



HOUSE BILL No. 6225

November 19, 1996, Introduced by Rep. Dobb and referred to the Committee on Public Utilities.

A bill to codify, revise, consolidate, and classify the laws relating to the regulation of certain public utilities; to prescribe certain procedures; to prescribe the powers and duties of certain departments and agencies; to prescribe the powers and duties of certain local officials and agencies; to provide certain appropriations; to provide penalties and remedies; to repeal certain executive reorganization orders; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

ARTICLE 1

GENERAL PROVISIONS

PART 11. SHORT TITLE AND INTENT

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4 Sec. 1101. This act shall be known and may be cited as the
5 "Michigan utility code of 1996".

1 Sec. 1102. (1) The purpose of this act is to revise only as
2 necessary to codify and classify the laws relating to the
3 regulation of public utilities and other entities.

4 (2) The legislature specifically intends that any changes in
5 the language and structure of statutes repealed and codified as
6 sections or parts of this act are not and should not be construed
7 as changes or revisions to the intent, purpose, or meanings of
8 those statutes.

9 (3) Changes in language and structure do not alter, amend,
10 or void any court interpretations or holdings as of the effective
11 date of this act that involve the statutes incorporated into this
12 act.

13 (4) Evidence of a specific change in language or structure
14 from the incorporated statutes or parts of statutes shall not be
15 used as a basis by the courts or commission to expand or narrow
16 the regulation of public utilities and other entities.

17 Sec. 1103. A heading or title of an article or part of this
18 act shall not be used to construe the act more broadly or nar-
19 rowly than the text of the sections of the act would indicate,
20 but shall be considered as inserted for the convenience of the
21 users of this act.

22 PART 12. DEFINITIONS

23 Sec. 1201. Except as otherwise defined in this act, as used
24 in this act:

25 (a) "Commission" means the Michigan public service commis-
26 sion described in article 2.

1 (b) "Contested case" means a contested case under chapter 4
2 of the administrative procedures act of 1969, Act No. 306 of the
3 Public Acts of 1969, being sections 24.271 to 24.287 of the
4 Michigan Compiled Laws.

5 (c) "Department" means the department of consumer and indus-
6 try services.

7 (d) "Municipality" means a city, township, or village.

8 (e) "Municipally owned utility" means a utility that is
9 owned by a municipality.

10 (f) "Person" means an individual, partnership, corporation,
11 limited liability company, association, or other legal entity.

12 (g) "Renewable resource power production facility" means a
13 facility having a rated power production capacity of 30 megawatts
14 or less that produces electric energy by the use of biomass,
15 waste, wood, hydroelectric, wind, or other renewable resources,
16 or any combination of renewable resources, as the primary energy
17 source.

18 (h) "Rule" means a rule promulgated under the administrative
19 procedures act of 1969, Act No. 306 of the Public Acts of 1969,
20 being sections 24.201 to 24.328 of the Michigan Compiled Laws.

21 ARTICLE 2

22 MICHIGAN PUBLIC SERVICE COMMISSION

23 PART 21. COMMISSION ORGANIZATION

24 Sec. 2101. (1) The commission created under section 1 of
25 former Act No. 3 of the Public Acts of 1939 shall continue in
26 existence under this act in the department.

1 (2) The commission shall have the jurisdiction and authority
2 to administer this act.

3 (3) In administering this act, the commission shall be
4 limited to the specific powers and duties prescribed by this
5 act.

6 Sec. 2102. (1) The commission shall consist of 3 members
7 appointed by the governor for 6-year staggered terms with the
8 advice and consent of the senate. Not more than 2 commission
9 members may be of the same political party. Each commission
10 member shall be a citizen of the United States and this state.

11 (2) The governor shall designate 1 commission member to
12 serve as chairperson of the commission.

13 (3) A commission member shall not be pecuniarily interested
14 in a public utility subject to the commission's jurisdiction.
15 During his or her term, a commission member shall not serve as an
16 officer or committee member of a political party organization,
17 hold any office, or be employed by any other commission, board,
18 department, or institution of this state.

19 (4) A commission member shall not be retained or employed by
20 a public utility or person subject to the commission's jurisdic-
21 tion while he or she is acting as a commission member or for 6
22 months after that time.

23 (5) A commission member who is also a member of the state
24 bar of Michigan shall not practice law or act as counselor or
25 attorney in a court of this state while he or she is a commission
26 member.

1 (6) This section does not require a commission member to
2 retire from or dissolve a partnership of which he or she is a
3 member, but the partnership shall not engage in public utility
4 practice while he or she is a commission member.

5 (7) When a commission member's term expires, the governor
6 shall appoint a successor subject to the requirements of this
7 section, for a term of 6 years or until his or her successors are
8 appointed and qualified.

9 (8) A commission member serving at the effective date of
10 this act shall continue as a commission member under this act for
11 the remainder of his or her term, unless he or she resigns, dies,
12 or is removed under section 2103.

13 (9) A vacancy on the commission shall be filled in the same
14 manner as is provided for an appointment of a commission member
15 under this section. If a vacancy is created other than by expi-
16 ration of a term, the new commission member shall be appointed
17 for the balance of the unexpired term of the commission member to
18 be succeeded.

19 Sec. 2103. (1) A commission member becomes qualified by
20 taking and subscribing to the constitutional oath of office and
21 shall hold office until the appointment and qualification of his
22 or her successor.

23 (2) A vacancy in the commission does not impair the right of
24 the 2 remaining commission members to exercise all of the
25 commission's powers.

26 (3) Two commission members constitute a quorum.

1 (4) A commission member shall devote his or her entire work
2 time to the performance of the duties of office.

3 (5) The commission shall adopt an official seal, of which
4 all courts shall take judicial notice and by which commission
5 proceedings, orders, and decrees are authenticated. The commis-
6 sion shall be provided by the department with suitable offices,
7 supplies, and equipment in the city of Lansing.

8 (6) The legislature shall annually establish the salary of
9 the chairperson and the other commission members and the schedule
10 for reimbursement of expenses.

11 (7) The governor may remove a commission member after a
12 hearing if it is found the commission member committed misfeas-
13 ance, malfeasance, or nonfeasance in office.

14 Sec. 2104. (1) The commission may appoint a secretary, dep-
15 uties, clerks, assistants, inspectors, heads of divisions, and
16 other employees necessary to exercise the commission's powers and
17 duties.

18 (2) The commission may employ engineers and experts in
19 public utilities matters and fix their compensation for services
20 which may be paid out of the appropriation provided by the
21 legislature.

22 (3) The engineers, inspectors, and employees are entitled to
23 actual and necessary expenses incurred in the performance of
24 their duties under the schedule established by the legislature.

25 (4) All salaries and other expenses the commission incurs
26 shall be paid from funds provided under part 23.

1 PART 22. COMMISSION JURISDICTION, POWERS, AND DUTIES

2 Sec. 2201. (1) Except for a municipally owned utility or as
3 otherwise restricted by law or this act, the commission has the
4 jurisdiction to regulate all of the following concerning public
5 utilities in this state:

6 (a) Rates, fares, fees, and charges.

7 (b) Services and conditions of service.

8 (c) Rules and regulations.

9 (d) All other matters pertaining to the formation, opera-
10 tion, or direction of public utilities.

11 (2) The commission is granted the power and jurisdiction to
12 hear and decide all matters pertaining, necessary, or incident to
13 the regulation of public utilities, including electric light and
14 power companies, whether private, corporate, or cooperative;
15 water, telegraph, oil, gas, and pipeline companies; or companies
16 producing, transmitting, delivering, or furnishing steam for
17 heating or power.

18 (3) The owner of a renewable resource power production
19 facility is not subject to the commission's regulation or control
20 under this act if both of the following conditions are met:

21 (a) The owner of the renewable resource power production
22 facility was not a public utility subject to the commission's
23 jurisdiction before constructing the renewable resource power
24 production facility.

25 (b) The ownership of the renewable resource power production
26 facility is ancillary to financing the facility.

1 Sec. 2202. (1) The commission may require public utilities
2 to make reports and to supply data reasonably necessary for the
3 proper performance of the commission's powers and duties under
4 this act.

5 (2) The commission may promulgate and enforce rules and reg-
6 ulations for the conduct of its business and the proper discharge
7 of its functions under this act. All persons dealing with the
8 commission or interested in any matter or proceeding pending
9 before it shall be bound by such rules and regulations.

10 (3) The commission may promulgate rules for conducting the
11 business of public utilities subject to its jurisdiction under
12 this act.

13 (4) A person that violates a rule established under this
14 section is liable for a state civil infraction of not less than
15 \$100.00 or more than \$1,000.00 for each offense. A person that
16 fails to pay the fine as required is guilty of a misdemeanor pun-
17 ishable by a fine of not less than \$10.00 or more than \$1,000.00
18 or imprisonment of not more than 6 months, or both.

19 Sec. 2203. (1) The commission may examine the books,
20 accounts, or records of a public utility subject to its
21 jurisdiction.

22 (2) A commission member, examiner, or employee shall be
23 given free and full access to the books, accounts, or records of
24 a public utility.

25 (3) For purposes provided in this act, a commission member
26 may administer oaths, certify to official acts, issue subpoenas,
27 and compel the attendance of witnesses or the production of

1 books, records, or other evidence or testimony relating to the
2 operations or management of a public utility. A subpoena shall
3 be served in the same manner as a subpoena of the circuit court.

4 (4) The commission may summon the owner, manager, or officer
5 of any person owning or operating a public utility to appear
6 before the commission to answer questions concerning the
7 utility's operation and business.

8 (5) The commission may apply to the circuit court in any
9 county to enforce its subpoena. The court has jurisdiction to
10 compel compliance with the subpoena in the same manner as any
11 other court subpoena.

12 (6) A person who fails to comply with a subpoena of the com-
13 mission or refuses to testify is guilty of a misdemeanor.

14 Sec. 2204. (1) A person operating a public utility within
15 this state subject to this act shall maintain a principal office
16 within this state.

17 (2) Except as otherwise provided in this act or by commis-
18 sion order or rule, the public utility shall keep all books,
19 accounts, and records pertaining to the business and operation of
20 the utility at its principal office.

21 (3) Schedules of rates in a form and in the detail directed
22 by the commission shall be filed in the office of the commission
23 and copies of the schedules shall be printed and posted in the
24 principal office of the public utility and other locations as the
25 commission directs. A schedule is not operative until the com-
26 mission has approved it. A change shall not be made in the
27 schedules except with the commission's approval.

1 Sec. 2205. (1) On a municipality's request, the commission
2 shall give advice and render reasonable assistance with respect
3 to the operation of a municipally owned utility.

4 (2) The commission shall not change or alter the rates or
5 charges fixed in or regulated by a franchise or agreement granted
6 or made by a city, village, or township.

7 (3) A municipality and a public utility operating within the
8 limits of that municipality, whether the public utility is oper-
9 ating under the terms of a franchise or otherwise, may join in
10 submitting to the commission any question involving the fixing or
11 determination of rates or charges or the making of rules or con-
12 ditions of service. The commission shall make a full investiga-
13 tion as to all matters submitted and establish reasonable maximum
14 rates and charges, prescribe rules and conditions of service, and
15 make just and reasonable determinations and orders relative to
16 those matters. An order issued under this section shall have the
17 same force and effect as any other order of the commission issued
18 under this act.

19 (4) If a franchise under which a public utility is or has
20 been operating expires, a municipality may petition the commis-
21 sion to fix the rates and charges of the public utility in
22 accordance with this act or may complain to the commission as
23 provided in this act concerning a practice, service, or regula-
24 tion of that public utility.

25 Sec. 2206. (1) The commission may investigate a public
26 utility subject to this act that the commission believes has
27 engaged, is engaging, or is about to engage in a method, act, or

1 practice that is unlawful under the Michigan consumer protection
2 act, Act No. 331 of the Public Acts of 1976, being sections
3 445.901 to 445.922 of the Michigan Compiled Laws.

4 (2) The commission shall conduct its investigation in the
5 manner set forth in sections 7 and 18 of Act No. 331 of the
6 Public Acts of 1976, being sections 445.907 and 445.918 of the
7 Michigan Compiled Laws.

8 Sec. 2207. (1) The commission shall make an annual report
9 of its activities to the governor and the legislature on or
10 before the first Monday of March of each year.

11 (2) The annual report shall be a summary of commission
12 activities and may include rules, opinions, and orders promul-
13 gated or entered by the commission during the calendar year cov-
14 ered by the report. The annual report shall also contain any
15 other information the commission considers to be of value.

16 PART 23. UTILITY ASSESSMENT

17 Sec. 2301. As used in this part, "public utility" means a
18 steam, heat, electric, power, gas, water, telecommunications,
19 telegraph, communications, pipeline, or gas producing company
20 regulated by the commission, whether private, corporate, or coop-
21 erative, except a municipally owned utility.

22 Sec. 2302. (1) Within 30 days after the enactment into law
23 of any appropriation to it, the department shall ascertain the
24 amount of the appropriation attributable to the regulation of
25 public utilities. This amount shall be assessed against the
26 public utilities and shall be apportioned among them as provided

1 in this part. The amount assessed under this section shall not
2 be less than \$50.00.

3 (2) The gross revenue for the preceding calendar year
4 derived from intrastate operations for each public utility shall
5 be totaled and each public utility shall pay a portion of the
6 assessment in the same proportion that its gross revenue for the
7 preceding calendar year derived from intrastate operations bears
8 to the total.

9 (3) An amount equal to the difference by which the actual
10 expenditures for the previous fiscal year attributable to the
11 regulation of public utilities are less than the amounts appro-
12 priated for those purposes shall be deducted from any amount to
13 be assessed under subsection (2). Those deductions shall be made
14 in the same proportion as the original assessments in
15 subsection (2).

16 Sec. 2303. (1) Within 15 days after receiving the statement
17 of an amount assessed under this part, the public utility may
18 file with the commission objections setting forth in detail the
19 grounds upon which the assessment is claimed to be excessive,
20 erroneous, unlawful, or invalid.

21 (2) After notice to the public utility, the commission shall
22 hold a hearing on the objections. If the commission finds the
23 assessment is not excessive, erroneous, unlawful, or invalid in
24 whole or in part, it shall record its findings and transmit them
25 to the public utility and again mail or serve a copy of the
26 assessment upon the utility.

1 Sec. 2304. Assessment statements to which objections have
2 not been filed and assessment statements and amended assessment
3 statements mailed or served after a hearing on objections filed
4 under section 2303 shall be paid not later than 30 days after
5 their receipt. Assessments not paid when due bear interest at
6 the rate of 1% per month. The attorney general shall recover
7 unpaid assessments together with interest upon them by appropri-
8 ate action.

9 Sec. 2305. (1) A person shall not maintain a suit or pro-
10 ceeding in a court to restrain or delay the collection or payment
11 of an assessment made under this part. A person making a payment
12 under this part who believes the amount to be excessive, errone-
13 ous, unlawful, or invalid may seek recovery through the court of
14 claims. In an action for recovery of a payment made under this
15 part, the claimant may raise every relevant issue of law and fact
16 evidenced by the record made before the commission.

