AN ORDER IMPLEMENTING SEPARATE
5 FILING REQUIREMENTS, REVIEW CRITERIA, AND APPROVAL STANDARDS THAT
6 DIFFER FROM THOSE ESTABLISHED UNDER SUBSECTION (3). AN ELECTRIC
7 UTILITY PROVIDING ELECTRIC TARIFF SERVICE TO CUSTOMERS BOTH IN THIS
8 STATE AND IN AT LEAST 1 OTHER STATE MAY DESIGN ITS INTEGRATED
9 RESOURCE PLAN TO COVER ALL ITS CUSTOMERS ON THAT MULTISTATE BASIS.
10 IF AN ELECTRIC UTILITY HAS FILED A MULTISTATE INTEGRATED RESOURCE
11 PLAN THAT INCLUDES ITS SERVICE AREA IN THIS STATE WITH THE RELEVANT
12 UTILITY REGULATORY COMMISSION IN ANOTHER STATE IN WHICH IT PROVIDES
13 TARIFF SERVICE TO RETAIL CUSTOMERS, THE COMMISSION SHALL ACCEPT
14 THAT INTEGRATED RESOURCE PLAN FILING FOR FILING PURPOSES IN THIS
15 STATE. HOWEVER, THE COMMISSION MAY REQUIRE SUPPLEMENTAL INFORMATION
16 IF NECESSARY AS PART OF ITS EVALUATION AND DETERMINATION OF WHETHER
17 TO APPROVE THE PLAN. UPON REQUEST OF AN ELECTRIC UTILITY, THE
18 COMMISSION MAY ADJUST THE FILING DATES FOR A MULTISTATE INTEGRATED
19 RESOURCE PLAN FILING IN THIS STATE TO PLACE ITS REVIEW ON THE SAME
20 TIMELINE AS OTHER RELEVANT STATE REVIEWS.

21 (5) AN INTEGRATED RESOURCE PLAN SHALL INCLUDE ALL OF THE
22 FOLLOWING:

23 (A) A LONG-TERM FORECAST OF THE ELECTRIC UTILITY'S SALES AND
24 PEAK DEMAND UNDER VARIOUS REASONABLE SCENARIOS.

25 (B) THE TYPE OF GENERATION TECHNOLOGY PROPOSED FOR A
26 GENERATION FACILITY CONTAINED IN THE PLAN AND THE PROPOSED CAPACITY
27 OF THE GENERATION FACILITY, INCLUDING PROJECTED FUEL COSTS UNDER

1 VARIOUS REASONABLE SCENARIOS.

2 (C) PROJECTED ENERGY PURCHASED OR PRODUCED BY THE ELECTRIC
3 UTILITY FROM A RENEWABLE ENERGY RESOURCE. IF THE LEVEL OF RENEWABLE
4 ENERGY PURCHASED OR PRODUCED IS PROJECTED TO DROP OVER THE PLANNING
5 PERIODS SET FORTH IN SUBSECTION (3), THE ELECTRIC UTILITY MUST
6 DEMONSTRATE WHY THE REDUCTION IS IN THE BEST INTEREST OF
7 RATEPAYERS.

8 (D) DETAILS REGARDING THE UTILITY'S PLAN TO ELIMINATE ENERGY
9 WASTE, INCLUDING THE TOTAL AMOUNT OF ENERGY WASTE REDUCTION
10 EXPECTED TO BE ACHIEVED ANNUALLY, THE COST OF THE PLAN, AND THE
11 EXPECTED SAVINGS FOR ITS RETAIL CUSTOMERS.

12 (E) AN ANALYSIS OF HOW THE COMBINED AMOUNTS OF RENEWABLE
13 ENERGY AND ENERGY WASTE REDUCTION ACHIEVED UNDER THE PLAN COMPARE
14 TO THE RENEWABLE ENERGY RESOURCES AND ENERGY WASTE REDUCTION GOAL
15 PROVIDED IN SECTION 1 OF THE CLEAN AND RENEWABLE ENERGY AND ENERGY
16 WASTE REDUCTION ACT, 2008 PA 295, MCL 460.1001. THIS ANALYSIS AND
17 COMPARISON MAY INCLUDE RENEWABLE ENERGY AND CAPACITY IN ANY FORM,
18 INCLUDING GENERATING ELECTRICITY FROM RENEWABLE ENERGY SYSTEMS FOR
19 SALE TO RETAIL CUSTOMERS OR PURCHASING OR OTHERWISE ACQUIRING
20 RENEWABLE ENERGY CREDITS WITH OR WITHOUT ASSOCIATED RENEWABLE
21 ENERGY, ALLOWED UNDER SECTION 27 OF THE CLEAN AND RENEWABLE ENERGY
22 AND ENERGY WASTE REDUCTION ACT, 2008 PA 295, MCL 460.1027, AS IT
23 EXISTED BEFORE THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
24 THIS SECTION.

25 (F) PROJECTED LOAD MANAGEMENT AND DEMAND RESPONSE SAVINGS FOR
26 THE ELECTRIC UTILITY AND THE PROJECTED COSTS FOR THOSE PROGRAMS.

27 (G) PROJECTED ENERGY AND CAPACITY PURCHASED OR PRODUCED BY THE

1 ELECTRIC UTILITY FROM A COGENERATION RESOURCE.

2 (H) AN ANALYSIS OF POTENTIAL NEW OR UPGRADED ELECTRIC
3 TRANSMISSION OPTIONS FOR THE ELECTRIC UTILITY.

4 (I) DATA REGARDING THE UTILITY'S CURRENT GENERATION PORTFOLIO,
5 INCLUDING THE AGE, CAPACITY FACTOR, LICENSING STATUS, AND REMAINING
6 ESTIMATED TIME OF OPERATION FOR EACH FACILITY IN THE PORTFOLIO.

7 (J) PLANS FOR MEETING CURRENT AND FUTURE CAPACITY NEEDS WITH
8 THE COST ESTIMATES FOR ALL PROPOSED CONSTRUCTION AND MAJOR
9 INVESTMENTS, INCLUDING ANY TRANSMISSION OR DISTRIBUTION
10 INFRASTRUCTURE THAT WOULD BE REQUIRED TO SUPPORT THE PROPOSED
11 CONSTRUCTION OR INVESTMENT, AND POWER PURCHASE AGREEMENTS.

12 (K) AN ANALYSIS OF THE COST, CAPACITY FACTOR, AND VIABILITY OF
13 ALL REASONABLE OPTIONS AVAILABLE TO MEET PROJECTED ENERGY AND
14 CAPACITY NEEDS, INCLUDING, BUT NOT LIMITED TO, EXISTING ELECTRIC
15 GENERATION FACILITIES IN THIS STATE.

16 (L) PROJECTED RATE IMPACT FOR THE PERIODS COVERED BY THE PLAN.

17 (M) HOW THE UTILITY WILL COMPLY WITH ALL APPLICABLE STATE AND
18 FEDERAL ENVIRONMENTAL REGULATIONS, LAWS, AND RULES, AND THE
19 PROJECTED COSTS OF COMPLYING WITH THOSE REGULATIONS, LAWS, AND
20 RULES.

21 (N) A FORECAST OF THE UTILITY'S PEAK DEMAND AND DETAILS
22 REGARDING THE AMOUNT OF PEAK DEMAND REDUCTION THE UTILITY EXPECTS
23 TO ACHIEVE AND THE ACTIONS THE UTILITY PROPOSES TO TAKE IN ORDER TO
24 ACHIEVE THAT PEAK DEMAND REDUCTION.

25 (O) THE PROJECTED LONG-TERM FIRM GAS TRANSPORTATION CONTRACTS
26 OR NATURAL GAS STORAGE THE ELECTRIC UTILITY WILL HOLD TO PROVIDE AN
27 ADEQUATE SUPPLY OF NATURAL GAS TO ANY NEW GENERATION FACILITY.

1 (6) BEFORE FILING AN INTEGRATED RESOURCE PLAN UNDER THIS
2 SECTION, EACH ELECTRIC UTILITY WHOSE RATES ARE REGULATED BY THE
3 COMMISSION SHALL ISSUE A REQUEST FOR PROPOSALS TO PROVIDE ANY NEW
4 SUPPLY-SIDE GENERATION CAPACITY RESOURCES NEEDED TO SERVE THE
5 UTILITY'S REASONABLY PROJECTED ELECTRIC LOAD, APPLICABLE PLANNING
6 RESERVE MARGIN, AND LOCAL CLEARING REQUIREMENT FOR ITS CUSTOMERS IN
7 THIS STATE AND CUSTOMERS THE UTILITY SERVES IN OTHER STATES DURING
8 THE INITIAL 3-YEAR PLANNING PERIOD TO BE CONSIDERED IN EACH
9 INTEGRATED RESOURCE PLAN TO BE FILED UNDER THIS SECTION. AN
10 ELECTRIC UTILITY SHALL DEFINE QUALIFYING PERFORMANCE STANDARDS,
11 CONTRACT TERMS, TECHNICAL COMPETENCE, CAPABILITY, RELIABILITY,
12 CREDITWORTHINESS, PAST PERFORMANCE, AND OTHER CRITERIA THAT
13 RESPONSES AND RESPONDENTS TO THE REQUEST FOR PROPOSALS MUST MEET IN
14 ORDER TO BE CONSIDERED BY THE UTILITY IN ITS INTEGRATED RESOURCE
15 PLAN TO BE FILED UNDER THIS SECTION. RESPONDENTS TO A REQUEST FOR
16 PROPOSALS MAY REQUEST THAT CERTAIN PROPRIETARY INFORMATION BE
17 EXEMPT FROM PUBLIC DISCLOSURE AS ALLOWED BY THE COMMISSION. A
18 UTILITY THAT ISSUES A REQUEST FOR PROPOSALS UNDER THIS SUBSECTION
19 SHALL USE THE RESULTING PROPOSALS TO INFORM ITS INTEGRATED RESOURCE
20 PLAN FILED UNDER THIS SECTION AND INCLUDE ALL OF THE SUBMITTED
21 PROPOSALS AS ATTACHMENTS TO ITS INTEGRATED RESOURCE PLAN FILING
22 REGARDLESS OF WHETHER THE PROPOSALS MET THE QUALIFYING PERFORMANCE
23 STANDARDS, CONTRACT TERMS, TECHNICAL COMPETENCE, CAPABILITY,
24 RELIABILITY, CREDITWORTHINESS, PAST PERFORMANCE, OR OTHER CRITERIA
25 SPECIFIED FOR THE UTILITY'S REQUEST FOR PROPOSALS UNDER THIS
26 SECTION. AN EXISTING SUPPLIER OF ELECTRIC GENERATION CAPACITY
27 CURRENTLY PRODUCING AT LEAST 200 MEGAWATTS OF FIRM ELECTRIC

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1 GENERATION CAPACITY RESOURCES LOCATED IN THE INDEPENDENT SYSTEM
2 OPERATOR'S ZONE IN WHICH THE UTILITY'S LOAD IS SERVED THAT SEEKS TO
3 PROVIDE ELECTRIC GENERATION CAPACITY RESOURCES TO THE UTILITY MAY
4 SUBMIT A WRITTEN PROPOSAL DIRECTLY TO THE COMMISSION AS AN
5 ALTERNATIVE TO ANY SUPPLY-SIDE GENERATION CAPACITY RESOURCE
6 INCLUDED IN THE ELECTRIC UTILITY'S INTEGRATED RESOURCE PLAN
7 SUBMITTED UNDER THIS SECTION, AND HAS STANDING TO INTERVENE IN THE
8 CONTESTED CASE PROCEEDING CONDUCTED UNDER THIS SECTION. THIS
9 SUBSECTION DOES NOT REQUIRE AN ENTITY THAT SUBMITS AN ALTERNATIVE
10 UNDER THIS SUBSECTION TO SUBMIT AN INTEGRATED RESOURCE PLAN. THIS
11 SUBSECTION DOES NOT LIMIT THE ABILITY OF ANY OTHER PERSON TO SUBMIT
12 TO THE COMMISSION AN ALTERNATIVE PROPOSAL TO [ANY SUPPLY-SIDE GENERATION
13 CAPACITY RESOURCE INCLUDED IN THE ELECTRIC UTILITY'S INTEGRATED RESOURCE
14 PLAN SUBMITTED] UNDER THIS SECTION AND TO PETITION FOR AND BE GRANTED
LEAVE
15 TO INTERVENE IN THE CONTESTED CASE PROCEEDING CONDUCTED UNDER THIS
16 SECTION UNDER THE RULES OF PRACTICE AND PROCEDURE OF THE
17 COMMISSION. THE COMMISSION SHALL ONLY CONSIDER AN ALTERNATIVE
18 PROPOSAL SUBMITTED UNDER THIS SUBSECTION AS PART OF ITS APPROVAL
19 PROCESS UNDER SUBSECTION (8). THE ELECTRIC UTILITY SUBMITTING AN
20 INTEGRATED RESOURCE PLAN UNDER THIS SECTION IS NOT REQUIRED TO
21 ADOPT ANY PROPOSALS SUBMITTED UNDER THIS SUBSECTION. TO THE EXTENT
22 PRACTICABLE, EACH ELECTRIC UTILITY IS ENCOURAGED, BUT NOT REQUIRED,
23 TO PARTNER WITH OTHER ELECTRIC PROVIDERS IN THE SAME LOCAL RESOURCE
24 ZONE AS THE UTILITY'S LOAD IS SERVED IN THE DEVELOPMENT OF ANY NEW
25 SUPPLY-SIDE GENERATION CAPACITY RESOURCES INCLUDED AS PART OF ITS
26 INTEGRATED RESOURCE PLAN.

27 (7) NOT LATER THAN 300 DAYS AFTER AN ELECTRIC UTILITY FILES AN

1 INTEGRATED RESOURCE PLAN UNDER THIS SECTION, THE COMMISSION SHALL
2 STATE IF THE COMMISSION HAS ANY RECOMMENDED CHANGES, AND IF SO,
3 DESCRIBE THEM IN SUFFICIENT DETAIL TO ALLOW THEIR INCORPORATION IN
4 THE INTEGRATED RESOURCE PLAN. IF THE COMMISSION DOES NOT RECOMMEND
5 CHANGES, IT SHALL ISSUE A FINAL, APPEALABLE ORDER APPROVING OR
6 DENYING THE PLAN FILED BY THE ELECTRIC UTILITY. IF THE COMMISSION
7 RECOMMENDS CHANGES, THE COMMISSION SHALL SET A SCHEDULE ALLOWING
8 PARTIES AT LEAST 15 DAYS AFTER THAT RECOMMENDATION TO FILE COMMENTS
9 REGARDING THOSE RECOMMENDATIONS, AND ALLOWING THE ELECTRIC UTILITY
10 AT LEAST 30 DAYS TO CONSIDER THE RECOMMENDED CHANGES AND SUBMIT A
11 REVISED INTEGRATED RESOURCE PLAN THAT INCORPORATES 1 OR MORE OF THE
12 RECOMMENDED CHANGES. IF THE ELECTRIC UTILITY SUBMITS A REVISED
13 INTEGRATED RESOURCE PLAN UNDER THIS SECTION, THE COMMISSION SHALL
14 ISSUE A FINAL, APPEALABLE ORDER APPROVING THE PLAN AS REVISED BY
15 THE ELECTRIC UTILITY OR DENYING THE PLAN. THE COMMISSION SHALL
16 ISSUE A FINAL, APPEALABLE ORDER NO LATER THAN 360 DAYS AFTER AN
17 ELECTRIC UTILITY FILES AN INTEGRATED RESOURCE PLAN UNDER THIS
18 SECTION. UP TO 150 DAYS AFTER AN ELECTRIC UTILITY MAKES ITS INITIAL
19 FILING, THE ELECTRIC UTILITY MAY FILE TO UPDATE ITS COST ESTIMATES
20 IF THOSE COST ESTIMATES HAVE MATERIALLY CHANGED. A UTILITY SHALL
21 NOT MODIFY ANY OTHER ASPECT OF THE INITIAL FILING UNLESS THE
22 UTILITY WITHDRAWS AND REFILES THE APPLICATION. A UTILITY'S FILING
23 UPDATING ITS COST ESTIMATES DOES NOT EXTEND THE PERIOD FOR THE
24 COMMISSION TO ISSUE AN ORDER APPROVING OR DENYING THE INTEGRATED
25 RESOURCE PLAN. THE COMMISSION SHALL REVIEW THE INTEGRATED RESOURCE
26 PLAN IN A CONTESTED CASE PROCEEDING CONDUCTED PURSUANT TO CHAPTER 4
27 OF THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL

1 24.271 TO 24.287. THE COMMISSION SHALL ALLOW INTERVENTION BY
2 INTERESTED PERSONS INCLUDING ELECTRIC CUSTOMERS OF THE UTILITY,
3 RESPONDENTS TO THE UTILITY'S REQUEST FOR PROPOSALS UNDER THIS
4 SECTION, OR OTHER PARTIES APPROVED BY THE COMMISSION. THE
5 COMMISSION SHALL REQUEST AN ADVISORY OPINION FROM THE DEPARTMENT OF
6 ENVIRONMENTAL QUALITY REGARDING WHETHER ANY POTENTIAL DECREASE IN
7 EMISSIONS OF SULFUR DIOXIDE, OXIDES OF NITROGEN, MERCURY, AND
8 PARTICULATE MATTER WOULD REASONABLY BE EXPECTED TO RESULT IF THE
9 INTEGRATED RESOURCE PLAN PROPOSED BY THE ELECTRIC UTILITY UNDER
10 SUBSECTION (3) WAS APPROVED AND WHETHER THE INTEGRATED RESOURCE
11 PLAN CAN REASONABLY BE EXPECTED TO ACHIEVE COMPLIANCE WITH THE
12 REGULATIONS, LAWS, OR RULES IDENTIFIED IN SUBSECTION (1). THE
13 COMMISSION MAY TAKE OFFICIAL NOTICE OF THE OPINION ISSUED BY THE
14 DEPARTMENT OF ENVIRONMENTAL QUALITY UNDER THIS SUBSECTION PURSUANT
15 TO R 792.10428 OF THE MICHIGAN ADMINISTRATIVE CODE. INFORMATION
16 SUBMITTED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY UNDER THIS
17 SUBSECTION IS ADVISORY AND IS NOT BINDING ON FUTURE DETERMINATIONS
18 BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY OR THE COMMISSION IN ANY
19 PROCEEDING OR PERMITTING PROCESS. THIS SECTION DOES NOT PREVENT AN
20 ELECTRIC UTILITY FROM APPLYING FOR, OR RECEIVING, ANY NECESSARY
21 PERMITS FROM THE DEPARTMENT OF ENVIRONMENTAL QUALITY. THE
22 COMMISSION MAY INVITE OTHER STATE AGENCIES TO PROVIDE TESTIMONY
23 REGARDING OTHER RELEVANT REGULATORY REQUIREMENTS RELATED TO THE
24 INTEGRATED RESOURCE PLAN. THE COMMISSION SHALL PERMIT REASONABLE
25 DISCOVERY AFTER AN INTEGRATED RESOURCE PLAN IS FILED AND DURING THE
26 HEARING IN ORDER TO ASSIST PARTIES AND INTERESTED PERSONS IN
27 OBTAINING EVIDENCE CONCERNING THE INTEGRATED RESOURCE PLAN,

1 INCLUDING, BUT NOT LIMITED TO, THE REASONABLENESS AND PRUDENCE OF
2 THE PLAN AND ALTERNATIVES TO THE PLAN RAISED BY INTERVENING
3 PARTIES.

4 (8) THE COMMISSION SHALL APPROVE THE INTEGRATED RESOURCE PLAN
5 UNDER SUBSECTION (7) IF THE COMMISSION DETERMINES ALL OF THE
6 FOLLOWING:

7 (A) THE PROPOSED INTEGRATED RESOURCE PLAN REPRESENTS THE MOST
8 REASONABLE AND PRUDENT MEANS OF MEETING THE ELECTRIC UTILITY'S
9 ENERGY AND CAPACITY NEEDS. TO DETERMINE WHETHER THE INTEGRATED
10 RESOURCE PLAN IS THE MOST REASONABLE AND PRUDENT MEANS OF MEETING
11 ENERGY AND CAPACITY NEEDS, THE COMMISSION SHALL CONSIDER WHETHER
12 THE PLAN APPROPRIATELY BALANCES ALL OF THE FOLLOWING FACTORS:

13 (i) RESOURCE ADEQUACY AND CAPACITY TO SERVE ANTICIPATED PEAK
14 ELECTRIC LOAD, APPLICABLE PLANNING RESERVE MARGIN, AND LOCAL
15 CLEARING REQUIREMENT.

16 (ii) COMPLIANCE WITH APPLICABLE STATE AND FEDERAL
17 ENVIRONMENTAL REGULATIONS.

18 (iii) COMPETITIVE PRICING.

