

HOUSE BILL No. 4298

March 5, 2015, Introduced by Rep. Nesbitt and referred to the Committee on Energy Policy.

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, 6b, 6l, 6m, 6s, 10, 10a, 10c, 10e, 10g, 10q, 10t, and 10y (MCL 460.6a, 460.6b, 460.6l, 460.6m,

460.6s, 460.10, 460.10a, 460.10c, 460.10e, 460.10g, 460.10q, 460.10t, and 460.10y), the title as amended by 2005 PA 190, sections 6a, 10, 10a, 10g, and 10y as amended and section 6s as added by 2008 PA 286, section 6b as amended by 1982 PA 212, section 6l as amended and sections 10c, 10e, 10q, and 10t as added by 2000 PA 141, and section 6m as amended by 2014 PA 170, and by adding section 6t; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

TITLE

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 PRESCRIBE THE POWER AND DUTIES OF CERTAIN STATE AGENCIES;** to encourage the utilization of resource recovery facilities; to prohibit certain acts and practices of providers of energy; to

1 allow for the securitization of stranded costs; to reduce rates; to
2 provide for appeals; to provide appropriations; to declare the
3 effect and purpose of this act; to prescribe remedies and
4 penalties; and to repeal acts and parts of acts.

5 Sec. 6a. (1) A gas or electric utility shall not increase its
6 rates and charges or alter, change, or amend any rate or rate
7 schedules, the effect of which will be to increase the cost of
8 services to its customers, without first receiving commission
9 approval as provided in this section. The utility shall place in
10 evidence facts relied upon to support the utility's petition or
11 application to increase its rates and charges, or to alter, change,
12 or amend any rate or rate schedules. The commission shall require
13 notice to be given to all interested parties within the service
14 area to be affected, and all interested parties shall have a
15 reasonable opportunity for a full and complete hearing. A utility
16 may use projected costs and revenues for a future consecutive 12-
17 month period in developing its requested rates and charges. The
18 commission shall notify the utility within 30 days of filing,
19 whether the utility's petition or application is complete. A
20 petition or application is considered complete if it complies with
21 the rate application filing forms and instructions adopted under
22 subsection (6). A petition or application pending before the
23 commission ~~prior to~~ **BEFORE** the adoption of filing forms and
24 instructions ~~pursuant to~~ **UNDER** subsection (6) shall be evaluated
25 based upon the filing requirements in effect at the time the
26 petition or application was filed. If the application is not
27 complete, the commission shall notify the utility of all

1 information necessary to make that filing complete. If the
2 commission has not notified the utility within 30 days of whether
3 the utility's petition or application is complete, the application
4 is considered complete. ~~If the commission has not issued an order
5 within 180 days of the filing of a complete application, the
6 utility may implement up to the amount of the proposed annual rate
7 request through equal percentage increases or decreases applied to
8 all base rates. For a petition or application pending before the
9 commission prior to the effective date of the amendatory act that
10 added this sentence, the 180 day period commences on the effective
11 date of the amendatory act that added this sentence. If the utility
12 uses projected costs and revenues for a future period in developing
13 its requested rates and charges, the utility may not implement the
14 equal percentage increases or decreases prior to the calendar date
15 corresponding to the start of the projected 12 month period. For
16 good cause, the commission may issue a temporary order preventing
17 or delaying a utility from implementing its proposed rates or
18 charges. If a utility implements increased rates or charges under
19 this subsection before the commission issues a final order, that
20 utility shall refund to customers, with interest, any portion of
21 the total revenues collected through application of the equal
22 percentage increase that exceed the total that would have been
23 produced by the rates or charges subsequently ordered by the
24 commission in its final order. The commission shall allocate any
25 refund required by this section among primary customers based upon
26 their pro rata share of the total revenue collected through the
27 applicable increase, and among secondary and residential customers~~

1 ~~in a manner to be determined by the commission. The rate of~~
2 ~~interest for refunds shall equal 5% plus the London interbank~~
3 ~~offerred rate (LIBOR) for the appropriate time period. For any~~
4 ~~portion of the refund which, exclusive of interest, exceeds 25% of~~
5 ~~the annual revenue increase awarded by the commission in its final~~
6 ~~order, the rate of interest shall be the authorized rate of return~~
7 ~~on the common stock of the utility during the appropriate period.~~
8 ~~Any refund or interest awarded under this subsection shall not be~~
9 ~~included, in whole or in part, in any application for a rate~~
10 ~~increase by a utility.~~ **THE COMMISSION SHALL USE A REFUND PROCESS**
11 **FOR ANY ELECTRIC AND GAS RATE OVERCHARGES UNDER THIS SECTION,**
12 **WHATEVER THE CAUSE OF THE OVERCHARGE, THAT RETURNS TO CUSTOMERS A**
13 **REFUND OF THE AMOUNT THE CUSTOMER WAS OVERCHARGED, PLUS FAIR AND**
14 **REASONABLE INTEREST FOR THE PERIOD THE CUSTOMER WAS OVERCHARGED.**
15 **THE REFUND REQUIREMENTS OF THIS SECTION DO NOT APPLY TO AN ENERGY**
16 **UTILITY ORGANIZED AS A COOPERATIVE CORPORATION UNDER SECTIONS 98 TO**
17 **109 OF 1931 PA 327, MCL 450.98 TO 450.109.** Nothing in this section
18 impairs the commission's ability to issue a show cause order as
19 part of its rate-making authority. An alteration or amendment in
20 rates or rate schedules applied for by a public utility that will
21 not result in an increase in the cost of service to its customers
22 may be authorized and approved without notice or hearing. There
23 shall be no increase in rates based upon changes in cost of fuel or
24 purchased gas unless notice has been given within the service area
25 to be affected, and there has been an opportunity for a full and
26 complete hearing on the cost of fuel or purchased gas. The rates
27 charged by any utility ~~pursuant to~~ **UNDER** an automatic fuel or

1 purchased gas adjustment clause shall not be altered, changed, or
2 amended unless notice has been given within the service area to be
3 affected, and there has been an opportunity for a full and complete
4 hearing on the cost of the fuel or purchased gas.

5 (2) The commission shall adopt rules and procedures for the
6 filing, investigation, and hearing of petitions or applications to
7 increase or decrease utility rates and charges as the commission
8 finds necessary or appropriate to enable it to reach a final
9 decision with respect to petitions or applications within a period
10 of ~~12~~10 months from the filing of the complete petitions or
11 applications. The commission shall not authorize or approve
12 adjustment clauses that operate without notice and an opportunity
13 for a full and complete hearing, and all such clauses ~~shall be~~ **ARE**
14 abolished. The commission may hold a full and complete hearing to
15 determine the cost of fuel, purchased gas, or purchased power
16 separately from a full and complete hearing on a general rate case
17 and may ~~be held~~ **HOLD THAT HEARING** concurrently with the general
18 rate case. The commission shall authorize a utility to recover the
19 cost of fuel, purchased gas, or purchased power only to the extent
20 that the purchases are reasonable and prudent. ~~As used in this~~
21 ~~section:~~

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

27 ~~—— (b) "General rate case" means a proceeding initiated by a~~

1 ~~utility in an application filed with the commission that alleges a~~
2 ~~revenue deficiency and requests an increase in the schedule of~~
3 ~~rates or charges based on the utility's total cost of providing~~
4 ~~service.~~

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

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

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

1 or approve transportation contracts entered into by the utility in
2 good faith if the industrial or commercial customer has the
3 installed capability to use an alternative fuel or otherwise has a
4 viable alternative to receiving natural gas transportation service
5 from the utility, the customer can obtain the alternative fuel or
6 gas transportation from an alternative source at a price ~~which~~**THAT**
7 would cause them to cease using the gas utility's system, and the
8 customer, as a result of their use of the system and receipt of
9 transportation service, makes a significant contribution to the
10 utility's fixed costs. The commission shall adopt accounting and
11 rate-making policies to ensure that the discounts associated with
12 the transportation rate schedules and contracts are recovered by
13 the gas utility through charges applicable to other customers if
14 the incremental costs related to the discounts are no greater than
15 the costs that would be passed on to those customers as the result
16 of a loss of the industrial or commercial customer's contribution
17 to a utility's fixed costs.

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

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

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

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

25 (9) The commission shall issue orders to permit the recovery
26 authorized under subsections (7) and (8) upon petition of the
27 merchant plant. The merchant plant ~~shall IS~~ not ~~be~~ required to

1 alter or amend the existing contract with the electric utility in
2 order to obtain the recovery under subsections (7) and (8). The
3 commission shall permit or require the electric utility whose rates
4 are regulated by the commission to recover from its ratepayers all
5 fuel and variable operation and maintenance costs that the electric
6 utility is required to pay to the merchant plant as reasonably and
7 prudently incurred costs.

8 (10) AS USED IN THIS SECTION:

9 (A) "FULL AND COMPLETE HEARING" MEANS A HEARING THAT PROVIDES
10 INTERESTED PARTIES A REASONABLE OPPORTUNITY TO PRESENT AND CROSS-
11 EXAMINE EVIDENCE AND PRESENT ARGUMENTS RELEVANT TO THE SPECIFIC
12 ELEMENT OR ELEMENTS OF THE REQUEST THAT ARE THE SUBJECT OF THE
13 HEARING.