17 (2) The court of claims may review questions of law and fact
18 involved in a final decision or determination of the commission
19 made under this part. The procedure providing for the determina-
20 tion of the lawfulness of assessments and the recovery of pay-
21 ments made under this part is exclusive of all other remedies and
22 procedures.

23 Sec. 2306. After notice and hearing, the commission may
24 exempt a public utility from this part if it determines that
25 gross revenues derived from intrastate operations is not a fair
26 or equitable basis for assessing the costs of regulating that

1 investigation and to any other person on payment of a reasonable
2 amount for the transcript.

3 (2) In any investigation, the commission or a party may
4 cause the deposition of a witness to be taken in the same manner
5 as in civil actions in circuit court.

6 (3) A witness who appears before the commission by its order
7 shall receive for his or her attendance the fees and mileage pro-
8 vided for witnesses in civil cases in circuit court upon the pre-
9 sentation of a proper voucher. A witness subpoenaed at the
10 instance of parties other than the commission is not entitled to
11 compensation from the state for attendance and travel unless the
12 commission certifies that his or her testimony was material and
13 necessary to the matter investigated.

14 Sec. 3102. (1) A person is not excused from testifying or
15 from producing books and papers in any proceeding based upon a
16 violation of this act on the ground that the testimony or evi-
17 dence may tend to incriminate him or her or subject him or her to
18 penalty or forfeiture.

19 (2) Except for the prosecution and punishment for perjury in
20 testifying, a person having testified as required by this section
21 shall not be prosecuted or subjected to any penalty or forfeiture
22 for or on account of any transaction, matter, or thing concerning
23 which he or she may have testified or produced any evidence.

24 (3) The immunity conferred by this section only extends to
25 an individual who gives testimony or produces, documentary or
26 otherwise, evidence under oath pursuant to a subpoena.

1 Sec. 3103. Upon the application of a person, the commission
2 shall furnish certified copies of an order made by the
3 commission. The certified copy is prima facie evidence in any
4 court or proceedings of the facts stated in the certified copy.

5 Sec. 3104. (1) In a proceeding before the commission, it
6 may grant a rehearing and alter, amend, or modify its findings
7 and orders.

8 (2) The time allowed to bring an action to review a commis-
9 sion order shall continue after the order denying a rehearing or
10 made upon a rehearing for the same number of days now provided by
11 this act for reviewing the order upon which the rehearing was
12 denied or conducted.

13 (3) The commission may upon application of any person and
14 upon at least 10 days' notice to all interested parties, and
15 after providing an opportunity to be heard, rescind, alter, or
16 amend any rates, fares, charges or classifications, or any other
17 order made by the commission.

18 Sec. 3105. (1) Except as otherwise provided by this act, a
19 public utility, common carrier, or other party in interest dis-
20 satisfied with a commission order fixing any rate or rates,
21 fares, charges, classifications, joint rate or rates, or fixing
22 any regulations, practices, or services, may file an appeal as of
23 right in the court of appeals within 30 days after the date of
24 the issuance and notice of that order.

25 (2) The court of appeals does not have jurisdiction over an
26 appeal that is filed later than the 30-day appeal period provided
27 for in subsection (1).

1 (3) An appeal from a commission order that is filed in a
2 timely manner but is incorrectly initiated in the Ingham county
3 circuit court or the court of appeals shall be transferred by
4 that court on its own motion or on motion of a party, to the
5 proper court and shall proceed as if timely filed in that court.

6 (4) The court of appeals shall have equitable powers and may
7 issue an injunction following notice to the commission and a
8 hearing.

9 Sec. 3106. (1) Within 28 days after the filing of an
10 appeal, a party may apply to the commission to present additional
11 evidence. A copy of the application for additional evidence
12 shall be filed in the court of appeals and the court shall stay
13 further appellate proceedings pending the commission's receipt
14 and consideration of the proposed evidence.

15 (2) If the commission finds that the proposed evidence is
16 different from or in addition to the evidence presented at the
17 original hearing, the commission shall receive the additional
18 evidence. After considering the additional evidence, the commis-
19 sion may alter, modify, amend, or rescind its order relating to
20 the rates, fares, charges, classifications, joint rate or rates,
21 regulations, practice, or service and shall report its decision
22 to the court of appeals within the time period prescribed by the
23 court.

24 (3) If the commission rescinds its order, the appeal shall
25 be dismissed. If the commission alters, modifies, or amends its
26 order, the court of appeals shall render its decision based on
27 the amended order. If the commission does not rescind or amend

1 the original order, the court shall render judgment upon the
2 original order.

3 Sec. 3107. An appeal from a commission order pertaining to
4 the application of commission rules, tariffs, or rate schedules
5 to an individual customer in a contested case shall be filed in
6 the Ingham county circuit court within 30 days after the date of
7 the issuance and notice of an order.

8 Sec. 3108. In all appeals under this part, the appellant
9 has the burden of proof to show by clear and satisfactory evi-
10 dence that the commission's order is unlawful or unreasonable.

11 Sec. 3109. All rates, fares, charges, or classifications
12 and joint rates and all regulations, practices, and services
13 fixed by the commission shall be in force and are prima facie
14 lawful and reasonable until found otherwise in an action brought
15 under section 3105 or until changed or modified by the
16 commission.

17 Sec. 3110. This act and all orders and rules of the commis-
18 sion may be enforced by any person or the commission by suit for
19 injunction, mandamus, or other appropriate remedy.

20 Sec. 3111. (1) If any public utility within this state or
21 any agent or officer of a public utility shall, directly or indi-
22 rectly by any special rate, rebate, drawback, or by any means of
23 false billing, false classification, false weighing, or by any
24 other device, charge, demand, collect, or receive from any
25 person, firm, or corporation a greater or less compensation for
26 any service rendered or to be rendered by the public utility than
27 that prescribed in the public tariffs then in force, or that the

1 public utility charges, demands, collects, or receives from any
2 other person, firm, or corporation for a like and contemporaneous
3 service under substantially similar circumstances and conditions,
4 or shall knowingly and willfully assist or permit such greater or
5 less compensation to be charged, demanded, collected, or
6 received, such public utility shall be deemed guilty of unjust
7 discrimination, which is hereby prohibited and declared to be
8 unlawful.

9 (2) It shall be unlawful for any public utility to demand,
10 charge, collect, or receive from any person, firm, or corporation
11 a less compensation for any service rendered or to be rendered by
12 said public utility in consideration of said person, firm, or
13 corporation furnishing any part of the facilities incident to the
14 service. This subsection shall not be construed as prohibiting
15 any public utility from procuring any facilities or service and
16 paying a reasonable compensation for the facilities or service.

17 Sec. 3112. (1) It shall be unlawful for any person, firm,
18 or corporation knowingly to accept or to receive any rebate con-
19 cession or discrimination in respect to any service in this
20 state, whereby such service shall, by false billing, false clas-
21 sification, false weighing, or any other device whatsoever, be
22 provided at a less rate than that named in the published tariffs
23 in force or whereby any service or advantage is received, other
24 than is specified in the tariffs.

25 (2) Any person, firm, or corporation violating the provi-
26 sions of this section shall be deemed guilty of a misdemeanor,
27 and on conviction punished by a fine of not more than \$500.00 or

1 by imprisonment of not more than 3 months, or both, for each
2 offense.

3 PART 32. CERTIFICATE OF CONVENIENCE AND NECESSITY

4 Sec. 3201. As used in this part:

5 (a) "Municipality" means a city, village, or township.

6 (b) "Public utility" means persons and corporations, other
7 than municipal corporations, or their lessees, trustees, and
8 receivers owning or operating in this state equipment or facili-
9 ties for producing, generating, transmitting, delivering, or fur-
10 nishing gas or electricity for the production of light, heat, or
11 power to or for the public for compensation.

12 Sec. 3202. (1) A public utility shall not begin construct-
13 ing or operating a public utility plant or system or render any
14 service to transact or carry on a local business, either directly
15 or indirectly, by serving any other utility or agency so engaged
16 in such a local business in a municipality where another utility
17 or agency is engaged in that local business and rendering the
18 same sort of service, or where the municipality is receiving
19 service of the same sort, until it first obtains from the commis-
20 sion a certificate that public convenience and necessity requires
21 or will require the construction, operation, service, or
22 extension.

23 (2) To obtain a certificate of convenience and necessity,
24 the applicant shall file an application with the commission stat-
25 ing the name of the municipality or municipalities that it
26 desires to serve and the kind of service that it proposes to
27 render, and that the applicant has secured the necessary consent

1 or franchise from the municipality or municipalities authorizing
2 it to transact a local business.

3 Sec. 3203. When an application is filed, the commission
4 shall set a hearing and notify the applicant. At least 10 days
5 before the date of the hearing, a copy of the application and a
6 notice of the date, time, and place of the hearing shall be
7 served upon every other utility or agency in the municipality or
8 municipalities proposed to be served by the applicant that
9 renders a similar service in the municipality, and upon the clerk
10 or other similar officer of each municipality and each person
11 receiving notice under this section shall have the right to
12 appear and be heard regarding the application.

13 Sec. 3204. (1) In determining the question of public conve-
14 nience and necessity, the commission shall take into considera-
15 tion the service being rendered by the public utility then serv-
16 ing the territory, the investment in the utility, the benefit, if
17 any, to the public in the matter of rates, and any other matter
18 that is proper and equitable in determining whether or not public
19 convenience and necessity requires the applying utility to serve
20 the territory.

21 (2) A certificate of public convenience and necessity issued
22 by the commission under this part shall describe in detail the
23 territory in which the applicant will operate. The applicant
24 shall not operate in or serve any other area under the authority
25 of that certificate.

1 PART 33. CONSUMER PARTICIPATION

2 Sec. 3301. This part provides a means to insure equitable
3 representation of the interests of energy utility customers in
4 proceedings under part 42 and part 52.

5 Sec. 3302. As used in this part:

6 (a) "Annual receipts" means the payments received by the
7 fund during a calendar year.

8 (b) "Board" means the utility consumer participation board
9 described in section 3303.

10 (c) "Energy cost recovery proceeding" means a proceeding
11 under part 42 or 52 to establish or implement a gas cost recovery
12 clause or a power supply cost recovery clause, to set gas cost
13 recovery factors, or to set power supply cost recovery factors.

14 (d) "Energy utility" or "utility" means an electric or gas
15 company located in or outside of this state.

16 (e) "Fund" means the utility consumer representation fund
17 described in section 3308.

18 (f) "Household" means a single-family home, duplex, mobile
19 home, seasonal dwelling, farm home, cooperative, condominium, or
20 apartment that has normal household facilities such as a bath-
21 room, individual cooking facilities, and kitchen sink
22 facilities. Household does not include a penal or corrective
23 institution, or a motel, hotel, or other similar structure if
24 used as a transient dwelling.

25 (g) "Jurisdictional" means subject to rate regulation by the
26 commission.

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

4 (i) "Residential energy utility consumer" or "consumer"
5 means a customer of an energy utility who receives utility serv-
6 ice for use within an individual household or an improvement rea-
7 sonably appurtenant to and normally associated with an individual
8 household.

9 (j) "Residential tariff sales" means those sales by an
10 energy utility subject to residential tariffs on file with the
11 commission.

12 (k) "Utility consuming industry" means a person that
13 receives energy utility service ordinarily and primarily for use
14 in connection with the manufacture, sale, or distribution of
15 goods or the provision of services. Utility consuming industry
16 does not include a nonprofit organization representing residen-
17 tial utility customers.

18 Sec. 3303. (1) The utility consumer participation board
19 created under section 64 of former Act No. 3 of the Public Acts
20 of 1939 shall continue in existence under this act in the depart-
21 ment of management and budget. The procurement and related man-
22 agement functions for the board shall be performed under the
23 direction and supervision of the department of management and
24 budget.

25 (2) The board consists of 5 members appointed by the gover-
26 nor, 1 of whom shall be chosen from a list of qualified persons
27 submitted by the attorney general. A board member serving on the

1 effective date of this act shall continue as a board member for
2 the remainder of his or her term unless he or she resigns, dies,
3 or is otherwise removed under this act.

4 (3) If the governor does not appoint a person whose name is
5 submitted by the attorney general, the attorney general shall
6 submit another list of qualified persons.

7 (4) Each board member shall meet the following
8 requirements:

9 (a) Is an advocate for the interests of residential utility
10 consumers, as demonstrated by the member's knowledge of and sup-
11 port for consumer interests and concerns in general or specifi-
12 cally related to utility matters.

13 (b) Within the 5 years preceding appointment, was not a
14 member of a governing body of or employed in a managerial, pro-
15 fessional, or consulting capacity by any of the following:

16 (i) A utility or an association representing utilities.

17 (ii) An enterprise or professional practice that received
18 over \$1,500.00 in the year preceding the appointment as a sup-
19 plier of goods or services to a utility or association represent-
20 ing utilities.

21 (iii) An organization representing employees of a utility,
22 association, enterprise, or professional practice, or an associa-
23 tion representing such an organization.

24 (c) Within 1 year preceding appointment, did not have a
25 financial interest exceeding \$1,500.00 in a utility, an associa-
26 tion representing utilities, or an enterprise or professional
27 practice that received over \$1,500.00 in the year preceding the

1 appointment as a supplier of goods or services to a utility or
2 association representing utilities.

3 (d) Is not an officer or director of an applicant for a
4 grant under this part.

5 (e) Is not a member of the immediate family of a person who
6 would be ineligible under subdivision (a), (b), (c), or (d).

7 (5) Board members shall be appointed for 2-year terms begin-
8 ning with the first day of a legislative session in odd numbered
9 years and ending on the day before the first day of the legisla-
10 tive session in the next odd numbered year or when the members'
11 successors are appointed, whichever occurs later.

12 (6) A vacancy shall be filled in the same manner as the
13 original appointment. If the vacancy is created other than by
14 expiration of a term, the new member shall be appointed for the
15 balance of the unexpired term of the member to be succeeded. The
16 governor shall not appoint a member to the board for a term com-
17 mencing after the governor's term of office has ended.

18 (7) The governor shall remove a member of the board if that
19 member is absent for any reason from either 3 consecutive board
20 meetings or more than 50% of the meetings held by the board in a
21 calendar year. A person who is removed due to absenteeism is
22 eligible for reappointment to fill a vacancy that occurs in the
23 board membership. The governor also shall remove a member of the
24 board if the member is subsequently determined to be ineligible
25 under subsection (4).

26 Sec. 3304. (1) At its first meeting following the
27 appointment of new members, or as soon as possible after the

1 first meeting, the board shall elect biennially from its
2 membership a chairperson and a vice-chairperson.

3 (2) The board shall hold bimonthly meetings and additional
4 meetings as necessary.