19 (iv) RELIABILITY.

20 (v) COMMODITY PRICE RISKS.

21 (vi) DIVERSITY OF GENERATION SUPPLY.

22 (vii) WHETHER THE PROPOSED LEVELS OF PEAK LOAD REDUCTION AND
23 ENERGY WASTE REDUCTION ARE REASONABLE AND COST EFFECTIVE. EXCEEDING
24 THE RENEWABLE ENERGY RESOURCES AND ENERGY WASTE REDUCTION GOAL IN
25 SECTION 1 OF THE CLEAN AND RENEWABLE ENERGY AND ENERGY WASTE
26 REDUCTION ACT, 2008 PA 295, MCL 460.1001, BY A UTILITY SHALL NOT,
27 IN AND OF ITSELF, BE GROUNDS FOR DETERMINING THAT THE PROPOSED

1 LEVELS OF PEAK LOAD REDUCTION, RENEWABLE ENERGY, AND ENERGY WASTE
2 REDUCTION ARE NOT REASONABLE AND COST EFFECTIVE.

3 (B) TO THE EXTENT PRACTICABLE, THE CONSTRUCTION OR INVESTMENT
4 IN A NEW OR EXISTING CAPACITY RESOURCE IN THIS STATE IS COMPLETED
5 USING A WORKFORCE COMPOSED OF RESIDENTS OF THIS STATE AS DETERMINED
6 BY THE COMMISSION. THIS SUBDIVISION DOES NOT APPLY TO A CAPACITY
7 RESOURCE THAT IS LOCATED IN A COUNTY THAT LIES ON THE BORDER WITH
8 ANOTHER STATE.

9 (C) THE PLAN MEETS THE REQUIREMENTS OF SUBSECTION (5).

10 (9) IF THE COMMISSION DENIES A UTILITY'S INTEGRATED RESOURCE
11 PLAN, THE UTILITY, WITHIN 60 DAYS AFTER THE DATE OF THE FINAL ORDER
12 DENYING THE INTEGRATED RESOURCE PLAN, MAY SUBMIT REVISIONS TO THE
13 INTEGRATED RESOURCE PLAN TO THE COMMISSION FOR APPROVAL. THE
14 COMMISSION SHALL COMMENCE A NEW CONTESTED CASE HEARING UNDER
15 CHAPTER 4 OF THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA
16 306, MCL 24.271 TO 24.287. NOT LATER THAN 90 DAYS AFTER THE DATE
17 THAT THE UTILITY SUBMITS THE REVISED INTEGRATED RESOURCE PLAN TO
18 THE COMMISSION UNDER THIS SUBSECTION, THE COMMISSION SHALL ISSUE AN
19 ORDER APPROVING OR DENYING, WITH RECOMMENDATIONS, THE REVISED
20 INTEGRATED RESOURCE PLAN IF THE REVISIONS ARE NOT SUBSTANTIAL OR
21 INCONSISTENT WITH THE ORIGINAL INTEGRATED RESOURCE PLAN FILED UNDER
22 THIS SECTION. IF THE REVISIONS ARE SUBSTANTIAL OR INCONSISTENT WITH
23 THE ORIGINAL INTEGRATED RESOURCE PLAN, THE COMMISSION HAS UP TO 150
24 DAYS TO ISSUE AN ORDER APPROVING OR DENYING, WITH RECOMMENDATIONS,
25 THE REVISED INTEGRATED RESOURCE PLAN.

26 (10) IF THE COMMISSION DENIES AN ELECTRIC UTILITY'S INTEGRATED
27 RESOURCE PLAN, THE ELECTRIC UTILITY MAY PROCEED WITH A PROPOSED

1 CONSTRUCTION, PURCHASE, INVESTMENT, OR POWER PURCHASE AGREEMENT
2 CONTAINED IN THE INTEGRATED RESOURCE PLAN WITHOUT THE ASSURANCES
3 GRANTED UNDER THIS SECTION.

4 (11) IN APPROVING AN INTEGRATED RESOURCE PLAN UNDER THIS
5 SECTION, THE COMMISSION SHALL SPECIFY THE COSTS APPROVED FOR THE
6 CONSTRUCTION OF OR SIGNIFICANT INVESTMENT IN AN ELECTRIC GENERATION
7 FACILITY, THE PURCHASE OF AN EXISTING ELECTRIC GENERATION FACILITY,
8 THE PURCHASE OF POWER UNDER THE TERMS OF THE POWER PURCHASE
9 AGREEMENT, OR OTHER INVESTMENTS OR RESOURCES USED TO MEET ENERGY
10 AND CAPACITY NEEDS THAT ARE INCLUDED IN THE APPROVED INTEGRATED
11 RESOURCE PLAN. THE COSTS FOR SPECIFICALLY IDENTIFIED INVESTMENTS,
12 INCLUDING THE COSTS FOR FACILITIES UNDER SUBSECTION (12), INCLUDED
13 IN AN APPROVED INTEGRATED RESOURCE PLAN THAT ARE COMMENCED WITHIN 3
14 YEARS AFTER THE COMMISSION'S ORDER APPROVING THE INITIAL PLAN,
15 AMENDED PLAN, OR PLAN REVIEW ARE CONSIDERED REASONABLE AND PRUDENT
16 FOR COST RECOVERY PURPOSES.

17 (12) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (13), FOR A
18 NEW ELECTRIC GENERATION FACILITY APPROVED IN AN INTEGRATED RESOURCE
19 PLAN THAT IS TO BE OWNED BY THE ELECTRIC UTILITY AND THAT IS
20 COMMENCED WITHIN 3 YEARS AFTER THE COMMISSION'S ORDER APPROVING THE
21 PLAN, THE COMMISSION SHALL FINALIZE THE APPROVED COSTS FOR THE
22 FACILITY ONLY AFTER THE UTILITY HAS DONE ALL OF THE FOLLOWING AND
23 FILED THE RESULTS, ANALYSIS, AND RECOMMENDATIONS WITH THE
24 COMMISSION:

25 (A) IMPLEMENTED A COMPETITIVE BIDDING PROCESS FOR ALL MAJOR
26 ENGINEERING, PROCUREMENT, AND CONSTRUCTION CONTRACTS ASSOCIATED
27 WITH THE CONSTRUCTION OF THE FACILITY.

1 (B) IMPLEMENTED A COMPETITIVE BIDDING PROCESS THAT ALLOWS
2 THIRD PARTIES TO SUBMIT FIRM AND BINDING BIDS FOR THE CONSTRUCTION
3 OF AN ELECTRIC GENERATION FACILITY ON BEHALF OF THE UTILITY THAT
4 WOULD MEET ALL OF THE TECHNICAL, COMMERCIAL, AND OTHER
5 SPECIFICATIONS REQUIRED BY THE UTILITY FOR THE GENERATION FACILITY,
6 SUCH THAT OWNERSHIP OF THE ELECTRIC GENERATION FACILITY VESTS WITH
7 THE UTILITY NO LATER THAN THE DATE THE ELECTRIC GENERATION FACILITY
8 BECOMES COMMERCIALY AVAILABLE.

9 (C) DEMONSTRATED TO THE COMMISSION THAT THE FINALIZED COSTS
10 FOR THE NEW ELECTRIC GENERATION FACILITY ARE NOT SIGNIFICANTLY
11 HIGHER THAN THE INITIALLY APPROVED COSTS UNDER SUBSECTION (11). IF
12 THE FINALIZED COSTS ARE FOUND TO BE SIGNIFICANTLY HIGHER THAN THE
13 INITIALLY APPROVED COSTS, THE COMMISSION SHALL REVIEW AND APPROVE
14 THE PROPOSED COSTS IF THE COMMISSION DETERMINES THOSE COSTS ARE
15 REASONABLE AND PRUDENT.

16 (13) IF THE CAPACITY RESOURCE UNDER SUBSECTION (12) IS FOR THE
17 CONSTRUCTION OF AN ELECTRIC GENERATION FACILITY OF 225 MEGAWATTS OR
18 MORE OR FOR THE CONSTRUCTION OF AN ADDITIONAL GENERATING UNIT OR
19 UNITS TOTALING 225 MEGAWATTS OR MORE AT AN EXISTING ELECTRIC
20 GENERATION FACILITY, THE UTILITY SHALL SUBMIT AN APPLICATION TO THE
21 COMMISSION SEEKING A CERTIFICATE OF NECESSITY UNDER SECTION 6S.

22 (14) AN ELECTRIC UTILITY SHALL ANNUALLY, OR MORE FREQUENTLY IF
23 REQUIRED BY THE COMMISSION, FILE REPORTS TO THE COMMISSION
24 REGARDING THE STATUS OF ANY PROJECTS INCLUDED IN THE INITIAL 3-YEAR
25 PERIOD OF AN INTEGRATED RESOURCE PLAN APPROVED UNDER SUBSECTION
26 (7).

27 (15) FOR POWER PURCHASE AGREEMENTS THAT A UTILITY ENTERS INTO

1 AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
2 SECTION WITH AN ENTITY THAT IS NOT AFFILIATED WITH THAT UTILITY,
3 THE COMMISSION SHALL CONSIDER AND MAY AUTHORIZE A FINANCIAL
4 INCENTIVE FOR THAT UTILITY THAT DOES NOT EXCEED THE UTILITY'S
5 WEIGHTED AVERAGE COST OF CAPITAL.

6 (16) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN ORDER BY
7 THE COMMISSION APPROVING AN INTEGRATED RESOURCE PLAN MAY BE
8 REVIEWED BY THE COURT OF APPEALS UPON A FILING BY A PARTY TO THE
9 COMMISSION PROCEEDING WITHIN 30 DAYS AFTER THE ORDER IS ISSUED. ALL
10 APPEALS OF THE ORDER SHALL BE HEARD AND DETERMINED AS EXPEDITIOUSLY
11 AS POSSIBLE WITH LAWFUL PRECEDENCE OVER OTHER MATTERS. REVIEW ON
12 APPEAL SHALL BE BASED SOLELY ON THE RECORD BEFORE THE COMMISSION
13 AND BRIEFS TO THE COURT AND IS LIMITED TO WHETHER THE ORDER
14 CONFORMS TO THE CONSTITUTION AND LAWS OF THIS STATE AND THE UNITED
15 STATES AND IS WITHIN THE AUTHORITY OF THE COMMISSION UNDER THIS
16 ACT.

17 (17) THE COMMISSION SHALL INCLUDE IN AN ELECTRIC UTILITY'S
18 RETAIL RATES ALL REASONABLE AND PRUDENT COSTS SPECIFIED UNDER
19 SUBSECTIONS (11) AND (12) THAT HAVE BEEN INCURRED TO IMPLEMENT AN
20 INTEGRATED RESOURCE PLAN APPROVED BY THE COMMISSION. THE COMMISSION
21 SHALL NOT DISALLOW RECOVERY OF COSTS AN ELECTRIC UTILITY INCURS IN
22 IMPLEMENTING AN APPROVED INTEGRATED RESOURCE PLAN, IF THE COSTS DO
23 NOT EXCEED THE COSTS APPROVED BY THE COMMISSION UNDER SUBSECTIONS
24 (11) AND (12). IF THE ACTUAL COSTS INCURRED BY THE ELECTRIC UTILITY
25 EXCEED THE COSTS APPROVED BY THE COMMISSION, THE ELECTRIC UTILITY
26 HAS THE BURDEN OF PROVING BY A PREPONDERANCE OF THE EVIDENCE THAT
27 THE COSTS ARE REASONABLE AND PRUDENT. THE PORTION OF THE COST OF A

1 PLANT, FACILITY, POWER PURCHASE AGREEMENT, OR OTHER INVESTMENT IN A
2 RESOURCE THAT MEETS A DEMONSTRATED NEED FOR CAPACITY THAT EXCEEDS
3 THE COST APPROVED BY THE COMMISSION IS PRESUMED TO HAVE BEEN
4 INCURRED DUE TO A LACK OF PRUDENCE. THE COMMISSION MAY INCLUDE ANY
5 OR ALL OF THE PORTION OF THE COST IN EXCESS OF THE COST APPROVED BY
6 THE COMMISSION IF THE COMMISSION FINDS BY A PREPONDERANCE OF THE
7 EVIDENCE THAT THE COSTS ARE REASONABLE AND PRUDENT. THE COMMISSION
8 SHALL DISALLOW COSTS THE COMMISSION FINDS HAVE BEEN INCURRED AS THE
9 RESULT OF FRAUD, CONCEALMENT, GROSS MISMANAGEMENT, OR LACK OF
10 QUALITY CONTROLS AMOUNTING TO GROSS MISMANAGEMENT. THE COMMISSION
11 SHALL ALSO REQUIRE REFUNDS WITH INTEREST TO RATEPAYERS OF ANY OF
12 THESE COSTS ALREADY RECOVERED THROUGH THE ELECTRIC UTILITY'S RATES
13 AND CHARGES. IF THE ASSUMPTIONS UNDERLYING AN APPROVED INTEGRATED
14 RESOURCE PLAN MATERIALLY CHANGE, OR IF THE COMMISSION BELIEVES IT
15 IS UNLIKELY THAT A PROJECT OR PROGRAM WILL BECOME COMMERCIALY
16 OPERATIONAL, AN ELECTRIC UTILITY MAY REQUEST, OR THE COMMISSION ON
17 ITS OWN MOTION MAY INITIATE, A PROCEEDING TO REVIEW WHETHER IT IS
18 REASONABLE AND PRUDENT TO COMPLETE AN UNFINISHED PROJECT OR PROGRAM
19 INCLUDED IN AN APPROVED INTEGRATED RESOURCE PLAN. IF THE COMMISSION
20 FINDS THAT COMPLETION OF THE PROJECT OR PROGRAM IS NO LONGER
21 REASONABLE AND PRUDENT, THE COMMISSION MAY MODIFY OR CANCEL
22 APPROVAL OF THE PROJECT OR PROGRAM AND UNINCURRED COSTS IN THE
23 ELECTRIC UTILITY'S INTEGRATED RESOURCE PLAN. EXCEPT FOR COSTS THE
24 COMMISSION FINDS AN ELECTRIC UTILITY HAS INCURRED AS THE RESULT OF
25 FRAUD, CONCEALMENT, GROSS MISMANAGEMENT, OR LACK OF QUALITY
26 CONTROLS AMOUNTING TO GROSS MISMANAGEMENT, IF COMMISSION APPROVAL
27 IS MODIFIED OR CANCELED, THE COMMISSION SHALL NOT DISALLOW

1 REASONABLE AND PRUDENT COSTS ALREADY INCURRED OR COMMITTED TO BY
2 CONTRACT BY AN ELECTRIC UTILITY. ONCE THE COMMISSION FINDS THAT
3 COMPLETION OF THE PROJECT OR PROGRAM IS NO LONGER REASONABLE AND
4 PRUDENT, THE COMMISSION MAY LIMIT FUTURE COST RECOVERY TO THOSE
5 COSTS THAT COULD NOT BE REASONABLY AVOIDED.

6 (18) THE COMMISSION MAY ALLOW FINANCING INTEREST COST RECOVERY
7 IN AN ELECTRIC UTILITY'S BASE RATES ON CONSTRUCTION WORK IN
8 PROGRESS FOR CAPITAL IMPROVEMENTS APPROVED UNDER THIS SECTION PRIOR
9 TO THE ASSETS' BEING CONSIDERED USED AND USEFUL. REGARDLESS OF
10 WHETHER OR NOT THE COMMISSION AUTHORIZES BASE RATE TREATMENT FOR
11 CONSTRUCTION WORK IN PROGRESS FINANCING INTEREST EXPENSE, AN
12 ELECTRIC UTILITY MAY RECOGNIZE, ACCRUE, AND DEFER THE ALLOWANCE FOR
13 FUNDS USED DURING CONSTRUCTION.

14 (19) AN ELECTRIC UTILITY MAY SEEK TO AMEND AN APPROVED
15 INTEGRATED RESOURCE PLAN. EXCEPT AS OTHERWISE PROVIDED UNDER THIS
16 SUBSECTION, THE COMMISSION SHALL CONSIDER THE AMENDMENTS UNDER THE
17 SAME PROCESS AND STANDARDS THAT GOVERN THE REVIEW AND APPROVAL OF A
18 REVISED INTEGRATED RESOURCE PLAN UNDER SUBSECTION (9). THE
19 COMMISSION MAY ORDER AN ELECTRIC UTILITY THAT SEEKS TO AMEND AN
20 APPROVED INTEGRATED RESOURCE PLAN UNDER THIS SUBSECTION TO FILE A
21 PLAN REVIEW UNDER SUBSECTION (21).

22 (20) AN ELECTRIC UTILITY SHALL FILE AN APPLICATION FOR REVIEW
23 OF ITS INTEGRATED RESOURCE PLAN NOT LATER THAN 5 YEARS AFTER THE
24 EFFECTIVE DATE OF THE MOST RECENT COMMISSION ORDER APPROVING A
25 PLAN, A PLAN AMENDMENT, OR A PLAN REVIEW. THE COMMISSION SHALL
26 CONSIDER A PLAN REVIEW UNDER THE SAME PROCESS AND STANDARDS
27 ESTABLISHED IN THIS SECTION FOR REVIEW AND APPROVAL OF AN

1 INTEGRATED RESOURCE PLAN. A COMMISSION ORDER APPROVING A PLAN
2 REVIEW HAS THE SAME EFFECT AS AN ORDER APPROVING AN INTEGRATED
3 RESOURCE PLAN.

4 (21) THE COMMISSION MAY, ON ITS OWN MOTION OR AT THE REQUEST
5 OF THE ELECTRIC UTILITY, ORDER AN ELECTRIC UTILITY TO FILE A PLAN
6 REVIEW. THE DEPARTMENT OF ENVIRONMENTAL QUALITY MAY REQUEST THE
7 COMMISSION TO ORDER A PLAN REVIEW TO ADDRESS MATERIAL CHANGES IN
8 ENVIRONMENTAL REGULATIONS AND REQUIREMENTS THAT OCCUR AFTER THE
9 COMMISSION'S APPROVAL OF AN INTEGRATED RESOURCE PLAN. AN ELECTRIC
10 UTILITY MUST FILE A PLAN REVIEW WITHIN 270 DAYS AFTER THE
11 COMMISSION ORDERS THE UTILITY TO FILE A PLAN REVIEW.

12 (22) AS USED IN THIS SECTION, "LONG-TERM FIRM GAS
13 TRANSPORTATION" MEANS A BINDING AGREEMENT ENTERED INTO BETWEEN THE
14 ELECTRIC UTILITY AND A NATURAL GAS TRANSMISSION PROVIDER FOR A SET
15 PERIOD OF TIME TO PROVIDE FIRM DELIVERY OF NATURAL GAS TO AN
16 ELECTRIC GENERATION FACILITY.

17 SEC. 6U. (1) NOT LATER THAN 90 DAYS AFTER THE EFFECTIVE DATE
18 OF THE AMENDATORY ACT THAT ADDED THIS SECTION, THE COMMISSION SHALL
19 COMMENCE A STUDY IN COLLABORATION WITH REPRESENTATIVES OF EACH
20 CUSTOMER CLASS, UTILITIES WHOSE RATES ARE REGULATED BY THE
21 COMMISSION, AND OTHER INTERESTED PARTIES REGARDING PERFORMANCE-
22 BASED REGULATION, UNDER WHICH A UTILITY'S AUTHORIZED RATE OF RETURN
23 WOULD DEPEND ON THE UTILITY ACHIEVING TARGETED POLICY OUTCOMES.

24 (2) IN THE STUDY REQUIRED UNDER THIS SECTION, THE COMMISSION
25 SHALL REVIEW PERFORMANCE-BASED REGULATION SYSTEMS THAT HAVE BEEN
26 IMPLEMENTED IN ANOTHER STATE OR COUNTRY, INCLUDING, BUT NOT LIMITED
27 TO, THE RIIO (REVENUE = INCENTIVES + INNOVATION + OUTPUTS) MODEL

1 UTILIZED IN THE UNITED KINGDOM.

2 (3) IN REVIEWING VARIOUS PERFORMANCE-BASED REGULATION SYSTEMS,
3 THE COMMISSION SHALL EVALUATE, BUT NOT BE LIMITED TO, ALL OF THE
4 FOLLOWING FACTORS:

5 (A) METHODS FOR ESTIMATING THE REVENUE NEEDED BY A UTILITY
6 DURING A MULTIYEAR PRICING PERIOD, AND A FAIR RETURN, THAT USES
7 FORECASTS OF EFFICIENT TOTAL EXPENDITURES BY THE UTILITY INSTEAD OF
8 DISTINGUISHING BETWEEN OPERATING AND CAPITAL COSTS.