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

19 Sec. 6b. If the rates of any gas utility ~~shall be~~ ARE based,
20 among other considerations, upon the cost of natural gas purchased
21 by ~~said~~ THE gas utility ~~which~~ THAT is in turn distributed by ~~said~~
22 THE gas utility to the public served by it, and the cost for ~~such~~
23 THE gas is regulated by the federal energy regulatory commission,
24 the ~~Michigan~~ public service commission ~~shall have~~ HAS the authority
25 set forth in this section. In any proceeding to increase the rates
26 and charges or to alter, change, or amend any rate or rate schedule
27 of a gas utility, the ~~Michigan~~ public service commission ~~shall be~~

1 IS permitted to and shall receive in evidence the rates, charges,
2 classifications, and schedules on file with the federal energy
3 regulatory commission whereby the cost of gas purchased or received
4 by ~~such~~ **THE** gas utility is fixed and determined. If, while ~~such~~
5 **THAT** proceeding is pending before the ~~Michigan~~ public service
6 commission, a proceeding ~~shall be~~ **IS** instituted or ~~be~~ pending
7 before ~~said~~ **THE** federal energy regulatory commission, or on appeal
8 ~~therefrom~~ **FROM THE FEDERAL ENERGY REGULATORY COMMISSION** in a court
9 having jurisdiction, with respect to or affecting the cost of gas
10 payable by ~~such~~ **THE** gas utility, ~~said Michigan~~ **THE** public service
11 commission shall consider as an item of operating expense to ~~said~~
12 **THE** gas utility the cost of gas set forth in ~~said~~ **THE** rates,
13 charges, classifications, and schedules on file with the federal
14 energy regulatory commission. If the cost of gas payable by ~~said~~
15 **THE** gas utility ~~shall be~~ **IS** reduced by the final order of the
16 federal energy regulatory commission or the final decree of the
17 court, if appealed ~~thereto~~, **TO A COURT**, and the ~~Michigan~~ public
18 service commission ~~shall have~~ **HAS** entered an order approving rates
19 to ~~said~~ **THE** gas utility as ~~aforsaid~~ based upon the cost of gas set
20 forth in the rates, charges, classifications, and schedules on file
21 with the federal energy regulatory commission which were later
22 reduced, ~~as above set forth~~, the ~~Michigan~~ public service commission
23 upon its own motion or upon complaint and after notice and hearing
24 may proceed to order **A** refund to the gas utility's customers of any
25 sums refunded to the ~~said~~ gas utility for the period subsequent to
26 the effective date of the ~~Michigan~~ public service commission order
27 approving rates for the gas utility. ~~as above set forth. No~~ **ANY GAS**

1 REFUNDS SHALL BE RETURNED TO EACH CUSTOMER IN THE MANNER AND AMOUNT
 2 THAT THE SUMS WERE CHARGED TO THE CUSTOMER SO AS TO ACCURATELY
 3 REFUND TO THAT CUSTOMER THE AMOUNT THAT CUSTOMER WAS OVERCHARGED,
 4 PLUS FAIR AND REASONABLE INTEREST FOR THE PERIOD THE CUSTOMER WAS
 5 OVERCHARGED. A member of ~~this~~ **THE** 81st Legislature shall **NOT** accept
 6 an employment position with any utility in this state within 2
 7 years after vacating his or her legislative office.

8 Sec. 6l. (1) For purposes of implementing sections 6h, 6i, 6j,
 9 and 6k, this section and section 6m shall provide means of insuring
 10 equitable representation of the interests of energy utility
 11 customers.

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

13 (a) "Annual receipts" means the payments received by the fund
 14 under section 6m(2)(a) and (b) during a calendar year.

15 (b) "Board" means the utility consumer ~~participation~~
 16 **PROTECTION** board created under subsection (3).

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

19 (d) "Energy cost recovery proceeding" means any proceeding to
 20 establish or implement a gas cost recovery clause or a power supply
 21 cost recovery clause as provided in sections 6h, 6i, 6j, or 6k, to
 22 set gas cost recovery factors ~~pursuant to~~ **UNDER** section 6h(17), or
 23 to set power supply cost recovery factors ~~pursuant to~~ **UNDER** section
 24 6j(18).

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

27 (f) "Fund" means the utility consumer representation fund

1 created in section 6m.

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

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

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

14 (j) "Residential energy utility consumer" or "consumer" means
15 a customer of an energy utility who receives utility service for
16 use within an individual household or an improvement reasonably
17 appurtenant to and normally associated with an individual
18 household.

19 (k) "Residential tariff sales" means those sales by an energy
20 utility ~~which~~**THAT** are subject to residential tariffs on file with
21 the **PUBLIC SERVICE** commission.

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

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

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

11 (5) Each member of the board shall meet the following
 12 requirements:

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

17 (b) Shall not be, or shall not have been within the 5 years
 18 preceding appointment, a member of a governing body of, or employed
 19 in a managerial or professional or consulting capacity by ~~a~~**ANY OF**
 20 **THE FOLLOWING:**

21 (i) **A** utility or an association representing utilities. ~~an~~

22 (ii) **AN** enterprise or professional practice ~~which~~**THAT** received
 23 over \$1,500.00 in the year preceding the appointment as a supplier
 24 of goods or services to a utility or association representing
 25 utilities. ~~or an~~

26 (iii) **AN** organization representing employees of ~~such~~a utility,
 27 association, enterprise, or professional practice **DESCRIBED IN**

1 **SUBPARAGRAPH (i) OR (ii)**, or an association ~~which~~ **THAT** represents
2 such an organization.

3 (c) Shall not have, or shall not have had within 1 year
4 preceding appointment, a financial interest exceeding \$1,500.00 in
5 a utility, an association representing utilities, or an enterprise
6 or professional practice ~~which~~ **THAT** received over \$1,500.00 in the
7 year preceding the appointment as a supplier of goods or services
8 to a utility or association representing utilities.

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

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

14 (6) ~~The~~ **UNTIL DECEMBER 31, 2016, THE** members of the board
15 shall be appointed for 2-year terms beginning with the first day of
16 a legislative session in an odd-numbered year and ending on the day
17 before the first day of the legislative session in the next odd-
18 numbered year or when the members' successors are appointed,
19 whichever occurs later. **BEGINNING JANUARY 1, 2017, THE MEMBERS OF**
20 **THE BOARD SHALL BE APPOINTED FOR 4-YEAR TERMS BEGINNING WITH THE**
21 **FIRST DAY OF A LEGISLATIVE SESSION IN AN ODD-NUMBERED YEAR.** The
22 governor shall not appoint a member to the board for a term
23 commencing after the governor's term of office has ended. A vacancy
24 shall be filled in the same manner as the original appointment. If
25 the vacancy is created other than by expiration of a term, the
26 member shall be appointed for the balance of the unexpired term of
27 the member to be succeeded.

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

9 (8) The board shall hold bimonthly meetings and additional
10 meetings as necessary. A quorum consists of 3 members. A majority
11 vote of the members appointed and serving is necessary for a
12 decision. At its first meeting following the appointment of new
13 members, or as soon as possible after the first meeting, the board
14 shall elect biennially from its membership a chairperson and a
15 vice-chairperson.

16 (9) The board shall not act directly to represent the
17 interests of residential utility consumers except through
18 administration of the fund and grant program under this section.

19 (10) The business ~~which~~ **THAT** the board may perform shall be
20 conducted at a public meeting of the board held in compliance with
21 the open meetings act, ~~Act No. 267 of the Public Acts of 1976,~~
22 ~~being sections 15.261 to 15.275 of the Michigan Compiled Laws. 1976~~
23 **PA 267, MCL 15.261 TO 15.275.** Public notice of the time, date, and
24 place of the meeting shall be given in the manner required by ~~Act~~
25 ~~No. 267 of the Public Acts of 1976.~~ **THE OPEN MEETINGS ACT, 1976 PA**
26 **267, MCL 15.261 TO 15.275.**

27 (11) A writing prepared, owned, used, in the possession of, or

1 retained by the board in the performance of an official function
2 shall be made available to the public in compliance with the
3 freedom of information act, ~~Act No. 442 of the Public Acts of 1976,~~
4 ~~being sections 15.231 to 15.246 of the Michigan Compiled Laws.1976~~
5 **PA 442, MCL 15.231 TO 15.246.**

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

15 ~~—— (13) Until the board certifies that it is operating and ready~~
16 ~~to perform all duties under this act, the director of the energy~~
17 ~~administration created by executive directives 1976-2 and 1976-5~~
18 ~~shall serve as temporary administrator of the fund and exercise all~~
19 ~~duties and powers of the board.~~

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

1 directed by the board.

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

9 (a) In the case of an energy utility company serving at least
10 100,000 customers in this state, an amount that bears to
11 \$300,000.00, multiplied by a factor as provided in subsection (4),
12 the same proportion as the company's jurisdictional 1981 total
13 operating revenues, as stated in its annual report, bear to the
14 jurisdictional 1981 total operating revenues of all energy utility
15 companies serving at least 100,000 customers in this state. This
16 amount shall be made available by the board ~~for use by the attorney~~
17 ~~general~~ for the purposes described in subsection (17).