5 (3) A quorum consists of 3 members. A majority vote of the
6 members appointed and serving is necessary for a decision.

7 (4) The board shall not act directly to represent the inter-
8 ests of residential utility consumers except through administra-
9 tion of the fund and grant program under this part.

10 Sec. 3305. Board business shall be conducted at a public
11 meeting held in compliance with the open meetings act, Act No.
12 267 of the Public Acts of 1976, being sections 15.261 to 15.275
13 of the Michigan Compiled Laws.

14 Sec. 3306. A writing prepared, owned, used, in the posses-
15 sion of, or retained by the board in the performance of an offi-
16 cial function shall be made available to the public in compliance
17 with the freedom of information act, Act No. 442 of the Public
18 Acts of 1976, being sections 15.231 to 15.246 of the Michigan
19 Compiled Laws.

20 Sec. 3307. A member of the board may be reimbursed for
21 actual and necessary expenses, including travel expenses to and
22 from each meeting held by the board, incurred in discharging the
23 member's duties under this part. In addition to expense reim-
24 bursement, a board member may receive remuneration from the board
25 of \$100.00 per meeting attended, not to exceed \$1,000.00 in a
26 calendar year. These limits shall be adjusted proportionately to

1 an adjustment in the remittance amounts under section 3309(3) to
2 allow for changes in the cost of living.

3 Sec. 3308. (1) The utility consumer representation fund
4 created by section 6m of former Act No. 3 of the Public Acts of
5 1939 shall continue in existence under this act.

6 (2) The state treasurer shall maintain a separate account of
7 the money in the fund and invest the money in the fund in the
8 bonds, notes, and other evidences of indebtedness issued or
9 insured by the United States government and in prime commercial
10 paper.

11 (3) The state treasurer shall be the custodian of the funds
12 and shall release money from the fund, including interest earned,
13 as directed by the board.

14 Sec. 3309. (1) Except as provided in this part, each energy
15 utility applying to the commission to initiate an energy cost
16 recovery proceeding shall pay into the fund before filing the
17 initial application for a proceeding and on or before the first
18 anniversary of that application an amount of money determined by
19 the board in the following manner:

20 (a) For an energy utility serving 100,000 or more customers
21 in this state, an amount that has the same proportion to
22 \$300,000.00 multiplied by a factor as provided in subsection (3),
23 as the utility's jurisdictional 1981 total operating revenues
24 stated in its annual report has to the jurisdictional 1981 total
25 operating revenues of all energy utilities serving at least
26 100,000 customers in this state. This amount shall be made

1 available by the board for use by the attorney general for the
2 purposes described in section 3312(1).

3 (b) For an energy utility serving 100,000 or more residen-
4 tial customers in this state, an amount that has the same propor-
5 tion to \$300,000.00 multiplied by a factor as provided in subsec-
6 tion (3), as the utility's jurisdictional 1981 gross revenues
7 from residential tariff sales has to the jurisdictional 1981
8 gross revenues from residential tariff sales of all energy utili-
9 ties serving at least 100,000 residential customers in this
10 state. This amount shall be used for grants under section
11 3311(2).

12 (2) On or before the second and succeeding anniversaries of
13 its initial application for an energy cost recovery proceeding,
14 an energy utility shall remit to the board amounts equal to 5/6
15 of the amounts required under subsection (1).

16 (3) For purposes of subsection (1), the board shall set the
17 factor at a level not more than the percentage increase in the
18 consumer price index for the Detroit standard metropolitan sta-
19 tistical area as compiled by the United States department of
20 labor for the period between January 1981 and January of the year
21 in which the payment is required. If more than 1 index is com-
22 piled, the index yielding the largest payment shall be used to
23 calculate the maximum allowable factor. The board shall advise
24 utilities of the factor.

25 (4) Payments made by an energy utility under subsection
26 (1)(a) are operating expenses of the utility that the commission
27 shall permit the utility to charge to its customers. Payments

1 made by an energy utility under subsection (1)(b) are operating
2 expenses of the utility that the commission shall permit the
3 energy utility to charge to its residential customers.

4 (5) The payment requirements of this section do not apply to
5 an energy utility organized as a cooperative corporation under
6 sections 98 to 109 of Act No. 327 of the Public Acts of 1931,
7 being sections 450.98 to 450.109 of the Michigan Compiled Laws,
8 or a consumer cooperative organized under chapter 11 of the non-
9 profit corporation act, Act No. 162 of the Public Acts of 1982,
10 being sections 450.3100 to 450.3192 of the Michigan Compiled
11 Laws. Grants from the fund shall not be used to participate in
12 an energy cost recovery proceeding primarily affecting an energy
13 utility.

14 (6) If a dispute exists between the board and an energy
15 utility about the amount of payment due, the utility shall pay
16 the undisputed amount. If the utility and the board cannot
17 agree, the board may initiate civil action in the Ingham county
18 circuit court for recovery of the disputed amount.

19 (7) The commission shall not accept or take action on an
20 application for an energy cost recovery proceeding from an energy
21 utility subject to this section that has not fully paid the
22 undisputed amount required by this section.

23 (8) The commission shall not accept or take action on an
24 application for an energy cost recovery proceeding from an energy
25 utility subject to this section until 30 days after the board has
26 notified it that the board is ready to process grant
27 applications, will transfer funds to the attorney general upon

1 the receipt of those funds, and within 30 days will approve
2 grants and remit funds to qualified grant applicants.

3 Sec. 3310. The board may accept a gift or grant from any
4 source to be deposited in the fund if the conditions or purposes
5 of the gift or grant are consistent with this part.

6 Sec. 3311. (1) The costs of operation and expenses the
7 board incurs in performing its duties under this part shall be
8 paid from the fund. A maximum of 5% of the annual receipts of
9 the fund may be budgeted and used to pay expenses other than
10 grants made under subsection (2).

11 (2) The net grant proceeds shall finance a grant program
12 from which the board may award to an applicant an amount the
13 board determines to be used for the purposes set forth in this
14 part.

15 (3) The board shall create and make available an application
16 form. Each applicant shall indicate on the application how the
17 applicant meets the eligibility requirements under this part and
18 how the applicant proposes to use a grant from the fund to par-
19 ticipate in 1 or more proceedings as authorized in this part,
20 which have been or are expected to be filed.

21 (4) The board shall receive an application requesting a
22 grant from the fund only from a nonprofit organization or a unit
23 of local government in this state.

24 (5) The board shall consider only applications for grants
25 containing proposals that comply with this part and that serve
26 the interests of residential utility consumers. In making
27 grants, the board may consider protecting the environment,

1 conserving energy, creating employment and a healthy economy in
2 this state, and maintaining adequate energy resources. The board
3 shall not consider an application that primarily benefits the
4 applicant or a service provided or administered by the
5 applicant.

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

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

17 (b) In the case of a nongovernmental applicant, the extent
18 to which the applicant is representative of or has a previous
19 history of advocating the interests of citizens, especially resi-
20 dential utility consumers.

21 (c) The anticipated effect of the proposal contained in the
22 application on residential utility consumers, including the imme-
23 diate and long-term impacts of the proposal.

24 (d) Evidence demonstrating the potential for continuity of
25 effort and the development of expertise in relation to the pro-
26 posal contained in the application.

1 (e) The uniqueness or innovativeness of an applicant's
2 position or point of view, and the probability and desirability
3 of that position or point of view prevailing.

4 (7) As an alternative to choosing between 2 or more applica-
5 tions having similar proposals, the board may invite 2 or more of
6 the applicants to file jointly and award a grant to be managed
7 cooperatively.

8 (8) The board shall not consider an application from a non-
9 profit organization if 1 of the organization's principal inter-
10 ests or unifying principles is the welfare of an energy utility
11 or its investors or employees, or the welfare of 1 or more busi-
12 nesses or industries, other than farms not owned or operated by a
13 corporation, that receive utility service ordinarily and primar-
14 ily for use in connection with the profit-seeking manufacture,
15 sale, or distribution of goods or services. Ownership of securi-
16 ties by a nonprofit organization or its members does not alone
17 disqualify an application submitted by that organization.

18 (9) The board shall make disbursements under a grant before
19 an applicant's proposed actions as set forth in the application
20 if necessary to enable the applicant to initiate, continue, or
21 complete the proposed actions.

22 (10) A notice to utility customers and the general public of
23 hearings or other state proceedings in which grants from the fund
24 may be used shall contain a notice of the availability of the
25 fund and the address of the board.

26 Sec. 3312. (1) The annual receipts and interest earned,
27 less administrative costs, may be used only for participating in

1 administrative and judicial proceedings under part 42 or 52 and
2 federal administrative and judicial proceedings that directly
3 affect the energy costs paid by energy utilities in this state.

4 (2) Amounts that have been in the fund more than 12 months
5 may be retained in the fund for future grants, or may be returned
6 to energy utilities or used to offset their future remittances in
7 proportion to their previous remittances to the fund as the board
8 determines will best serve the interests of consumers.

9 (3) The following conditions apply to all grants from the
10 fund:

11 (a) Disbursements from the fund may be used only to advocate
12 the interests of energy utility customers or classes of energy
13 utility customers, and not for representation of individual
14 interests.

15 (b) The board shall attempt to maintain a reasonable rela-
16 tionship between the payments from a particular energy utility
17 and the benefits to consumers of that utility.

18 (c) The board shall coordinate the funded activities of
19 grant recipients with those of the attorney general to avoid
20 duplicating effort, to promote supplementing effort, and to maxi-
21 mize the number of hearings and proceedings with intervenor
22 participation.

23 Sec. 3313. (1) A recipient of a grant under section 3311
24 may use the grant only for advancing the proposed action approved
25 by the board, including, but not limited to, costs of staff,
26 hired consultants and counsel, and research.

1 (2) A recipient of a grant under section 3311 shall file a
2 report with the board within 90 days after the end of the year or
3 a shorter period for which the grant is made. The report shall
4 be made in a form approved by the board and shall be subject to
5 audit by the board. The report shall include all of the follow-
6 ing information:

7 (a) An account of all grant expenditures made by the grant
8 recipient. Expenditures shall be reported within the following
9 categories:

10 (i) Employee and contract for services costs.

11 (ii) Costs of materials and supplies.

12 (iii) Filing fees and other costs required to effectively
13 represent residential utility consumers as provided in this
14 part.

15 (b) Any additional information concerning uses of the grant
16 required by the board.

17 Sec. 3314. The attorney general shall file a report with
18 the house and senate committees on appropriations within 90 days
19 after the end of each fiscal year. The report shall include all
20 of the following information:

21 (a) An account of all expenditures made by the attorney gen-
22 eral of funds received under this part. Expenditures shall be
23 reported within the following 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 utility consumers as provided in this part.

1 (b) Any additional information concerning uses of the funds
2 received under this part required by the committees.

3 Sec. 3315. (1) On or before July 1 of each year, the board
4 shall submit a detailed report to the legislature regarding the
5 discharge of duties and responsibilities under this part during
6 the preceding calendar year.

7 (2) At 3-year intervals starting from October 13, 1985, a
8 senate committee chosen by the majority leader of the senate and
9 a house committee chosen by the speaker of the house of represen-
10 tatives shall review the relationship between costs and benefits
11 resulting from this part and may recommend changes to the
12 legislature.

13 PART 34. DEPOSITS, ATTACHMENTS, AND CONSERVATION PROGRAMS

14 Sec. 3401. (1) A public utility regulated by this act may
15 require a ratepayer to pay a deposit as a guaranty for payment of
16 the public utility's services. In the absence of specific rules
17 adopted by the commission, the commission shall approve the terms
18 and conditions for a guaranty deposit required by a public
19 utility.

20 (2) The commission may prescribe by rule all of the
21 following:

22 (a) The circumstances under which a public utility may
23 require a guaranty deposit.

24 (b) The amount of the guaranty deposit.

25 (c) The interest rate payable on the guaranty deposit.

26 (d) The method by which the public utility will pay interest
27 on the guaranty deposit to the ratepayer.

1 (e) The circumstances under which the guaranty deposit must
2 be returned to the ratepayer.

3 Sec. 3402. (1) As used in this section:

4 (a) "Attaching party" means any person, firm, corporation,
5 partnership, or cooperatively organized association, other than a
6 public utility or a municipality, which seeks to construct
7 attachments upon, along, under, or across public ways or private
8 rights-of-way.

9 (b) "Attachment" means a wire, cable, facility, or apparatus
10 for the transmission of writing, signs, signals, pictures,
11 sounds, or other forms of intelligence or for the transmission of
12 electricity for light, heat, or power, installed by an attaching
13 party upon a pole or in a duct or conduit owned or controlled, in
14 whole or in part, by 1 or more specified utilities.

15 (c) "Specified utility" means a public utility subject to
16 the regulation and control of the commission that owns or con-
17 trols, or shares ownership or control of poles, ducts, or con-
18 ducts used or useful, in whole or in part, for supporting or
19 enclosing wires, cables, or other facilities or apparatus for the
20 transmission of writing, signs, signals, pictures, sounds, or
21 other forms of intelligence or for the transmission of electric-
22 ity for light, heat, or power.

23 (2) The commission shall regulate the rates, terms, and con-
24 ditions of attachments by attaching parties. The commission
25 shall not require a hearing when approving the rates, terms, and
26 conditions unless the attaching party or specified utility
27 petitions the commission for a hearing.

1 (3) The commission shall ensure that the rates, terms, and
2 conditions are just and reasonable and shall consider the inter-
3 ests of the attaching parties' customers as well as the specified
4 utility and its customers.

5 (4) An attaching party shall obtain any necessary authoriza-
6 tion before occupying public ways or private rights-of-way with
7 its attachment.

8 (5) Procedures under this section shall be those applicable
9 to any public utility whose rates charged its customers are regu-
10 lated by the commission, including the right to appeal a final
11 decision of the commission to the courts.

12 Sec. 3403. (1) The commission may approve energy conserva-
13 tion programs for residential customers of public utilities.

14 (2) The related costs of money, bad debt expense, adminis-
15 trative costs, and the cost of residential energy audits associ-
16 ated with an energy conservation program authorized by this sec-
17 tion, except for an energy conservation loan program, shall be
18 included only in the public utility's general rates. The inclu-
19 sion of costs in public utility rates as provided in this subsec-
20 tion shall not continue after the costs arising from an approved
21 energy conservation program have been recovered.

22 (3) The conservation programs subject to this section shall
23 provide approved conservation devices, services, and materials
24 and may include approved ceiling and wall insulation, flue damp-
25 ers, caulking, and weather stripping as allowed by state law and
26 rules.

1 (4) A residential energy audit or preinspection shall be
2 completed by the public utility before the installation of any
3 device or material under this section. A residential customer
4 participating in an energy conservation program shall be provided
5 with cost benefit information regarding those conservation
6 devices, services, and materials as they apply to the customer's
7 residence.

