

HOUSE BILL No. 5387

January 10, 2018, Introduced by Reps. Glenn, Howell and Canfield 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 powers and duties of certain state governmental officers and entities; 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 encourage the utilization of resource recovery facilities; to prohibit certain acts and practices of providers of energy; to allow for the securitization of stranded costs; to reduce rates; to provide for appeals; to provide appropriations; to declare the effect and purpose of this act; to prescribe remedies and penalties; and to repeal acts and parts of acts,"

by amending section 10a (MCL 460.10a), as amended by 2016 PA 341.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 10a. (1) The commission shall issue orders establishing
2 the rates, terms, and conditions of service that allow retail
3 customers to take service from an alternative electric supplier.
4 The orders ~~shall~~**MUST** do all of the following:

5 (a) Except as otherwise provided in this section, provide that
6 no more than 10% of an electric utility's average weather-adjusted
7 retail sales for the preceding calendar year may take service from
8 an alternative electric supplier at any time.

9 (b) Set forth procedures necessary to allocate the amount of
10 load that will be allowed to be served by alternative electric
11 suppliers, through the use of annual energy allotments awarded on a
12 calendar year basis. If the sales of a utility are less in a
13 subsequent year or if the energy usage of a customer receiving
14 electric service from an alternative electric supplier exceeds its
15 annual energy allotment for that facility, that customer shall not
16 be forced to purchase electricity from a utility, but may purchase
17 electricity from an alternative electric supplier for that facility
18 during that calendar year.

19 (c) Notwithstanding any other provision of this section,
20 provide that, if the commission determines that less than 10% of an
21 electric utility's average weather-adjusted retail sales for the
22 preceding calendar year is taking service from alternative electric
23 suppliers, the commission shall set as a cap on the weather-
24 adjusted retail sales that may take service from an alternative
25 electric supplier, for the current calendar year and 5 subsequent

1 calendar years, the percentage amount of weather-adjusted retail
 2 sales for the preceding calendar year rounded up to the nearest
 3 whole percentage. If the cap is not adjusted for 6 consecutive
 4 calendar years, the cap ~~shall return~~ **RETURNS** to 10% in the calendar
 5 year following that sixth consecutive calendar year. If a utility
 6 that serves less than 200,000 customers in this state has not had
 7 any load served by an alternative electric supplier in the
 8 preceding 4 years, the commission shall adjust the cap in
 9 accordance with this provision for no more than 2 consecutive
 10 calendar years.

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

19 **(E) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, AN**
 20 **AGRICULTURAL PRODUCTION OR PROCESSING OPERATION MAY PURCHASE ALL OR**
 21 **ANY PORTION OF ITS ELECTRICITY FROM AN ALTERNATIVE ELECTRIC**
 22 **SUPPLIER, REGARDLESS OF WHETHER THE SALES EXCEED 10% OF THE SERVING**
 23 **ELECTRIC UTILITY'S AVERAGE WEATHER-ADJUSTED RETAIL SALES.**

24 **(F)** ~~(e)~~ Provide that for an existing facility that is
 25 receiving 100% of its electric service from an alternative electric
 26 supplier on or after ~~the effective date of the amendatory act that~~
 27 ~~added section 6t,~~ **APRIL 20, 2017**, the owner of that facility may

1 purchase electricity from an alternative electric supplier,
2 regardless of whether the sales exceed 10% of the servicing
3 electric utility's average weather-adjusted retail sales, for both
4 the existing electric choice load at that facility and any expanded
5 load arising after ~~the effective date of the amendatory act that~~
6 ~~added section 6t~~ **APRIL 20, 2017** at that facility as well as any new
7 facility that is similar in nature to the existing facility, that
8 is constructed or acquired by the customer on a site contiguous to
9 the existing site or on a site that would be contiguous to an
10 existing site in the absence of an existing public right-of-way,
11 and the customer owns more than 50% of that facility. This
12 subdivision does not authorize or permit an existing facility being
13 served by an electric utility on standard tariff service on ~~the~~
14 ~~effective date of the amendatory act that added section 6t~~ **APRIL**
15 **20, 2017** to be served by an alternative electric supplier.

16 (G) ~~(F)~~ Notwithstanding any other provision of this section,
17 any customer operating an iron ore mining facility, iron ore
18 processing facility, or both, located in the Upper Peninsula of
19 this state, may purchase all or any portion of its electricity from
20 an alternative electric supplier, regardless of whether the sales
21 exceed 10% of the serving electric utility's average weather-
22 adjusted retail sales, if that customer is in compliance with the
23 terms of a settlement agreement requiring it to facilitate
24 construction of a new power plant located in the Upper Peninsula of
25 this state. A customer described in this subdivision and the
26 alternative electric supplier that provides electric service to
27 that customer are not subject to the requirements contained in ~~the~~

~~amendatory act that added section 6t-2016 PA 341~~ and any
 administrative regulations adopted under ~~that amendatory act.~~ **2016**
PA 341. The commission's orders establishing rates, terms, and
 conditions of retail access service issued before ~~the effective~~
~~date of the amendatory act that added section 6t-~~ **APRIL 20, 2017**
 remain in effect with regard to retail open access provided under
 this subdivision.