9 (B) METHODS TO INCREASE THE LENGTH OF TIME BETWEEN RATE CASES,
10 TO PROVIDE UTILITIES WITH MORE OPPORTUNITY TO RETAIN COST SAVINGS
11 WITHOUT THE THREAT OF IMMINENT RATE ADJUSTMENTS, AND TO ENCOURAGE
12 UTILITIES TO MAKE INVESTMENTS THAT HAVE EXTENDED PAYBACK PERIODS.

13 (C) OPTIONS FOR ESTABLISHING INCENTIVES AND PENALTIES THAT
14 PERTAIN TO ISSUES SUCH AS CUSTOMER SATISFACTION, SAFETY,
15 RELIABILITY, ENVIRONMENTAL IMPACT, AND SOCIAL OBLIGATIONS.

16 (D) PROFIT-SHARING PROVISIONS THAT CAN SPREAD EFFICIENCY GAINS
17 AMONG CONSUMERS AND UTILITY SHAREHOLDERS AND CAN REDUCE THE DEGREE
18 OF DOWNSIDE RISK ASSOCIATED WITH ATTEMPTS AT INNOVATION.

19 (4) NOT LATER THAN 1 YEAR AFTER THE EFFECTIVE DATE OF THE
20 AMENDATORY ACT THAT ADDED THIS SECTION, THE COMMISSION SHALL REPORT
21 AND MAKE RECOMMENDATIONS IN WRITING TO THE LEGISLATURE AND GOVERNOR
22 BASED ON THE RESULT OF THE STUDY CONDUCTED UNDER THIS SECTION.

23 (5) THIS SECTION DOES NOT LIMIT THE COMMISSION'S AUTHORITY TO
24 AUTHORIZE PERFORMANCE-BASED REGULATION.

25 SEC. 6V. (1) NOTWITHSTANDING ANY EXISTING POWER PURCHASE
26 AGREEMENT, THE COMMISSION SHALL, AT LEAST EVERY 5 YEARS, CONDUCT A
27 PROCEEDING, AS A CONTESTED CASE PURSUANT TO CHAPTER 4 OF THE

1 ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.271 TO
2 24.287, TO REEVALUATE THE PROCEDURES AND RATES SCHEDULES INCLUDING
3 AVOIDED COST RATES, AS ORIGINALLY ESTABLISHED BY THE COMMISSION IN
4 AN ORDER DATED MARCH 17, 1981 IN CASE NO. U-6798, TO IMPLEMENT
5 TITLE II, SECTION 210, OF THE PUBLIC UTILITY REGULATORY POLICIES
6 ACT OF 1978, AS IT RELATES TO QUALIFYING FACILITIES FROM WHICH
7 UTILITIES IN THIS STATE HAVE AN OBLIGATION TO PURCHASE ENERGY AND
8 CAPACITY. NOTHING IN THIS SECTION SUPERSEDES THE PROVISIONS OF
9 PURPA OR THE FEDERAL ENERGY REGULATORY COMMISSION'S REGULATIONS AND
10 ORDERS IMPLEMENTING PURPA.

11 (2) IN SETTING RATES FOR AVOIDED COSTS, THE COMMISSION SHALL
12 TAKE INTO CONSIDERATION THE FACTORS REGARDING AVOIDED COSTS SET
13 FORTH IN PURPA AND THE FEDERAL ENERGY REGULATORY COMMISSION'S
14 REGULATIONS AND ORDERS IMPLEMENTING PURPA.

15 (3) AFTER AN INITIAL CONTESTED CASE UNDER SUBSECTION (1), FOR
16 A UTILITY SERVING LESS THAN 1,000,000 ELECTRIC CUSTOMERS IN THIS
17 STATE, THE COMMISSION MAY CONDUCT ANY PERIODIC REEVALUATIONS OF THE
18 PROCEDURES, RATE SCHEDULES, AND AVOIDED COST RATES FOR THAT UTILITY
19 USING NOTICE AND COMMENT PROCEDURES INSTEAD OF A FULL CONTESTED
20 CASE. THE COMMISSION SHALL CONDUCT THE PERIODIC REEVALUATION IN A
21 CONTESTED CASE UNDER CHAPTER 4 OF THE ADMINISTRATIVE PROCEDURES ACT
22 OF 1969, 1969 PA 306, MCL 24.271 TO 24.287, IF A QUALIFYING
23 FACILITY FILES A COMMENT DISPUTING THE UTILITY FILING AND
24 REQUESTING A CONTESTED CASE.

25 (4) AN ORDER ISSUED BY THE COMMISSION UNDER SUBSECTION (1)
26 SHALL DO ALL OF THE FOLLOWING:

27 (A) ENSURE THAT THE RATES FOR PURCHASES BY AN ELECTRIC UTILITY

1 FROM, AND RATES FOR SALES TO, A QUALIFYING FACILITY SHALL, OVER THE
2 TERM OF A CONTRACT, BE JUST AND REASONABLE AND IN THE PUBLIC
3 INTEREST, AS DEFINED BY PURPA.

4 (B) ENSURE THAT AN ELECTRIC UTILITY DOES NOT DISCRIMINATE
5 AGAINST A QUALIFYING FACILITY WITH RESPECT TO THE CONDITIONS OR
6 PRICE FOR PROVISION OF MAINTENANCE POWER, BACKUP POWER,
7 INTERRUPTIBLE POWER, AND SUPPLEMENTARY POWER OR FOR ANY OTHER
8 SERVICE.

9 (C) REQUIRE THAT ANY PRICES CHARGED BY AN ELECTRIC UTILITY FOR
10 MAINTENANCE POWER, BACKUP POWER, INTERRUPTIBLE POWER, AND
11 SUPPLEMENTARY POWER AND ALL OTHER SUCH SERVICES ARE COST-BASED AND
12 JUST AND REASONABLE.

13 (D) ESTABLISH A SCHEDULE OF AVOIDED COST PRICE UPDATES FOR
14 EACH ELECTRIC UTILITY.

15 (E) REQUIRE ELECTRIC UTILITIES TO PUBLISH ON THEIR WEBSITES
16 TEMPLATE CONTRACTS FOR POWER PURCHASE AGREEMENTS FOR QUALIFYING
17 FACILITIES OF LESS THAN 3 MEGAWATTS THAT NEED NOT INCLUDE TERMS FOR
18 EITHER PRICE OR DURATION OF THE CONTRACT. THE TERMS OF A TEMPLATE
19 CONTRACT PUBLISHED UNDER THIS SUBSECTION ARE NOT BINDING ON EITHER
20 AN ELECTRIC UTILITY OR A QUALIFYING FACILITY AND MAY BE NEGOTIATED
21 AND ALTERED UPON AGREEMENT BETWEEN AN ELECTRIC UTILITY AND A
22 QUALIFYING FACILITY.

23 (5) WITHIN 1 YEAR AFTER THE EFFECTIVE DATE OF THE AMENDATORY
24 ACT THAT ADDED THIS SECTION, AND EVERY 2 YEARS THEREAFTER, THE
25 COMMISSION SHALL ISSUE A REPORT TO THE MICHIGAN AGENCY FOR ENERGY
26 AND THE STANDING COMMITTEES OF THE SENATE AND HOUSE OF
27 REPRESENTATIVES WITH PRIMARY RESPONSIBILITY FOR ENERGY AND

1 ENVIRONMENTAL ISSUES. THE REPORT SHALL PROVIDE A DESCRIPTION AND
2 STATUS OF QUALIFYING FACILITIES IN THIS STATE, THE CURRENT STATUS
3 OF POWER PURCHASE AGREEMENTS OF EACH QUALIFYING FACILITY, AND THE
4 COMMISSION'S EFFORTS TO COMPLY WITH THE REQUIREMENTS OF PURPA.

5 (6) AS USED IN THIS SECTION:

6 (A) "AVOIDED COSTS" MEANS THAT TERM AS DEFINED IN 18 CFR
7 292.101.

8 (B) "BACKUP POWER" MEANS ELECTRIC ENERGY OR CAPACITY SUPPLIED
9 BY AN ELECTRIC UTILITY TO REPLACE ELECTRIC ENERGY ORDINARILY
10 GENERATED BY A QUALIFYING FACILITY'S OWN ELECTRIC GENERATION
11 EQUIPMENT DURING AN UNSCHEDULED OUTAGE OF THE QUALIFYING FACILITY.

12 (C) "MAINTENANCE POWER" MEANS ELECTRIC ENERGY OR CAPACITY
13 SUPPLIED BY AN ELECTRIC UTILITY DURING SCHEDULED OUTAGES OF THE
14 QUALIFYING FACILITY.

15 (D) "PURPA" MEANS TITLE II, SECTION 210, OF THE PUBLIC UTILITY
16 REGULATORY POLICIES ACT OF 1978.

17 (E) "QUALIFYING FACILITY" OR "FACILITIES" MEANS QUALIFYING
18 COGENERATION FACILITIES OR QUALIFYING SMALL POWER PRODUCTION
19 FACILITIES FROM WHICH AN ELECTRIC UTILITY WITHIN THIS STATE HAS AN
20 OBLIGATION TO PURCHASE ENERGY AND CAPACITY WITHIN THE MEANING OF
21 SECTIONS 201 AND 210 OF PURPA, 16 USC 796 AND 824A-3, AND
22 ASSOCIATED FEDERAL REGULATIONS AND ORDERS.

23 (F) "SUPPLEMENTARY POWER" MEANS ELECTRIC ENERGY OR CAPACITY
24 SUPPLIED BY AN ELECTRIC UTILITY, REGULARLY USED BY A QUALIFYING
25 FACILITY IN ADDITION TO THE ELECTRIC ENERGY OR CAPACITY THAT THE
26 QUALIFYING FACILITY GENERATES.

27 SEC. 6W. (1) IF THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR

1 RECEIVES APPROVAL FROM THE FEDERAL ENERGY REGULATORY COMMISSION TO
2 IMPLEMENT A RESOURCE ADEQUACY TARIFF THAT PROVIDES FOR A CAPACITY
3 FORWARD AUCTION, AND INCLUDES THE OPTION FOR A STATE TO IMPLEMENT A
4 PREVAILING STATE COMPENSATION MECHANISM FOR CAPACITY, THEN THE
5 COMMISSION SHALL EXAMINE WHETHER THE PREVAILING STATE COMPENSATION
6 MECHANISM WOULD BE MORE COST-EFFECTIVE, REASONABLE, AND PRUDENT
7 THAN THE CAPACITY FORWARD AUCTION FOR THIS STATE BEFORE THE
8 COMMISSION MAY ORDER THE PREVAILING STATE COMPENSATION MECHANISM TO
9 BE IMPLEMENTED IN ANY UTILITY SERVICE TERRITORY IN WHICH THE
10 PREVAILING STATE COMPENSATION MECHANISM IS NOT YET EFFECTIVE.
11 BEFORE THE COMMISSION ORDERS THE IMPLEMENTATION OF THE PREVAILING
12 STATE COMPENSATION MECHANISM IN 1 OR MORE UTILITY SERVICE
13 TERRITORIES, THE COMMISSION SHALL HOLD A CONTESTED CASE HEARING
14 PURSUANT TO CHAPTER 4 OF THE ADMINISTRATIVE PROCEDURES ACT OF 1969,
15 1969 PA 306, MCL 24.271 TO 24.287. THE COMMISSION SHALL ALLOW
16 INTERVENTION BY INTERESTED PERSONS, ALTERNATIVE ELECTRIC SUPPLIERS,
17 AND CUSTOMERS OF ALTERNATIVE ELECTRIC SUPPLIERS AND THE UTILITY
18 UNDER CONSIDERATION. AT THE CONCLUSION OF THE PROCEEDING, THE
19 COMMISSION SHALL MAKE A FINDING FOR EACH UTILITY SERVICE TERRITORY
20 UNDER CONSIDERATION, BASED ON CLEAR AND CONVINCING EVIDENCE, AS TO
21 WHETHER OR NOT THE PREVAILING STATE COMPENSATION MECHANISM WOULD BE
22 MORE COST-EFFECTIVE, REASONABLE, AND PRUDENT THAN THE USE OF THE
23 CAPACITY FORWARD AUCTION FOR THIS STATE IN MEETING THE LOCAL
24 CLEARING REQUIREMENT AND THE PLANNING RESERVE MARGIN REQUIREMENT.
25 THE CONTESTED CASE MUST BE SCHEDULED FOR COMPLETION BY DECEMBER 1
26 BEFORE THE INDEPENDENT SYSTEM OPERATOR'S CAPACITY FORWARD AUCTION
27 FOR THIS STATE, AND THE COMMISSION'S DECISION SHALL IDENTIFY WHICH

1 UTILITY SERVICE TERRITORIES WILL BE SUBJECT TO THE PREVAILING STATE
2 COMPENSATION MECHANISM. IF THE COMMISSION IMPLEMENTS THE PREVAILING
3 STATE COMPENSATION MECHANISM, IT SHALL IMPLEMENT THE PREVAILING
4 STATE COMPENSATION MECHANISM FOR A MINIMUM OF 4 CONSECUTIVE
5 PLANNING YEARS UNLESS SUCH PERIOD CONFLICTS WITH THE FEDERAL
6 TARIFF. THE COMMISSION SHALL ESTABLISH THE CHARGE AS A CAPACITY
7 CHARGE UNDER SUBSECTION (3) AND DETERMINE THAT CHARGE CONSISTENT
8 WITH THE APPROVED RESOURCE ADEQUACY TARIFF OF THE APPROPRIATE
9 INDEPENDENT SYSTEM OPERATOR.

10 (2) IF THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR RECEIVES
11 APPROVAL FROM THE FEDERAL ENERGY REGULATORY COMMISSION TO IMPLEMENT
12 A RESOURCE ADEQUACY TARIFF THAT PROVIDES FOR A CAPACITY FORWARD
13 AUCTION, AND DOES NOT INCLUDE THE OPTION FOR A STATE TO IMPLEMENT A
14 PREVAILING STATE COMPENSATION MECHANISM FOR CAPACITY, THEN THE
15 COMMISSION SHALL EXAMINE WHETHER A STATE RELIABILITY MECHANISM
16 ESTABLISHED UNDER SUBSECTION (8) WOULD BE MORE COST-EFFECTIVE,
17 REASONABLE, AND PRUDENT THAN THE CAPACITY FORWARD AUCTION FOR THIS
18 STATE BEFORE THE COMMISSION MAY ORDER THE STATE RELIABILITY
19 MECHANISM TO BE IMPLEMENTED IN ANY UTILITY SERVICE TERRITORY.
20 BEFORE THE COMMISSION ORDERS THE IMPLEMENTATION OF THE STATE
21 RELIABILITY MECHANISM IN 1 OR MORE UTILITY SERVICE TERRITORIES, THE
22 COMMISSION SHALL HOLD A CONTESTED CASE HEARING PURSUANT TO CHAPTER
23 4 OF THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL
24 24.271 TO 24.287. THE COMMISSION SHALL ALLOW INTERVENTION BY
25 INTERESTED PERSONS, ALTERNATIVE ELECTRIC SUPPLIERS, AND CUSTOMERS
26 OF ALTERNATIVE ELECTRIC SUPPLIERS AND THE UTILITY UNDER
27 CONSIDERATION. AT THE CONCLUSION OF THE PROCEEDING, THE COMMISSION

1 SHALL MAKE A FINDING FOR EACH UTILITY SERVICE TERRITORY UNDER
2 CONSIDERATION, BASED ON CLEAR AND CONVINCING EVIDENCE, AS TO
3 WHETHER OR NOT THE STATE RELIABILITY MECHANISM WOULD BE MORE COST-
4 EFFECTIVE, REASONABLE, AND PRUDENT THAN THE USE OF THE CAPACITY
5 FORWARD AUCTION FOR THIS STATE IN MEETING THE LOCAL CLEARING
6 REQUIREMENT AND THE PLANNING RESERVE MARGIN REQUIREMENT. THE
7 CONTESTED CASE MUST BE SCHEDULED FOR COMPLETION BY DECEMBER 1
8 BEFORE THE INDEPENDENT SYSTEM OPERATOR'S CAPACITY FORWARD AUCTION
9 FOR THIS STATE, AND THE COMMISSION'S DECISION SHALL IDENTIFY WHICH
10 UTILITY SERVICE TERRITORIES WILL BE SUBJECT TO THE STATE
11 RELIABILITY MECHANISM. IF, BY SEPTEMBER 30, 2017, THE FEDERAL
12 ENERGY REGULATORY COMMISSION DOES NOT PUT INTO EFFECT A RESOURCE
13 ADEQUACY TARIFF THAT INCLUDES A CAPACITY FORWARD AUCTION OR A
14 PREVAILING STATE COMPENSATION MECHANISM, THEN THE COMMISSION SHALL
15 ESTABLISH A STATE RELIABILITY MECHANISM UNDER SUBSECTION (8). THE
16 COMMISSION MAY COMMENCE A PROCEEDING BEFORE OCTOBER 1 IF THE
17 COMMISSION BELIEVES ORDERLY ADMINISTRATION WOULD BE ENABLED BY
18 DOING SO. IF THE COMMISSION IMPLEMENTS A STATE RELIABILITY
19 MECHANISM, IT SHALL BE FOR A MINIMUM OF 4 CONSECUTIVE PLANNING
20 YEARS BEGINNING IN THE UPCOMING PLANNING YEAR. A STATE RELIABILITY
21 CHARGE MUST BE ESTABLISHED IN THE SAME MANNER AS A CAPACITY CHARGE
22 UNDER SUBSECTION (3) AND BE DETERMINED CONSISTENT WITH SUBSECTION
23 (8).

24 (3) AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
25 SECTION 6T, THE COMMISSION SHALL ESTABLISH A CAPACITY CHARGE AS
26 PROVIDED IN THIS SECTION. A DETERMINATION OF A CAPACITY CHARGE MUST
27 BE CONDUCTED AS A CONTESTED CASE PURSUANT TO CHAPTER 4 OF THE

1 ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.271 TO
2 24.287, AFTER PROVIDING INTERESTED PERSONS WITH NOTICE AND A
3 REASONABLE OPPORTUNITY FOR A FULL AND COMPLETE HEARING AND CONCLUDE
4 BY DECEMBER 1 OF EACH YEAR. THE COMMISSION SHALL ALLOW INTERVENTION
5 BY INTERESTED PERSONS, ALTERNATIVE ELECTRIC SUPPLIERS, AND
6 CUSTOMERS OF ALTERNATIVE ELECTRIC SUPPLIERS AND THE UTILITY UNDER
7 CONSIDERATION. THE COMMISSION SHALL PROVIDE NOTICE TO THE PUBLIC OF
8 THE SINGLE CAPACITY CHARGE AS DETERMINED FOR EACH TERRITORY. NO NEW
9 CAPACITY CHARGE IS REQUIRED TO BE PAID BEFORE JUNE 1, 2018. THE
10 CAPACITY CHARGE MUST BE APPLIED TO ALTERNATIVE ELECTRIC LOAD THAT
11 IS NOT EXEMPT AS SET FORTH UNDER SUBSECTIONS (6) AND (7). IF THE
12 COMMISSION ELECTS TO IMPLEMENT A CAPACITY FORWARD AUCTION FOR THIS
13 STATE AS SET FORTH IN SUBSECTION (1) OR (2), THEN A CAPACITY CHARGE
14 SHALL NOT APPLY BEGINNING IN THE FIRST YEAR THAT THE CAPACITY
15 FORWARD AUCTION FOR THIS STATE IS EFFECTIVE. IN ORDER TO ENSURE
16 THAT NONCAPACITY ELECTRIC GENERATION SERVICES ARE NOT INCLUDED IN
17 THE CAPACITY CHARGE, IN DETERMINING THE CAPACITY CHARGE, THE
18 COMMISSION SHALL DO BOTH OF THE FOLLOWING AND ENSURE THAT THE
19 RESULTING CAPACITY CHARGE DOES NOT DIFFER FOR FULL SERVICE LOAD AND
20 ALTERNATIVE ELECTRIC SUPPLIER LOAD:

21 (A) FOR THE APPLICABLE TERM OF THE CAPACITY CHARGE, INCLUDE
22 THE CAPACITY-RELATED GENERATION COSTS INCLUDED IN THE UTILITY'S
23 BASE RATES, SURCHARGES, AND POWER SUPPLY COST RECOVERY FACTORS,
24 REGARDLESS OF WHETHER THOSE COSTS RESULT FROM UTILITY OWNERSHIP OF
25 THE CAPACITY RESOURCES OR THE PURCHASE OR LEASE OF THE CAPACITY
26 RESOURCE FROM A THIRD PARTY.

27 (B) FOR THE APPLICABLE TERM OF THE CAPACITY CHARGE, SUBTRACT

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1 ALL NON-CAPACITY-RELATED ELECTRIC GENERATION COSTS, INCLUDING, BUT
2 NOT LIMITED TO, COSTS PREVIOUSLY SET FOR RECOVERY THROUGH NET
3 STRANDED COST RECOVERY AND SECURITIZATION AND THE PROJECTED
4 REVENUES, NET OF PROJECTED FUEL COSTS, FROM ALL OF THE FOLLOWING:

5 (i) ALL ENERGY MARKET SALES.