8 (5) If a residential customer participating in an energy
9 conservation program personally installs insulation in the
10 customer's place of residence, the cost of installation shall not
11 be included as part of the customer's participation in the
12 program.

13 (6) The commission shall promulgate rules to establish stan-
14 dards for energy conservation programs implemented under this
15 section.

16 (7) A public utility maintaining an energy conservation pro-
17 gram permitted under this section shall not accept an application
18 for or make a loan as a part of that program.

19 PART 35. ENERGY EMERGENCIES

20 Sec. 3501. As used in this part:

21 (a) "Energy advisory committee" means the committee created
22 under section 3502.

23 (b) "Energy emergency" means a condition of danger to the
24 health, safety, or welfare of the citizens of this state due to
25 an impending or present energy shortage.

26 (c) "Energy resource" means electricity, natural gas,
27 synthetic gas, a petroleum product including a liquefied

1 petroleum gas, coal, wood fuel, geothermal source, hydropower,
2 nuclear material, or other source producing power or heat.

3 (d) "Energy resource supplier" means a person who furnishes
4 an energy resource for the public at the wholesale or retail
5 level.

6 (e) "Energy shortage" means lack of adequate available
7 energy resources in the state, or any part of the state, as
8 determined by the energy advisory committee or the governor.

9 Sec. 3502. (1) The energy advisory committee created under
10 section 2 of former Act No. 191 of the Public Acts of 1982, being
11 section 10.82 of the Michigan Compiled Laws, shall continue in
12 existence under this act.

13 (2) The energy advisory committee shall consist of the
14 director of the department, the director of the department of
15 agriculture, the chairperson of the commission, the director of
16 the department of community health, the director of the depart-
17 ment of transportation, and the director of the department of
18 state police. The governor shall designate 1 of the 6 members of
19 the energy advisory committee as chairperson of the energy
20 advisory committee.

21 (3) The energy advisory committee shall notify the governor
22 of an impending energy emergency. The energy advisory committee
23 shall determine whether an energy emergency is imminent on the
24 basis of information available to the energy advisory committee
25 from the commission, other state agencies, federal agencies, and
26 other sources of information including computer information
27 systems.

1 Sec. 3503. (1) The governor may declare, by executive order
2 or proclamation, a state of energy emergency upon notification of
3 an impending energy emergency by the energy advisory committee
4 under section 3502(3), or upon the governor's own initiative if
5 the governor finds that an energy emergency exists or is
6 imminent.

7 (2) Except as provided in subsections (3) and (4), the state
8 of an energy emergency declared by the governor under
9 subsection (1) shall continue until the governor finds that the
10 energy emergency no longer exists, or until the state of energy
11 emergency has been in effect for 90 days, whichever period is
12 shorter.

13 (3) After a state of energy emergency has been in effect for
14 90 days, the legislature may approve an extension of the state of
15 energy emergency for a specific number of days by a concurrent
16 resolution adopted by a record roll call vote by a majority of
17 the members elected to and serving in each house of the
18 legislature. If the legislature does not act to extend the state
19 of energy emergency under this subsection, the state of energy
20 emergency is terminated.

21 (4) The legislature may terminate a state of energy emer-
22 gency at any time after the governor declares a state of energy
23 emergency, by a concurrent resolution adopted by a record roll
24 call vote by a majority of the members elected to and serving in
25 each house of the legislature.

26 Sec. 3504. During an energy emergency, the governor may do
27 all of the following:

1 (a) Order specific restrictions on the use and sale of
2 energy resources. Restrictions imposed by the governor under
3 this subdivision may include any of the following:

4 (i) Restrictions on the interior temperature of public, com-
5 mercial, industrial, and school buildings.

6 (ii) Restrictions on the hours and days during which public,
7 commercial, industrial, and school buildings may be open.

8 (iii) Restrictions on the conditions under which energy
9 resources may be sold to consumers.

10 (iv) Restrictions on lighting levels in public, commercial,
11 industrial, and school buildings.

12 (v) Restrictions on the use of display and decorative
13 lighting.

14 (vi) Restrictions on the use of privately owned vehicles or
15 a reduction in speed limits.

16 (vii) Restrictions on the use of public transportation
17 including directions to close a public transportation facility.

18 (viii) Restrictions on the use of pupil transportation pro-
19 grams operated by public schools.

20 (b) Direct an energy resource supplier to provide an energy
21 resource to a health facility, school, public utility, public
22 transit authority, fire or police station or vehicles, newspaper,
23 or television or radio station for the purpose of relaying emer-
24 gency instructions or other emergency message, food producer,
25 processor, retailer, or wholesaler, and to any other person or
26 facility which provides essential services for the health,
27 safety, and welfare of the residents of this state.

1 (c) By executive order, suspend, in whole or in part, a
2 statute or an order or rule of a state agency if strict compli-
3 ance with the statute, rule, or order will prevent, hinder, or
4 delay necessary action in coping with the energy emergency. The
5 governor may not suspend a criminal process or procedure or a
6 statute or rule governing the operation of the legislature. At
7 the time of the suspension of a statute, rule, or order, the gov-
8 ernor shall state the extent of the energy shortage and shall
9 specify the provisions of a statute, rule, or order which are
10 suspended, the length of time for which the provisions are sus-
11 pended, and the degree to which the provisions are suspended. A
12 suspended statute, rule, or order shall be directly related to an
13 energy emergency.

14 Sec. 3505. (1) The governor may issue an executive order,
15 proclamation, or directive having the force and effect of law to
16 implement this part. The governor may rescind or amend an execu-
17 tive order, proclamation, or directive.

18 (2) An executive order, proclamation, or directive issued
19 under this part shall be effective for the duration of a state
20 energy emergency as provided in section 3503(2). If the legisla-
21 ture approves an extension of a state of energy emergency under
22 section 3503(3), an executive order, proclamation, or directive
23 shall continue in effect for the extended period unless the leg-
24 islature by a concurrent resolution adopted by a record roll call
25 vote by a majority of the members elected to and serving in each
26 house of the legislature disapproves the executive order,

1 proclamation, or directive, or unless it is rescinded by the
2 governor under subsection (1).

3 (3) An executive order, proclamation, or directive issued
4 under this part shall be disseminated promptly to the general
5 public and filed with the secretary of state and the department
6 of state police.

7 (4) The governor shall notify the legislature of an execu-
8 tive order, proclamation, or directive issued under this part.

9 Sec. 3506. This part shall not limit, modify, or abridge
10 the authority of the governor to proclaim a state of disaster
11 under the emergency management act, Act No. 390 of the Public
12 Acts of 1976, being sections 30.401 to 30.420 of the Michigan
13 Compiled Laws, or to exercise any other powers vested in the gov-
14 ernor by the state constitution of 1963, state statutes, or the
15 common law of the state.

16 Sec. 3507. (1) A person who knowingly violates this part or
17 an order, proclamation, or directive issued by the governor under
18 this part, is guilty of a misdemeanor punishable by a fine of not
19 more than \$500.00. Each day a violation continues is a separate
20 offense.

21 (2) The attorney general or a prosecuting attorney of a
22 county may bring an action in a court of competent jurisdiction
23 to prevent a violation of this part or of an executive order,
24 proclamation, or directive issued under this part, or to compel a
25 person to perform a duty imposed on the person under this part or
26 an executive order, proclamation, or directive issued under this
27 part.

PART 36. PROTECTION OF UNDERGROUND FACILITIES

Sec. 3601. As used in this part:

(a) "Association" means the association created under section 3607.

(b) "Person" includes an individual, partnership, corporation, association, or any other legal entity. Person does not mean a public agency.

(c) "Public agency" means the state, a city, village, township, county, or any other governmental entity or municipality.

(d) "Public utility" means a natural gas company subject to the jurisdiction of the federal energy regulatory commission or an electric, steam, gas, telephone, power, water, or pipeline company subject to the jurisdiction of the commission under this act, Act No. 19 of the Public Acts of 1967, being sections 486.551 to 486.571 of the Michigan Compiled Laws, or the Michigan telecommunications act, Act No. 179 of the Public Acts of 1991, being sections 484.2101 to 484.2605 of the Michigan Compiled Laws, a person or public agency owning or operating cable television facilities, and a public agency, other than the state transportation department, owning public service facilities for supplying water, light, heat, gas, power, telecommunications, sewage disposal, storm drains, or storm water drainage facilities.

Sec. 3602. This part does not apply to a person or public agency using only nonpowered hand tools in performing excavating or tunneling operations.

Sec. 3603. A person or public agency shall not discharge explosives, excavate, or tunnel in a street, highway, public

1 place, a private easement of a public utility, or near the
2 location of a public utility facility owned, maintained, or
3 installed on a customer's premises, or demolish a building con-
4 taining a public utility facility without having first ascer-
5 tained in the manner prescribed in sections 3605 or 3607 the
6 location of all underground facilities of a public utility in the
7 proposed area of excavation, discharging of explosives, tunnel-
8 ing, or demolition.

9 Sec. 3604. A public utility having underground facilities
10 in a county shall file with the clerk of the county a list con-
11 taining the name of every city, village, township, and section
12 within the township in the county in which it has underground
13 facilities, the name of the public utility and the title and
14 address of its representative designated to receive the written
15 notice of intent required by section 3605.

16 Sec. 3605. (1) Except as provided in sections 3607 and
17 3609, a person or public agency responsible for excavating or
18 tunneling operations, drilling or boring procedures, or discharge
19 of explosives in a street, highway, other public place, a private
20 easement for a public utility, or near the location of utility
21 facilities on a customer's property, or demolition of a building
22 containing a utility facility, shall give written or telephone
23 notice to the association as required in section 3607 of intent
24 to excavate, tunnel, discharge explosives, or demolish at least 3
25 full working days, excluding Saturdays, Sundays, and holidays,
26 but not more than 21 calendar days, before commencing the

1 excavating, demolishing, discharging of explosives, tunneling
2 operations, or drilling or boring procedures.

3 (2) The written or telephone notice of intent shall contain
4 the name, address, and telephone number of the person or public
5 agency filing the notice of intent, the name of the person or
6 public agency performing the excavation, discharging of explo-
7 sives, tunneling, or demolition, the date and type of excavating,
8 discharging of explosives, demolishing, drilling or boring proce-
9 dure, or tunneling operation to be conducted, and the location of
10 the excavation, tunneling, discharging of explosives, drilling,
11 boring, or demolition.

12 Sec. 3606. A public agency that under law requires a person
13 to obtain a permit shall require as a condition of the permit
14 that the person comply with this part.

15 Sec. 3607. (1) Public utilities having underground facili-
16 ties shall form and operate an association providing for mutual
17 receipt of notification of construction activities in those areas
18 served by public utilities having underground facilities.

19 Notification to the association formed and operated by the public
20 utilities shall be considered to be notice to each public utility
21 having underground facilities within the proposed areas of exca-
22 vation, discharging of explosives, tunneling, demolition,
23 drilling, or boring. Notification to the association shall be
24 effected in writing as set forth in section 3605 or by telephone
25 call, providing the same information required by section 3605,
26 made by the person or public agency responsible for the

1 excavating, demolishing, discharging of explosives, drilling or
2 boring procedures, or tunneling operations.

3 (2) A public utility owned by a public agency shall partici-
4 pate in and receive the services furnished by the association and
5 shall pay its share of the costs and services furnished, but
6 shall not be required to become a member of the association. The
7 association, whose members or participants have underground
8 facilities within a county, shall file with the clerk of the
9 county a description of the geographical area served by the asso-
10 ciation and list the name and address of every member and partic-
11 ipating public utility.

12 (3) If notification is made by telephone, an adequate record
13 shall be maintained by the association to document compliance
14 with the requirements of this part.

15 Sec. 3608. (1) Not less than 1 working day in advance of
16 proposed construction, unless otherwise agreed between the person
17 or public agency performing the excavation, discharging of explo-
18 sives, drilling, boring, tunneling, or demolition and the public
19 utility, a public utility served with notice under section 3605
20 or 3607 shall inform the person or public agency of the approxi-
21 mate location of the underground facilities owned or operated by
22 the public utility in the proposed area of excavation, discharg-
23 ing of explosives, drilling, boring, tunneling, or demolition, in
24 a manner that enables the person or public agency to employ hand
25 dug test holes or other similar means of establishing the precise
26 location of the underground facilities using reasonable care to

1 establish the precise location of the underground facilities in
2 advance of construction.

3 (2) For the purposes of this part, the approximate location
4 of underground facilities is defined as a strip of land at least
5 36 inches wide but not wider than the width of the facility plus
6 18 inches on either side of the facility. If the approximate
7 location of an underground facility is marked with stakes or
8 other physical means, the public utility shall follow the color
9 coding prescribed in this section.

10

11 Utility and Type of Product	Specific Group Identifying Color
12 Electric power distribution and	
13 transmission	Safety red
14 Municipal electric systems	Safety red
15 Gas distribution and	
16 transmission	High visibility safety yellow
17 Oil distribution and	
18 transmission	High visibility safety yellow
19 Dangerous materials, product	
20 lines	High visibility safety yellow
21 Telephone and telegraph systems	Safety alert orange
22 Cable television	Safety alert orange
23 Police and fire communications	Safety alert orange
24 Water systems	Safety precaution blue
25 Sewer systems	Safety brown
26 Storm drains	Safety green

1 Land survey monumentation High visibility safety pink

2 (3) All safety alert orange markings shall include the name
3 or type of the company who owns the underground facility to be
4 marked.

5 (4) If the precise location of the underground facilities
6 cannot be established, the person or public agency shall then
7 notify the public utility, which shall no later than 1 working
8 day after the notice provide such further assistance as may be
9 needed to determine the precise location of the underground
10 facilities in advance of the proposed excavating, tunneling, dis-
11 charging of explosives, drilling or boring procedures, or demoli-
12 tion operations.

13 (5) Where demolition of a building is proposed and the
14 public utility is notified, it shall be given reasonable time to
15 remove or protect its facilities before demolition of the
16 building.

17 Sec. 3609. (1) In case of an emergency involving danger to
18 life, health, or property or which requires immediate correction
19 in order to continue the operation of a major industrial plant or
20 to assure the continuity of public utility service, a person or
21 public agency may make excavation, maintenance, or repairs, with-
22 out using explosives, if notice in writing is given to the public
23 utility or association as soon as reasonably possible.

24 (2) In case of an emergency involving an immediate and sub-
25 stantial danger of death or serious personal injury, explosives
26 may be discharged if notice is given to a public utility or an
27 association at any time before the discharge is undertaken.

1 Sec. 3610. (1) This part shall not be construed to
2 authorize, affect, or impair local ordinances, charters, or other
3 provisions of law, requiring permits to be obtained before exca-
4 vating or tunneling in a public street or highway or to construct
5 or demolish buildings or other structures on private property nor
6 to grant to a person or public agency any rights not specifically
7 provided by this part.

