

**MICHIGAN PUBLIC SERVICE COMMISSION (EXCERPT)**  
**Act 3 of 1939**

**460.10f Generation capacity in excess of utility's retail sales load; determination of total generating capacity; market power mitigation plan; application; approval; requirements of independent brokering trustee.**

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

- (a) Divest a portion of its generating capacity.
- (b) Sell generating capacity under a contract with a nonretail purchaser for a term of at least 5 years.
- (c) Transfer generating capacity to an independent brokering trustee for a term of at least 5 years in blocks of at least 500 megawatts, 24 hours per day.

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

- (a) If a municipal utility does not permit its retail customers to select alternative electric suppliers, the generating capacity owned by a municipal utility necessary to serve the retail native load.
- (b) Generating capacity dedicated to serving on-site load.
- (c) The generating capacity of any multistate electric supplier jurisdictionally assigned to customers of other states.

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

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

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

**History:** Add. 2000, Act 141, Imd. Eff. June 5, 2000;—Am. 2016, Act 341, Eff. Apr. 20, 2017.

**Popular name:** Customer Choice and Electricity Reliability Act