18 (b) In the case of an energy utility company serving at least
19 100,000 residential customers in this state, an amount that bears
20 to \$300,000.00, multiplied by a factor as provided in subsection
21 (4), the same proportion as the company's jurisdictional 1981 gross
22 revenues from residential tariff sales bear to the jurisdictional
23 1981 gross revenues from residential tariff sales of all energy
24 utility companies serving at least 100,000 residential customers in
25 this state. This amount shall be used for grants under subsection
26 (11).

27 (3) Payments made by an energy utility under subsection (2)(a)

1 are operating expenses of the utility that the public service
2 commission shall permit the utility to charge to its customers.
3 Payments made by a utility under subsection (2)(b) are operating
4 expenses of the utility that the public service commission shall
5 permit the utility to charge to its residential customers.

6 (4) For purposes of subsection (2), the factor shall be set by
7 the board at a level not to exceed the percentage increase in the
8 index known as the consumer price index for urban wage earners and
9 clerical workers, select areas, all items indexed, for the Detroit
10 standard metropolitan statistical area, compiled by the bureau of
11 labor statistics of the United States department of labor, or any
12 successor agency, that has occurred between January 1981 and
13 January of the year in which the payment is required to be made. In
14 the event that more than 1 such index is compiled, the index
15 yielding the largest payment shall be the maximum allowable factor.
16 The board shall advise utilities of the factor.

17 (5) On or before the second and succeeding anniversaries of
18 its initial application for an energy cost recovery proceeding, an
19 energy utility shall remit to the board amounts equal to 5/6 of the
20 amounts required under subsection (2).

21 (6) The remittance requirements of this section do not apply
22 to an energy utility organized as a cooperative corporation under
23 sections 98 to 109 of 1931 PA 327, MCL 450.98 to 450.109, and
24 grants from the fund shall not be used to participate in an energy
25 cost recovery proceeding primarily affecting such a utility.

26 (7) In the event of a dispute between the board and an energy
27 utility about the amount of payment due, the utility shall pay the

1 undisputed amount and, if the utility and the board cannot agree,
2 the board may initiate civil action in the circuit court for Ingham
3 county for recovery of the disputed amount. The commission shall
4 not accept or take action on an application for an energy cost
5 recovery proceeding from an energy utility subject to this section
6 that has not fully paid undisputed remittances required by this
7 section.

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

17 (9) The board may accept a gift or grant from any source to be
18 deposited in the fund if the conditions or purposes of the gift or
19 grant are consistent with this section.

20 (10) The costs of operation and expenses incurred by the board
21 in performing its duties under this section and section 61,
22 including remuneration to board members, shall be paid from the
23 fund. A maximum of 5% of the annual receipts of the fund may be
24 budgeted and used to pay expenses other than grants made under
25 subsection (11).

26 (11) The net grant proceeds shall finance a grant program from
27 which the board may award to an applicant an amount that the board

1 determines shall be used for the purposes set forth in this
2 section.

3 (12) The board shall create and make available to applicants
4 an application form. Each applicant shall indicate on the
5 application how the applicant meets the eligibility requirements
6 provided for in this section and how the applicant proposes to use
7 a grant from the fund to participate in 1 or more proceedings as
8 authorized in subsection (17) that have been or are expected to be
9 filed. The board shall receive an application requesting a grant
10 from the fund only from a nonprofit organization or a unit of local
11 government in this state. The board shall consider only
12 applications for grants containing proposals that are consistent
13 with subsections (17) and (18) and that serve the interests of
14 residential utility consumers. For purposes of making grants, the
15 board may consider protection of the environment, energy
16 conservation, the creation of employment and a healthy economy in
17 the state, **LOWER COSTS FOR RESIDENTIAL CUSTOMERS**, and the
18 maintenance of adequate energy resources. The board shall not
19 consider an application that primarily benefits the applicant or a
20 service provided or administered by the applicant. The board shall
21 not consider an application from a nonprofit organization if 1 of
22 the organization's principal interests or unifying principles is
23 the welfare of a utility or its investors or employees, or the
24 welfare of 1 or more businesses or industries, other than farms not
25 owned or operated by a corporation, that receive utility service
26 ordinarily and primarily for use in connection with the profit-
27 seeking manufacture, sale, or distribution of goods or services.

1 Mere ownership of securities by a nonprofit organization or its
2 members does not disqualify an application submitted by that
3 organization.

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

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

15 (b) In the case of a nongovernmental applicant, the extent to
16 which the applicant is representative of or has a previous history
17 of advocating the interests of citizens, especially residential
18 utility consumers.

19 (c) The anticipated effect of the proposal contained in the
20 application on residential utility consumers, including the
21 immediate and long-term impacts of the proposal.

22 (d) Evidence demonstrating the potential for continuity of
23 effort and the development of expertise in relation to the proposal
24 contained in the application.

25 (e) The uniqueness or innovativeness of an applicant's
26 position or point of view, and the probability and desirability of
27 that position or point of view prevailing.

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

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

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

13 (17) The annual receipts and interest earned, less
14 administrative costs, may be used only for participation in
15 administrative and judicial proceedings under sections **6A**, 6h, 6i,
16 6j, and 6k, in federal administrative and judicial proceedings that
17 directly affect the energy costs paid by Michigan energy utilities,
18 and in cost allocation and rate design proceedings initiated under
19 section 11(3). Amounts that have been in the fund more than 12
20 months may be retained in the fund for future grants, or may be
21 returned to energy utility companies or used to offset their future
22 remittances in proportion to their previous remittances to the
23 fund, as the board determines will best serve the interests of
24 consumers.

25 (18) The following conditions ~~shall~~ apply to all grants from
26 the fund:

27 (a) Disbursements from the fund may be used only to advocate

1 the interests of energy utility customers or classes of energy
2 utility customers, and not for representation of merely individual
3 interests.

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

7 (c) The board shall coordinate the funded activities of grant
8 recipients with those of the attorney general to avoid duplication
9 of effort, to promote supplementation of effort, and to maximize
10 the number of hearings and proceedings with intervenor
11 participation.

12 (19) A recipient of a grant under subsection (11) may use the
13 grant only for the advancement of the proposed action approved by
14 the board, including, but not limited to, costs of staff, hired
15 consultants and counsel, and research.

16 (20) A recipient of a grant under subsection (11) shall file a
17 report with the board within 90 days following the end of the year
18 or a shorter period for which the grant is made. The report shall
19 be made in a form prescribed by the board and is subject to audit
20 by the board. The report shall include the following information:

21 (a) An account of all grant expenditures made by the grant
22 recipient. Expenditures shall be reported within the following
23 categories:

24 (i) Employee and contract for services costs.

25 (ii) Costs of materials and supplies.

26 (iii) Filing fees and other costs required to effectively
27 represent residential utility consumers as provided in this

1 section.

2 (b) Any additional information concerning uses of the grant
3 required by the board.

4 ~~—— (21) The attorney general shall file a report with the house
5 and senate committees on appropriations within 90 days following
6 the end of each fiscal year. The report shall include the following
7 information:~~

8 ~~—— (a) An account of all expenditures made by the attorney
9 general of funds received under this section. Expenditures shall be
10 reported within the following categories:~~

11 ~~—— (i) Employee and contract for services costs.~~

12 ~~—— (ii) Costs of materials and supplies.~~

13 ~~—— (iii) Filing fees and other costs required to effectively
14 represent utility consumers as provided in this section.~~

15 ~~—— (b) Any additional information concerning uses of the funds
16 received under this section required by the committees.~~

17 (21) ~~(22)~~ On or before July 1 of each calendar year, the board
18 shall submit a detailed report to the legislature regarding the
19 discharge of duties and responsibilities under this section and
20 section 6l during the preceding calendar year.

21 (22) ~~(23)~~ By October 13, 1985, and at 3-year intervals
22 thereafter, a senate committee chosen by the majority leader of the
23 senate and a house committee chosen by the speaker of the house of
24 representatives shall review the relationship between costs and
25 benefits resulting from this section and sections 6h through 6l, and
26 may recommend changes to the legislature.

27 Sec. 6s. (1) An electric utility that proposes to construct an

1 electric generation facility, make a significant investment in an
2 existing electric generation facility, purchase an existing
3 electric generation facility, or enter into a power purchase
4 agreement for the purchase of electric capacity for a period of 6
5 years or longer may submit an application to the commission seeking
6 a certificate of necessity for that construction, investment, or
7 purchase if that construction, investment, or purchase costs
8 \$500,000,000.00 or more and a portion of the costs would be
9 allocable to retail customers in this state. A significant
10 investment in an electric generation facility includes a group of
11 investments reasonably planned to be made over a multiple year
12 period not to exceed 6 years for a singular purpose such as
13 increasing the capacity of an existing electric generation plant.
14 The commission shall not issue a certificate of necessity under
15 this section for any environmental upgrades to existing electric
16 generation facilities or for a renewable energy system.

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

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

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

26 (b) A certificate of necessity that the size, fuel type, and
27 other design characteristics of the existing or proposed electric

1 generation facility or the terms of the power purchase agreement
2 represent the most reasonable and prudent means of meeting that
3 power need.