8 (2) A permit issued by a public agency shall not be consid-
9 ered to relieve a person from the responsibility for complying
10 with the provisions of this part.

11 (3) The failure of a person, who has been granted a permit,
12 to comply with the provisions of this part shall not be consid-
13 ered to impose any liability upon the public agency issuing the
14 permit.

15 (4) This part shall not preclude establishment of working
16 agreements between public utilities and contractor associations
17 to accomplish the intent and purpose of this part.

18 Sec. 3611. Upon receiving the information provided for in
19 section 3605 or 3607, a person or public agency excavating, tun-
20 neling, or discharging explosives shall exercise reasonable care
21 when working in close proximity to the underground facilities of
22 a public utility. If the facilities are to be or are likely to
23 be exposed, only hand-digging shall be employed and such support
24 as may be reasonably necessary to protect the facilities shall be
25 provided in and near the construction area.

26 Sec. 3612. (1) When contact with or damage to a pipe,
27 cable, or its protective coating or other underground facility of

1 a public utility occurs, the public utility shall be notified
2 immediately by the person or public agency responsible for the
3 operations causing the contact or damage.

4 (2) Upon receiving the notice, the public utility shall dis-
5 patch personnel to the location as soon as possible to effect
6 temporary or permanent repair of the damage. If a serious elec-
7 trical short is occurring or if dangerous fluids or gases are
8 escaping from a broken line, the person or public agency respon-
9 sible for causing the damage shall evacuate the immediate area
10 while awaiting the arrival of the public utility personnel.

11 Sec. 3613. Except as otherwise provided for in this part,
12 this act does not affect any civil remedies for damage to public
13 utility facilities and does not affect any civil remedies a
14 person may have for actual damage to the person's property caused
15 by a public utility's negligence in staking its facilities.

16 Sec. 3614. In a civil action in a court of this state, when
17 it is shown by competent evidence that damage to the underground
18 facilities of a public utility resulted from excavating, tunnel-
19 ing, drilling or boring procedures, demolishing operations, or
20 the discharge of explosives, as described in section 3603, and
21 that the person responsible for giving notice of intent to exca-
22 vate, tunnel, demolish, or discharge explosives failed to give
23 notice, did not employ hand-digging, or failed to provide sup-
24 port, the person shall be liable for the resulting damage to the
25 underground facilities, but the liability for damages shall be
26 reduced in proportion to the negligence of the public utility if
27 it fails to comply with section 3608.

1 Sec. 3615. (1) A person who damages the facilities of a
2 public utility on more than 3 occasions on any 1 construction
3 contract location because of that person's failure to comply with
4 this part may be enjoined from engaging in any further excavat-
5 ing, demolition, discharging of explosives, drilling or boring
6 procedures, or tunneling work within the state, except under
7 terms and conditions as a court may prescribe to ensure the
8 safety of the public.

9 (2) A court may prescribe penalties as it considers neces-
10 sary or appropriate for a violation of an injunctive order up to
11 a maximum of \$5,000.00 per violation.

12 Sec. 3616. A person who willfully removes or otherwise
13 destroys the stakes or other physical markings used by a public
14 utility to mark the approximate location of underground facili-
15 ties is guilty of a misdemeanor, punishable by a fine of not more
16 than \$5,000.00, or imprisonment for not more than 1 year, or
17 both.

18 PART 37. PUBLIC UTILITY FRANCHISES

19 Sec. 3701. A township may grant a franchise to a person to
20 use the highways, streets, alleys, and other public places of the
21 township to construct, operate, and maintain poles, wires, and
22 pipes or conduits and the right to transact a local business in
23 the township, subject to reasonable regulations.

24 Sec. 3702. (1) A township may grant the franchise allowed
25 under section 3701 by a majority vote of the township board. The
26 board shall designate the franchise as either revocable or
27 irrevocable.

1 (2) If the franchise is designated as irrevocable, approval
2 of the franchise as irrevocable shall be submitted to a vote of
3 the electors of the township at the next election.

4 (3) If the electors do not approve the irrevocability of the
5 franchise, the franchise shall remain valid but continue as a
6 revocable franchise.

7 Sec. 3703. At least 20 days before the next election, the
8 township clerk shall give notice that the question of granting an
9 irrevocable franchise will be submitted to a vote of the electors
10 by posting a notice in 3 or more public places in the township.

11 Sec. 3704. Unless revoked by the board or otherwise voted
12 by the electors, a revocable franchise granted before June 26,
13 1996, shall be a revocable franchise under this part subject to
14 the terms and conditions of any existing agreements or contracts
15 between the franchisee and the township.

16 PART 38. COMPLAINTS

17 Sec. 3801. (1) The commission shall investigate a complaint
18 submitted in writing that any rate, classification, regulation,
19 or practice charged, made, or observed by any public utility is
20 unjust, inaccurate, or improper, or that any service is inade-
21 quate to the prejudice of the complainant. The commission shall
22 establish procedures to be followed in such complaint cases in
23 rules adopted by the commission. The commission shall notify the
24 public utility that a complaint has been made and furnish the
25 public utility with a copy of the complaint at least 20 days
26 prior to a formal investigation.

1 (2) In all cases, reasonable notice of not less than 10 days
2 shall be given to the parties concerned as to the time and place
3 of any hearing which is deemed necessary. The public utility
4 shall have the right to a hearing with respect to a complaint.
5 All parties shall be entitled to be heard.

6 (3) Hearings shall be governed by the rules of the commis-
7 sion and applicable statutory provisions. If a hearing is held,
8 parties to the hearing shall have the right to present
9 witnesses. The taking of testimony at such hearing shall be gov-
10 erned by the rules of the commission.

11 (4) Upon completion of any hearing, the commission shall
12 have the authority to issue an order dismissing the complaint or
13 directing that the rate, charge, practice, or other matter com-
14 plained of be removed, modified, or altered, in a manner which is
15 just, equitable, and in accordance with the rights of the parties
16 concerned.

17 (5) If the commission believes that any rate or rates or
18 charge or charges may be unreasonable or unjustly discriminatory,
19 or that any service is inadequate, it may, upon its own motion,
20 investigate the rate, charge, or service. Before making an
21 investigation, the commission shall present to the public utility
22 a statement in writing, setting forth the rate, charge, or serv-
23 ice to be investigated. The commission may proceed in the same
24 manner as when a complaint has been made.

25 PART 39. SPECIAL CONTRACTS

26 Sec. 3901. Nothing in this act shall be construed to
27 prevent special contract rates, but all such rates shall be open

1 to persons for like contemporaneous service rendered under
2 similar circumstances and conditions. Such special contract
3 rates shall be under the supervision and regulation of the
4 commission.

5

6

7

ARTICLE 4

8

ELECTRIC UTILITIES

9

PART 41. GENERAL PROVISIONS

10 Sec. 4101. (1) The commission shall have jurisdiction under
11 this part to regulate the rate of charge to be made to the con-
12 sumer for electricity which is generated or developed by steam,
13 water, or other power, within 1 county of this state, and trans-
14 mitted and delivered to the consumer in the same or another
15 county as set forth in this part. The commission shall also have
16 jurisdiction under this part to regulate the rules and conditions
17 of service for the transmission and distribution of such
18 electricity.

19 (2) The commission shall have control and supervision of the
20 business of transmitting and supplying electricity as set forth
21 in subsection (1). A public utility supplying electricity shall
22 not put into force any rate or charge for the same without first
23 receiving the commission's approval to initiate or put into force
24 such rate or charge.

25 (3) This article does not apply to transmitting or using
26 electricity to convey information by telegraph, telephone, or
27 similar method.

1 Sec. 4102. (1) If an electric utility applies to the
2 commission for a finding or order to increase its rates and
3 charges or to alter, change, or amend its rates or rate sched-
4 ules, the effect of which will be to increase the cost of serv-
5 ices to its customers, notice shall be given within the service
6 area to be affected. The electric utility shall place in evi-
7 dence facts relied upon to support its application to increase
8 its rates and charges or to alter, change, or amend its rates or
9 rate schedules.

10 (2) After giving notice to the interested parties within the
11 affected service area and affording interested parties a reason-
12 able opportunity for a full and complete hearing, the commission
13 after submission of all proofs by any interested party may upon
14 written motion by the electric utility make a finding and enter
15 an order granting partial and immediate relief. The commission
16 shall not authorize or approve a finding or order ex parte, nor
17 until the commission's technical staff has made an investigation
18 and report.

19 (3) The commission may authorize and approve an alteration
20 or amendment in rates or rate schedules applied for by an elec-
21 tric utility that will not result in an increase in the cost of
22 service to its customers without notice or hearing.

23 (4) The commission shall not authorize or approve an
24 increase in rates based upon changes in cost of fuel unless
25 notice has been given within the affected service area and there
26 has been an opportunity for a full and complete hearing on the
27 cost of fuel. The rates charged by an electric utility under an

1 automatic fuel adjustment clause shall not be altered, changed,
2 or amended unless notice has been given within the affected serv-
3 ice area and there has been an opportunity for a full and com-
4 plete hearing on the cost of the fuel.

5 (5) The commission shall adopt rules and procedures for the
6 filing, investigating, and hearing of applications or petitions
7 to increase or decrease electric utility rates and charges as the
8 commission finds necessary or appropriate to enable it to reach a
9 final decision with respect to applications or petitions within 9
10 months after filing.

11 (6) The commission shall not authorize or approve adjustment
12 clauses that operate without notice and an opportunity for a full
13 and complete hearing, and any such clauses shall be abolished.

14 (7) The commission may hold a full and complete hearing to
15 determine the cost of fuel or purchased power separately from a
16 full and complete hearing on a general rate case. The hearing
17 may be held concurrently with the general rate case. The commis-
18 sion shall authorize an electric utility to recover the cost of
19 fuel or purchased power only to the extent that the purchases are
20 reasonable and prudent.

21 (8) As used in this part:

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

1 (b) "General rate case" means a proceeding initiated by an
2 electric utility in an application filed with the commission that
3 alleges a revenue deficiency and requests an increase in the
4 schedule of rates or charges based on the electric utility's
5 total cost of providing service.

6 (9) If a final decision has not been reached upon a petition
7 or application to increase or decrease utility rates within the
8 9-month period required by subsection (5), the commission shall
9 give priority to the case and shall take other action necessary
10 or appropriate to expedite a final decision. If the commission
11 fails to reach a final decision with respect to a petition or
12 application to increase or decrease utility rates within the
13 9-month period required under subsection (5), the commission
14 shall submit a written report to the governor and to the presi-
15 dent of the senate and the speaker of the house of representa-
16 tives within 15 days after the 9-month period expires stating the
17 reasons a decision was not reached within the 9-month period and
18 the actions being taken to expedite the decision. The commission
19 shall submit a further report upon reaching a final decision pro-
20 viding full details with respect to the conduct of the case,
21 including the time required to issue the commission's decision
22 following the conclusion of hearings.

23 Sec. 4103. (1) The commission's agents, examiners, inspec-
24 tors, engineers, and accountants may inspect the system and
25 method used in transmitting and supplying electricity and may
26 examine the books and papers of a person pertaining to the

1 transmittal and supply of electricity or any other matter of
2 complaint.

3 (2) The commission shall provide notice of hearing with a
4 copy of the complaint to the affected electric utility and the
5 person complained of or affected by the complaint and that person
6 may be heard in any matter complained of at a convenient time and
7 place stated in the notice. After the investigation and hearing,
8 the commission may by order fix the price of electricity to be
9 charged by the electric utility and may by order establish rules
10 and conditions of service that are just and reasonable.

11 (3) The electric utility shall receive notice of the price
12 fixed by the commission under subsection (2) and charge that
13 fixed price until changed by the commission.

14 (4) In determining the price, the commission shall consider
15 and give due weight to all lawful elements necessary for the com-
16 mission to determine the price to be fixed for supplying elec-
17 tricity, including cost, reasonable return on the fair value of
18 all property used in the service, depreciation, obsolescence,
19 risks of business, value of service to the consumer, the con-
20 nected load, the hours of the day when used, and the quantity
21 used each month.

22 (5) The commission shall not change or alter the price fixed
23 in or regulated by or under a franchise granted by a city, vil-
24 lage, or township.

25 (6) If identical or substantially identical rates are estab-
26 lished in 2 or more contiguous cities, villages, townships, or
27 communities served or whose inhabitants are served by the same

1 electric utility, the territory served shall be treated as a unit
2 for fixing rates. A rate shall not be changed with respect to 1
3 or more of the cities, villages, townships, or communities so as
4 to establish a difference of rate within the territory served,
5 unless it is shown that the continuance of the identical or sub-
6 stantially identical rate or rates will work substantial hardship
7 to a city, village, township, or electric utility or unless oth-
8 erwise provided by law.

9 (7) The rates of an electric utility shall be just and rea-
10 sonable and a consumer shall not be charged more or less than
11 what other consumers are charged for like contemporaneous service
12 rendered under similar circumstances and conditions.

13 Sec. 4104. (1) As used in this section:

14 (a) "Resource recovery facility" means a facility that meets
15 all of the following requirements:

16 (i) Has machinery, equipment, and structures installed for
17 the primary purpose of recovering energy through the incineration
18 of qualified solid waste, qualified landfill gas, or scrap
19 tires.

20 (ii) Utilizes at least 80% of its total annual fuel input in
21 the form of qualified solid waste, at least 90% of its total
22 annual fuel input in the form of qualified landfill gas, or 90%
23 of its total annual fuel input in the form of scrap tires, exclu-
24 sive of fuel used for normal start-up and shutdown.

25 (iii) Is a qualifying facility as defined by the federal
26 energy regulatory commission under the public utility regulatory
27 policies act of 1978, Public Law 95-617, 92 Stat. 3117.

1 (b) "Qualified landfill gas" means gas reclaimed from a type
2 II landfill as defined in R 299.4105 of the Michigan administra-
3 tive code.

4 (c) "Qualified solid waste" means solid waste that may be
5 lawfully disposed of in a type II landfill as defined in
6 R 299.4105 of the Michigan administrative code, and which is gen-
7 erated within this state.

8 (d) "Scrap tire", "scrap tire hauler", and "scrap tire
9 processor" mean those terms as they are defined in part 169
10 (scrap tires) of the natural resources and environmental protec-
11 tion act, Act No. 451 of the Public Acts of 1994, being sections
12 324.16901 to 324.16909 of the Michigan Compiled Laws.

13 (2) Electric utilities with more than 500,000 customers in
14 this state shall enter into power purchase agreements for the
15 purchase of capacity and energy from resource recovery facilities
16 that incinerate qualified landfill gas, that incinerate qualified
17 solid waste, at least 50.1% of which is generated within the
18 service areas of the electric utility, or, subject to the provi-
19 sions of this section, that incinerate scrap tires, under rates,
20 charges, terms, and conditions of service that, for these facili-
21 ties, may differ from those negotiated, authorized, or prescribed
22 for purchases from qualifying facilities that are not resource
23 recovery facilities.