6 (ii) OFF-SYSTEM ENERGY SALES.

7 (iii) ANCILLARY SERVICES SALES.

8 (iv) ENERGY SALES UNDER UNIT-SPECIFIC BILATERAL CONTRACTS.

9 (4) THE COMMISSION SHALL PROVIDE FOR A TRUE-UP MECHANISM THAT
10 RESULTS IN A UTILITY CHARGE OR CREDIT FOR THE DIFFERENCE BETWEEN
11 THE PROJECTED NET REVENUES DESCRIBED IN SUBSECTION (3) AND THE
12 ACTUAL NET REVENUES REFLECTED IN THE CAPACITY CHARGE. THE TRUE-UP
13 SHALL BE REFLECTED IN THE CAPACITY CHARGE IN THE SUBSEQUENT YEAR.
14 THE METHODOLOGY USED TO SET THE CAPACITY CHARGE SHALL BE THE SAME
15 METHODOLOGY USED IN THE TRUE-UP FOR THE APPLICABLE PLANNING YEAR.

16 (5) NOT LESS THAN ONCE EVERY YEAR, THE COMMISSION SHALL REVIEW
17 OR AMEND THE CAPACITY CHARGE IN ALL SUBSEQUENT RATE CASES, POWER
18 SUPPLY COST RECOVERY CASES, OR SEPARATE PROCEEDINGS ESTABLISHED FOR
19 THAT PURPOSE.

20 (6) A CAPACITY CHARGE SHALL NOT BE ASSESSED FOR ANY PORTION OF
21 CAPACITY OBLIGATIONS FOR EACH PLANNING YEAR FOR WHICH AN
22 ALTERNATIVE ELECTRIC SUPPLIER CAN DEMONSTRATE THAT IT CAN MEET ITS
23 CAPACITY OBLIGATIONS THROUGH OWNED OR CONTRACTUAL RIGHTS TO ANY
24 RESOURCE THAT THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR ALLOWS TO
25 MEET THE CAPACITY OBLIGATION OF THE ELECTRIC PROVIDER. THE
26 PRECEDING SENTENCE SHALL NOT BE APPLIED IN ANY WAY THAT CONFLICTS
27 WITH [A FEDERAL] RESOURCE ADEQUACY TARIFF, WHEN APPLICABLE. ANY ELECTRIC

1 PROVIDER THAT HAS PREVIOUSLY DEMONSTRATED THAT IT CAN MEET ALL OR A
2 PORTION OF ITS CAPACITY OBLIGATIONS SHALL GIVE NOTICE TO THE
3 COMMISSION BY SEPTEMBER 1 OF THE YEAR 4 YEARS BEFORE THE BEGINNING
4 OF THE APPLICABLE PLANNING YEAR IF IT DOES NOT EXPECT TO MEET THAT
5 CAPACITY OBLIGATION AND INSTEAD EXPECTS TO PAY A CAPACITY CHARGE.
6 THE CAPACITY CHARGE IN THE UTILITY SERVICE TERRITORY MUST BE PAID
7 FOR THE PORTION OF ITS LOAD TAKING SERVICE FROM THE ALTERNATIVE
8 ELECTRIC SUPPLIER NOT COVERED BY CAPACITY AS SET FORTH IN THIS
9 SUBSECTION DURING THE PERIOD THAT ANY SUCH CAPACITY CHARGE IS
10 EFFECTIVE.

11 (7) AN ELECTRIC PROVIDER SHALL PROVIDE CAPACITY TO MEET THE
12 CAPACITY OBLIGATION FOR THE PORTION OF THAT LOAD TAKING SERVICE
13 FROM AN ALTERNATIVE ELECTRIC SUPPLIER IN THE ELECTRIC PROVIDER'S
14 SERVICE TERRITORY THAT IS COVERED BY THE CAPACITY CHARGE DURING THE
15 PERIOD THAT ANY SUCH CAPACITY CHARGE IS EFFECTIVE. THE ALTERNATIVE
16 ELECTRIC SUPPLIER HAS THE OBLIGATION TO PROVIDE CAPACITY FOR THE
17 PORTION OF THE LOAD FOR WHICH THE ALTERNATIVE ELECTRIC SUPPLIER HAS
18 DEMONSTRATED AN ABILITY TO MEET ITS CAPACITY OBLIGATIONS. IF AN
19 ALTERNATIVE ELECTRIC SUPPLIER CEASES TO PROVIDE SERVICE FOR A
20 PORTION OR ALL OF ITS LOAD, IT SHALL ALLOW, AT A COST NO HIGHER
21 THAN THE DETERMINED CAPACITY CHARGE, THE ASSIGNMENT OF ANY RIGHT TO
22 THAT CAPACITY IN THE APPLICABLE PLANNING YEAR TO WHATEVER ELECTRIC
23 PROVIDER ACCEPTS THAT LOAD.

24 (8) IF A STATE RELIABILITY MECHANISM IS REQUIRED TO BE
25 ESTABLISHED UNDER SUBSECTION (2), THE COMMISSION SHALL DO ALL OF
26 THE FOLLOWING:

27 (A) REQUIRE, BY DECEMBER 1 OF EACH YEAR, THAT EACH ELECTRIC

1 UTILITY DEMONSTRATE TO THE COMMISSION, IN A FORMAT DETERMINED BY
2 THE COMMISSION, THAT FOR THE PLANNING YEAR BEGINNING 4 YEARS AFTER
3 THE BEGINNING OF THE CURRENT PLANNING YEAR, THE ELECTRIC UTILITY
4 OWNS OR HAS CONTRACTUAL RIGHTS TO SUFFICIENT CAPACITY TO MEET ITS
5 CAPACITY OBLIGATIONS AS SET BY THE APPROPRIATE INDEPENDENT SYSTEM
6 OPERATOR, OR COMMISSION, AS APPLICABLE.

7 (B) REQUIRE, BY THE SEVENTH BUSINESS DAY OF FEBRUARY EACH
8 YEAR, THAT EACH ALTERNATIVE ELECTRIC SUPPLIER, COOPERATIVE ELECTRIC
9 UTILITY, OR MUNICIPALLY OWNED ELECTRIC UTILITY DEMONSTRATE TO THE
10 COMMISSION, IN A FORMAT DETERMINED BY THE COMMISSION, THAT FOR THE
11 PLANNING YEAR BEGINNING 4 YEARS AFTER THE BEGINNING OF THE CURRENT
12 PLANNING YEAR, THE ALTERNATIVE ELECTRIC SUPPLIER, COOPERATIVE
13 ELECTRIC UTILITY, OR MUNICIPALLY OWNED ELECTRIC UTILITY OWNS OR HAS
14 CONTRACTUAL RIGHTS TO SUFFICIENT CAPACITY TO MEET ITS CAPACITY
15 OBLIGATIONS AS SET BY THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR,
16 OR COMMISSION, AS APPLICABLE. ONE OR MORE MUNICIPALLY OWNED
17 ELECTRIC UTILITIES MAY AGGREGATE THEIR CAPACITY RESOURCES THAT ARE
18 LOCATED IN THE SAME LOCAL RESOURCE ZONE TO MEET THE REQUIREMENTS OF
19 THIS SUBDIVISION. ONE OR MORE COOPERATIVE ELECTRIC UTILITIES MAY
20 AGGREGATE THEIR CAPACITY RESOURCES THAT ARE LOCATED IN THE SAME
21 LOCAL RESOURCE ZONE TO MEET THE REQUIREMENTS OF THIS SUBDIVISION. A
22 COOPERATIVE OR MUNICIPALLY OWNED ELECTRIC UTILITY MAY MEET THE
23 REQUIREMENTS OF THIS SUBDIVISION THROUGH ANY RESOURCE, INCLUDING A
24 RESOURCE ACQUIRED THROUGH A CAPACITY FORWARD AUCTION, THAT THE
25 APPROPRIATE INDEPENDENT SYSTEM OPERATOR ALLOWS TO QUALIFY FOR
26 MEETING THE LOCAL CLEARING REQUIREMENT. A COOPERATIVE OR
27 MUNICIPALLY OWNED ELECTRIC UTILITY'S PAYMENT OF AN AUCTION PRICE

1 RELATED TO A CAPACITY DEFICIENCY AS PART OF A CAPACITY FORWARD
2 AUCTION CONDUCTED BY THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR
3 DOES NOT BY ITSELF SATISFY THE RESOURCE ADEQUACY REQUIREMENTS OF
4 THIS SECTION UNLESS THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR CAN
5 DIRECTLY TIE THAT PROVIDER'S PAYMENT TO A CAPACITY RESOURCE THAT
6 MEETS THE REQUIREMENTS OF THIS SUBSECTION. BY THE SEVENTH BUSINESS
7 DAY OF FEBRUARY IN 2018, AN ALTERNATIVE ELECTRIC SUPPLIER SHALL
8 DEMONSTRATE TO THE COMMISSION, IN A FORMAT DETERMINED BY THE
9 COMMISSION, THAT FOR THE PLANNING YEAR BEGINNING JUNE 1, 2018, AND
10 THE SUBSEQUENT 3 PLANNING YEARS, THE ALTERNATIVE ELECTRIC SUPPLIER
11 OWNS OR HAS CONTRACTUAL RIGHTS TO SUFFICIENT CAPACITY TO MEET ITS
12 CAPACITY OBLIGATIONS AS SET BY THE APPROPRIATE INDEPENDENT SYSTEM
13 OPERATOR, OR COMMISSION, AS APPLICABLE. IF THE COMMISSION FINDS AN
14 ELECTRIC PROVIDER HAS FAILED TO DEMONSTRATE IT CAN MEET A PORTION
15 OR ALL OF ITS CAPACITY OBLIGATION, THE COMMISSION SHALL DO ALL OF
16 THE FOLLOWING:

17 (i) FOR ALTERNATIVE ELECTRIC LOAD, REQUIRE THE PAYMENT OF A
18 CAPACITY CHARGE THAT IS DETERMINED, ASSESSED, AND APPLIED IN THE
19 SAME MANNER AS UNDER SUBSECTION (3) FOR THAT PORTION OF THE LOAD
20 NOT COVERED AS SET FORTH IN SUBSECTIONS (6) AND (7). IF A CAPACITY
21 CHARGE IS REQUIRED TO BE PAID UNDER THIS SUBDIVISION IN THE
22 PLANNING YEAR BEGINNING JUNE 1, 2018 OR ANY OF THE 3 SUBSEQUENT
23 PLANNING YEARS, THE CAPACITY CHARGE IS APPLICABLE FOR EACH OF THOSE
24 PLANNING YEARS.

25 (ii) FOR A COOPERATIVE OR MUNICIPALLY OWNED ELECTRIC UTILITY,
26 RECOMMEND TO THE ATTORNEY GENERAL THAT SUIT BE BROUGHT CONSISTENT
27 WITH THE PROVISIONS OF SUBSECTION (9) TO REQUIRE THAT PROCUREMENT.

1 (iii) FOR AN ELECTRIC UTILITY, REQUIRE ANY AUDITS AND
2 REPORTING AS THE COMMISSION CONSIDERS NECESSARY TO DETERMINE IF
3 SUFFICIENT CAPACITY IS PROCURED. IF AN ELECTRIC UTILITY FAILS TO
4 MEET ITS CAPACITY OBLIGATIONS, THE COMMISSION MAY ASSESS
5 APPROPRIATE AND REASONABLE FINES, PENALTIES, AND CUSTOMER REFUNDS
6 UNDER THIS ACT.

7 (C) IN ORDER TO DETERMINE THE CAPACITY OBLIGATIONS, REQUEST
8 THAT THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR PROVIDE TECHNICAL
9 ASSISTANCE IN DETERMINING THE LOCAL CLEARING REQUIREMENT AND
10 PLANNING RESERVE MARGIN REQUIREMENT. IF THE APPROPRIATE INDEPENDENT
11 SYSTEM OPERATOR DECLINES, OR HAS NOT MADE A DETERMINATION BY
12 OCTOBER 1 OF THAT YEAR, THE COMMISSION SHALL SET ANY REQUIRED LOCAL
13 CLEARING REQUIREMENT AND PLANNING RESERVE MARGIN REQUIREMENT,
14 CONSISTENT WITH FEDERAL RELIABILITY REQUIREMENTS.

15 (D) IN ORDER TO DETERMINE IF RESOURCES PUT FORWARD WILL MEET
16 SUCH FEDERAL RELIABILITY REQUIREMENTS, REQUEST TECHNICAL ASSISTANCE
17 FROM THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR TO ASSIST WITH
18 ASSESSING RESOURCES TO ENSURE THAT ANY RESOURCES WILL MEET FEDERAL
19 RELIABILITY REQUIREMENTS. IF THE TECHNICAL ASSISTANCE IS RENDERED,
20 THE COMMISSION SHALL ACCEPT THE APPROPRIATE INDEPENDENT SYSTEM
21 OPERATOR'S DETERMINATIONS UNLESS IT FINDS ADEQUATE JUSTIFICATION TO
22 DEVIATE FROM THE DETERMINATIONS RELATED TO THE QUALIFICATION OF
23 RESOURCES. IF THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR DECLINES,
24 OR HAS NOT MADE A DETERMINATION BY FEBRUARY 28, THE COMMISSION
25 SHALL MAKE THOSE DETERMINATIONS.

26 (9) THE ATTORNEY GENERAL OR ANY CUSTOMER OF A MUNICIPALLY
27 OWNED ELECTRIC UTILITY OR COOPERATIVE ELECTRIC UTILITY MAY COMMENCE

1 A CIVIL ACTION FOR INJUNCTIVE RELIEF AGAINST THAT MUNICIPALLY OWNED
2 ELECTRIC UTILITY OR COOPERATIVE ELECTRIC UTILITY IF THE MUNICIPALLY
3 OWNED ELECTRIC UTILITY OR COOPERATIVE ELECTRIC UTILITY FAILS TO
4 MEET THE APPLICABLE REQUIREMENTS OF SUBSECTION (8) (B) . THE ATTORNEY
5 GENERAL OR CUSTOMER SHALL COMMENCE AN ACTION UNDER THIS SUBSECTION
6 IN THE CIRCUIT COURT FOR THE COUNTY IN WHICH THE PRINCIPAL OFFICE
7 OF THE MUNICIPALLY OWNED ELECTRIC UTILITY OR COOPERATIVE ELECTRIC
8 UTILITY IS LOCATED. THE ATTORNEY GENERAL OR CUSTOMER SHALL NOT FILE
9 AN ACTION UNDER THIS SUBSECTION UNLESS THE ATTORNEY GENERAL OR
10 CUSTOMER GIVES THE MUNICIPALLY OWNED ELECTRIC UTILITY OR
11 COOPERATIVE ELECTRIC UTILITY AT LEAST 60 DAYS' WRITTEN NOTICE OF
12 THE INTENT TO SUE, THE BASIS FOR THE SUIT, AND THE RELIEF SOUGHT.
13 WITHIN 30 DAYS AFTER THE MUNICIPALLY OWNED ELECTRIC UTILITY OR
14 COOPERATIVE ELECTRIC UTILITY RECEIVES WRITTEN NOTICE OF THE INTENT
15 TO SUE, THE MUNICIPALLY OWNED ELECTRIC UTILITY OR COOPERATIVE
16 ELECTRIC UTILITY AND THE ATTORNEY GENERAL OR CUSTOMER SHALL MEET
17 AND MAKE A GOOD-FAITH ATTEMPT TO DETERMINE IF THERE IS A CREDIBLE
18 BASIS FOR THE ACTION. THE MUNICIPALLY OWNED ELECTRIC UTILITY OR
19 COOPERATIVE ELECTRIC UTILITY SHALL TAKE ALL REASONABLE AND PRUDENT
20 STEPS NECESSARY TO COMPLY WITH THE APPLICABLE REQUIREMENTS OF
21 SUBSECTION (8) (B) WITHIN 90 DAYS AFTER THE MEETING IF THERE IS A
22 CREDIBLE BASIS FOR THE ACTION. IF THE PARTIES DO NOT AGREE AS TO
23 WHETHER THERE IS A CREDIBLE BASIS FOR THE ACTION, THE ATTORNEY
24 GENERAL OR CUSTOMER MAY PROCEED TO FILE THE SUIT.

25 (10) THE COMMISSION SHALL ADJUST THE DATES UNDER THIS SECTION
26 IF NEEDED TO ENSURE PROPER ALIGNMENT WITH THE APPROPRIATE
27 INDEPENDENT SYSTEM OPERATOR'S PROCEDURES AND REQUIREMENTS. HOWEVER,

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1 ANY CHANGES TO THE DATES IN THIS SECTION MUST ENSURE THAT PROVIDERS
2 STILL MEET APPLICABLE RELIABILITY REQUIREMENTS. THE COMMISSION
3 SHALL NOT PERMIT A CAPACITY CHARGE TO BE ASSESSED UNDER THIS
4 SECTION FOR ANY YEAR IN WHICH IT HAS ELECTED THE CAPACITY FORWARD
5 AUCTION INSTEAD OF THE PREVAILING STATE COMPENSATION MECHANISM OR
6 THE STATE RELIABILITY MECHANISM.

7 (11) NOTHING IN THIS ACT SHALL PREVENT THE COMMISSION FROM
8 DETERMINING A GENERATION CAPACITY CHARGE UNDER THE RELIABILITY
9 ASSURANCE AGREEMENT, RATE SCHEDULE FERC NO. 44 OF THE INDEPENDENT
10 SYSTEM OPERATOR KNOWN AS PJM INTERCONNECTION, LLC, AS APPROVED BY
11 THE FEDERAL ENERGY REGULATORY COMMISSION IN DOCKET NO. ER10-2710 OR
12 SIMILAR SUCCESSOR TARIFF.

13 (12) AS USED IN THIS SECTION:

14 (A) "APPROPRIATE INDEPENDENT SYSTEM OPERATOR" MEANS THE
15 MIDCONTINENT INDEPENDENT SYSTEM OPERATOR.

16 (B) "CAPACITY FORWARD AUCTION" MEANS AN AUCTION-BASED RESOURCE
17 ADEQUACY CONSTRUCT AND THE ASSOCIATED TARIFFS DEVELOPED BY THE
18 APPROPRIATE INDEPENDENT SYSTEM OPERATOR FOR AT LEAST A PORTION OF
19 THIS STATE FOR 3 [YEARS FORWARD OR MORE.]

20 (C) "ELECTRIC PROVIDER" MEANS ANY OF THE FOLLOWING:

21 (i) ANY PERSON OR ENTITY THAT IS REGULATED BY THE COMMISSION
22 FOR THE PURPOSE OF SELLING ELECTRICITY TO RETAIL CUSTOMERS IN THIS
23 STATE.

24 (ii) A MUNICIPALLY OWNED ELECTRIC UTILITY IN THIS STATE.

25 (iii) A COOPERATIVE ELECTRIC UTILITY IN THIS STATE.

26 (iv) AN ALTERNATIVE ELECTRIC SUPPLIER LICENSED UNDER SECTION
27 10A.

1 (D) "LOCAL CLEARING REQUIREMENT" MEANS THE AMOUNT OF CAPACITY
2 RESOURCES REQUIRED TO BE IN THE LOCAL RESOURCE ZONE IN WHICH THE
3 ELECTRIC PROVIDER'S DEMAND IS SERVED TO ENSURE RELIABILITY IN THAT
4 ZONE AS DETERMINED BY THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR
5 FOR THE LOCAL RESOURCE ZONE IN WHICH THE ELECTRIC PROVIDER'S DEMAND
6 IS SERVED AND BY THE COMMISSION UNDER SUBSECTION (8) .

7 (E) "PLANNING RESERVE MARGIN REQUIREMENT" MEANS THE AMOUNT OF
8 CAPACITY EQUAL TO THE FORECASTED COINCIDENT PEAK DEMAND THAT OCCURS
9 WHEN THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR FOOTPRINT PEAK
10 DEMAND OCCURS PLUS A RESERVE MARGIN THAT MEETS AN ACCEPTABLE LOSS
11 OF LOAD EXPECTATION AS SET BY THE COMMISSION OR THE APPROPRIATE
12 INDEPENDENT SYSTEM OPERATOR UNDER SUBSECTION (8) .

13 (F) "PLANNING YEAR" MEANS JUNE 1 THROUGH THE FOLLOWING MAY 31
14 OF EACH YEAR.

15 (G) "PREVAILING STATE COMPENSATION MECHANISM" MEANS AN OPTION
16 FOR A STATE TO ELECT A PREVAILING COMPENSATION RATE FOR CAPACITY
17 CONSISTENT WITH THE REQUIREMENTS OF THE APPROPRIATE INDEPENDENT
18 SYSTEM OPERATOR'S RESOURCE ADEQUACY TARIFF.