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

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

14 (4) Within 270 days of the filing of an application under this
15 section, the commission shall issue an order granting or denying
16 the requested certificate of necessity. The commission shall hold a
17 hearing on the application. The hearing shall be conducted as a
18 contested case pursuant to chapter 4 of the administrative
19 procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. The
20 commission shall allow intervention by interested persons.
21 Reasonable discovery shall be permitted before and during the
22 hearing in order to assist parties and interested persons in
23 obtaining evidence concerning the application, including, but not
24 limited to, the reasonableness and prudence of the construction,
25 investment, or purchase for which the certificate of necessity has
26 been requested. The commission shall grant the request if it
27 determines all of the following:

1 (a) That the electric utility has demonstrated a need for the
2 power that would be supplied by the existing or proposed electric
3 generation facility or pursuant to the proposed power purchase
4 agreement through its approved integrated resource plan that
5 complies with subsection (11).

6 (b) The information supplied indicates that the existing or
7 proposed electric generation facility will comply with all
8 applicable state and federal environmental standards, laws, and
9 rules.

10 (c) The estimated cost of power from the existing or proposed
11 electric generation facility or the price of power specified in the
12 proposed power purchase agreement is reasonable. The commission
13 shall find that the cost is reasonable if, in the construction or
14 investment in a new or existing facility, to the extent it is
15 commercially practicable, the estimated costs are the result of
16 competitively bid engineering, procurement, and construction
17 contracts, or in a power purchase agreement, the cost is the result
18 of a competitive solicitation. Up to 150 days after an electric
19 utility makes its initial filing, it may file to update its cost
20 estimates if they have materially changed. No other aspect of the
21 initial filing may be modified unless the application is withdrawn
22 and refiled. A utility's filing updating its cost estimates does
23 not extend the period for the commission to issue an order granting
24 or denying a certificate of necessity. An affiliate of an electric
25 utility that serves customers in this state and at least 1 other
26 state may participate in the competitive bidding to provide
27 engineering, procurement, and construction services to that

1 electric utility for a project covered by this section.

2 (d) The existing or proposed electric generation facility or
3 proposed power purchase agreement represents the most reasonable
4 and prudent means of meeting the power need relative to other
5 resource options for meeting power demand, including energy
6 efficiency programs and electric transmission efficiencies.

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

12 (5) The commission may consider any other costs or information
13 related to the costs associated with the power that would be
14 supplied by the existing or proposed electric generation facility
15 or pursuant to the proposed purchase agreement or alternatives to
16 the proposal raised by intervening parties.

17 (6) In a certificate of necessity under this section, the
18 commission shall specify the costs approved for the construction of
19 or significant investment in the electric generation facility, the
20 price approved for the purchase of the existing electric generation
21 facility, or the price approved for the purchase of power pursuant
22 to the terms of the power purchase agreement.

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

1 (8) If the commission denies any of the relief requested by an
2 electric utility, the electric utility may withdraw its application
3 or proceed with the proposed construction, purchase, investment, or
4 power purchase agreement without a certificate and the assurances
5 granted under this section.

6 (9) Once the electric generation facility or power purchase
7 agreement is considered used and useful or as otherwise provided in
8 subsection (12), the commission shall include in an electric
9 utility's retail rates all reasonable and prudent costs for an
10 electric generation facility or power purchase agreement for which
11 a certificate of necessity has been granted. The commission shall
12 not disallow recovery of costs an electric utility incurs in
13 constructing, investing in, or purchasing an electric generation
14 facility or in purchasing power pursuant to a power purchase
15 agreement for which a certificate of necessity has been granted, if
16 the costs do not exceed the costs approved by the commission in the
17 certificate. Once the electric generation facility or power
18 purchase agreement is considered used and useful or as otherwise
19 provided in subsection (12), the commission shall include in the
20 electric utility's retail rates costs actually incurred by the
21 electric utility that exceed the costs approved by the commission
22 only if the commission finds that the additional costs are
23 reasonable and prudent. If the actual costs incurred by the
24 electric utility exceed the costs approved by the commission, the
25 electric utility has the burden of proving by a preponderance of
26 the evidence that the costs are reasonable and prudent. The portion
27 of the cost of a plant, facility, or power purchase agreement ~~which~~

1 **THAT** exceeds 110% of the cost approved by the commission is
2 presumed to have been incurred due to a lack of prudence. The
3 commission may include any or all of the portion of the cost in
4 excess of 110% of the cost approved by the commission if the
5 commission finds by a preponderance of the evidence that the costs
6 were prudently incurred.

7 ~~(10) Within 90 days of the effective date of the amendatory~~
8 ~~act that added this section, the~~ **THE** commission shall adopt
9 standard application filing forms and instructions for use in all
10 requests for a certificate of necessity under this section. The
11 commission may ~~, in its discretion,~~ modify the standard application
12 filing forms and instructions adopted under this section.

13 (11) The commission shall establish standards for an
14 integrated resource plan that shall be filed by an electric utility
15 ~~requesting a certificate of necessity under this section.~~ **EVERY 5**
16 **YEARS AND APPROVED BY THE COMMISSION AFTER A CONTESTED CASE HEARING**
17 **PURSUANT TO CHAPTER 4 OF THE ADMINISTRATIVE PROCEDURES ACT OF 1969,**
18 **1969 PA 306, MCL 24.271 TO 24.287.** An integrated resource plan **AND**
19 **PROCEEDING** shall include all of the following:

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

22 (b) The type of generation technology proposed for ~~the~~ **ANY NEW**
23 generation facility and the proposed capacity of the generation
24 facility, including projected fuel and regulatory costs under
25 various reasonable scenarios.

26 (c) Projected energy and capacity purchased or produced by the
27 electric utility pursuant to any renewable portfolio standard.

1 (d) Projected energy efficiency program savings under any
2 energy efficiency program requirements and the projected costs for
3 that program.

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

6 (f) An analysis of the availability and costs of other
7 electric resources that could defer, displace, or partially
8 displace ~~the~~ **ANY** proposed generation facility or purchased power
9 agreement, including additional renewable energy, energy efficiency
10 programs, load management, and demand response, beyond those
11 amounts contained in subdivisions (c) to (e).

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

13 **(H) NOTICE TO EACH REGIONAL TRANSMISSION ORGANIZATION SERVING**
14 **ANY PORTION OF THE UTILITY'S SERVICE AREA THAT THE REGIONAL**
15 **TRANSMISSION ORGANIZATION HAS STANDING TO INTERVENE IN THE**
16 **INTEGRATED RESOURCE PLAN PROCEEDING AND A REQUEST THAT THE REGIONAL**
17 **TRANSMISSION ORGANIZATION PARTICIPATE.**

18 **(I) NOTICE TO ELECTRIC CUSTOMERS AND POTENTIAL RESOURCE**
19 **SUPPLIERS OF THE UTILITY'S PROPOSED INTEGRATED RESOURCE PLAN AND**
20 **THEIR STANDING TO PARTICIPATE IN THE PROCEEDING.**

21 **(J) THE PROJECTED ANNUAL LOAD FOR ALL CUSTOMERS AND CUSTOMER**
22 **CLASSES CONNECTED TO THE UTILITY'S DISTRIBUTION SYSTEM FOR AT LEAST**
23 **THE NEXT 10 YEARS.**

24 **(K) THE ELECTRIC UTILITY'S PROJECTED WHOLESALE SALES AND**
25 **PURCHASES OF ELECTRICITY.**

26 **(L) THE ELECTRIC GENERATING CAPACITY LOCATED WITHIN THE**
27 **ELECTRIC UTILITY'S SERVICE AREA, INCLUDING ELECTRIC GENERATING**

1 FACILITIES NOT OWNED BY THAT ELECTRIC UTILITY.

2 (M) THE AVAILABLE TRANSMISSION CAPACITY AND THE COST OF
3 ADDITIONAL TRANSMISSION CAPACITY THAT COULD BE USED TO SERVE
4 CUSTOMERS WITHIN THE UTILITY'S DISTRIBUTION SERVICE AREA.

5 (N) THE COST AND RELIABILITY OF RESOURCES LOCATED OUTSIDE THE
6 ELECTRIC UTILITY'S DISTRIBUTION SERVICE AREA THAT COULD BE USED TO
7 SERVE CUSTOMERS WITHIN THE SERVICE AREA.

8 (O) AN ANALYSIS OF THE PROJECTED MARKET PRICES FOR POWER
9 PURCHASED UNDER THE RULES OF THE MIDCONTINENT INDEPENDENT SYSTEM
10 OPERATOR, OR APPLICABLE REGIONAL TRANSMISSION ORGANIZATION, AS
11 COMPARED TO THE COSTS OF NEW ELECTRIC GENERATION FACILITIES AND NEW
12 ELECTRIC TRANSMISSION FACILITIES.

13 (P) THE NEED FOR ADDITIONAL GENERATING OR TRANSMISSION
14 CAPACITY TO MAINTAIN ELECTRIC RELIABILITY OR SECURE ECONOMIC
15 ADVANTAGES TO THE UTILITY'S FULL-SERVICE CUSTOMERS.

16 (Q) A REGIONAL AND STATEWIDE EVALUATION OF ELECTRIC SUPPLY AND
17 DEMAND TO IDENTIFY SOURCES OUTSIDE OF THE ELECTRIC UTILITY SERVICE
18 AREA WHERE POWER MAY BE AVAILABLE.