(H) ~~(g)~~ Provide that a customer on an enrollment queue waiting
 to take retail open access service as of December 31, 2015 shall
 continue on the queue and an electric utility shall add a new
 customer to the queue if the customer's prospective alternative
 electric supplier submits an enrollment request to the electric
 utility. A customer shall be removed from the queue by notifying
 the electric utility electronically or in writing.

(I) ~~(h)~~ Require each electric utility to file with the
 commission not later than January 15 of each year a rank-ordered
 queue of all customers awaiting retail open access service under
 subdivision ~~(g)~~. **(H)**. The filing must include the estimated amount
 of electricity used by each customer awaiting retail open access
 service under subdivision ~~(g)~~. **(H)**. All customer-specific
 information contained in the filing under this subdivision is
 exempt from release under the freedom of information act, 1976 PA
 442, MCL 15.231 to 15.246, and the commission shall treat that
 information as confidential information. The commission may release
 aggregated information as part of its annual report as long as
 individual customer information or data are not released.

(J) ~~(i)~~ Provide that if the prospective alternative electric

1 supplier of a customer next on the queue awaiting retail open
2 access service is notified after ~~the effective date of the~~
3 ~~amendatory act that added section 6t~~ **APRIL 20, 2017** that less than
4 10% of an electric utility's average weather-adjusted retail sales
5 for the preceding calendar year are taking service from an
6 alternative electric supplier and that the amount of electricity
7 needed to serve the customer's electric load is available under the
8 10% allocation, the customer may take service from an alternative
9 electric supplier. The customer's prospective alternative electric
10 supplier shall notify the electric utility within 5 business days
11 after being notified whether the customer will take service from an
12 alternative electric supplier. If the customer's prospective
13 alternative electric supplier fails to notify the utility within 5
14 business days or if the customer chooses not to take retail open
15 access service, the customer shall be removed from the queue of
16 those awaiting retail open access service. The customer may
17 subsequently be added to the queue as a new customer under the
18 provisions of subdivision ~~(g)~~ **(H)**. A customer that elects to take
19 service from an alternative electric supplier under this
20 subdivision shall become service-ready under rules established by
21 the commission and the utility's approved retail open access
22 service tariffs.

23 **(K)** ~~(j)~~ Provide that the commission shall ensure if a customer
24 is notified that the customer's service from an alternative
25 electric supplier will be terminated or restricted as a result of
26 the alternative electric supplier limiting service in this state,
27 the customer has 60 days to acquire service from a different

1 alternative electric supplier. If the customer is a public entity,
2 the time to acquire services from a different alternative electric
3 supplier shall not be less than 180 days.

4 (l) ~~(k)~~ Provide that as a condition of licensure, an
5 alternative electric supplier meets all of the requirements of this
6 act.

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

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

26 (4) This act does not prohibit or limit the right of a person
27 to obtain self-service power and does not impose a transition,

1 implementation, exit fee, or any other similar charge on self-
2 service power. A person using self-service power is not an electric
3 supplier, electric utility, or a person conducting an electric
4 utility business. As used in this subsection, "self-service power"
5 means any of the following:

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

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

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

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

26 (5) This act does not prohibit or limit the right of a person
27 to engage in affiliate wheeling and does not impose a transition,

1 implementation, exit fee, or any other similar charge on a person
2 engaged in affiliate wheeling.

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

14 (7) A customer that elects to receive service from an
15 alternative electric supplier may subsequently provide notice to
16 the electric utility of the customer's desire to receive standard
17 tariff service from the electric utility under procedures approved
18 by the commission.

19 (8) The commission shall authorize rates that will ensure that
20 an electric utility that offered retail open access service from
21 2002 through October 6, 2008 fully recovers its restructuring costs
22 and any associated accrued regulatory assets. This includes, but is
23 not limited to, implementation costs, stranded costs, and costs
24 authorized under section 10d(4) as it existed before October 6,
25 2008, that have been authorized for recovery by the commission in
26 orders issued before October 6, 2008. The commission shall approve
27 surcharges that will ensure full recovery of all such costs by

1 October 6, 2013.

2 (9) As used in subsections (1) and (7):

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

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

13 (10) As used in this section:

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

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

1 (i) For at least 90 days during the period from January 1,
2 1996 to October 1, 1999, supplied by self-service power, but only
3 to the extent of the capacity reserved or load served by self-
4 service power during the period.

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