19 (H) "STATE RELIABILITY MECHANISM" MEANS A PLAN ADOPTED BY THE
20 COMMISSION IN THE ABSENCE OF A PREVAILING STATE COMPENSATION
21 MECHANISM TO ENSURE RELIABILITY OF THE ELECTRIC GRID IN THIS STATE
22 CONSISTENT WITH SUBSECTION (8) .

23 SEC. 6X. (1) SUBJECT TO SECTION 6A(13), IN ORDER TO ENSURE
24 EQUIVALENT CONSIDERATION OF ENERGY WASTE REDUCTION RESOURCES WITHIN
25 THE INTEGRATED RESOURCE PLANNING PROCESS, THE COMMISSION SHALL BY
26 JANUARY 1, 2021 AUTHORIZE A SHARED SAVINGS MECHANISM FOR AN
27 ELECTRIC UTILITY TO THE EXTENT THAT THE ELECTRIC UTILITY HAS NOT

1 OTHERWISE CAPITALIZED THE COSTS OF THE ENERGY WASTE REDUCTION,
2 CONSERVATION, DEMAND REDUCTION, AND OTHER WASTE REDUCTION MEASURES.

3 (2) FOR AN ELECTRIC UTILITY THAT ACHIEVES ANNUAL ELECTRIC
4 ENERGY SAVINGS OF AT LEAST 1% BUT NOT GREATER THAN 1.25% OF ITS
5 TOTAL ANNUAL WEATHER-ADJUSTED RETAIL SALES IN MEGAWATT HOURS IN THE
6 PREVIOUS CALENDAR YEAR, THE SHARED SAVINGS INCENTIVE SHALL BE 25%
7 OF THE NET BENEFITS VALIDATED AS A RESULT OF THE PROGRAMS
8 IMPLEMENTED BY THE ELECTRIC UTILITY RELATED TO ENERGY WASTE
9 REDUCTION, CONSERVATION, DEMAND REDUCTION, AND OTHER WASTE
10 REDUCTION. A SHARED SAVINGS MECHANISM AUTHORIZED UNDER THIS
11 SUBSECTION SHALL NOT EXCEED 15% OF THE ELECTRIC UTILITY'S
12 EXPENDITURES ASSOCIATED WITH IMPLEMENTING ENERGY WASTE REDUCTION
13 PROGRAMS FOR THE CALENDAR YEAR IN WHICH THE SHARED SAVINGS
14 MECHANISM WAS AUTHORIZED. THE COMMISSION SHALL DETERMINE NET
15 BENEFITS BY CALCULATING THE NET PRESENT VALUE OF THE LIFETIME
16 AVOIDED UTILITY COSTS THAT ARE PROJECTED FROM THE UTILITY'S ENERGY
17 WASTE REDUCTION PROGRAMS IMPLEMENTED IN A CALENDAR YEAR LESS THE
18 UTILITY EXPENDITURES ASSOCIATED WITH IMPLEMENTING THE ENERGY WASTE
19 REDUCTION PROGRAM IN THAT CALENDAR YEAR, INCLUDING ALL OVERHEAD AND
20 ADMINISTRATIVE COSTS. THE COMMISSION SHALL CALCULATE NET PRESENT
21 VALUE BY USING A DISCOUNT RATE OF THE UTILITY'S WEIGHTED AVERAGE
22 COST OF CAPITAL IN THAT CALENDAR YEAR.

23 (3) FOR AN ELECTRIC UTILITY THAT ACHIEVES ANNUAL ELECTRIC
24 ENERGY SAVINGS OF GREATER THAN 1.25% BUT NOT GREATER THAN 1.5% OF
25 THE TOTAL ANNUAL WEATHER-ADJUSTED RETAIL SALES IN MEGAWATT HOURS IN
26 THE PREVIOUS CALENDAR YEAR, THE SHARED SAVINGS INCENTIVE SHALL BE
27 27.5% OF THE NET BENEFITS VALIDATED AS A RESULT OF THE PROGRAMS

1 IMPLEMENTED BY THE ELECTRIC UTILITY RELATED TO ENERGY WASTE
2 REDUCTION, CONSERVATION, DEMAND REDUCTION, AND OTHER WASTE
3 REDUCTION. A SHARED SAVINGS MECHANISM AUTHORIZED UNDER THIS
4 SUBSECTION SHALL NOT EXCEED 17.5% OF THE ELECTRIC UTILITY'S
5 EXPENDITURES ASSOCIATED WITH IMPLEMENTING ENERGY WASTE REDUCTION
6 PROGRAMS FOR THE CALENDAR YEAR IN WHICH THE SHARED SAVINGS
7 MECHANISM WAS AUTHORIZED. THE COMMISSION SHALL DETERMINE NET
8 BENEFITS BY CALCULATING THE NET PRESENT VALUE OF THE LIFETIME
9 AVOIDED UTILITY COSTS THAT ARE PROJECTED FROM THE UTILITY'S ENERGY
10 WASTE REDUCTION PROGRAMS IMPLEMENTED IN A CALENDAR YEAR LESS THE
11 UTILITY EXPENDITURES ASSOCIATED WITH IMPLEMENTING THE ENERGY WASTE
12 REDUCTION PROGRAM IN THAT CALENDAR YEAR, INCLUDING ALL OVERHEAD AND
13 ADMINISTRATIVE COSTS. THE COMMISSION SHALL CALCULATE NET PRESENT
14 VALUE BY USING A DISCOUNT RATE OF THE UTILITY'S WEIGHTED AVERAGE
15 COST OF CAPITAL IN THAT CALENDAR YEAR.

16 (4) FOR AN ELECTRIC UTILITY THAT ACHIEVES ANNUAL ELECTRIC
17 ENERGY SAVINGS GREATER THAN 1.5% OF THE TOTAL ANNUAL WEATHER-
18 ADJUSTED RETAIL SALES IN MEGAWATT HOURS IN THE PREVIOUS CALENDAR
19 YEAR, THE SHARED SAVINGS INCENTIVE SHALL BE 30% OF THE NET BENEFITS
20 VALIDATED AS A RESULT OF THE PROGRAMS IMPLEMENTED BY THE ELECTRIC
21 UTILITY RELATED TO ENERGY WASTE REDUCTION, CONSERVATION, DEMAND
22 REDUCTION, AND OTHER WASTE REDUCTION. A SHARED SAVINGS MECHANISM
23 AUTHORIZED UNDER THIS SUBSECTION SHALL NOT EXCEED 20% OF THE
24 ELECTRIC UTILITY'S EXPENDITURES ASSOCIATED WITH IMPLEMENTING ENERGY
25 WASTE REDUCTION PROGRAMS FOR THE CALENDAR YEAR IN WHICH THE SHARED
26 SAVINGS MECHANISM WAS AUTHORIZED. THE COMMISSION SHALL DETERMINE
27 NET BENEFITS BY CALCULATING THE NET PRESENT VALUE OF THE LIFETIME

1 AVOIDED UTILITY COSTS THAT ARE PROJECTED FROM THE UTILITY'S ENERGY
2 WASTE REDUCTION PROGRAMS IMPLEMENTED IN A CALENDAR YEAR LESS THE
3 UTILITY EXPENDITURES ASSOCIATED WITH IMPLEMENTING THE ENERGY WASTE
4 REDUCTION PROGRAM IN THAT CALENDAR YEAR, INCLUDING ALL OVERHEAD AND
5 ADMINISTRATIVE COSTS. THE COMMISSION SHALL CALCULATE NET PRESENT
6 VALUE BY USING A DISCOUNT RATE OF THE UTILITY'S WEIGHTED AVERAGE
7 COST OF CAPITAL IN THAT CALENDAR YEAR.

8 SEC. 6Z. (1) A COVERED UTILITY SHALL NOT DISCONTINUE UTILITY
9 SERVICE TO A GEOGRAPHIC AREA THAT THE COVERED UTILITY SERVES
10 WITHOUT FIRST FILING AN ABANDONMENT APPLICATION WITH THE COMMISSION
11 AND OBTAINING APPROVAL FROM THE COMMISSION TO DISCONTINUE THAT
12 SERVICE AFTER NOTICE AND A CONTESTED CASE PROCEEDING. THE
13 COMMISSION SHALL NOT APPROVE ANY ABANDONMENT APPLICATION FILED
14 UNDER THIS SECTION UNLESS THE COMMISSION DETERMINES THAT THERE IS
15 CLEAR AND CONVINCING EVIDENCE THAT ALL AFFECTED CUSTOMERS WOULD
16 HAVE ACCESS TO AFFORDABLE, RELIABLE, AND SAFE UTILITY SERVICE FROM
17 AN ALTERNATIVE SOURCE. A COVERED UTILITY DOES NOT HAVE TO FILE AN
18 ABANDONMENT APPLICATION UNDER THIS SECTION IF UTILITY SERVICE IS
19 BEING DISCONTINUED TO A SPECIFIC PARCEL OR PARCELS TO ENABLE
20 ANOTHER COVERED UTILITY TO PROVIDE SERVICE THAT THE OTHER COVERED
21 UTILITY IS LEGALLY PERMITTED TO PROVIDE. AS USED IN THIS
22 SUBSECTION, "COVERED UTILITY" MEANS ANY OF THE FOLLOWING:

23 (A) A COOPERATIVE ELECTRIC UTILITY SUBJECT TO THE COMMISSION'S
24 JURISDICTION FOR ITS SERVICE AREA, DISTRIBUTION PERFORMANCE
25 STANDARDS, AND QUALITY OF SERVICE.

26 (B) A RURAL GAS COOPERATIVE.

27 (C) AN ELECTRIC UTILITY, NATURAL GAS UTILITY, OR STEAM UTILITY

1 SUBJECT TO THE COMMISSION'S RATE-MAKING JURISDICTION.

2 (2) NOT LESS THAN 30 DAYS AFTER AN ELECTRIC UTILITY FILES A
3 PROPOSAL TO RETIRE AN ELECTRIC GENERATING PLANT WITH A REGIONAL
4 TRANSMISSION ORGANIZATION, THE UTILITY SHALL PROVIDE THAT PROPOSAL
5 IN ITS ENTIRETY TO THE COMMISSION.

6 (3) NOT LESS THAN 60 DAYS BEFORE AN ELECTRIC UTILITY APPLIES
7 TO THE OPERATING RELIABILITY SUBCOMMITTEE OF THE NORTH AMERICAN
8 ELECTRIC RELIABILITY CORPORATION FOR APPROVAL OF A PROPOSAL TO
9 REVISE AN EXISTING LOAD BALANCING AUTHORITY, THE ELECTRIC UTILITY
10 SHALL DO BOTH OF THE FOLLOWING:

11 (A) FILE WITH THE COMMISSION A FULL AND COMPLETE REPORT OF THE
12 PROPOSED REVISION.

13 (B) SERVE A COPY OF THE REPORT REQUIRED TO BE FILED WITH THE
14 COMMISSION UNDER SUBDIVISION (A) ON ALL OTHER ELECTRIC UTILITIES IN
15 THIS STATE.

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

18 ~~— (2) The purpose of sections 10a through 10bb is to do all of~~
19 ~~the following:~~

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

22 ~~— (b) To allow and encourage the Michigan public service~~
23 ~~commission to foster competition in this state in the provision of~~
24 ~~electric supply and maintain regulation of electric supply for~~
25 ~~customers who continue to choose supply from incumbent electric~~
26 ~~utilities.~~

27 ~~— (c) To encourage the development and construction of merchant~~

~~plants which will diversify the ownership of electric generation in this state.~~

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

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

(C) ~~(f)~~—To maintain, foster, and encourage robust, reliable, and economic generation, distribution, and transmission systems to provide this state's electric suppliers and generators an opportunity to access regional sources of generation and wholesale power markets and to ensure a reliable supply of electricity in this state.

Sec. 10a. (1) The commission shall issue orders establishing the rates, terms, and conditions of service that allow ~~all~~ retail customers ~~of an electric utility or provider to choose~~ **TO TAKE SERVICE FROM** an alternative electric supplier. The orders shall do all of the following:

(a) ~~Provide~~ **EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, PROVIDE** that no more than 10% of an electric utility's average weather-adjusted retail sales for the preceding calendar year may take service from an alternative electric supplier at any time.

(b) Set forth procedures necessary to ~~administer and~~ allocate the amount of load that will be allowed to be served by alternative electric suppliers, through the use of annual energy allotments awarded on a calendar year basis. ~~, and shall provide, among other things, that existing customers who are taking electric service~~

~~from an alternative electric supplier at a facility on the effective date of the amendatory act that added this subdivision shall be given an allocated annual energy allotment for that service at that facility, that customers seeking to expand usage at a facility served through an alternative electric supplier will be given next priority, with the remaining available load, if any, allocated on a first-come first-served basis. The procedures shall also provide how customer facilities will be defined for the purpose of assigning the annual energy allotments to be allocated under this section. The commission shall not allocate additional annual energy allotments at any time when the total annual energy allotments for the utility's distribution service territory is greater than 10% of the utility's weather-adjusted retail sales in the calendar year preceding the date of allocation. If the sales of a utility are less in a subsequent year or if the energy usage of a customer receiving electric service from an alternative electric supplier exceeds its annual energy allotment for that facility, that customer shall not be forced to purchase electricity from a utility, but may purchase electricity from an alternative electric supplier for that facility during that calendar year.~~

(C) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, PROVIDE THAT, IF THE COMMISSION DETERMINES THAT LESS THAN 10% OF AN ELECTRIC UTILITY'S AVERAGE WEATHER-ADJUSTED RETAIL SALES FOR THE PRECEDING CALENDAR YEAR IS TAKING SERVICE FROM ALTERNATIVE ELECTRIC SUPPLIERS, THE COMMISSION SHALL SET AS A CAP ON THE WEATHER-ADJUSTED RETAIL SALES THAT MAY TAKE SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER, FOR THE CURRENT CALENDAR YEAR AND 5 SUBSEQUENT

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1 CALENDAR YEARS, THE PERCENTAGE AMOUNT OF [WEATHER-ADJUSTED] RETAIL SALES
FOR

2 THE PRECEDING CALENDAR YEAR ROUNDED UP TO THE NEAREST WHOLE
3 PERCENTAGE. IF THE CAP IS NOT ADJUSTED FOR 6 CONSECUTIVE CALENDAR
4 YEARS, THE CAP SHALL RETURN TO 10% IN THE CALENDAR YEAR FOLLOWING
5 THAT SIXTH CONSECUTIVE CALENDAR YEAR. IF A UTILITY THAT SERVES LESS
6 THAN 200,000 CUSTOMERS IN THIS STATE HAS NOT HAD ANY LOAD SERVED BY
7 AN ALTERNATIVE ELECTRIC SUPPLIER IN THE PRECEDING 4 YEARS, THE
8 COMMISSION SHALL ADJUST THE CAP IN ACCORDANCE WITH THIS PROVISION
9 FOR NO MORE THAN 2 CONSECUTIVE CALENDAR YEARS.

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

19 (E) PROVIDE THAT FOR AN EXISTING FACILITY THAT IS RECEIVING
20 100% OF ITS ELECTRIC SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER
21 ON OR AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
22 SECTION 6T, THE OWNER OF THAT FACILITY MAY PURCHASE ELECTRICITY
23 FROM AN ALTERNATIVE ELECTRIC SUPPLIER, REGARDLESS OF WHETHER THE
24 SALES EXCEED 10% OF THE SERVICING ELECTRIC UTILITY'S AVERAGE
25 WEATHER-ADJUSTED RETAIL SALES, FOR BOTH THE EXISTING ELECTRIC
26 CHOICE LOAD AT THAT FACILITY AND ANY EXPANDED LOAD ARISING AFTER
27 THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED SECTION 6T AT

1 THAT FACILITY AS WELL AS ANY NEW FACILITY THAT IS SIMILAR IN NATURE
2 TO THE EXISTING FACILITY, THAT IS CONSTRUCTED OR ACQUIRED BY THE
3 CUSTOMER ON A SITE CONTIGUOUS TO THE EXISTING SITE OR ON A SITE
4 THAT WOULD BE CONTIGUOUS TO AN EXISTING SITE IN THE ABSENCE OF AN
5 EXISTING PUBLIC RIGHT-OF-WAY, AND THE CUSTOMER OWNS MORE THAN 50%
6 OF THAT FACILITY. THIS SUBDIVISION DOES NOT AUTHORIZE OR PERMIT AN
7 EXISTING FACILITY BEING SERVED BY AN ELECTRIC UTILITY ON STANDARD
8 TARIFF SERVICE ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT
9 ADDED SECTION 6T TO BE SERVED BY AN ALTERNATIVE ELECTRIC SUPPLIER.

10 (F) ~~(d)~~ Notwithstanding any other provision of this section,
11 any customer operating an iron ore mining facility, iron ore
12 processing facility, or both, located in the Upper Peninsula of
13 this state, ~~shall be permitted to~~ MAY purchase all or any portion
14 of its electricity from an alternative electric supplier,
15 regardless of whether the sales exceed 10% of the serving electric
16 utility's average weather-adjusted retail sales, IF THAT CUSTOMER
17 IS IN COMPLIANCE WITH THE TERMS OF A SETTLEMENT AGREEMENT REQUIRING
18 IT TO FACILITATE CONSTRUCTION OF A NEW POWER PLANT LOCATED IN THE
19 UPPER PENINSULA OF THIS STATE. A CUSTOMER DESCRIBED IN THIS
20 SUBDIVISION AND THE ALTERNATIVE ELECTRIC SUPPLIER THAT PROVIDES
21 ELECTRIC SERVICE TO THAT CUSTOMER ARE NOT SUBJECT TO THE
22 REQUIREMENTS CONTAINED IN THE AMENDATORY ACT THAT ADDED SECTION 6T
23 AND ANY ADMINISTRATIVE REGULATIONS ADOPTED UNDER THAT AMENDATORY
24 ACT. THE COMMISSION'S ORDERS ESTABLISHING RATES, TERMS, AND
25 CONDITIONS OF RETAIL ACCESS SERVICE ISSUED BEFORE THE EFFECTIVE
26 DATE OF THE AMENDATORY ACT THAT ADDED SECTION 6T REMAIN IN EFFECT
27 WITH REGARD TO RETAIL OPEN ACCESS PROVIDED UNDER THIS SUBDIVISION.

1 (G) PROVIDE THAT A CUSTOMER ON AN ENROLLMENT QUEUE WAITING TO
2 TAKE RETAIL OPEN ACCESS SERVICE AS OF DECEMBER 31, 2015 SHALL
3 CONTINUE ON THE QUEUE AND AN ELECTRIC UTILITY SHALL ADD A NEW
4 CUSTOMER TO THE QUEUE IF THE CUSTOMER'S PROSPECTIVE ALTERNATIVE
5 ELECTRIC SUPPLIER SUBMITS AN ENROLLMENT REQUEST TO THE ELECTRIC
6 UTILITY. A CUSTOMER SHALL BE REMOVED FROM THE QUEUE BY NOTIFYING
7 THE ELECTRIC UTILITY ELECTRONICALLY OR IN WRITING.

8 (H) REQUIRE EACH ELECTRIC UTILITY TO FILE WITH THE COMMISSION
9 NOT LATER THAN JANUARY 15 OF EACH YEAR A RANK-ORDERED QUEUE OF ALL
10 CUSTOMERS AWAITING RETAIL OPEN ACCESS SERVICE UNDER SUBDIVISION
11 (G). THE FILING MUST INCLUDE THE ESTIMATED AMOUNT OF ELECTRICITY
12 USED BY EACH CUSTOMER AWAITING RETAIL OPEN ACCESS SERVICE UNDER
13 SUBDIVISION (G). ALL CUSTOMER-SPECIFIC INFORMATION CONTAINED IN THE
14 FILING UNDER THIS SUBDIVISION IS EXEMPT FROM RELEASE UNDER THE
15 FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246, AND
16 THE COMMISSION SHALL TREAT THAT INFORMATION AS CONFIDENTIAL
17 INFORMATION. THE COMMISSION MAY RELEASE AGGREGATED INFORMATION AS
18 PART OF ITS ANNUAL REPORT AS LONG AS INDIVIDUAL CUSTOMER
19 INFORMATION OR DATA ARE NOT RELEASED.