19 (R) THE QUANTITY AND TYPE OF RESOURCES, INCLUDING RESERVES,
20 REQUIRED BY THE OPEN ACCESS TRANSMISSION AND ENERGY MARKETS TARIFFS
21 OF THE REGIONAL TRANSMISSION ORGANIZATION OR THE TARIFF OF ANY
22 SUCCESSOR ORGANIZATION IN WHICH THE ELECTRIC UTILITY PARTICIPATES,
23 AND RESOURCES REQUIRED BY RELIABILITY STANDARDS OR OTHER
24 REQUIREMENTS IMPOSED UNDER THE AUTHORITY OF AN ELECTRIC RELIABILITY
25 ORGANIZATION TO WHICH THE ELECTRIC UTILITY IS SUBJECT.

26 (12) The commission shall allow financing interest cost
27 recovery in an electric utility's base rates on construction work

1 in progress for capital improvements approved under this section
2 prior to the assets being considered used and useful. Regardless of
3 whether or not the commission authorizes base rate treatment for
4 construction work in progress financing interest expense, an
5 electric utility ~~shall be allowed to~~ **MAY** recognize, accrue, and
6 defer the allowance for funds used during construction related to
7 equity capital.

8 (13) As used in this section, "renewable energy system" means
9 that term as defined in **SECTION 11 OF** the clean, renewable, and
10 efficient energy act, 2008 PA 295, MCL 460.1011.

11 **SEC. 6T. (1) IF THE COMMISSION DETERMINES THAT COMPLIANCE WITH**
12 **A NEW STATE OR FEDERAL ENVIRONMENTAL STANDARD, LAW, OR RULE OR THE**
13 **NEED FOR ADDITIONAL GENERATION CAPACITY WILL COST ELECTRIC**
14 **UTILITIES IN THIS STATE \$500,000,000.00 OR MORE IN TOTAL, THE**
15 **COMMISSION SHALL COMMENCE ON ITS OWN MOTION A PROCEEDING FOR EACH**
16 **AFFECTED ELECTRIC UTILITY TO ADOPT A CAPACITY NEEDS AND**
17 **ENVIRONMENTAL REGULATION COMPLIANCE PLAN FOR THAT UTILITY.**

18 (2) THE COMMISSION SHALL REQUIRE EACH AFFECTED ELECTRIC
19 UTILITY TO FILE A PROPOSED PLAN UNDER THIS SECTION. AN ELECTRIC
20 UTILITY SHALL INCLUDE ALL OF THE FOLLOWING IN A PROPOSED PLAN:

21 (A) ANY EXPECTED NEED FOR ADDITIONAL GENERATION CAPACITY FOR
22 THAT ELECTRIC UTILITY.

23 (B) PROPOSED SUPPLY-SIDE AND DEMAND-SIDE RESOURCES TO ADDRESS
24 ANY NEED FOR ADDITIONAL GENERATION CAPACITY, INCLUDING, BUT NOT
25 LIMITED TO, THE TYPE OF GENERATION TECHNOLOGY FOR ANY PROPOSED
26 GENERATION FACILITY, PROJECTED ENERGY EFFICIENCY SAVINGS, AND
27 PROJECTED LOAD MANAGEMENT AND DEMAND RESPONSE SAVINGS.

1 (C) AN ANALYSIS OF THE IMPACT OF ANY EXISTING OR PROPOSED
2 STATE AND FEDERAL ENVIRONMENTAL STANDARDS, LAWS, OR RULES ON THAT
3 ELECTRIC UTILITY AND HOW THE ELECTRIC UTILITY'S PLAN WILL MEET
4 THOSE REQUIREMENTS.

5 (3) IN A PROCEEDING UNDER THIS SECTION, THE DEPARTMENT OF
6 ENVIRONMENTAL QUALITY SHALL FILE A STATEMENT THAT INCLUDES ALL OF
7 THE FOLLOWING:

8 (A) ANY NEW STATE OR FEDERAL ENVIRONMENTAL STANDARD, LAW, OR
9 RULE AND HOW THAT STANDARD, LAW, OR RULE WOULD AFFECT THE ELECTRIC
10 UTILITY.

11 (B) ANY PROPOSED STATE OR FEDERAL ENVIRONMENTAL STANDARD, LAW,
12 OR RULE AND HOW THE PROPOSED STANDARD, LAW, OR RULE WOULD AFFECT
13 THE ELECTRIC UTILITY.

14 (C) WHETHER THE PLAN PROPOSED BY THE ELECTRIC UTILITY UNDER
15 SUBSECTION (2) WOULD REASONABLY BE EXPECTED TO ACHIEVE COMPLIANCE
16 WITH THE STANDARDS, LAWS, OR RULES IDENTIFIED IN SUBDIVISIONS (A)
17 AND (B).

18 (D) ANY ALTERNATIVE METHODS THE ELECTRIC UTILITY COULD USE TO
19 ACHIEVE COMPLIANCE WITH THE STANDARDS, LAWS, OR RULES IDENTIFIED IN
20 SUBDIVISIONS (A) AND (B).

21 (4) WITHIN 270 DAYS OF THE FILING OF A PLAN UNDER THIS
22 SECTION, THE COMMISSION SHALL ISSUE AN ORDER GRANTING, MODIFYING,
23 OR DENYING THE REQUESTED PLAN. THE COMMISSION SHALL HOLD A HEARING
24 ON THE PLAN. THE HEARING SHALL BE CONDUCTED AS A CONTESTED CASE
25 PURSUANT TO CHAPTER 4 OF THE ADMINISTRATIVE PROCEDURES ACT OF 1969,
26 1969 PA 306, MCL 24.271 TO 24.287. THE COMMISSION SHALL ALLOW
27 INTERVENTION BY INTERESTED PERSONS. THE COMMISSION SHALL PERMIT

1 REASONABLE DISCOVERY BEFORE AND DURING THE HEARING IN ORDER TO
2 ASSIST PARTIES AND INTERESTED PERSONS IN OBTAINING EVIDENCE
3 CONCERNING THE PLAN, INCLUDING, BUT NOT LIMITED TO, THE
4 REASONABLENESS AND PRUDENCE OF THE PROPOSED PLAN. THE COMMISSION
5 SHALL APPROVE THE PLAN IF THE COMMISSION DETERMINES ALL OF THE
6 FOLLOWING:

7 (A) THAT THE PLAN WOULD MAINTAIN OR INCREASE ELECTRIC
8 RELIABILITY IN THIS STATE.

9 (B) THAT THE PLAN WILL COMPLY WITH ALL APPLICABLE STATE AND
10 FEDERAL ENVIRONMENTAL STANDARDS, LAWS, AND RULES.

11 (C) THAT THE PLAN REPRESENTS THE MOST REASONABLE AND PRUDENT
12 MEANS OF MEETING THE NEED FOR ADDITIONAL GENERATION CAPACITY OR
13 MEETING THE STATE AND FEDERAL ENVIRONMENTAL STANDARDS, LAWS, AND
14 RULES.

15 (5) IN APPROVING A PLAN UNDER THIS SECTION, THE COMMISSION
16 SHALL SPECIFY THE COSTS APPROVED FOR THE INVESTMENTS NEEDED TO
17 COMPLY WITH A PLAN UNDER THIS SECTION.

18 (6) THE ELECTRIC UTILITY SHALL ANNUALLY FILE, OR MORE
19 FREQUENTLY IF REQUIRED BY THE COMMISSION, REPORTS TO THE COMMISSION
20 REGARDING THE STATUS OF ANY INVESTMENTS FOR A PLAN THAT HAS BEEN
21 APPROVED UNDER SUBSECTION (4), INCLUDING AN UPDATE CONCERNING THE
22 COST AND SCHEDULE OF THOSE INVESTMENTS.

23 (7) ONCE THE INVESTMENT IS CONSIDERED USED AND USEFUL OR AS
24 OTHERWISE PROVIDED IN SUBSECTION (8), THE COMMISSION SHALL INCLUDE
25 IN AN ELECTRIC UTILITY'S RETAIL RATES ALL REASONABLE AND PRUDENT
26 COSTS FOR AN INVESTMENT FOR WHICH A PLAN HAS BEEN APPROVED. THE
27 COMMISSION SHALL NOT DISALLOW RECOVERY OF COSTS AN ELECTRIC UTILITY

1 INCURS IN INVESTMENTS FOR WHICH A PLAN HAS BEEN APPROVED, IF THE
2 COSTS DO NOT EXCEED THE COSTS APPROVED BY THE COMMISSION IN THE
3 PLAN. ONCE THE INVESTMENT IS CONSIDERED USED AND USEFUL OR AS
4 OTHERWISE PROVIDED IN SUBSECTION (8), THE COMMISSION SHALL INCLUDE
5 IN THE ELECTRIC UTILITY'S RETAIL RATES COSTS ACTUALLY INCURRED BY
6 THE ELECTRIC UTILITY THAT EXCEED THE COSTS APPROVED BY THE
7 COMMISSION ONLY IF THE COMMISSION FINDS THAT THE ADDITIONAL COSTS
8 ARE REASONABLE AND PRUDENT. IF THE ACTUAL COSTS INCURRED BY THE
9 ELECTRIC UTILITY EXCEED THE COSTS APPROVED BY THE COMMISSION, THE
10 ELECTRIC UTILITY HAS THE BURDEN OF PROVING BY A PREPONDERANCE OF
11 THE EVIDENCE THAT THE COSTS ARE REASONABLE AND PRUDENT. THE PORTION
12 OF THE COST OF THE INVESTMENT THAT EXCEEDS 110% OF THE COST
13 APPROVED BY THE COMMISSION IS PRESUMED TO HAVE BEEN INCURRED DUE TO
14 A LACK OF PRUDENCE. THE COMMISSION MAY INCLUDE ANY OR ALL OF THE
15 PORTION OF THE COST IN EXCESS OF 110% OF THE COST APPROVED BY THE
16 COMMISSION IF THE COMMISSION FINDS BY A PREPONDERANCE OF THE
17 EVIDENCE THAT THE COSTS WERE PRUDENTLY INCURRED.