24 (3) If a resource recovery facility incinerates scrap tires,
25 or any other tires that are obtained from outside the state, or
26 if more than 50.1% of the scrap tires or other tires are obtained
27 outside the electric utility service area, the electric utility

1 may in partial satisfaction of its obligation under this section
2 purchase capacity and energy from the facility but is not obli-
3 gated by this act to purchase the facility's capacity and
4 energy.

5 (4) A resource recovery facility that incinerates at least
6 90% of its total annual fuel input in the form of scrap tires
7 shall accept all scrap tires that first became scrap tires in the
8 state and that are delivered to the facility by a scrap tire pro-
9 cessor or a scrap tire hauler. The first 6,000,000 of these
10 scrap tires delivered to the resource recovery facility each year
11 shall be charged a rate not greater than an amount equal to
12 \$34.50 per ton, increased each calendar quarter beginning July 1,
13 1990, by an amount equal to the increase in the all items version
14 of the consumer price index for urban wage earners and clerical
15 workers during the prior calendar quarter.

16 (5) Including power purchase agreements executed prior to
17 June 30, 1989, this section does not apply after 120 megawatts of
18 electric resource recovery facility capacity in an electric
19 utility's service territory have been contracted and entered in
20 commercial operation.

21 (6) This section also does not apply to more than the first
22 30 megawatts of scrap tire fueled resource recovery facility
23 capacity in the state that has been contracted and entered in
24 commercial operation.

25 (7) Excluding rate provisions, if 1 or more provisions of a
26 purchase agreement remain in dispute, each party shall submit to
27 the commission all of the purchase agreement provisions of their

1 last best offer and a supporting brief. On each disputed
2 provision, the commission shall within 60 days either select or
3 reject with recommendation the offers submitted by either party.

4 (8) A power purchase agreement entered into by an electric
5 utility for the purchase of capacity and energy from a resource
6 recovery facility shall be filed with the commission and a con-
7 tested case proceeding shall commence immediately.

8 (9) A power purchase agreement shall be considered approved
9 if the commission does not approve or disapprove the agreement
10 within 6 months of the date of the filing of the agreement.
11 Approval under this subsection constitutes prior approval under
12 section 4212(b).

13 (10) The energy rate component of all power sales contracts
14 for resource recovery facilities shall be equal to the avoided
15 energy cost of the purchasing electric utility.

16 (11) When averaged over the term of the contract, the capac-
17 ity rate component of all power sales contracts for resource
18 recovery facilities may be equal to but not less than the full
19 avoided cost of the electric utility as determined by the
20 commission. In determining the capacity rate, the commission may
21 assume that the electric utility needs capacity.

22 (12) Capacity purchased by an electric utility prior to
23 January 1, 2000 under a power sales contract with a resource
24 recovery facility shall not be considered directly or indirectly
25 in determining the electric utility's reserve margin, reserve
26 capacity, or other resource capability measurement.

1 (13) To insure compliance with this section, a resource
2 recovery facility that incinerates scrap tires shall provide an
3 annual accounting to the legislature and the commission. The
4 annual accounting shall include the total amount of scrap tires
5 incinerated at the resource recovery facility and the percentage
6 of those scrap tires that prior to incineration were used within
7 this state for their original intended purpose.

8 Sec. 4105. (1) With the consent of the appropriate authori-
9 ties of the cities, villages, and townships in or through which
10 an electric utility operates or may subsequently propose to oper-
11 ate, the electric utility that is transmitting and supplying
12 electricity in 1 or more counties of this state may use the high-
13 ways, streets, alleys, and other public places of the cities,
14 villages, and townships.

15 (2) All transmission lines used shall have insulation and
16 conductivity in accordance with their voltage.

17 (3) Before transacting local business, an electric utility
18 shall obtain a franchise from a city, village, or township autho-
19 rizing it to do business in the city, village, or township.

20 (4) This act does not impair any right of a village or town-
21 ship to the reasonable control of its streets, alleys, and public
22 places in all matters of mere local concern.

23 Sec. 4106. (1) Subject to part 43 and if the commission
24 requires, a person erecting any lines to transmit electricity in
25 or through the highways, streets, or public places of 1 or more
26 counties of this state shall file with the commission data and
27 information relative to the method and manner of the construction

1 of those lines, the franchise or consent under which the lines
2 were constructed or are being maintained, and any other informa-
3 tion the commission reasonably requires. The commission may
4 require the filing of detailed specifications showing the type of
5 construction of lines and the details of construction of lines of
6 various voltages.

7 (2) After the commission approves specifications under this
8 section, all lines shall be constructed according to those
9 specifications.

10 (3) The height of the lines at all highway crossings shall
11 not be less than 22 feet, and at railroad crossings shall be in
12 accordance with the commission's rules.

13 (4) The commission may require that all poles used in the
14 transmission of electricity be stenciled or otherwise marked with
15 the owner's name.

16 Sec. 4107. (1) The commission shall have the power to
17 inspect and examine all electrical apparatus installed in a
18 public highway, street, or place and may investigate the method
19 employed by persons transmitting and supplying electricity.

20 (2) The commission shall have the power to order improve-
21 ments in the method employed in transmitting and supplying elec-
22 tricity which are necessary to secure good service and the safety
23 of the public, those employed in the business of transmitting and
24 distributing the electricity, or any persons liable to be injured
25 by the erection, maintenance, or use of the apparatus.

26 Sec. 4108. (1) The commission may do any of the following:

1 (a) Order electric current for distribution to be delivered
2 at a suitable primary voltage, to any city, village, or township
3 through which a transmission line or lines may pass.

4 (b) Order service to be rendered by an electric utility if
5 it is reasonable for the service to be ordered.

6 (c) Prescribe uniform methods of keeping accounts to be
7 observed by persons engaged in such business of transmitting and
8 supplying electricity.

9 (d) Keep informed as to the methods employed by electric
10 utilities in the transaction of their business.

11 (e) Insure that the property of electric utilities is main-
12 tained and operated for the security and accommodation of the
13 public and in compliance with the legal requirements.

14 (f) Require an electric utility annually to file a verified
15 report in the form the commission specifies providing information
16 the commission determines necessary to perform its duties and
17 require from all electric utilities in this state information
18 that it may need to perform its duties under this part.

19 (g) In connection with any rate or service hearing or inves-
20 tigation, make an audit and analysis of the books and records of
21 the electric utility, and an inventory and appraisal of its prop-
22 erty as necessary in connection with the commission's duties
23 under this part.

24 (2) In a case described in subsection (1)(g), the commission
25 shall keep a record of all expenses incurred in connection with
26 its investigation of the affairs and property of the electric
27 utility. During the progress or at the conclusion of its work,

1 the commission shall state the amount in writing to the electric
2 utility and the electric utility shall pay to the department of
3 treasury the amount of that expense in the manner the commission
4 by order requires. This money shall be credited to the commis-
5 sion for the payment of its expenses.

6 Sec. 4109. (1) An electric utility and its officers,
7 agents, and employees shall obey all lawful orders issued by the
8 commission under this part so long as the order remains in
9 force.

10 (2) A person who willfully or knowingly fails or neglects to
11 obey or comply with an order or provision of this part is liable
12 for a state civil infraction of not more than \$300.00 for each
13 offense. Every act that violates an order or provision of this
14 part is a separate offense and, for a continued violation, each
15 day constitutes a separate offense.

16 (3) An action to recover a fine under this section may be
17 brought in a court of competent jurisdiction.

18 (4) All money recovered in the action, together with the
19 costs, shall be paid into the state treasury to the credit of the
20 general fund.

21 PART 42. POWER SUPPLY COST RECOVERY

22 Sec. 4201. As used in this part:

23 (a) "General rate case" means a proceeding before the com-
24 mission in which interested parties are given notice and a rea-
25 sonable opportunity for a full and complete hearing on an elec-
26 tric utility's total cost of service and all other lawful

1 elements properly to be considered in determining just and
2 reasonable rates.

3 (b) "Interested person" means the attorney general, the
4 commission's technical staff, an intervenor admitted to 1 or both
5 of the electric utility's 2 previous general rate cases or to 1
6 or both of the electric utility's 2 previous reconciliation hear-
7 ings, or an association of electric utility customers that meets
8 the requirements to intervene in a reconciliation hearing under
9 the commission's rules of practice and procedure.

10 (c) "Power supply cost recovery clause" means a clause in
11 the electric rates or rate schedule of an electric utility that
12 permits the monthly adjustment of rates for power supply to allow
13 the electric utility to recover the booked costs, including
14 transportation costs, reclamation costs, and disposal and repro-
15 cessing costs, of fuel burned by the utility for electric genera-
16 tion and the booked costs of purchased and net interchanged power
17 transactions by the electric utility incurred under reasonable
18 and prudent policies and practices.

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

24 Sec. 4202. (1) The commission may, but is not required to
25 do so, incorporate a power supply cost recovery clause in the
26 electric rates or rate schedule of an electric utility.

1 (2) An order incorporating a power supply cost recovery
2 clause shall be as a result of a hearing held solely on the
3 question of the inclusion of the clause in the rates or rate
4 schedule. A hearing under this section shall be conducted as a
5 contested case or under section 4217 as a result of a general
6 rate case.

7 (3) An order incorporating a power supply cost recovery
8 clause shall replace and rescind any previous fuel cost adjust-
9 ment clause or purchased and net interchanged power adjustment
10 clause incorporated in the electric rates of the electric utility
11 upon the effective date of the first power supply cost recovery
12 factor authorized for the electric utility under its power supply
13 cost recovery clause.

14 Sec. 4203. (1) To implement the power supply cost recovery
15 clause established under section 4202, an electric utility annu-
16 ally shall file a complete power supply cost recovery plan
17 describing the expected sources of electric power supply and
18 changes in the cost of power supply anticipated over a future
19 12-month period specified by the commission and requesting for
20 each of those 12 months a specific power supply cost recovery
21 factor. The commission may establish filing procedures.

22 (2) The plan shall be filed not less than 3 months before
23 the beginning of the 12-month period covered by the plan.

24 (3) The plan shall describe all major contracts and power
25 supply arrangements entered into by the electric utility for pro-
26 viding power supply during the specified 12-month period. The
27 description of the major contracts and arrangements shall include

1 the price of fuel, the duration of the contract or arrangement,
2 and an explanation or description of any other term or provision
3 required by the commission.

4 (4) The plan shall also include the evaluation by the elec-
5 tric utility of the reasonableness and prudence of its decisions
6 to provide power supply in the manner described in the plan, in
7 light of its existing sources of electrical generation, and an
8 explanation of the actions taken by the electric utility to mini-
9 mize the cost of fuel to the electric utility.

10 Sec. 4204. (1) To implement the power supply cost recovery
11 clause established under section 4202, an electric utility shall
12 file contemporaneously with its power supply cost recovery plan a
13 5-year forecast of the power supply requirements of its custom-
14 ers, its anticipated sources of supply, and projections of power
15 supply costs, in light of its existing sources of electrical gen-
16 eration and sources of electrical generation under construction.

17 (2) The forecast shall include a description of all relevant
18 major contracts and power supply arrangements entered into or
19 contemplated by the electric utility, and other information the
20 commission requires.

21 Sec. 4205. (1) If an electric utility files a power supply
22 cost recovery plan and a 5-year forecast, the commission shall
23 conduct a power supply and cost review to evaluate the reason-
24 ableness and prudence of the power supply cost recovery plan of
25 the electric utility and establish the power supply cost recovery
26 factors to implement a power supply cost recovery clause

1 incorporated in the electric rates or rate schedule of the
2 electric utility.

3 (2) The power supply and cost review shall be conducted as a
4 contested case.

5 (3) In its final order in a power supply and cost review,
6 the commission shall evaluate the reasonableness and prudence of
7 the decisions underlying the power supply cost recovery plan of
8 the electric utility and shall approve, disapprove, or amend the
9 power supply cost recovery plan accordingly.

10 (4) In evaluating the decisions underlying the power supply
11 cost recovery plan, the commission shall consider:

12 (a) The cost and availability of the electrical generation
13 available to the electric utility.

14 (b) The cost of short-term firm purchases available to the
15 electric utility.

16 (c) The availability of interruptible service.

17 (d) The ability of the electric utility to reduce or to
18 eliminate any firm sales to out-of-state customers if the elec-
19 tric utility is not a multi-state utility whose firm sales are
20 subject to other regulatory authority.

21 (e) Whether the electric utility has taken all appropriate
22 actions to minimize the cost of fuel.

23 (f) Other relevant factors.

24 (5) The commission shall approve, reject, or amend the 12
25 monthly power supply cost recovery factors requested by the elec-
26 tric utility in its power supply cost recovery plan. The factors
27 shall not reflect items the commission could reasonably

1 anticipate would be disallowed under section 4212. The factors
2 ordered shall be described in fixed dollar amounts per unit of
3 electricity, but may include specific amounts contingent on
4 future events.

5 Sec. 4206. In its final order in a power supply and cost
6 review, the commission shall evaluate the decisions underlying
7 the 5-year forecast of the electric utility. The commission may
8 also indicate any cost items in the 5-year forecast that, on the
9 basis of present evidence, the commission would be unlikely to
10 permit the electric utility to recover from its customers in
11 rates, rate schedules, or power supply cost recovery factors
12 established in the future.

13 Sec. 4207. (1) On its own motion or the motion of any
14 party, the commission may make a finding and enter a temporary
15 order granting approval or partial approval of a power supply
16 cost recovery plan in a power supply and cost recovery review,
17 after first giving notice to the parties to the review and after
18 having provided the parties a reasonable opportunity for a full
19 and complete hearing.

20 (2) A temporary order made under this section is a final
21 order for purposes of judicial review.

22 Sec. 4208. (1) If the commission has made a final or tempo-
23 rary order in a power supply and cost review, the electric util-
24 ity may each month incorporate in its rates for the period cov-
25 ered by the order any amounts up to the power supply cost recov-
26 ery factors permitted in that order.

1 (2) If the commission has not made a final or temporary
2 order within 3 months after a complete power supply cost recovery
3 plan is submitted or by the beginning of the period covered in
4 the plan, whichever comes later, or, if a temporary order has
5 expired without being extended or replaced, then pending an order
6 that determines the power supply cost recovery factors, an elec-
7 tric utility may each month adjust its rates to incorporate all
8 or a part of the power supply cost recovery factors requested in
9 its plan.

10 (3) Any amounts collected under the power supply cost recov-
11 ery factors under subsection (2) are subject to prompt refund
12 with interest to the extent the total amounts collected exceed
13 the total amounts determined in the commission's final order to
14 be reasonable and prudent for the same period of time.

15 Sec. 4209. (1) Not less than 3 months before the beginning
16 of the third quarter of the 12-month period, the electric utility
17 may file a revised power supply cost recovery plan covering the
18 remainder of the 12-month period.

19 (2) Upon receipt of the revised power supply cost recovery
20 plan, the commission shall reopen the power supply and cost
21 review.