20 (I) PROVIDE THAT IF THE PROSPECTIVE ALTERNATIVE ELECTRIC
21 SUPPLIER OF A CUSTOMER NEXT ON THE QUEUE AWAITING RETAIL OPEN
22 ACCESS SERVICE IS NOTIFIED AFTER THE EFFECTIVE DATE OF THE
23 AMENDATORY ACT THAT ADDED SECTION 6T THAT LESS THAN 10% OF AN
24 ELECTRIC UTILITY'S AVERAGE WEATHER-ADJUSTED RETAIL SALES FOR THE
25 PRECEDING CALENDAR YEAR ARE TAKING SERVICE FROM AN ALTERNATIVE
26 ELECTRIC SUPPLIER AND THAT THE AMOUNT OF ELECTRICITY NEEDED TO
27 SERVE THE CUSTOMER'S ELECTRIC LOAD IS AVAILABLE UNDER THE 10%

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1 ALLOCATION, THE CUSTOMER MAY TAKE SERVICE FROM AN ALTERNATIVE
2 ELECTRIC SUPPLIER. THE CUSTOMER'S PROSPECTIVE ALTERNATIVE ELECTRIC
3 SUPPLIER SHALL NOTIFY THE ELECTRIC UTILITY WITHIN 5 BUSINESS DAYS
4 AFTER BEING NOTIFIED WHETHER THE CUSTOMER WILL TAKE SERVICE FROM AN
5 ALTERNATIVE ELECTRIC SUPPLIER. IF THE CUSTOMER'S PROSPECTIVE
6 ALTERNATIVE ELECTRIC SUPPLIER FAILS TO NOTIFY THE UTILITY WITHIN 5
7 BUSINESS DAYS OR IF THE CUSTOMER CHOOSES NOT TO TAKE RETAIL OPEN
8 ACCESS SERVICE, THE CUSTOMER SHALL BE REMOVED FROM THE QUEUE OF
9 THOSE AWAITING RETAIL OPEN ACCESS SERVICE. THE CUSTOMER MAY
10 SUBSEQUENTLY BE ADDED TO THE QUEUE AS A NEW CUSTOMER UNDER THE
11 PROVISIONS OF SUBDIVISION [(G)]. A CUSTOMER THAT ELECTS TO TAKE
12 SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER UNDER THIS
13 SUBDIVISION SHALL BECOME SERVICE-READY UNDER RULES ESTABLISHED BY
14 THE COMMISSION AND THE UTILITY'S APPROVED RETAIL OPEN ACCESS
15 SERVICE TARIFFS.

16 (J) PROVIDE THAT THE COMMISSION SHALL ENSURE IF A CUSTOMER IS
17 NOTIFIED THAT THE CUSTOMER'S SERVICE FROM AN ALTERNATIVE ELECTRIC
18 SUPPLIER WILL BE TERMINATED OR RESTRICTED AS A RESULT OF THE
19 ALTERNATIVE ELECTRIC SUPPLIER LIMITING SERVICE IN THIS STATE, THE
20 CUSTOMER HAS 60 DAYS TO ACQUIRE SERVICE FROM A DIFFERENT
21 ALTERNATIVE ELECTRIC SUPPLIER. IF THE CUSTOMER IS A PUBLIC ENTITY,
22 THE TIME TO ACQUIRE SERVICES FROM A DIFFERENT ALTERNATIVE ELECTRIC
23 SUPPLIER SHALL NOT BE LESS THAN 180 DAYS.

24 (K) PROVIDE THAT AS A CONDITION OF LICENSURE, AN ALTERNATIVE
25 ELECTRIC SUPPLIER MEETS ALL OF THE REQUIREMENTS OF THIS ACT.

26 (2) The commission shall issue orders establishing a licensing
27 procedure for all alternative electric suppliers. To ensure

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

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

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

~~1 (5) An electric utility may offer its customers an appliance
2 service program. Except as otherwise provided by this section, the
3 utility shall comply with the code of conduct established by the
4 commission under subsection (4). As used in this section,
5 "appliance service program" or "program" means a subscription
6 program for the repair and servicing of heating and cooling systems
7 or other appliances.~~

~~8 (6) A utility offering a program under subsection (5) shall do
9 all of the following:~~

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

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

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

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

~~1 include administrative and general expense loading to be determined
2 in the same manner as the utility determines administrative and
3 general expense loading for all of the utility's regulated and
4 unregulated activities. A subsidy by a utility does not exist if
5 costs allocated as required by this subsection do not exceed the
6 revenue of the program.~~

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

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

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

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

~~19 (9) In marketing its appliance service program to the public,
20 a utility shall do all of the following:~~

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

~~1 (b) Appropriately allocate costs as required under subsection
2 (7) when personnel employed at a utility's call center provide
3 appliance service program marketing information to a prospective
4 customer.~~

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

~~8 (i) That appliance service programs may be available from
9 another provider.~~

~~10 (ii) That the appliance service program is not regulated by
11 the commission.~~

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

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

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

~~27 (10) This section does not prohibit the commission from~~

~~1 requiring a utility to include revenues from an appliance service
2 program in establishing base rates. If the commission includes the
3 revenues of an appliance service program in determining a utility's
4 base rates, the commission shall also include all of the costs of
5 the program as determined under this section.~~

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

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

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

(b) Electricity generated primarily by the use of by-product
fuels, including waste water solids, which electricity is consumed
as part of a contiguous facility, with the use of an electric

1 utility's transmission and distribution system, but only if the
 2 point or points of receipt of the power within the facility are not
 3 greater than 3 miles distant from the point of generation.

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

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

14 (5) ~~(13)~~—This act does not prohibit or limit the right of a
 15 person to engage in affiliate wheeling and does not impose a
 16 transition, implementation, exit fee, or any other similar charge
 17 on a person engaged in affiliate wheeling. ~~As used in this section:~~

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

27 ~~—— (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.~~

~~(6) (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~~ **ARE** 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.

~~(7) (15)~~ A customer ~~who~~ **THAT** elects to receive service from an

1 alternative electric supplier may subsequently provide notice to
 2 the electric utility of the customer's desire to receive standard
 3 tariff service from the electric utility **UNDER PROCEDURES APPROVED**
 4 **BY THE COMMISSION.** ~~The procedures in place for each electric~~
 5 ~~utility as of January 1, 2008 that set forth the terms pursuant to~~
 6 ~~which a customer receiving service from an alternative electric~~
 7 ~~supplier may return to full service from the electric utility are~~
 8 ~~ratified and shall remain in effect and may be amended by the~~
 9 ~~commission as needed. If an electric utility did not have the~~
 10 ~~procedures in place as of January 1, 2008, the commission shall~~
 11 ~~adopt those procedures.~~

12 **(8)** ~~(16)~~ The commission shall authorize rates that will ensure
 13 that an electric utility that offered retail open access service
 14 from 2002 through ~~the effective date of the amendatory act that~~
 15 ~~added this subsection~~ **OCTOBER 6, 2008** fully recovers its
 16 restructuring costs and any associated accrued regulatory assets.
 17 This includes, but is not limited to, implementation costs,
 18 stranded costs, and costs authorized ~~pursuant to~~ **UNDER** section
 19 10d(4) as it existed ~~prior to the effective date of the amendatory~~
 20 ~~act that added this subsection,~~ **BEFORE OCTOBER 6, 2008,** that have
 21 been authorized for recovery by the commission in orders issued
 22 ~~prior to the effective date of the amendatory act that added this~~
 23 ~~subsection.~~ **BEFORE OCTOBER 6, 2008.** The commission shall approve
 24 surcharges that will ensure full recovery of all such costs ~~within~~
 25 ~~5 years of the effective date of the amendatory act that added this~~
 26 ~~subsection.~~ **BY OCTOBER 6, 2013.**

27 **(9)** ~~(17)~~ As used in subsections (1) and ~~(15)~~ **(7)** :

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

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

11 **(10) AS USED IN THIS SECTION:**

12 **(A) "AFFILIATE" MEANS A PERSON OR ENTITY THAT DIRECTLY, OR**
13 **INDIRECTLY THROUGH 1 OR MORE INTERMEDIATES, CONTROLS, IS CONTROLLED**
14 **BY, OR IS UNDER COMMON CONTROL WITH ANOTHER SPECIFIED ENTITY. AS**
15 **USED IN THIS SUBDIVISION, "CONTROL" MEANS, WHETHER THROUGH AN**
16 **OWNERSHIP, BENEFICIAL, CONTRACTUAL, OR EQUITABLE INTEREST, THE**
17 **POSSESSION, DIRECTLY OR INDIRECTLY, OF THE POWER TO DIRECT OR TO**
18 **CAUSE THE DIRECTION OF THE MANAGEMENT OR POLICIES OF A PERSON OR**
19 **ENTITY OR THE OWNERSHIP OF AT LEAST 7% OF AN ENTITY EITHER DIRECTLY**
20 **OR INDIRECTLY.**

21 **(B) "AFFILIATE WHEELING" MEANS A PERSON'S USE OF DIRECT ACCESS**
22 **SERVICE WHERE AN ELECTRIC UTILITY DELIVERS ELECTRICITY GENERATED AT**
23 **A PERSON'S INDUSTRIAL SITE TO THAT PERSON OR THAT PERSON'S**
24 **AFFILIATE AT A LOCATION, OR GENERAL AGGREGATED LOCATIONS, WITHIN**
25 **THIS STATE THAT WAS EITHER 1 OF THE FOLLOWING:**

26 **(i) FOR AT LEAST 90 DAYS DURING THE PERIOD FROM JANUARY 1,**
27 **1996 TO OCTOBER 1, 1999, SUPPLIED BY SELF-SERVICE POWER, BUT ONLY**

1 TO THE EXTENT OF THE CAPACITY RESERVED OR LOAD SERVED BY SELF-
 2 SERVICE POWER DURING THE PERIOD.

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

10 Sec. 10c. (1) Except for a violation under section 10a(3) and
 11 as otherwise provided under this section, upon a complaint or on
 12 the commission's own motion, if the commission finds, after notice
 13 and hearing, that an electric utility or an alternative electric
 14 supplier has not complied with a provision or order issued under
 15 sections 10 through ~~10bb~~, **10EE**, OR THAT A NATURAL GAS UTILITY HAS
 16 NOT COMPLIED WITH A PROVISION OR ORDER ISSUED UNDER SECTION 10EE,
 17 the commission shall order ~~such~~ **ANY** remedies and penalties ~~as~~
 18 necessary to make whole a customer or other person ~~who~~ **THAT** has
 19 suffered damages as a result of the violation, including, but not
 20 limited to, 1 or more of the following:

21 (a) Order the electric utility, **NATURAL GAS UTILITY**, or
 22 alternative electric supplier to pay a fine for the first offense
 23 of not less than \$1,000.00 or more than \$20,000.00. For a second
 24 offense, the commission shall order the person to pay a fine of not
 25 less than \$2,000.00 or more than \$40,000.00. For a third and any
 26 subsequent offense, the commission shall order the person to pay a
 27 fine of not less than \$5,000.00 or more than \$50,000.00.

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

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

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

7 (e) Issue cease and desist orders.

8 (2) Upon a complaint or the commission's own motion, the
9 commission may conduct a contested case to review allegations of a
10 violation under section 10a(3).

11 (3) If the commission finds that a person has violated section
12 10a(3), the commission shall order remedies and penalties to
13 protect customers and other persons ~~who~~**THAT** have suffered damages
14 as a result of the violation, including, but not limited to, 1 or
15 more of the following:

16 (a) Order the person to pay a fine for the first offense of
17 not less than \$20,000.00 or more than \$30,000.00. For a second and
18 any subsequent offense, the commission shall order the person to
19 pay a fine of not less than \$30,000.00 or more than \$50,000.00. If
20 the commission finds that the second or any of the subsequent
21 offenses were knowingly made in violation of section 10a(3), the
22 commission shall order the person to pay a fine of not more than
23 \$70,000.00. Each unauthorized action made in violation of section
24 10a(3) ~~shall be~~**IS** a separate offense under this subdivision.

25 (b) Order an unauthorized supplier to refund to the customer
26 any amount greater than the customer would have paid to an
27 authorized supplier.

1 (c) Order an unauthorized supplier to reimburse an authorized
2 supplier an amount equal to the amount paid by the customer that
3 should have been paid to the authorized supplier.

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

6 (e) Order a portion between 10% to 50% of the fine ordered
7 under subdivision (a) be paid directly to the customer ~~who~~**THAT**
8 suffered the violation under section 10a(3).

9 (f) If the person is licensed under this act, revoke the
10 license if the commission finds a pattern of violations of section
11 10a(3).

12 (g) Issue cease and desist orders.

13 (4) Notwithstanding subsection (3), a fine shall not be
14 imposed for a violation of section 10a(3) if the supplier has
15 otherwise fully complied with section 10a(3) and shows that the
16 violation was an unintentional and bona fide error ~~which~~**THAT**
17 occurred notwithstanding the maintenance of procedures reasonably
18 adopted to avoid the error. Examples of a bona fide error include
19 clerical, calculation, computer malfunction, programming, or
20 printing errors. An error in legal judgment with respect to a
21 supplier's obligations under section 10a(3) is not a bona fide
22 error. The burden of proving that a violation was an unintentional
23 and bona fide error is on the supplier.

24 (5) If the commission finds that a party's position in a
25 complaint filed under subsection (2) is frivolous, the commission
26 shall award to the prevailing party their costs, including
27 reasonable attorney fees, against the nonprevailing party and their

1 attorney.

2 Sec. 10f. (1) If, ~~After~~**AFTER** subtracting the average demand
3 for each retail customer under contract that exceeds 15% of the
4 utility's retail load in the relevant market, an electric utility
5 has commercial control over more than 30% of the generating
6 capacity available to serve a relevant market, the utility shall do
7 1 or more of the following with respect to any generation in excess
8 of that required to serve its firm retail sales load, including a
9 reasonable reserve margin:

10 (a) Divest a portion of its generating capacity.

11 (b) Sell generating capacity under a contract with a nonretail
12 purchaser for a term of at least 5 years.

13 (c) Transfer generating capacity to an independent brokering
14 trustee for a term of at least 5 years in blocks of at least 500
15 megawatts, 24 hours per day.

16 (2) The total generating capacity available to serve the
17 relevant market shall be determined by the commission and shall
18 equal the sum of the firm available transmission capability into
19 the relevant market and the aggregate generating capacity located
20 within the relevant market, less 1 or more of the following:

21 (a) If a municipal utility does not permit its retail
22 customers to select alternative electric suppliers, the generating
23 capacity owned by a municipal utility necessary to serve the retail
24 native load.

25 (b) Generating capacity dedicated to serving on-site load.

26 (c) The generating capacity of any multistate electric
27 supplier jurisdictionally assigned to customers of other states.

1 (3) Within 30 days after a commission determination of the
2 total generating capacity under subsection (2) in a relevant
3 market, an electric utility that exceeds the 30% limit shall file
4 an application with the commission for approval of a market power
5 mitigation plan. The commission shall approve the plan if it is
6 consistent with this act or require modifications to the plan to
7 make it consistent with this act. The utility ~~shall retain~~ **RETAINS**
8 the right to determine what specific actions to take to achieve
9 compliance with this section.

10 (4) An independent brokering trustee shall be completely
11 independent from and have no affiliation with the utility. The
12 terms of any transfer of generating capacity shall ensure that the
13 trustee has complete control over the marketing, pricing, and terms
14 of the transferred capacity for at least 5 years and shall provide
15 appropriate performance incentives to the trustee for marketing the
16 transferred capacity.

17 (5) Upon application to the commission by the utility, the
18 commission may issue an order approving a change in trustees during
19 the 5-year term upon a showing that a trustee has failed to market
20 the transferred generating capacity in a prudent and experienced
21 manner.

22 ~~—— (6) Within 1 year of the effective date of the amendatory act~~
23 ~~that added this section, the commission shall issue a report to the~~
24 ~~governor and the legislature that analyzes all aspects relating to~~
25 ~~market power in the Upper Peninsula of this state. The report shall~~
26 ~~include, but not be limited to, concentration of generating~~
27 ~~capacity, control of the transmission system, restrictions on the~~

1 ~~delivery of power, ability of new suppliers to enter the market,~~
2 ~~and identification of any market power problems under the existing~~
3 ~~market power test. Prior to issuing its report, the commission~~
4 ~~shall receive written comments and hold hearings to solicit public~~
5 ~~input.~~

6 Sec. 10p. (1) Each electric utility operating in this state
7 shall establish an industry worker transition program that, ~~shall,~~
8 in consultation with employees or applicable collective bargaining
9 representatives, ~~provide~~ **PROVIDES** skills upgrades, apprenticeship
10 and training programs, voluntary separation packages consistent
11 with reasonable business practices, and job banks to coordinate and
12 assist placement of employees into comparable employment at no less
13 than the wage rates and substantially equivalent fringe benefits
14 received before the transition.

15 (2) The costs resulting from subsection (1) ~~shall include~~
16 audited and verified employee-related restructuring costs that are
17 incurred as a result of ~~the amendatory act that added this section~~
18 **2000 PA 141** or as a result of prior commission restructuring
19 orders, including employee severance costs, employee retraining
20 programs, early retirement programs, outplacement programs, and
21 similar costs and programs, that have been approved and found to be
22 prudently incurred by the commission.

23 (3) In the event of a sale, purchase, or any other transfer of
24 ownership of 1 or more Michigan divisions or business units, or
25 generating stations or generating units, of an electric utility, to
26 either a third party or a utility subsidiary, the electric
27 utility's contract and agreements with the acquiring entity or

1 persons shall require all of the following for a period of at least
2 30 months:

3 (a) That the acquiring entity or persons hire a sufficient
4 number of nonsupervisory employees to safely and reliably operate
5 and maintain the station, division, or unit by making offers of
6 employment to the nonsupervisory workforce of the electric
7 utility's division, business unit, generating station, or
8 generating unit.

9 (b) That the acquiring entity or persons not employ
10 nonsupervisory employees from outside the electric utility's
11 workforce unless offers of employment have been made to all
12 qualified nonsupervisory employees of the acquired business unit or
13 facility.

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

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

1 employment within that 30-month period.

2 (4) The electric utility shall offer a transition plan to
3 those employees who are not offered jobs by the entity because the
4 entity has a need for fewer workers. If there is litigation
5 concerning the sale, or other transfer of ownership of the electric
6 utility's divisions, business units, generating stations, or
7 generating units, the 30-month period under subsection (3) begins
8 on the date the acquiring entity or persons take control or
9 management of the divisions, business units, generating stations,
10 or generating units of the electric utility.

11 (5) The commission shall adopt generally applicable service
12 quality and reliability standards for the transmission, generation,
13 and distribution systems of electric utilities and other entities
14 subject to its jurisdiction, including, but not limited to,
15 standards for service outages, distribution facility upgrades,
16 repairs and maintenance, telephone service, billing service,
17 operational reliability, and public and worker safety. In setting
18 service quality and reliability standards, the commission shall
19 consider safety, costs, local geography and weather, applicable
20 codes, national electric industry practices, sound engineering
21 judgment, and experience. The commission shall also include
22 provisions to upgrade the service quality of distribution circuits
23 that historically have experienced significantly below-average
24 performance in relationship to similar distribution circuits.

25 (6) Annually, each jurisdictional utility or entity shall file
26 its report with the commission detailing actions to be taken to
27 comply with the service quality and reliability standards during

1 the next calendar year and its performance in relation to the
2 service quality and reliability standards during the prior calendar
3 year. The annual reports shall contain that data as required by the
4 commission, including the estimated cost of achieving improvements
5 in the jurisdictional utility's or entity's performance with
6 respect to the service quality and reliability standards.

7 (7) The commission shall analyze the data to determine whether
8 the jurisdictional entities are properly operating and maintaining
9 their systems and take corrective action if needed.

10 ~~—— (8) The commission shall submit a report to the governor and~~
11 ~~the legislature by September 1, 2009. In preparing the report, the~~
12 ~~commission should review and consider relevant existing customer~~
13 ~~surveys and examine what other states have done. This report shall~~
14 ~~include all of the following:~~

15 ~~—— (a) An assessment of the major types of end-use customer power~~
16 ~~quality disturbances, including, but not limited to, voltage sags,~~
17 ~~overvoltages, oscillatory transients, voltage swells, distortion,~~
18 ~~power frequency variations, and interruptions, caused by both the~~
19 ~~distribution and transmission systems within this state.~~

20 ~~—— (b) An assessment of utility power plant generating cost~~
21 ~~efficiency, including, but not limited to, operational efficiency,~~
22 ~~economic generating cost efficiency, and schedules for planned and~~
23 ~~unplanned outages.~~

24 ~~—— (c) Current efforts employed by the commission to monitor or~~
25 ~~enforce standards pertaining to end-use customer power quality~~
26 ~~disturbances and utility power plant generating cost efficiency~~
27 ~~either through current practice, statute, policy, or rule.~~

~~1 (d) Recommendations for use of common characteristics,
2 measures, and indices to monitor power quality disturbances and
3 power plant generating cost efficiency, such as expert customer
4 service assessments, frequency of disturbance occurrence, duration
5 of disturbance, and voltage magnitude.~~

~~6 (e) Recommendations for statutory changes that would be
7 necessary to enable the commission to properly monitor and enforce
8 standards to optimize power plant generating cost efficiency and
9 minimize power quality disturbances. These recommendations shall
10 include recommendations to provide methods to ensure that this
11 state can obtain optimal and cost-effective end-use customer power
12 quality to attract economic development and investment into the
13 state.~~

14 (8) ~~(9)~~ By December 31, 2009, the commission shall ~~, based on~~
15 ~~its findings in subsection (8),~~ review its existing rules under
16 this section and amend the rules, if needed, under the
17 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
18 24.328, to implement performance standards for generation
19 facilities and for distribution facilities to protect end-use
20 customers from power quality disturbances.