18 (8) THE COMMISSION SHALL ALLOW FINANCING INTEREST COST
19 RECOVERY IN AN ELECTRIC UTILITY'S BASE RATES ON CONSTRUCTION WORK
20 IN PROGRESS FOR INVESTMENTS APPROVED UNDER THIS SECTION PRIOR TO
21 THE ASSETS BEING CONSIDERED USED AND USEFUL.

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

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

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

1 ~~—— (b) To allow and encourage the Michigan public service~~
2 ~~commission to foster competition in this state in the provision of~~
3 ~~electric supply and maintain regulation of electric supply for~~
4 ~~customers who continue to choose supply from incumbent electric~~
5 ~~utilities.~~

6 ~~—— (c) To encourage the development and construction of merchant~~
7 ~~plants which will diversify the ownership of electric generation in~~
8 ~~this state.~~

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

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

14 ~~—— (f) To maintain, foster, and encourage robust, reliable, and~~
15 ~~economic generation, distribution, and transmission systems to~~
16 ~~provide this state's electric suppliers and generators an~~
17 ~~opportunity to access regional sources of generation and wholesale~~
18 ~~power markets and to ensure a reliable supply of electricity in~~
19 ~~this state.~~**BEGINNING ON THE EFFECTIVE DATE OF THE AMENDATORY ACT**

20 **THAT ADDED THIS SENTENCE, BOTH OF THE FOLLOWING APPLY TO ELECTRIC**
21 **SERVICE IN THIS STATE:**

22 **(A) CUSTOMERS PURCHASING ELECTRICITY FROM AN ELECTRIC UTILITY**
23 **SHALL CONTINUE TO RECEIVE ELECTRIC SERVICE FROM THAT ELECTRIC**
24 **UTILITY.**

25 **(B) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBDIVISION,**
26 **ALTERNATIVE ELECTRIC SUPPLIERS SHALL NOT PROVIDE RETAIL CUSTOMERS**
27 **WITH ELECTRIC GENERATION SERVICE OR ENTER INTO AGREEMENTS TO**

1 PROVIDE RETAIL CUSTOMERS WITH ELECTRIC GENERATION SERVICE. RETAIL
2 CUSTOMERS CURRENTLY PURCHASING ELECTRIC GENERATION SERVICE FROM AN
3 ALTERNATIVE ELECTRIC SUPPLIER MUST RETURN TO RECEIVING ELECTRIC
4 SERVICE FROM THE INCUMBENT ELECTRIC UTILITY WHEN THE PRIMARY TERM
5 OF THEIR EXISTING AGREEMENT WITH THE ALTERNATIVE ELECTRIC SUPPLIER
6 EXPIRES. AN ALTERNATIVE ELECTRIC SUPPLIER SHALL NOT PROVIDE
7 ELECTRIC GENERATION SERVICE UNDER AN AGREEMENT ENTERED INTO BEFORE
8 THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
9 SUBDIVISION, BEYOND THE PRIMARY TERM OF THE AGREEMENT.

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

15 ~~—— (a) Provide that no more than 10% of an electric utility's~~
16 ~~average weather adjusted retail sales for the preceding calendar~~
17 ~~year may take service from an alternative electric supplier at any~~
18 ~~time.~~

19 ~~—— (b) Set forth procedures necessary to administer and allocate~~
20 ~~the amount of load that will be allowed to be served by alternative~~
21 ~~electric suppliers, through the use of annual energy allotments~~
22 ~~awarded on a calendar year basis, and shall provide, among other~~
23 ~~things, that existing customers who are taking electric service~~
24 ~~from an alternative electric supplier at a facility on the~~
25 ~~effective date of the amendatory act that added this subdivision~~
26 ~~shall be given an allocated annual energy allotment for that~~
27 ~~service at that facility, that customers seeking to expand usage at~~

~~1 a facility served through an alternative electric supplier will be
2 given next priority, with the remaining available load, if any,
3 allocated on a first come first served basis. The procedures shall
4 also provide how customer facilities will be defined for the
5 purpose of assigning the annual energy allotments to be allocated
6 under this section. The commission shall not allocate additional
7 annual energy allotments at any time when the total annual energy
8 allotments for the utility's distribution service territory is
9 greater than 10% of the utility's weather adjusted retail sales in
10 the calendar year preceding the date of allocation. If the sales of
11 a utility are less in a subsequent year or if the energy usage of a
12 customer receiving electric service from an alternative electric
13 supplier exceeds its annual energy allotment for that facility,
14 that customer shall not be forced to purchase electricity from a
15 utility, but may purchase electricity from an alternative electric
16 supplier for that facility during that calendar year.~~

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

~~26 (d) Notwithstanding any other provision of this section, any
27 customer operating an iron ore mining facility, iron ore processing~~

1 ~~facility, or both, located in the Upper Peninsula of this state,~~
2 ~~shall be permitted to purchase all or any portion of its~~
3 ~~electricity from an alternative electric supplier, regardless of~~
4 ~~whether the sales exceed 10% of the serving electric utility's~~
5 ~~average weather-adjusted retail sales.~~

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

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

25 (1) ~~(4) No later than December 2, 2000, the~~ **THE** ~~commission~~
26 ~~shall establish a code of conduct that shall apply to all electric~~
27 ~~utilities. The code of conduct shall include, but is not limited~~

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

8 (2) ~~(5)~~—An electric utility may offer its customers an
9 appliance service program. Except as otherwise provided by this
10 section, the utility shall comply with the code of conduct
11 established by the commission under subsection ~~(4)~~. ~~As used in this~~
12 ~~section, "appliance service program" or "program" means a~~
13 ~~subscription program for the repair and servicing of heating and~~
14 ~~cooling systems or other appliances.~~ (1) .

15 (3) ~~(6)~~—A utility offering a program under subsection ~~(5)~~—(2)
16 shall do all of the following:

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

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

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

27 (4) ~~(7)~~—All costs directly attributable to an appliance

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

14 (5) ~~(8)~~-A utility may include charges for its appliance
15 service program on its monthly billings to its customers if the
16 utility complies with all of the following requirements:

17 (a) All costs associated with the billing process, including
18 the postage, envelopes, paper, and printing expenses, are allocated
19 as required under subsection ~~(7)~~-(4).

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

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

26 (6) ~~(9)~~-In marketing its appliance service program to the
27 public, a utility shall do all of the following:

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

8 (b) Appropriately allocate costs as required under subsection
9 ~~(7)~~**(4)** when personnel employed at a utility's call center provide
10 appliance service program marketing information to a prospective
11 customer.

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

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

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

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

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

26 (d) The utility name and logo may be used to market the
27 appliance service program ~~provided that~~**IF** the program is not

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

7 (7) ~~(10)~~ This section does not prohibit the commission from
8 requiring a utility to include revenues from an appliance service
9 program in establishing base rates. If the commission includes the
10 revenues of an appliance service program in determining a utility's
11 base rates, the commission shall also include all of the costs of
12 the program as determined under this section.

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

21 (9) ~~(12)~~ This act does not prohibit or limit the right of a
22 person to obtain self-service power and does not impose a
23 transition, implementation, exit fee, or any other similar charge
24 on self-service power. A person using self-service power is not an
25 electric supplier, electric utility, or a person conducting an
26 electric utility business. As used in this subsection, "self-
27 service power" means any of the following:

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

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

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

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

21 (10) ~~(13)~~—This act does not prohibit or limit the right of a
22 person to engage in affiliate wheeling and does not impose a
23 transition, implementation, exit fee, or any other similar charge
24 on a person engaged in affiliate wheeling.

25 ~~As used in this section:~~

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

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

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

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

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

24 ~~(11) (14) The rights of parties to existing contracts and~~
25 ~~agreements in effect as of January 1, 2000 between electric~~
26 ~~utilities and qualifying facilities, including the right to have~~
27 ~~the charges recovered from the customers of an electric utility, or~~

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

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

19 (12) ~~(16)~~The commission shall authorize rates that will
20 ensure that an electric utility that offered retail open access
21 service from 2002 through ~~the effective date of the amendatory act~~
22 ~~that added this subsection~~**OCTOBER 6, 2008** fully recovers its
23 restructuring costs and any associated accrued regulatory assets.
24 This includes, but is not limited to, implementation costs,
25 stranded costs, and costs authorized ~~pursuant to~~**UNDER** section
26 10d(4) as it existed ~~prior to the effective date of the amendatory~~
27 ~~act that added this subsection,~~**BEFORE OCTOBER 6, 2008**, that have

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

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

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

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

18 (13) AS USED IN THIS SECTION:

19 (A) "AFFILIATE" MEANS A PERSON OR ENTITY THAT DIRECTLY, OR
20 INDIRECTLY THROUGH 1 OR MORE INTERMEDIATES, CONTROLS, IS CONTROLLED
21 BY, OR IS UNDER COMMON CONTROL WITH ANOTHER SPECIFIED ENTITY. AS
22 USED IN THIS SUBDIVISION, "CONTROL" MEANS, WHETHER THROUGH AN
23 OWNERSHIP, BENEFICIAL, CONTRACTUAL, OR EQUITABLE INTEREST, THE
24 POSSESSION, DIRECTLY OR INDIRECTLY, OF THE POWER TO DIRECT OR TO
25 CAUSE THE DIRECTION OF THE MANAGEMENT OR POLICIES OF A PERSON OR
26 ENTITY OR THE OWNERSHIP OF AT LEAST 7% OF AN ENTITY EITHER DIRECTLY
27 OR INDIRECTLY.