22 (3) The commission may reopen the power supply and cost
23 review on its own motion or on the showing of good cause by any
24 party if at least 6 months have elapsed since the electric util-
25 ity submitted its complete filing and if there are at least 60
26 days remaining in the 12-month period under consideration.

1 (4) A reopened power supply and cost review shall be
2 conducted as a contested case and in accordance with this part.

3 Sec. 4210. (1) Not more than 45 days following the last day
4 of each billing month in which a power supply cost recovery
5 factor has been applied to customers' bills, the electric utility
6 shall file with the commission a detailed statement for that
7 month of the revenues recorded under the power supply cost recov-
8 ery factor, the allowance for cost of power supply included in
9 the base rates established in the latest commission order for the
10 electric utility, and the cost of power supply.

11 (2) The commission shall prescribe the manner and form for
12 the detailed statement. The commission shall establish proce-
13 dures for insuring that the detailed statement is promptly veri-
14 fied and corrected if necessary.

15 Sec. 4211. (1) Not less than once a year, and not later
16 than 3 months after the end of the 12-month period covered by an
17 electric utility's power supply cost recovery plan, the commis-
18 sion shall commence a power supply cost reconciliation proceeding
19 as a contested case.

20 (2) Reasonable discovery shall be permitted before and
21 during the power supply cost reconciliation proceeding to assist
22 parties and interested persons in obtaining evidence concerning
23 reconciliation issues including, but not limited to, the reason-
24 ableness and prudence of expenditures and the amounts collected
25 under the clause.

26 (3) At the power supply cost reconciliation proceeding, the
27 commission shall reconcile the revenues recorded under the power

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

9 Sec. 4212. An order in a power supply cost reconciliation
10 proceeding shall disallow all of the following:

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

17 (b) Any capacity charges associated with power purchased for
18 periods in excess of 6 months unless the electric utility has
19 obtained the prior approval of the commission. If the commission
20 has approved capacity charges in a contract with a qualifying
21 facility, as defined by the federal energy regulatory commission
22 under the public utility regulatory policies act of 1978, Public
23 Law 95-617, 92 Stat. 3117, the commission shall not disallow the
24 capacity charges for the facility in the power supply cost recon-
25 ciliation proceeding unless the commission has ordered revised
26 capacity charges upon reconsideration under this subsection. A
27 contract is valid and binding in accordance with its terms, and

1 capacity charges paid under the contract shall be recoverable
2 costs of the electric utility for rate-making purposes notwith-
3 standing that the order approving the contract is later vacated,
4 modified, or otherwise held to be invalid in whole or in part if
5 the order approving the contract has not been stayed or suspended
6 by a competent court within 30 days after the date of the order.
7 The commission shall determine the scope and manner of the review
8 of capacity charges for a qualifying facility. Proceedings seek-
9 ing approvals shall be conducted as a contested case. The com-
10 mission, upon its own motion or upon application of any person,
11 may reconsider its approval of capacity charges in a contested
12 case hearing after a period necessary for financing the qualify-
13 ing facility if the commission has first issued an order making a
14 finding based on evidence presented in a contested case that
15 there has been a substantial change in circumstances since the
16 commission's initial approval and the commission's finding is set
17 forth in a commission order subject to immediate judicial
18 review. The financing period for a qualifying facility during
19 which previously approved capacity charges are not subject to
20 commission reconsideration is 17.5 years, beginning with the date
21 of commercial operation, for all qualifying facilities, except
22 that the minimum financing period before reconsideration of the
23 previously approved capacity charges shall be for the duration of
24 the financing for a qualifying facility that produces electric
25 energy by the use of biomass, waste, wood, hydroelectric, wind,
26 and other renewable resources, or any combination of renewable
27 resources, as the primary energy source.

1 (c) Net increased costs attributable to a generating plant
2 outage of more than 90 days in duration unless the electric util-
3 ity demonstrates by clear and satisfactory evidence that the
4 outage, or any part of the outage, was not caused or prolonged by
5 the utility's negligence or by unreasonable or imprudent
6 management.

7 (d) Transportation costs attributable to capital investments
8 to develop the capability of an electric utility to transport
9 fuel or relocate fuel at the electric utility's facilities and
10 unloading and handling expenses incurred after receipt of fuel by
11 the electric utility.

12 (e) The cost of fuel purchased from an affiliated company to
13 the extent the fuel is more costly than fuel of requisite quality
14 available at or about the same time from other suppliers with
15 whom it would be comparably cost beneficial to deal.

16 (f) Charges unreasonably or imprudently incurred for fuel
17 not taken.

18 (g) Additional costs resulting from unreasonably or impru-
19 dently renegotiated fuel contracts.

20 (h) Penalty charges unreasonably or imprudently incurred.

21 (i) Demurrage charges.

22 (j) Increases in charges for nuclear fuel disposal unless
23 the electric utility has received the prior approval of the
24 commission.

25 Sec. 4213. (1) In its order in a power supply cost recon-
26 ciliation, the commission shall require an electric utility to
27 refund to customers or credit to customers' bills any net amount

1 determined to have been recovered over the period covered in
2 excess of the amounts determined to have been actually expensed
3 by the electric utility for power supply and to have been
4 incurred through reasonable and prudent actions not precluded by
5 the commission order in the power supply and cost review.

6 (2) The refunds or credits shall be apportioned among the
7 customers of the electric utility utilizing procedures that the
8 commission determines to be reasonable. The commission may adopt
9 different procedures with respect to customers served under the
10 various rate schedules of the electric utility and may, in appro-
11 priate circumstances, order refunds or credits in proportion to
12 the excess amounts actually collected from each customer during
13 the period covered.

14 Sec. 4214. (1) In its order in a power supply cost recon-
15 ciliation, the commission shall authorize an electric utility to
16 recover from customers any net amount by which the amount deter-
17 mined to have been recovered over the period covered was less
18 than the amount determined to have been actually expended by the
19 electric utility for power supply and to have been incurred
20 through reasonable and prudent actions not precluded by the com-
21 mission order in the power supply and cost review.

22 (2) For excess costs incurred through management actions
23 contrary to the commission's power supply and cost review order,
24 the commission shall authorize an electric utility to recover
25 costs incurred for power supply in the reconciliation period in
26 excess of the amount recovered over the period only if the
27 electric utility demonstrates by clear and convincing evidence

1 that the excess expenses were beyond the electric utility's
2 ability to control through reasonable and prudent actions.

3 (3) For excess costs incurred through management actions
4 consistent with the commission's power supply and cost review
5 order, the commission shall authorize an electric utility to
6 recover costs incurred for power supply in the reconciliation
7 period in excess of the amount recovered over the period only if
8 the electric utility demonstrates that the level of such expenses
9 resulted from reasonable and prudent management actions.

10 (4) The amounts in excess of the amounts actually recovered
11 by the electric utility for power supply shall be apportioned
12 among and charged to the customers of the electric utility using
13 procedures the commission determines are reasonable. The commis-
14 sion may adopt different procedures with respect to customers
15 served under the various rate schedules of the electric utility
16 and may, in appropriate circumstances, order charges to be made
17 in proportion to the amounts that would have been paid by those
18 customers if the amounts in excess of the amounts actually recov-
19 ered by the electric utility for cost of power supply had been
20 included in the power supply cost recovery factors with respect
21 to those customers during the period covered.

22 (5) Charges for the excess amounts shall be spread over a
23 period the commission determines is appropriate.

24 Sec. 4215. (1) If the commission orders refunds or credits
25 under section 4213, or additional charges to customers under sec-
26 tion 4214, in its final order in a power supply cost

1 reconciliation proceeding, the refunds, credits, or additional
2 charges shall include interest.

3 (2) In determining the interest included in a refund,
4 credit, or additional charge under this section, the commission
5 shall consider, to the extent material and practicable, when the
6 excess recoveries or insufficient recoveries, or both occurred.
7 The commission shall determine a rate of interest for excess
8 recoveries, refunds, and credits equal to the greater of the
9 average short-term borrowing rate available to the electric util-
10 ity during the appropriate period or the authorized rate of
11 return on the electric utility's common stock during that same
12 period.

13 (3) Costs incurred by the electric utility for refunds and
14 interest on refunds shall not be charged to customers. The com-
15 mission shall determine a rate of interest for insufficient
16 recoveries and additional charges equal to the average short-term
17 borrowing rate available to the electric utility during the
18 appropriate period.

19 Sec. 4216. To avoid undue hardship or unduly burdensome or
20 excessive cost, the commission may do the following:

21 (a) Exempt an electric utility with fewer than 200,000 cus-
22 tomers in this state from 1 or more of the procedural provisions
23 of this part or may modify the filing requirements of this part.

24 (b) Exempt an electric utility organized as a cooperative
25 corporation under sections 98 to 109 of Act No. 327 of the Public
26 Acts of 1931, being sections 450.98 to 450.109 of the Michigan
27 Compiled Laws or a consumer cooperative organized under chapter

1 11 of the nonprofit corporation act, Act No. 162 of the Public
2 Acts of 1982, being sections 450.3100 to 450.3192 of the Michigan
3 Compiled Laws, from 1 or more of the provisions of this part.

4 Sec. 4217. Notwithstanding any other provision of this act,
5 the commission may, upon application by an electric utility, set
6 power supply cost recovery factors, in a manner otherwise consis-
7 tent with this article, in an order resulting from a general rate
8 case. If the commission sets power supply cost recovery factors
9 in an order resulting from a general rate case, all of the fol-
10 lowing apply:

11 (a) The power supply cost recovery factors shall cover a
12 future period of 48 months or the number of months that elapse
13 until the commission orders new power supply cost recovery fac-
14 tors in a general rate case, whichever is the shorter period.

15 (b) Annual reconciliation proceedings shall be conducted
16 under section 4211 and if an annual reconciliation proceeding
17 shows a recoverable amount under section 4214, the commission
18 shall authorize the electric utility to defer the amount and to
19 accumulate interest on the amount under section 4215, and in the
20 next order resulting from a general rate case shall authorize the
21 electric utility to recover the amount and interest from its cus-
22 tomers in the manner provided in section 4214.

23 (c) The power supply cost recovery factors shall not be
24 revised under section 4209.

25 Sec. 4218. Every 5 years, the standing committees of the
26 house and senate that deal with public utilities shall review
27 section 4212(b).

PART 43. ELECTRIC TRANSMISSION LINES

Sec. 4301. As used in this part:

(a) "Certificate" means a certificate of public convenience and necessity issued for a major transmission line under this part or issued for a transmission line under section 4308.

(b) "Construction" means any substantial action taken on a route constituting placement or erection of the foundations or structures supporting a transmission line. Construction does not include preconstruction activity or the addition of circuits to an existing transmission line.

(c) "Electric utility" means a person, partnership, corporation, association, or other legal entity whose transmission or distribution of electricity the commission regulates under Act No. 106 of the Public Acts of 1909, being sections 460.551 to 460.559 of the Michigan Compiled Laws, or Act No. 3 of the Public Acts of 1939, being sections 460.1 to 460.8 of the Michigan Compiled Laws. Electric utility does not include a municipal utility.

(d) "Major transmission line" means a transmission line of 5 miles or more in length wholly or partially owned by an electric utility through which electricity is transferred at system bulk supply voltage of 345 kilovolts or more.

(e) "Municipality" means a city, township, or village.

(f) "Preconstruction activity" means activity on a proposed route conducted before construction of a transmission line begins. Preconstruction activity includes surveys, measurements, examinations, soundings, borings, sample-taking, or other testing

1 procedures, photography, appraisal, or tests of soil,
2 groundwater, structures, or other materials in or on the real
3 property for contamination. Preconstruction activity does not
4 include an action that permanently or irreparably alters the real
5 property on or across the proposed route.

6 (g) "Route" means real property on or across which a trans-
7 mission line is constructed or proposed to be constructed.

8 (h) "Transmission line" means all structures, equipment, and
9 real property necessary to transfer electricity at system bulk
10 supply voltage of 100 kilovolts or more.

11 Sec. 4302. Transmission of electricity is an essential
12 service.

13 Sec. 4303. (1) If an electric utility that has 50,000 or
14 more residential customers in this state plans to construct a
15 major transmission line in this state in the 5 years after plan-
16 ning commences, the electric utility shall submit a construction
17 plan to the commission. An electric utility with less than
18 50,000 residential customers in this state may submit a plan
19 under this section. The plan shall include all of the
20 following:

21 (a) The general location and size of all major transmission
22 lines to be constructed in the 5 years after planning commences.

23 (b) Copies of relevant bulk power transmission information
24 filed by the electric utility with any state or federal agency,
25 national electric reliability coalition, or regional electric
26 reliability coalition.

1 (c) Additional information required by commission rule or
2 order that directly relates to the construction plan.

3 (2) At the same time the electric utility submits a con-
4 struction plan to the commission under subsection (1), the elec-
5 tric utility shall provide a copy of the construction plan to
6 each municipality in which construction of the planned major
7 transmission line is intended.

8 Sec. 4304. An electric utility shall not begin construction
9 of a major transmission line for which a plan has been submitted
10 under section 4303 until the commission issues a certificate for
11 that transmission line. Except as otherwise provided in section
12 4308, a certificate of public convenience and necessity under
13 this act is not required for constructing a new transmission line
14 other than a major transmission line or for reconstructing,
15 repairing, replacing, or improving an existing transmission line,
16 including the addition of circuits to an existing transmission
17 line.

18 Sec. 4305. (1) Before applying for a certificate, an elec-
19 tric utility shall schedule and hold a public meeting in each
20 municipality through which a proposed major transmission line for
21 which a plan has been submitted under section 4303 would pass. A
22 public meeting held in a township satisfies the requirement that
23 a public meeting be held in each affected village located within
24 the township.

25 (2) In the 60 days before a public meeting held under
26 subsection (1), the electric utility shall offer in writing to
27 meet with the chief elected official of each affected

1 municipality or his or her designee to discuss the electric
2 utility's desire to build the major transmission line and to
3 explore the routes to be considered.

4 Sec. 4306. (1) An electric utility that has 50,000 or more
5 residential customers in this state shall apply to the commission
6 for a certificate for a proposed major transmission line. An
7 applicant may withdraw an application at any time.

8 (2) An application for a certificate shall contain all of
9 the following:

10 (a) The planned date for beginning construction.

11 (b) A detailed description of the proposed major transmis-
12 sion line, its route, and its expected configuration and use.

13 (c) A description and evaluation of 1 or more alternate
14 major transmission line routes and a statement of why the pro-
15 posed route was selected.

16 (d) If a zoning ordinance prohibits or regulates the loca-
17 tion or development of any portion of a proposed route, a
18 description of the location and manner in which that zoning ordi-
19 nance prohibits or regulates the location or construction of the
20 proposed route.

21 (e) The estimated overall cost of the proposed major trans-
22 mission line.