21 (9) ~~(10)~~ Any standards or rules developed under this section
22 shall be designed to do the following, as applicable:

23 (a) Establish different requirements for each customer class,
24 whenever those different requirements are appropriate to carry out
25 the provisions of this section, and to reflect different load and
26 service characteristics of each customer class.

27 (b) Consider the availability and associated cost of necessary

1 equipment and labor required to maintain or upgrade distribution
2 and generating facilities.

3 (c) Ensure that the most cost-effective means of addressing
4 power quality disturbances are promoted for each utility, including
5 consideration of the installation of equipment or adoption of
6 operating practices at the end-user's location.

7 (d) Take into account the extent to which the benefits
8 associated with achieving a specified standard or improvement are
9 offset by the incremental capital, fuel, and operation and
10 maintenance expenses associated with meeting the specified standard
11 or improvement.

12 (e) Carefully consider the time frame for achieving a
13 specified standard, taking into account the time required to
14 implement needed investments or modify operating practices.

15 **(10)** ~~(11)~~—The commission shall also create benchmarks for
16 individual jurisdictional entities within their rate-making process
17 in order to accomplish the goals of this section to alleviate end-
18 use customer power quality disturbances and promote power plant
19 generating cost efficiency.

20 **(11)** ~~(12)~~—The commission shall establish a method for
21 gathering data from the industrial customer class to assist in
22 monitoring power quality and reliability standards related to
23 service characteristics of the industrial customer class.

24 **(12)** ~~(13)~~—The commission is ~~authorized to~~ **MAY** levy financial
25 incentives and penalties upon any jurisdictional entity which
26 exceeds or fails to meet the service quality and reliability
27 standards.

1 **(13)** ~~(14)~~ As used in this section, "jurisdictional utility" or
 2 "jurisdictional entity" means **A** jurisdictional regulated utility as
 3 that term is defined in section 6q.

4 Sec. 10r. (1) The commission shall establish minimum standards
 5 for the form and content of all disclosures, explanations, or sales
 6 information disseminated by a person selling electric service to
 7 ensure that the person provides adequate, accurate, and
 8 understandable information about the service that enables a
 9 customer to make an informed decision relating to the source and
 10 type of electric service purchased. The **COMMISSION SHALL DEVELOP**
 11 **THE** standards ~~shall be developed~~ to do all of the following:

12 (a) Not be unduly burdensome.

13 (b) Not unnecessarily delay or inhibit the initiation and
 14 development of competition for electric generation service in any
 15 market.

16 (c) Establish different requirements for disclosures,
 17 explanations, or sales information relating to different services
 18 or similar services to different classes of customers, whenever the
 19 different requirements are appropriate to carry out the purposes of
 20 this section.

21 (2) The commission shall require that ~~, starting January 1,~~
 22 ~~2002,~~ all electric suppliers disclose in standardized, uniform
 23 format on the customer's bill with a bill insert, on customer
 24 contracts, or, for cooperatives, in periodicals issued by an
 25 association of rural electric cooperatives, information about the
 26 environmental characteristics of electricity products purchased by
 27 the customer, including all of the following:

1 (a) The average fuel mix, including categories for oil, gas,
2 coal, solar, hydroelectric, wind, biofuel, nuclear, solid waste
3 incineration, biomass, and other fuel sources. If a source fits
4 into the other category, the specific source must be disclosed. A
5 regional average, determined by the commission, may be used only
6 for that portion of the electricity purchased by the customer for
7 which the fuel mix cannot be discerned. ~~For the purposes of~~ **AS USED**
8 **IN** this subdivision, "biomass" means dedicated crops grown for
9 energy production and organic waste.

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

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

16 (d) The regional average fuel mix and emissions profile as
17 referenced in subdivisions (a), (b), and (c).

18 (3) The information required by subsection (2) shall be
19 provided no more than twice annually, and be based on a rolling
20 annual average. Emissions factors will be based on annual publicly
21 available data by generation source.

22 (4) All of the information required to be provided under
23 subsection (1) shall also be provided to the commission to be
24 included on the commission's internet site.

25 (5) The ~~commission~~ **MICHIGAN AGENCY FOR ENERGY** shall establish
26 the Michigan renewables energy program. The program shall be
27 designed to inform customers in this state of the availability and

1 value of using renewable energy generation and the potential of
2 reduced pollution. The program shall also be designed to promote
3 the use of existing renewable energy sources and encourage the
4 development of new facilities.

5 ~~—— (6) Within 2 years of the effective date of the amendatory act~~
6 ~~that added this subsection, the commission shall conduct a study~~
7 ~~and report to the governor and the house and senate standing~~
8 ~~committees with oversight of public utilities issues on the~~
9 ~~advisability of separating electric distribution and generation~~
10 ~~within electric utilities, taking into account the costs, benefits,~~
11 ~~efficiencies to be gained or lost, effects on customers, effects on~~
12 ~~reliability or quality of service, and other factors which the~~
13 ~~commission determines are appropriate. The report shall include,~~
14 ~~but is not limited to, the advisability of locating within separate~~
15 ~~departments of the utility the personnel responsible for the day-~~
16 ~~to-day management of electric distribution and generation and~~
17 ~~maintaining separate books and records for electric distribution~~
18 ~~and generation.~~

19 ~~—— (7) Two years after the effective date of the amendatory act~~
20 ~~that added this subsection, the commission shall conduct a study~~
21 ~~and report to the governor and the house and senate standing~~
22 ~~committees with oversight of public utilities issues on whether the~~
23 ~~state would benefit from the creation of a purchasing pool in which~~
24 ~~electric generation in this state is purchased and then resold. The~~
25 ~~report shall include, but is not limited to, whether the purchasing~~
26 ~~pool shall be a separate entity from electric utilities, the impact~~
27 ~~of such a pool on electric utilities' management of their~~

1 ~~electrical generating assets, and whether ratepayers would benefit~~
2 ~~from spreading the cost of new electric generation across all or a~~
3 ~~portion of this state.~~

4 (6) ~~(8) Within 270 days of the effective date of the~~
5 ~~amendatory act that added this subsection, BY JULY 3, 2009, each~~
6 electric utility regulated by the commission shall file with the
7 commission a plan for utilizing dispatchable customer-owned
8 distributed generation within the context of its integrated
9 resource planning process. Included in the utility's filing shall
10 be proposals for enrolling and compensating customers for the
11 utility's right to dispatch at-will the distributed generation
12 assets owned by those customers and provisions requiring the
13 customer to maintain these assets in a dispatchable condition. If
14 an electric utility already has programs addressing the subject of
15 the filing required under this subsection, the utility may refer to
16 and take credit for those existing programs in its proposed plan.

17 Sec. 10t. (1) An electric utility or alternative electric
18 supplier shall not shut off service to an eligible customer during
19 the heating season for nonpayment of a delinquent account if the
20 customer is an eligible senior citizen customer or if the customer
21 pays to the utility or supplier a monthly amount equal to 7% of the
22 estimated annual bill for the eligible customer and the eligible
23 customer demonstrates, within 14 days of requesting shutoff
24 protection, that he or she has applied for state or federal heating
25 assistance. If an arrearage exists at the time an eligible customer
26 applies for protection from shutoff of service during the heating
27 season, the utility or supplier shall permit the customer to pay

1 the arrearage in equal monthly installments between the date of
2 application and the start of the subsequent heating season.

3 (2) An electric utility or alternative electric supplier may
4 shut off service to **A CUSTOMER AS PROVIDED IN PART 7 OF THE CLEAN**
5 **AND RENEWABLE ENERGY AND ENERGY WASTE REDUCTION ACT, 2008 PA 295,**
6 **MCL 460.1201 TO 460.1211, OR TO** an eligible low-income customer who
7 does not pay the monthly amounts required under subsection (1)
8 after giving notice in the manner required by rules. The utility or
9 supplier is not required to offer a settlement agreement to an
10 eligible low-income customer who fails to make the monthly payments
11 required under subsection (1).

12 (3) If a customer fails to comply with the terms and
13 conditions of this section, an electric utility may shut off
14 service on its own behalf or on behalf of an alternative electric
15 supplier after giving the customer a notice, by personal service or
16 first-class mail, that contains all of the following information:

17 (a) That the customer has **NOT PAID THE PER-METER CHARGE**
18 **DESCRIBED IN SECTION 205 OF THE CLEAN AND RENEWABLE ENERGY AND**
19 **ENERGY WASTE REDUCTION ACT, 2008 PA 295, MCL 460.1205, OR THE**
20 **CUSTOMER HAS** defaulted on the winter protection plan.

21 (b) The nature of the default.

22 (c) That unless the customer makes the payments that are past
23 due within 10 days of the date of mailing, the utility or supplier
24 may shut off service.

25 (d) The date on or after which the utility or supplier may
26 shut off service, unless the customer takes appropriate action.

27 (e) That the customer has the right to file a complaint

1 disputing the claim of the utility or supplier before the date of
2 the proposed shutoff of service.

3 (f) That the customer has the right to request a hearing
4 before a hearing officer if the complaint cannot be otherwise
5 resolved and that the customer shall pay to the utility or supplier
6 that portion of the bill that is not in dispute within 3 days of
7 the date that the customer requests a hearing.

8 (g) That the customer has the right to represent himself or
9 herself, to be represented by an attorney, or to be assisted by any
10 other person of his or her choice in the complaint process.

11 (h) That the utility or supplier will not shut off service
12 pending the resolution of a complaint that is filed with the
13 utility in accordance with this section.

14 (i) The telephone number and address of the utility or
15 supplier where the customer may make inquiry, enter into a
16 settlement agreement, or file a complaint.

17 (j) That the customer should contact a social services agency
18 immediately if the customer believes he or she might be eligible
19 for emergency economic assistance.

20 (k) That the utility or supplier will postpone shutoff of
21 service if a medical emergency exists at the customer's residence.

22 (l) That the utility or supplier may require a deposit and
23 restoration charge if the supplier shuts off service for nonpayment
24 of a delinquent account.

25 (4) An electric utility is not required to shut off service
26 under this section to an eligible customer for nonpayment to an
27 alternative electric supplier.

(5) The commission shall establish an educational program to ensure that eligible customers are informed of the requirements and benefits of this section.

(6) As used in this section:

(a) "Eligible customer" means either an eligible low-income customer or an eligible senior citizen customer.

(b) "Eligible low-income customer" means a customer whose household income does not exceed 150% of the poverty level, as published by the United States ~~department of health and human services,~~ **DEPARTMENT OF HEALTH AND HUMAN SERVICES**, or who receives any of the following:

(i) Assistance from a state emergency relief program.

(ii) Food stamps.

(iii) Medicaid.

(c) "Eligible senior citizen customer" means a utility or supplier customer who is 65 years of age or older and who advises the utility of his or her eligibility.

Sec. 10dd. **(1)** For the fiscal year ending September 30, ~~2009,~~ **2017**, there is appropriated to the commission from the assessments imposed under 1972 PA 299, MCL 460.111 to 460.120, the amount of ~~\$2,500,000.00~~ **\$1,950,000.00** to hire ~~25.0~~ **13** full-time equated positions to implement the provisions of the amendatory act that added ~~this~~ section **6T**.

(2) FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2017, THERE IS APPROPRIATED TO THE ATTORNEY GENERAL FROM THE ASSESSMENTS IMPOSED UNDER 1972 PA 299, MCL 460.111 TO 460.120, THE AMOUNT OF \$150,000.00 TO HIRE 1.0 FULL-TIME EQUATED POSITION TO IMPLEMENT THE

1 PROVISIONS OF THE AMENDATORY ACT THAT ADDED SECTION 6T.

2 (3) FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2017, THERE IS
3 APPROPRIATED TO THE MICHIGAN ADMINISTRATIVE HEARING SYSTEM FROM THE
4 ASSESSMENTS IMPOSED UNDER 1972 PA 299, MCL 460.111 TO 460.120, THE
5 AMOUNT OF \$600,000.00 TO HIRE 4.0 FULL-TIME EQUATED POSITIONS TO
6 IMPLEMENT THE PROVISIONS OF THE AMENDATORY ACT THAT ADDED SECTION
7 6T.

8 (4) FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2017, THERE IS
9 APPROPRIATED TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY FROM THE
10 ASSESSMENTS IMPOSED UNDER 1972 PA 299, MCL 460.111 TO 460.120, THE
11 AMOUNT OF \$150,000.00 TO HIRE 1.0 FULL-TIME EQUATED POSITION TO
12 IMPLEMENT THE PROVISIONS OF THE AMENDATORY ACT THAT ADDED SECTION
13 6T.

14 (5) FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2017, THERE IS
15 APPROPRIATED TO THE MICHIGAN AGENCY FOR ENERGY FROM THE ASSESSMENTS
16 IMPOSED UNDER 1972 PA 299, MCL 460.111 TO 460.120, THE AMOUNT OF
17 \$260,000.00 TO HIRE 2.0 FULL-TIME EQUATED POSITIONS TO IMPLEMENT
18 THE PROVISIONS OF THE AMENDATORY ACT THAT ADDED SECTION 6T.

19 SEC. 10EE. (1) THE COMMISSION SHALL ESTABLISH A CODE OF
20 CONDUCT THAT APPLIES TO ALL UTILITIES. THE CODE OF CONDUCT SHALL
21 INCLUDE, BUT IS NOT LIMITED TO, MEASURES TO PREVENT CROSS-
22 SUBSIDIZATION, PREFERENTIAL TREATMENT, AND, EXCEPT AS OTHERWISE
23 PROVIDED UNDER THIS SECTION, INFORMATION SHARING, BETWEEN A
24 UTILITY'S REGULATED ELECTRIC, STEAM, OR NATURAL GAS SERVICES AND
25 UNREGULATED PROGRAMS AND SERVICES, WHETHER THOSE SERVICES ARE
26 PROVIDED BY THE UTILITY OR THE UTILITY'S AFFILIATED ENTITIES. THE
27 CODE OF CONDUCT ESTABLISHED UNDER THIS SECTION IS ALSO APPLICABLE

1 TO ELECTRIC UTILITIES AND ALTERNATIVE ELECTRIC SUPPLIERS CONSISTENT
2 WITH SECTIONS 10 THROUGH 10CC.

3 (2) A UTILITY MAY OFFER ITS CUSTOMERS VALUE-ADDED PROGRAMS AND
4 SERVICES IF THOSE PROGRAMS OR SERVICES DO NOT HARM THE PUBLIC
5 INTEREST BY UNDULY RESTRAINING TRADE OR COMPETITION IN AN
6 UNREGULATED MARKET.

7 (3) ASSETS OF A UTILITY MAY BE USED IN THE OPERATION OF AN
8 UNREGULATED VALUE-ADDED PROGRAM OR SERVICE IF THE UNREGULATED
9 VALUE-ADDED PROGRAM OR SERVICE COMPENSATES THE UTILITY AS PROVIDED
10 UNDER THIS SECTION FOR THE PROPORTIONAL USE OF THE ASSETS OF THE
11 UTILITY. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (11), ASSETS
12 INCLUDE THE USE OF THE UTILITY'S NAME AND LOGO.

13 (4) A UTILITY SHALL NOTIFY THE COMMISSION OF ITS INTENT TO
14 OFFER ITS CUSTOMERS VALUE-ADDED PROGRAMS AND SERVICES BEFORE
15 OFFERING THOSE PROGRAMS TO ITS CUSTOMERS.

16 (5) THE COMMISSION MAY INITIATE INFORMAL PROCEEDINGS TO
17 DETERMINE IF ANY PROGRAM OR SERVICE OFFERED UNDER THIS SECTION
18 POTENTIALLY VIOLATES SUBSECTION (2) OR (3). IF THE COMMISSION
19 DETERMINES THAT A POTENTIAL VIOLATION EXISTS, THE COMMISSION SHALL
20 CONDUCT FORMAL PROCEEDINGS TO DETERMINE WHETHER A VIOLATION HAS
21 OCCURRED AND ORDER CORRECTIVE ACTIONS UNDER THIS ACT. AN INFORMAL
22 PROCEEDING ALLOWED UNDER THIS SUBSECTION IS NOT REQUIRED AS A
23 PREREQUISITE TO A FORMAL COMPLAINT.

24 (6) A UTILITY OFFERING A VALUE-ADDED PROGRAM OR SERVICE UNDER
25 THIS SECTION SHALL DO ALL OF THE FOLLOWING:

26 (A) PROVIDE THE COMMISSION WITH WRITTEN NOTICE AND A
27 DESCRIPTION OF ANY NEWLY OFFERED VALUE-ADDED PROGRAM OR SERVICE.

1 (B) LOCATE WITHIN A SEPARATE DEPARTMENT OF THE UTILITY OR
2 AFFILIATE WITHIN THE UTILITY'S CORPORATE STRUCTURE THE PERSONNEL
3 RESPONSIBLE FOR THE DAY-TO-DAY MANAGEMENT OF THE PROGRAM OR
4 SERVICE.

5 (C) MAINTAIN SEPARATE BOOKS AND RECORDS FOR THE PROGRAM OR
6 SERVICE AND PROVIDE AN ANNUAL REPORT TO THE COMMISSION SHOWING HOW
7 ALL OF THE UTILITY'S COSTS ASSOCIATED WITH THE UNREGULATED VALUE-
8 ADDED PROGRAM OR SERVICE WERE ALLOCATED TO THE UNREGULATED PROGRAM
9 OR SERVICE. THE ANNUAL REPORT SHALL SHOW TO WHAT EXTENT THE
10 UTILITY'S RATES WERE AFFECTED BY THE ALLOCATIONS. THE UTILITY MAY
11 INCLUDE THIS REPORT AS PART OF A REQUEST FOR RATE RELIEF.

12 (7) A UTILITY OFFERING AN UNREGULATED VALUE-ADDED PROGRAM OR
13 SERVICE UNDER THIS SECTION SHALL NOT PROMOTE OR MARKET THE PROGRAM
14 OR SERVICE THROUGH THE USE OF UTILITY BILLING INSERTS, PRINTED
15 MESSAGES ON THE UTILITY'S BILLING MATERIALS, OR OTHER PROMOTIONAL
16 MATERIALS INCLUDED WITH CUSTOMERS' UTILITY BILLS.

17 (8) ALL UTILITY COSTS DIRECTLY ATTRIBUTABLE TO A VALUE-ADDED
18 PROGRAM OR SERVICE ALLOWED UNDER THIS SECTION SHALL BE ALLOCATED TO
19 THE PROGRAM OR SERVICE AS REQUIRED BY THIS SECTION. THE DIRECT AND
20 INDIRECT COSTS OF ALL UTILITY ASSETS USED IN THE OPERATION OF THE
21 PROGRAM OR SERVICE SHALL BE ALLOCATED TO THE PROGRAM OR SERVICE
22 BASED ON THE PROPORTIONAL USE BY THE PROGRAM OR SERVICE AS COMPARED
23 TO THE TOTAL USE OF THOSE ASSETS BY THE UTILITY. THE COST OF THE
24 PROGRAM OR SERVICE INCLUDES ADMINISTRATIVE AND GENERAL EXPENSE
25 LOADING TO BE DETERMINED IN THE SAME MANNER AS THE UTILITY
26 DETERMINES ADMINISTRATIVE AND GENERAL EXPENSE LOADING FOR ALL OF
27 THE UTILITY'S REGULATED AND UNREGULATED ACTIVITIES.

1 (9) A UTILITY MAY INCLUDE CHARGES FOR ITS VALUE-ADDED PROGRAMS
2 AND SERVICES OFFERED UNDER THIS SECTION ON ITS MONTHLY BILLINGS TO
3 ITS CUSTOMERS IF THE UTILITY COMPLIES WITH ALL OF THE FOLLOWING:

4 (A) THE PROPORTIONAL SHARE OF ALL COSTS ASSOCIATED WITH THE
5 BILLING PROCESS, INCLUDING THE POSTAGE, ENVELOPES, PAPER, AND
6 PRINTING EXPENSES, ARE ALLOCATED AS REQUIRED UNDER SUBSECTION (8) .

7 (B) A CUSTOMER'S REGULATED UTILITY SERVICE IS NOT TERMINATED
8 FOR NONPAYMENT OF THE VALUE-ADDED PROGRAM OR SERVICE PORTIONS OF
9 THE BILL.

10 (C) UNLESS THE CUSTOMER DIRECTS OTHERWISE IN WRITING, A
11 PARTIAL PAYMENT BY A CUSTOMER IS APPLIED FIRST TO THE BILL FOR
12 REGULATED SERVICE.