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

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

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

17 (C) "APPLIANCE SERVICE PROGRAM" OR "PROGRAM" MEANS A
18 SUBSCRIPTION PROGRAM FOR THE REPAIR AND SERVICING OF HEATING AND
19 COOLING SYSTEMS OR OTHER APPLIANCES.

20 Sec. 10c. ~~(1) Except for a violation under section 10a(3) and~~
21 as otherwise provided under this section, upon a complaint or on
22 the commission's own motion, if the commission finds, after notice
23 and hearing, that an electric utility or an alternative electric
24 supplier has not complied with a provision or order issued under
25 sections 10 through ~~10bb~~, **10AA**, the commission shall order ~~such~~ **ANY**
26 remedies and penalties as necessary to make whole a customer or
27 other person who has suffered damages as a result of the violation,

1 including, but not limited to, 1 or more of the following:

2 (a) Order the electric utility or alternative electric
3 supplier to pay a fine for the first offense of not less than
4 \$1,000.00 or more than \$20,000.00. For a second offense, the
5 commission shall order the person to pay a fine of not less than
6 \$2,000.00 or more than \$40,000.00. For a third and any subsequent
7 offense, the commission shall order the person to pay a fine of not
8 less than \$5,000.00 or more than \$50,000.00.

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

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

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

15 (e) Issue cease and desist orders.

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

19 ~~—— (3) If the commission finds that a person has violated section~~
20 ~~10a(3), the commission shall order remedies and penalties to~~
21 ~~protect customers and other persons who have suffered damages as a~~
22 ~~result of the violation, including, but not limited to, 1 or more~~
23 ~~of the following:~~

24 ~~—— (a) Order the person to pay a fine for the first offense of~~
25 ~~not less than \$20,000.00 or more than \$30,000.00. For a second and~~
26 ~~any subsequent offense, the commission shall order the person to~~
27 ~~pay a fine of not less than \$30,000.00 or more than \$50,000.00. If~~

1 ~~the commission finds that the second or any of the subsequent~~
2 ~~offenses were knowingly made in violation of section 10a(3), the~~
3 ~~commission shall order the person to pay a fine of not more than~~
4 ~~\$70,000.00. Each unauthorized action made in violation of section~~
5 ~~10a(3) shall be a separate offense under this subdivision.~~

6 ~~—— (b) Order an unauthorized supplier to refund to the customer~~
7 ~~any amount greater than the customer would have paid to an~~
8 ~~authorized supplier.~~

9 ~~—— (c) Order an unauthorized supplier to reimburse an authorized~~
10 ~~supplier an amount equal to the amount paid by the customer that~~
11 ~~should have been paid to the authorized supplier.~~

12 ~~—— (d) Order the refund of any amounts paid by the customer for~~
13 ~~unauthorized services.~~

14 ~~—— (e) Order a portion between 10% to 50% of the fine ordered~~
15 ~~under subdivision (a) be paid directly to the customer who suffered~~
16 ~~the violation under section 10a(3).~~

17 ~~—— (f) If the person is licensed under this act, revoke the~~
18 ~~license if the commission finds a pattern of violations of section~~
19 ~~10a(3).~~

20 ~~—— (g) Issue cease and desist orders.~~

21 ~~—— (4) Notwithstanding subsection (3), a fine shall not be~~
22 ~~imposed for a violation of section 10a(3) if the supplier has~~
23 ~~otherwise fully complied with section 10a(3) and shows that the~~
24 ~~violation was an unintentional and bona fide error which occurred~~
25 ~~notwithstanding the maintenance of procedures reasonably adopted to~~
26 ~~avoid the error. Examples of a bona fide error include clerical,~~
27 ~~calculation, computer malfunction, programming, or printing errors.~~

1 ~~An error in legal judgment with respect to a supplier's obligations~~
2 ~~under section 10a(3) is not a bona fide error. The burden of~~
3 ~~proving that a violation was an unintentional and bona fide error~~
4 ~~is on the supplier.~~

5 ~~—— (5) If the commission finds that a party's position in a~~
6 ~~complaint filed under subsection (2) is frivolous, the commission~~
7 ~~shall award to the prevailing party their costs, including~~
8 ~~reasonable attorney fees, against the nonprevailing party and their~~
9 ~~attorney.~~

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

20 ~~—— (2) A merchant plant may sell its capacity to alternative~~
21 ~~electric suppliers, electric utilities, municipal electric~~
22 ~~utilities, retail customers, or other persons. A merchant plant~~
23 ~~making sales to retail customers is an alternative electric~~
24 ~~supplier and shall obtain a license under section 10a(2).~~

25 (2) ~~(3)~~ The commission shall establish standards for the
26 interconnection of merchant plants with the transmission and
27 distribution systems of electric utilities. The standards shall not

1 require an electric utility to interconnect with generating
2 facilities with a capacity of less than 100 kilowatts for parallel
3 operations. The standards shall be consistent with generally
4 accepted industry practices and guidelines and shall be established
5 to ensure the reliability of electric service and the safety of
6 customers, utility employees, and the general public. The merchant
7 plant will be responsible for all costs associated with the
8 interconnection unless the commission has otherwise allocated the
9 costs and provided for cost recovery.

10 (3) ~~(4)~~—This section does not apply to interconnections or
11 transactions that are subject to the jurisdiction of the federal
12 energy regulatory commission.

13 Sec. 10g. ~~(1)~~—As used in sections 10 through ~~10bb~~ **10AA**:

14 (a) "Alternative electric supplier" means a person selling
15 electric generation service to retail customers in this state.
16 Alternative electric supplier does not include a person who
17 physically delivers electricity directly to retail customers in
18 this state. An alternative electric supplier is not a public
19 utility.

20 (b) "Commission" means the Michigan public service commission
21 created in section 1.

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

25 (d) "Independent transmission owner" means an independent
26 transmission company as that term is defined in section 2 of the
27 electric transmission line certification act, 1995 PA 30, MCL

1 460.562.

2 (e) "Merchant plant" means electric generating equipment and
3 associated facilities with a capacity of more than 100 kilowatts
4 located in this state that are not owned and operated by an
5 electric utility.

6 (f) "Relevant market" means either the Upper Peninsula or the
7 Lower Peninsula of this state.

8 (g) "Renewable energy source" means energy generated by solar,
9 wind, geothermal, biomass, including waste-to-energy and landfill
10 gas, or hydroelectric.

11 ~~——(2) A school district aggregating electricity for school~~
12 ~~properties or an exclusive aggregator for public or private school~~
13 ~~properties is not an electric utility or a public utility for the~~
14 ~~purpose of that aggregation.~~

15 Sec. 10q. (1) A person shall not engage in the business of an
16 alternative electric supplier in this state unless the person
17 obtains and maintains a license. ~~issued under section 10a.~~

18 (2) In addition to any other information required by the
19 commission in connection with a licensing application, the
20 applicant shall ~~be required to~~ do both of the following:

21 (a) Provide information, including information as to the
22 applicant's safety record and its history of service quality and
23 reliability, as to the applicant's technical ability, as defined
24 under regulations of the commission, to safely and reliably
25 generate or otherwise obtain and deliver electricity and provide
26 any other proposed services.

27 (b) Demonstrate that the employees of the applicant that will

1 be installing, operating, and maintaining generation or
2 transmission facilities within this state, or any entity with which
3 the applicant has contracted to perform those functions within this
4 state, have the requisite knowledge, skills, and competence to
5 perform those functions in a safe and responsible manner in order
6 to provide safe and reliable service.

7 (3) The commission shall order the applicant to post a bond or
8 provide a letter of credit or other financial guarantee in a
9 reasonable amount established by the commission of not less than
10 \$40,000.00, if the commission finds after an investigation and
11 review that the requirement of a bond would be in the public
12 interest.

13 (4) Only investor-owned, cooperative, or municipal electric
14 utilities shall own, construct, or operate electric distribution
15 facilities or electric meter equipment used in the distribution of
16 electricity in this state. This subsection does not prohibit a
17 self-service power provider from owning, constructing, or operating
18 electric distribution facilities or electric metering equipment for
19 the sole purpose of providing or utilizing self-service power. This
20 act does not affect the current rights, if any, of a nonutility to
21 construct or operate a private distribution system on private
22 property or private easements. This does not preclude crossing of
23 public rights-of-way.