13 (10) IN MARKETING A VALUE-ADDED PROGRAM OR SERVICE OFFERED
14 UNDER THIS SECTION TO THE PUBLIC, A UTILITY SHALL DO ALL OF THE
15 FOLLOWING:

16 (A) IN THE MANNER AND TO THE EXTENT ALLOWED BY COMMISSION RULE
17 OR ORDER, PROVIDE UPON REQUEST TO A PROVIDER OF A SIMILAR PROGRAM
18 OR SERVICE ANY LISTS OF CUSTOMERS RECEIVING REGULATED SERVICE THAT
19 THE UTILITY PROVIDES TO ITS VALUE-ADDED PROGRAMS OR SERVICES. THE
20 CUSTOMER LIST SHALL BE PROVIDED WITHIN 5 BUSINESS DAYS OF THE
21 REQUEST ON A NONDISCRIMINATORY BASIS. A NEW CUSTOMER SHALL BE ADDED
22 TO THE CUSTOMER LIST WITHIN 1 BUSINESS DAY OF THE DATE THE CUSTOMER
23 REQUESTS TO ENROLL IN THE PROGRAM OR SERVICE.

24 (B) APPROPRIATELY ALLOCATE UTILITY COSTS AS REQUIRED UNDER
25 SUBSECTION (8) WHEN PERSONNEL EMPLOYED AT A UTILITY'S CALL CENTER
26 PROVIDE PROGRAM MARKETING INFORMATION TO A PROSPECTIVE CUSTOMER OR
27 CUSTOMER SERVICE SUPPORT FOR PROGRAM PAYMENT ISSUES TO CUSTOMERS

1 PARTICIPATING IN A PROGRAM OR SERVICE OFFERED UNDER THIS SECTION.

2 (C) BEFORE ENROLLING A CUSTOMER INTO THE PROGRAM OR SERVICE
3 OFFERED UNDER THIS SECTION, THE UTILITY SHALL INFORM THE POTENTIAL
4 CUSTOMER OF ALL OF THE FOLLOWING:

5 (i) THAT THE PROGRAM OR SERVICE MAY BE AVAILABLE FROM ANOTHER
6 PROVIDER.

7 (ii) THAT THE PROGRAM OR SERVICE IS NOT REGULATED BY THE
8 COMMISSION.

9 (iii) THAT A NEW RESIDENTIAL CUSTOMER HAS 10 DAYS AFTER
10 ENROLLMENT TO CANCEL HIS OR HER PROGRAM OR SERVICE CONTRACT WITHOUT
11 PENALTY.

12 (iv) THAT THE CUSTOMER'S REGULATED RATES AND CONDITIONS OF
13 SERVICE PROVIDED BY THE UTILITY ARE NOT AFFECTED BY ENROLLMENT IN
14 THE PROGRAM OR SERVICE OR BY THE DECISION OF THE CUSTOMER TO OBTAIN
15 THE PROGRAM OR SERVICE FROM ANOTHER PROVIDER.

16 (D) THE UTILITY NAME AND LOGO MAY BE USED TO MARKET PROGRAMS
17 AND SERVICES OFFERED UNDER THIS SECTION IF THE UTILITY COMPLIES
18 WITH BOTH OF THE FOLLOWING:

19 (i) DOES NOT MARKET THE PROGRAM OR SERVICE IN CONJUNCTION WITH
20 A REGULATED SERVICE.

21 (ii) CLEARLY INDICATES ON ALL MARKETING MATERIALS THAT THE
22 PROGRAM OR SERVICE IS NOT REGULATED BY THE COMMISSION.

23 (11) FOR PROGRAMS OR SERVICES DIRECTLY OPERATED BY A UTILITY,
24 COSTS SHALL NOT BE ALLOCATED TO THE PROGRAM OR SERVICE FOR THE USE
25 OF THE UTILITY'S NAME OR LOGO.

26 (12) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, THE
27 COMMISSION SHALL INCLUDE ONLY THE REVENUES RECEIVED BY A UTILITY TO

1 RECOVER COSTS DIRECTLY ATTRIBUTABLE TO A VALUE-BASED PROGRAM OR
2 SERVICE UNDER SUBSECTION (8) IN DETERMINING A UTILITY'S BASE RATES.
3 THE UTILITY SHALL FILE WITH THE COMMISSION THE PERCENTAGE OF
4 ADDITIONAL REVENUES OVER THOSE THAT ARE ALLOCATED TO RECOVER COSTS
5 DIRECTLY ATTRIBUTABLE TO A VALUE-ADDED PROGRAM OR SERVICE UNDER
6 SUBSECTION (8) THAT THE UTILITY WISHES TO INCLUDE AS AN OFFSET TO
7 THE UTILITY'S BASE RATES. FOLLOWING A NOTICE AND HEARING, THE
8 COMMISSION SHALL APPROVE OR MODIFY THE AMOUNT TO BE INCLUDED AS AN
9 OFFSET TO THE UTILITY'S BASE RATES.

10 (13) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE CODE OF
11 CONDUCT SHALL NOT REQUIRE A UTILITY OPERATING OR OFFERING A VALUE-
12 ADDED PROGRAM OR SERVICE UNDER THIS SECTION AS PART OF ITS
13 REGULATED SERVICE TO FORM A SEPARATE AFFILIATE OR DIVISION, IMPOSE
14 FURTHER RESTRICTIONS ON THE SHARING OF EMPLOYEES, VEHICLES,
15 EQUIPMENT, OFFICE SPACE, AND OTHER FACILITIES, OR REQUIRE THE
16 UTILITY TO PROVIDE OTHER PROVIDERS OF APPLIANCE REPAIR SERVICE OR
17 VALUE-ADDED PROGRAMS OR SERVICES WITH ACCESS TO UTILITY EMPLOYEES,
18 VEHICLES, EQUIPMENT, OFFICE SPACE, OR OTHER FACILITIES.

19 (14) IN ADDITION TO ANY PENALTIES ALLOWED UNDER SECTION 10C,
20 FOR VIOLATIONS OF THIS SECTION A UTILITY SHALL PAY ALL REASONABLE
21 COSTS INCURRED BY THE PREVAILING PARTY.

22 (15) A UTILITY THAT OFFERS VALUE-ADDED PROGRAMS OR SERVICES
23 UNDER THIS SECTION SHALL FILE AN ANNUAL REPORT WITH THE COMMISSION
24 THAT PROVIDES A LIST OF ITS OFFERED VALUE-ADDED PROGRAMS AND
25 SERVICES, THE ESTIMATED MARKET SHARE OCCUPIED BY EACH VALUE-ADDED
26 PROGRAM AND SERVICE OFFERED BY THE UTILITY, AND A DETAILED
27 ACCOUNTING OF HOW THE COSTS FOR THE VALUE-ADDED PROGRAMS AND

SERVICES WERE APPORTIONED BETWEEN THE UTILITY AND THE VALUE-ADDED PROGRAMS AND SERVICES. THE UTILITY SHALL CERTIFY TO THE COMMISSION THAT IT IS COMPLYING WITH THE REQUIREMENTS OF THIS SECTION. THE COMMISSION MAY CONDUCT AN AUDIT OF THE BOOKS AND RECORDS OF THE UTILITY AND THE VALUE-ADDED PROGRAMS AND SERVICES TO ENSURE COMPLIANCE WITH THIS SECTION.

(16) AS USED IN THIS SECTION:

(A) "UTILITY" MEANS AN ELECTRIC, STEAM, OR NATURAL GAS UTILITY REGULATED BY THE COMMISSION.

(B) "VALUE-ADDED PROGRAMS AND SERVICES" MEANS PROGRAMS AND SERVICES THAT ARE UTILITY OR ENERGY RELATED, INCLUDING, BUT NOT LIMITED TO, HOME COMFORT AND PROTECTION, APPLIANCE SERVICE, BUILDING ENERGY PERFORMANCE, ALTERNATIVE ENERGY OPTIONS, OR ENGINEERING AND CONSTRUCTION SERVICES. VALUE-ADDED PROGRAMS AND SERVICES DO NOT INCLUDE ENERGY OPTIMIZATION OR ENERGY WASTE REDUCTION PROGRAMS PAID FOR BY UTILITY CUSTOMERS AS PART OF THEIR REGULATED RATES.

SEC. 10FF. (1) EFFECTIVE JANUARY 1, 2017, THE ENERGY OMBUDSMAN IS ESTABLISHED IN THE MICHIGAN AGENCY FOR ENERGY. THE INDIVIDUAL SERVING AS ENERGY OMBUDSMAN SHALL MEET BOTH OF THE FOLLOWING REQUIREMENTS:

(A) UNDERSTAND THE RATE-MAKING PROCESS AND INSTRUMENTS TO ENABLE THE ENERGY OMBUDSMAN TO PROVIDE RATE INFORMATION AND TRACK TRENDS RELATED TO ENERGY COSTS FOR BUSINESSES AND INDIVIDUALS IN THIS STATE.

(B) POSSESS THE KNOWLEDGE NECESSARY TO MEASURE HISTORIC, ONGOING, AND FUTURE ENERGY COSTS FOR BUSINESSES AND INDIVIDUALS IN

1 THIS STATE BASED ON THE ACTIONS OF THE EXECUTIVE, LEGISLATIVE, AND
2 JUDICIAL BRANCHES OF STATE GOVERNMENT.

3 (2) THE ENERGY OMBUDSMAN SHALL DO ALL OF THE FOLLOWING:

4 (A) SERVE AS A LIAISON FOR BUSINESSES AND INDIVIDUALS IN THE
5 STATE BY GUIDING ENERGY ISSUES, PROBLEMS, AND DISPUTES FROM
6 BUSINESSES AND INDIVIDUALS TO THE APPROPRIATE ENTITY, AGENCY, OR
7 VENUE FOR RESOLUTION.

8 (B) MONITOR THE ACTIVITIES OF THE COMMISSION, THE MICHIGAN
9 AGENCY FOR ENERGY, AND OTHER REGULATORY ENTITIES OF THIS STATE
10 WHOSE DECISIONS AFFECT BUSINESSES AND INDIVIDUALS WITH RESPECT TO
11 ENERGY AND COMMUNICATE THOSE ENTITIES' DECISIONS, POLICY CHANGES,
12 AND DEVELOPMENTS TO BUSINESSES AND INDIVIDUALS IN THIS STATE. THE
13 ISSUES THE ENERGY OMBUDSMAN SHALL MONITOR INCLUDE, BUT ARE NOT
14 LIMITED TO, ALL OF THE FOLLOWING:

15 (i) RENEWABLE SOURCES OF ENERGY.

16 (ii) ENERGY EFFICIENCY.

17 (iii) NET METERING.

18 (iv) COMBINED HEAT AND POWER.

19 (v) DISTRIBUTED GENERATION.

20 (vi) ON-BILL FINANCING.

21 (C) CONVENE REGULAR MEETINGS IN THIS STATE TO SHARE
22 INFORMATION AND DEVELOPMENTS PERTAINING TO ENERGY ISSUES, POLICIES,
23 AND ADMINISTRATIVE PROCESSES AFFECTING BUSINESSES AND INDIVIDUALS
24 IN THIS STATE.

25 (D) MONITOR THE IMPLEMENTATION OF THE CODE OF CONDUCT
26 ESTABLISHED BY THE COMMISSION UNDER SECTION 10EE AND COMPILE AND
27 ANNUALLY PUBLISH STATISTICS ON UNREGULATED SERVICES THAT ARE

1 **PROVIDED BY UTILITIES AND THEIR AFFILIATES.**

2 Sec. 11. (1) Except as otherwise provided in this subsection,
 3 the commission shall ~~phase in~~ **ENSURE THE ESTABLISHMENT OF** electric
 4 rates equal to the cost of providing service to each customer
 5 class. ~~over a period of 5 years from October 6, 2008. If the~~
 6 ~~commission determines that the rate impact on industrial metal~~
 7 ~~melting customers will exceed the 2.5% limit in subsection (2), the~~
 8 ~~commission may phase in cost-based rates for that class over a~~
 9 ~~longer period.~~ **IN ESTABLISHING COST OF SERVICE RATES, THE**
 10 **COMMISSION SHALL ENSURE THAT EACH CLASS, OR SUB-CLASS, IS ASSESSED**
 11 **FOR ITS FAIR AND EQUITABLE USE OF THE ELECTRIC GRID. IF THE**
 12 **COMMISSION DETERMINES THAT THE IMPACT OF IMPOSING COST OF SERVICE**
 13 **RATES ON CUSTOMERS OF AN ELECTRIC UTILITY WOULD HAVE A MATERIAL**
 14 **IMPACT ON CUSTOMER RATES, THE COMMISSION MAY APPROVE AN ORDER THAT**
 15 **IMPLEMENTS THOSE RATES OVER A SUITABLE NUMBER OF YEARS.** The
 16 **COMMISSION SHALL ENSURE THAT THE** cost of providing service to each
 17 customer class ~~shall be~~ **IS** based on the allocation of production-
 18 related **COSTS BASED ON USING THE 75-0-25 METHOD OF COST ALLOCATION**
 19 and transmission costs based on using the ~~50-25-25~~ **100% DEMAND**
 20 method of cost allocation. The commission may modify this method ~~to~~
 21 ~~better~~ **IF IT DETERMINES THAT THIS METHOD OF COST ALLOCATION DOES**
 22 **NOT** ensure **THAT** rates are equal to the cost of service.
 23 ~~—— (2) The commission shall ensure that the impact on residential~~
 24 ~~and industrial metal melting rates due to the cost of service~~
 25 ~~requirement in subsection (1) is no more than 2.5% per year.~~
 26 ~~—— (3) Within 60 days of the effective date of the amendatory act~~
 27 ~~that added this subsection, the commission shall commence a~~

~~proceeding for each affected electric utility to examine cost allocation methods and rate design methods used to set rates. In each proceeding, each affected utility shall file within 60 days of the commencement of that proceeding a proposal to modify the existing cost allocation methods and rate design methods that have been used to set existing rates and shall provide notice to all of that utility's customers outlining the proposed cost allocation methods and rate design methods. A proposal filed by an affected electric utility must meet both of the following conditions:~~

~~—— (a) Be consistent with subsection (1), which authorizes the commission to modify the 50-25-25 method of allocating production-related and transmission costs to better ensure rates are equal to the cost of service.~~

~~—— (b) Explore different methods for allocation of production, transmission, distribution, and customer-related costs and overall rate design, based on cost of service, that support affordable and competitive electric rates for all customer classes.~~

~~—— (4) The scope of a proceeding under subsection (3) is limited to examining cost allocation and rate design methods proposed to set rates for each affected electric utility that filed a proposal under subsection (3). The commission shall allow any interested person to intervene in a proceeding under subsection (3), including on behalf of residential utility customers. The commission shall not schedule a prehearing conference for the purposes of considering interventions until an electric utility files a proposal under subsection (3). Within 270 days after a proposal is filed under subsection (3), the commission shall issue a final~~

~~order adopting the cost allocation methods and rate design methods considered appropriate by the commission and doing either of the following:~~

~~—— (a) Implementing rates consistent with those cost allocation methods and rate design methods.~~

~~—— (b) Fixing a date for the establishment of rates consistent with those cost allocation methods and rate design methods, which date shall not be later than December 1, 2015.~~

~~—— (5) A utility may file other rate applications during the pendency of a proceeding initiated under subsection (3). If an affected electric utility files a rate application before December 1, 2014, the commission may close and consolidate the proceedings initiated under subsection (3) with the case so long as a final order addressing the proceedings initiated under subsection (3) can be implemented by December 1, 2015.~~

~~—— (6) The commission shall order the administrative law judge presiding over a proceeding under subsection (3) or (5) to prepare an interim report that the commission shall submit to the legislature within 150 days after proposals are filed under subsection (3) or in a consolidated case under subsection (5) describing the actions that have been taken to comply with subsection (3), including a summary of the record evidence and positions of the parties submitted to date regarding all of the following:~~

~~—— (a) A summary of proceedings that have been initiated.~~

~~—— (b) The schedules adopted for those proceedings.~~

~~—— (c) The cost allocation and rate design proposals made by~~

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~~parties to each of those proceedings.~~

~~—— (d) The estimated impacts on the various customer classes of each of the proposals, in aggregate and for an average customer in each customer class.~~

~~—— (e) A description of qualifications for any proposed new rate and estimation of the number of customers impacted by that new rate.~~

~~—— (f) A description of proposed definitions or methods that support affordable and competitive electric rates for all customer classes.~~

~~—— (7) Not later than 60 days before a final order is required to be issued under subsection (4) or in a consolidated case under subsection (5), the commission shall forward to the legislature the proposal for decision in each of the proceedings initiated under subsection (3) issued by the administrative law judge presiding over those proceedings including a summary of the evidence presented by the parties in the proceeding on which the commission's final decision must be made.~~

[

(2) ~~(8)~~ Notwithstanding any other provision of this act, the

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1 commission may establish eligible low-income customer or eligible
2 senior citizen customer rates. Upon filing of a rate increase
3 request, a utility shall include proposed eligible low-income
4 customer and eligible senior citizen customer rates and a method to
5 allocate the revenue shortfall attributed to the implementation of
6 those rates upon all customer classes. As used in this subsection,
7 "eligible low-income customer" and "eligible senior citizen
8 customer" mean those terms as defined in section 10t.

9 **[(3)]** ~~(9)~~ Notwithstanding any other provision of this section,
10 the commission shall establish rate schedules ~~which~~ **THAT** ensure
11 that public and private schools, universities, and community
12 colleges are charged retail electric rates that reflect the actual
13 cost of providing service to those customers. Electric utilities
14 regulated under this section shall file with the commission tariffs
15 to ensure that public and private schools, universities, and
16 community colleges are charged electric rates as provided in this
17 subsection.

18 ~~—— (10) Subsections (1) to (9) apply only to electric utilities~~
19 ~~with 1,000,000 or more retail customers in this state.~~

20 ~~—— (11) Within 2 years of the effective date of the amendatory~~
21 ~~act that added this subsection, an electric utility serving fewer~~
22 ~~than 120,000 retail customers in this state may file an application~~
23 ~~with the commission to modify the cost allocation methods and rate~~
24 ~~design methods used to set that utility's existing rates. Within~~
25 ~~180 days of the effective date of the amendatory act that added~~
26 ~~this subsection, an electric utility serving 120,000 or more but~~
27 ~~fewer than 1,000,000 retail customers in this state shall file an~~

~~application with the commission to modify the cost allocation methods and rate design methods used to set that utility's existing rates. This subsection does not apply to a cooperative electric utility that has elected to become member-regulated under the electric cooperative member-regulation act, 2008 PA 167, MCL 460.31 to 460.39. Upon receipt of an application under this subsection, the commission shall commence a proceeding for that electric utility, limited to examining and implementing any modifications to the cost allocation methods and rate design methods used by that utility. An electric utility's application must meet both of the following conditions:~~

~~—— (a) Be consistent with the cost of providing service provisions of subsection (12).~~

~~—— (b) Explore different methods for allocation of production, transmission, distribution, and customer-related costs and overall rate design, based on cost of service, that support affordable and competitive electric rates for all customer classes.~~

~~(12) The commission shall approve rates equal to the cost of providing service to customers of electric utilities serving less than 1,000,000 retail customers in this state. The rates shall be approved by the commission in each utility's first general rate case filed after passage of 2008 PA 286. If, in the judgment of the commission, the impact of imposing cost of service rates on customers of a utility would have a material impact, the commission may approve an order that implements those rates over a suitable number of years. The commission shall ensure that any impact on rates due to the cost of service requirement in this subsection is~~

1 ~~not more than 2.5% per year.~~

2 ~~—— (13) The commission shall annually retain an independent~~
3 ~~consultant to verify that the requirements of this section are~~
4 ~~being satisfied for each electric utility. The costs of this~~
5 ~~service shall be recoverable in the utility's electric rates. This~~
6 ~~subsection does not apply after December 31, 2015.~~

7 ~~—— (14) An analysis of affordable rates under this section shall~~
8 ~~include both of the following:~~

9 ~~—— (a) An analysis of rate impacts directly attributable to~~
10 ~~proposed cost allocation methods, not including expiring costs~~
11 ~~associated with non-base energy and non-base energy delivery that~~
12 ~~have, except for an expiring contract described in section 5 of the~~
13 ~~energy for economic development act of 2010, 2010 PA 297, MCL~~
14 ~~460.995, specific statutory time durations.~~

15 ~~—— (b) An analysis of the expected impact overall on customer~~
16 ~~bills.~~

17 Enacting section 1. Sections 6c and 6e of 1939 PA 3, MCL
18 460.6c and 460.6e, are repealed.

19 Enacting section 2. This amendatory act takes effect 120 days
20 after the date it is enacted into law.

21 Enacting section 3. This amendatory act does not take effect
22 unless Senate Bill No. 438 of the 98th Legislature is enacted into
23 law.