24 (5) The commission shall not prohibit an electric utility from
25 metering and billing its customers for services provided by the
26 electric utility.

27 Sec. 10t. (1) An electric utility ~~or alternative electric~~

1 ~~supplier~~ shall not shut off service to an eligible customer during
2 the heating season for nonpayment of a delinquent account if the
3 customer is an eligible senior citizen customer or if the customer
4 pays to the utility ~~or supplier~~ a monthly amount equal to 7% of the
5 estimated annual bill for the eligible customer and the eligible
6 customer demonstrates, within 14 days of requesting shutoff
7 protection, that he or she has applied for state or federal heating
8 assistance. If an arrearage exists at the time an eligible customer
9 applies for protection from shutoff of service during the heating
10 season, the utility ~~or supplier~~ shall permit the customer to pay
11 the arrearage in equal monthly installments between the date of
12 application and the start of the subsequent heating season.

13 (2) An electric utility ~~or alternative electric supplier~~ may
14 shut off service to an eligible low-income customer who does not
15 pay the monthly amounts required under subsection (1) after giving
16 notice in the manner required by rules. The utility ~~or supplier~~ is
17 not required to offer a settlement agreement to an eligible low-
18 income customer who fails to make the monthly payments required
19 under subsection (1).

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

25 (a) That the customer has defaulted on the winter protection
26 plan.

27 (b) The nature of the default.

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

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

6 (e) That the customer has the right to file a complaint
7 disputing the claim of the utility ~~or supplier~~ before the date of
8 the proposed shutoff of service.

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

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

17 (h) That the utility ~~or supplier~~ will not shut off service
18 pending the resolution of a complaint that is filed with the
19 utility in accordance with this section.

20 (i) The telephone number and address of the utility ~~or~~
21 ~~supplier~~ where the customer may make inquiry, enter into a
22 settlement agreement, or file a complaint.

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

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

1 (l) That the utility ~~or supplier~~ may require a deposit and
2 restoration charge if the ~~supplier~~ **UTILITY** shuts off service for
3 nonpayment of a delinquent account.

4 ~~—— (4) An electric utility is not required to shut off service~~
5 ~~under this section to an eligible customer for nonpayment to an~~
6 ~~alternative electric supplier.~~

7 (4) ~~(5)~~ The commission shall establish an educational program
8 to ensure that eligible customers are informed of the requirements
9 and benefits of this section.

10 (5) ~~(6)~~ As used in this section:

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

13 (b) "Eligible low-income customer" means a customer whose
14 household income does not exceed 150% of the poverty level, as
15 published by the United States department of health and human
16 services, or who receives any of the following:

17 (i) Assistance from a state emergency relief program.

18 (ii) Food stamps.

19 (iii) Medicaid.

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

23 Sec. 10y. ~~(1) The governing body of a municipally owned~~
24 ~~utility shall determine whether it will permit retail customers~~
25 ~~receiving delivery service from the municipally owned utility the~~
26 ~~opportunity of choosing an alternative electric supplier, subject~~
27 ~~to the implementation of rates, charges, terms, and conditions~~

1 referred to in subsection (5).

2 ~~—— (2) Except with the written consent of the municipally owned~~
3 ~~utility, a person shall not provide delivery service or customer~~
4 ~~account service to a retail customer that was receiving that~~
5 ~~service from a municipally owned utility as of June 5, 2000, or is~~
6 ~~receiving the service from a municipally owned utility. For~~
7 ~~purposes of this subsection, "customer" means the building or~~
8 ~~facilities served rather than the individual, association,~~
9 ~~partnership, corporation, governmental body, or any other entity~~
10 ~~taking service.~~

11 (1) ~~(3)~~ With respect to any electric utility regarding
12 delivery service to customers located outside of the municipal
13 boundaries of the municipality that owns the utility, a governing
14 body of a municipally owned utility may elect to operate in
15 compliance with R 460.3411 of the Michigan administrative code, as
16 in effect on June 5, 2000. However, compliance with R 460.3411(13)
17 of the Michigan administrative code is not required for the
18 municipally owned utility. Concurrent with the filing of an
19 election under this subsection with the commission, the municipally
20 owned utility shall serve a copy of the election on the electric
21 utility. Beginning 30 days after service of the copy of the
22 election, the electric utility shall, as to the electing
23 municipally owned utility, be subject to the terms of R 460.3411 of
24 the Michigan administrative code as in effect on June 5, 2000. The
25 commission shall decide disputes arising under this subsection
26 subject to judicial review and enforcement.

27 (2) ~~(4)~~ A municipally owned utility and an electric utility

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

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

17 ~~—— (a) Set delivery service rates applicable to services provided
18 by the municipally owned utility that shall not be unduly
19 discriminatory.~~

20 ~~—— (b) Determine the amount and types of, and recovery mechanism
21 for, stranded and transition costs that will be charged.~~

22 ~~—— (c) Establish rules, terms of access, and conditions that it
23 considers appropriate for the implementation of a program to allow
24 customers the opportunity of choosing an alternative electric
25 supplier.~~

26 ~~—— (6) Complaints alleging unduly discriminatory rates or other
27 noncompliance arising under subsection (5) shall be filed in the~~

1 ~~circuit court for the county in which the municipally owned utility~~
2 ~~is located.~~

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

8 (3) ~~(8)~~—This section shall not be construed to impair the
9 contractual rights of a municipally owned utility or customer under
10 an existing contract.

11 (4) ~~(9)~~—Contracts or other records pertaining to the sale of
12 electricity by a municipally owned utility that are in the
13 possession of a public body and that contain specific pricing or
14 other confidential or proprietary information may be exempted from
15 public disclosure requirements by the governing body of a
16 municipally owned utility. Upon a showing of good cause, disclosure
17 subject to appropriate confidentiality provisions may be ordered by
18 a court or the commission.

19 (5) ~~(10)~~—This section does not affect the validity of the
20 order relating to the terms and conditions of service in the
21 Traverse City area that was issued August 25, 1994, by the
22 commission at the request of consumers power company and the light
23 and power board of the city of Traverse City.

24 (6) ~~(11)~~—As provided in section 6, the commission does not
25 have jurisdiction over a municipally owned utility.

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

27 ~~—— (a) "Delivery service" means the providing of electric~~

1 ~~transmission or distribution to a retail customer.~~

2 ~~—— (b) "Municipality" means any city, village, or township.~~

3 ~~—— (c) "Customer account services" means billing and collection,~~
4 ~~provision of a meter, meter maintenance and testing, meter reading,~~
5 ~~and other administrative activity associated with maintaining a~~
6 ~~customer account.~~

7 (7) ~~(13)~~—In the event that an entity purchases 1 or more
8 divisions or business units, or generating stations or generating
9 units, of a municipal electric utility, the acquiring entity's
10 contract and agreements with the selling municipality shall require
11 all of the following for a period of at least 30 months:

12 (a) That the acquiring entity or persons hires a sufficient
13 number of employees to safely and reliably operate and maintain the
14 station, division, or unit by first making offers of employment to
15 the workforce of the municipal electric utility's division,
16 business unit, or generating unit.

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

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

25 (d) That the acquiring entity or persons offer employment at
26 no less than the wage rates and substantially equivalent fringe
27 benefits and terms and conditions of employment that are in effect

1 at the time of transfer of ownership of the division, business
2 unit, generating station, or generating unit. The wage rates and
3 substantially equivalent fringe benefits and terms and conditions
4 of employment shall continue for at least 30 months from the time
5 of the transfer of ownership unless the employees, or where
6 applicable collective bargaining representative, and the new
7 employer mutually agree to different terms and conditions of the
8 employment within that 30-month period.

9 (e) An acquiring entity is exempt from the obligations in this
10 subsection if the selling municipality transfers all displaced
11 municipal electric utility employees to positions of employment
12 within the municipality at no less than the wage rates and
13 substantially equivalent fringe benefits and terms and conditions
14 of employment that are in effect at the time of transfer. The wage
15 rates and substantially equivalent fringe benefits and terms and
16 conditions of employment shall continue for at least 30 months from
17 the time of the transfer unless the employees, or where applicable
18 collective bargaining representative, and the municipality mutually
19 agree to different terms and conditions of the employment within
20 that 30-month period.

21 (8) AS USED IN THIS SECTION:

22 (A) "DELIVERY SERVICE" MEANS THE PROVIDING OF ELECTRIC
23 TRANSMISSION OR DISTRIBUTION TO A RETAIL CUSTOMER.

24 (B) "MUNICIPALITY" MEANS ANY CITY, VILLAGE, OR TOWNSHIP.

25 (C) "CUSTOMER ACCOUNT SERVICES" MEANS BILLING AND COLLECTION,
26 PROVISION OF A METER, METER MAINTENANCE AND TESTING, METER READING,
27 AND OTHER ADMINISTRATIVE ACTIVITY ASSOCIATED WITH MAINTAINING A

1 **CUSTOMER ACCOUNT.**

2 Enacting section 1. Sections 10f, 10u, 10x, and 10bb of 1939
3 PA 3, MCL 460.10f, 460.10u, 460.10x, and 460.10bb, are repealed
4 effective 90 days after the date this amendatory act is enacted
5 into law.

6 Enacting section 2. This amendatory act takes effect 90 days
7 after the date it is enacted into law.