23 (f) Information supporting the need for the proposed major
24 transmission line, including identification of known future
25 wholesale users of the proposed major transmission line.

26 (g) Estimated quantifiable and nonquantifiable public
27 benefits of the proposed major transmission line.

1 (h) Estimated private benefits of the proposed major
2 transmission line to the applicant or any legal entity that is
3 affiliated with the applicant.

4 (i) Information addressing potential effects of the proposed
5 major transmission line on public health and safety.

6 (j) A summary of all comments received at each public meet-
7 ing and the applicant's response to those comments.

8 (k) Information indicating that the proposed major transmis-
9 sion line will comply with all applicable state and federal envi-
10 ronmental standards, laws, and rules.

11 (l) Other information reasonably required by the commission
12 pursuant to rule.

13 Sec. 4307. (1) Upon applying for a certificate, the elec-
14 tric utility shall give public notice in the manner and form the
15 commission prescribes of an opportunity to comment on the
16 application. Notice shall be published in a newspaper of general
17 circulation in the area to be affected within a reasonable time
18 period after an application is filed with the commission, and
19 shall be sent to each affected municipality and each affected
20 landowner on whose property a portion of the proposed major
21 transmission line will be constructed. The notice shall be writ-
22 ten in plain, nontechnical, and easily understood terms and shall
23 contain a title that includes the name of the electric utility
24 and the words "NOTICE OF INTENT TO CONSTRUCT A MAJOR TRANSMISSION
25 LINE".

26 (2) The commission shall conduct a proceeding on the
27 application as a contested case. Upon receiving an application

1 for a certificate, each affected municipality and each affected
2 landowner shall be granted full intervenor status as of right in
3 commission proceedings concerning the proposed major transmission
4 lines.

5 (3) The commission may assess certificate application fees
6 from the electric utility to cover the commission's administra-
7 tive costs in processing the application and may require the
8 electric utility to hire consultants chosen by the commission to
9 assist the commission in evaluating those issues the application
10 raises.

11 (4) The commission shall grant or deny the application for a
12 certificate not later than 1 year after the application's filing
13 date. If a party submits an alternative route for the proposed
14 major transmission line, the commission shall grant the applica-
15 tion for either the electric utility's proposed route or 1 alter-
16 native route or shall deny the application. The commission may
17 condition its approval upon the applicant taking additional
18 action to assure the public convenience, health, and safety and
19 reliability of the proposed major transmission line.

20 (5) The commission shall grant the application and issue a
21 certificate if it determines all of the following:

22 (a) The quantifiable and nonquantifiable public benefits of
23 the proposed major transmission line justify its construction.

24 (b) The proposed or alternative route is feasible and
25 reasonable.

26 (c) The proposed major transmission line does not present an
27 unreasonable threat to public health or safety.

1 (d) The applicant has accepted the conditions contained in a
2 conditional grant.

3 (6) A certificate issued under this section shall identify
4 the major transmission line's route and shall contain an esti-
5 mated cost for the transmission line.

6 (7) If construction of a proposed major transmission line is
7 not begun within 5 years of the date that a certificate is grant-
8 ed, the certificate is void and a new certificate shall be
9 required for the proposed major transmission line.

10 Sec. 4308. (1) An electric utility may file an application
11 with the commission for a certificate for a proposed transmission
12 line other than a major transmission line. If an electric util-
13 ity applies for a certificate under this section, the electric
14 utility shall not begin construction of the proposed transmission
15 line until the commission issues a certificate for that transmis-
16 sion line.

17 (2) The commission shall proceed on an application in the
18 same manner as provided in section 4307. Except as otherwise
19 provided in subsection (3), the provisions of this part that
20 apply to applications and certificates for major transmission
21 lines apply in the same manner to applications and certificates
22 issued under this section.

23 (3) Section 4303 does not apply to a transmission line for
24 which a certificate is sought under this section.

25 Sec. 4309. (1) If the commission grants a certificate under
26 this part, that certificate shall take precedence over a
27 conflicting local ordinance, law, rule, regulation, policy, or

1 practice that prohibits or regulates the location or construction
2 of a transmission line for which the commission has issued a
3 certificate.

4 (2) A zoning ordinance or limitation imposed after an elec-
5 tric utility files for a certificate shall not limit or impair
6 the transmission line's construction, operation, or maintenance.

7 (3) In an eminent domain or other related proceeding arising
8 out of or related to a transmission line for which a certificate
9 is issued, a certificate issued under this part is conclusive and
10 binding as to the public convenience and necessity for that
11 transmission line and its compatibility with the public health
12 and safety, or any zoning or land use requirements in effect when
13 the application was filed.

14 Sec. 4310. (1) In a civil action in the circuit court under
15 section 4 of the uniform condemnation procedures act, Act No. 87
16 of the Public Acts of 1980, being section 213.54 of the Michigan
17 Compiled Laws, the court may grant a limited license to an elec-
18 tric utility for entry on land to conduct preconstruction activ-
19 ity related to a proposed major transmission line or a transmis-
20 sion line if the electric utility has scheduled or held a public
21 meeting in connection with a certificate sought under
22 section 4308 and if written notice of the intent to enter the
23 land has been given to each affected landowner on whose property
24 the electric utility wishes to enter. The limited license may be
25 granted upon such terms as justice and equity require.

26 (2) An electric utility that obtains a limited license shall
27 provide each affected land owner with a copy of the limited

1 license. A limited license shall include a description of the
2 purpose of entry, the scope of activities permitted, and the
3 terms and conditions of entry with respect to the time, place,
4 and manner of entry.

5 (3) The court shall not deny a limited license for entry to
6 conduct preconstruction activity for any of the following
7 reasons:

8 (a) A disagreement exists over the proposed route.

9 (b) The electric utility has not yet applied for a
10 certificate.

11 (c) The commission has not yet granted or denied the
12 application.

13 (d) An alleged lack of public convenience or necessity.

14 Sec. 4311. (1) Reasonable and prudent costs for a transmis-
15 sion line for which a certificate is issued shall be included in
16 the rates of an electric utility.

17 (2) The commission shall not disallow costs the electric
18 utility incurs in constructing a transmission line for which a
19 certificate is issued that do not exceed the amount set forth in
20 the certificate unless the commission determines that the actual
21 costs were imprudently and unreasonably incurred, based upon sub-
22 stantial evidence presented in opposition to the utility's rate
23 request.

24 (3) Costs incurred by the electric utility that exceed the
25 amount set forth in the certificate shall be included in the
26 electric utility's rates if reasonably and prudently incurred

1 based upon substantial evidence presented in support of the
2 electric utility's rate request.

3 Sec. 4312. (1) Except as otherwise provided in this sec-
4 tion, information obtained by the commission under this act is a
5 public record under the freedom of information act, Act No. 442
6 of the Public Acts of 1976, being sections 15.231 to 15.246 of
7 the Michigan Compiled Laws.

8 (2) An electric utility may designate information received
9 from a third party that the utility submits to the commission in
10 an application for a certificate or in other documents required
11 by the commission for purposes of certification submitted to the
12 commission as being only for the confidential use of the
13 commission. The commission shall notify the electric utility of
14 a request for public records under section 5 of Act No. 442 of
15 the Public Acts of 1976, being section 15.235 of the Michigan
16 Compiled Laws, if the scope of the request includes information
17 designated as confidential. The electric utility has 10 days
18 after the receipt of the notice to demonstrate to the commission
19 that the information designated as confidential should not be
20 disclosed because the information is a trade secret or secret
21 process, or is production, commercial, or financial information
22 the disclosure of which would jeopardize the competitive position
23 of the electric utility or the person from whom the information
24 was obtained. The commission shall not grant the request for the
25 information if the electric utility demonstrates to the satisfac-
26 tion of the commission that the information should not be
27 disclosed for a reason authorized in this section. If the

1 commission makes a decision to grant a request, the information
2 requested shall not be released until 3 days after the date of
3 the notice of the decision is provided to the electric utility.

4 (3) If any person uses information described in
5 subsection (1) to forecast electrical demand, the person shall
6 structure the forecast so the third party is not identified
7 unless the third party waives confidentiality.

8 Sec. 4313. (1) The commission may promulgate rules to
9 implement this part. The rules may contain standards to deter-
10 mine a proposed major transmission line's health and safety
11 aspects, including but not limited to standards for permissible
12 additions to electric and magnetic fields produced by the trans-
13 mission line.

14 (2) Until rules are promulgated under subsection (1), the
15 commission shall consider and determine any health or safety
16 issue a party raises in a proceeding concerning a certificate
17 application.

18 PART 44. ELECTRIC UTILITY FACILITIES

19 Sec. 4401. As used in this part:

20 (a) "Electric utility facility" means a facility that a
21 municipality is authorized to acquire as part of a municipal
22 electric utility system under this part or other law.

23 (b) "Governing body" means the council, commission, or board
24 of trustees of a municipality, or when the charter of a munici-
25 pality provides that a separate board has general management over
26 the municipal electric utility system, governing body means that

1 separate board, subject to review by the legislative body of the
2 municipality as its charter may provide.

3 (c) "Governmental unit" means a municipality or a joint
4 agency venture project.

5 (d) "Joint agency" means a public body corporate and politic
6 consisting of a combination of 2 or more municipalities, authori-
7 ties, or other public bodies organized in accordance with section
8 4416 to 4433.

9 (e) "Joint venture" means a project undertaken by 2 or more
10 municipalities, or 1 or more municipalities in conjunction with 1
11 or more joint agencies, electric power cooperatives, publicly or
12 privately owned utilities, authorities, or other public or pri-
13 vate bodies, organized in accordance with sections 4412 to 4415.

14 (f) "Municipal bond" means a bond or note or other evidence
15 of indebtedness payable from ad valorem taxes that a governmental
16 unit may issue.

17 (g) "Municipal electric utility system" means a system owned
18 by a municipality or combination of municipalities to furnish
19 heat, power, and light.

20 (h) "Municipality" means a city, county, incorporated vil-
21 lage, township, or metropolitan district of this state, or a
22 board, agency, or commission thereof owning a system or facility
23 for the generation, transmission, or distribution of electric
24 power and energy for public or private use, or proposing to own
25 the system or facility.

26 (i) "Project" means a system or facility for the generation,
27 transmission, or transformation, or a combination thereof, of

1 electric power and energy carried out by a municipal electric
2 utility system by any means, including, but not limited to, any
3 or more electric generating units.

4 (j) "Project cost" means, but is not limited to, the cost of
5 acquisition, construction, reconstruction, improvement, enlarge-
6 ment, betterment, or extension of a project, including the cost
7 of studies, plans, specifications, surveys, and estimates of
8 costs and revenues relating to the project, the cost of land,
9 land rights, rights of way, easements, water rights, fees, per-
10 mits, approvals, licenses, certificates, franchises, and the
11 preparation of applications for securing the land, engineering
12 and inspection expenses, financing fees, expenses, and costs,
13 working capital, fuel costs, interest on bonds, establishment of
14 reserves and all other expenditures of the issuing municipality
15 or joint agency that are incidental, necessary, or convenient to
16 the acquisition, construction, reconstruction, improvement,
17 enlargement, betterment, or extension of a project and the plac-
18 ing of the project in operation.

19 (k) "Power utility" means a political subdivision of this or
20 another state or a Canadian province, an agency of this or
21 another state, a federal agency, or a Canadian federal or provin-
22 cial agency, or a cooperative or investor owned entity subject to
23 the regulation of the commission or the equivalent regulatory
24 agency of another state that is engaged in generating, transmit-
25 ting, or distributing electricity.

26 (l) "Power utility bond" means electric utility bonds,
27 notes, or other evidences of indebtedness of a municipality,

1 including refunding bonds issued to underwrite projects
2 authorized by this part.

3 (m) "Revenues" means all fees, charges, money, profits, pay-
4 ment of principal of, or interest on, municipal or power utility
5 bonds, or other gifts, grants, contributions and appropriations.

6 Sec. 4402. (1) The governing body of a municipal electric
7 utility system may purchase, acquire, construct, improve,
8 enlarge, extend, or repair in the name of the municipality a
9 source or sources of electrical energy for distribution and sale
10 by the municipal electric utility system, whether the source is
11 located within or without the state.

12 (2) A source may include, but not be limited to, facilities
13 utilizing fossil fuels, garbage, trash, and other waste materi-
14 als, nuclear fuels, water power, including pumped storage, solar
15 energy, wind power, geothermal energy, energy derived from munic-
16 ipal waste of any kind, or other energy or fuel sources of what-
17 ever nature.

18 (3) The governing body may in relation to a source, pur-
19 chase, acquire, construct, improve, enlarge, extend, or repair
20 facilities for the control, abatement, or prevention of pollution
21 or damage to the environment which might otherwise be caused by
22 facilities for the generation of electric power, and may acquire
23 facilities for the safe disposal of waste or by-products from the
24 generation of electrical powers.

25 Sec. 4403. (1) The governing body of a municipal electric
26 utility system may purchase, acquire, construct, improve,
27 enlarge, extend, or repair in the name of the municipality fuel

1 sources and reserves it considers necessary to the continued
2 efficient operation of the municipal electric utility system,
3 together with the necessary facilities for transportation and
4 storage.

5 (2) The fuel sources and reserves may include, but not be
6 limited to, advance payments on contracts for nuclear fuels, and
7 contracts for heat from facilities belonging to others.

8 (3) Facilities for transportation and storage of fuels shall
9 include, but not be limited to, pipelines, conveyor systems,
10 railroad cars, ships, storage tanks, underground storage areas,
11 and other necessary and related appurtenances.

12 Sec. 4404. The governing body of a municipal electric util-
13 ity system may purchase, acquire, construct, improve, enlarge,
14 extend, or repair facilities for the transmission of energy, and
15 may contract for the purchase, sale, exchange, interchange,
16 wheeling, pooling, or transmission of electrical energy with
17 another power utility.

18 Sec. 4405. The governing body of a municipal electric util-
19 ity system may exercise its authority to plan, finance, acquire,
20 construct, own, operate, maintain, and improve electric utility
21 facilities, individually, in joint venture agreements authorized
22 by sections 4412 to 4415, or in joint agency agreements as autho-
23 rized by sections 4416 to 4433, or in other joint endeavors
24 authorized by this part or other law, and in cooperation with 1
25 or more other power utilities, whether authorized by this part or
26 other law.

1 Sec. 4406. (1) A municipality engaging in a joint venture,
2 joint agency agreement, or other joint endeavor described in
3 section 4405 and authorized by sections 4412 to 4415 or sections
4 4416 to 4433 shall own a percentage of any common facility equal
5 to the percentage of the money furnished or the value of the
6 property supplied by the municipality for the acquisition and
7 construction of the common facility.

8 (2) Each municipality in a joint endeavor shall defray its
9 own interest and other payments required to be made in connection
10 with a financing undertaken by it to pay its own percentage of
11 the money furnished or the value of the property supplied by it
12 for the planning, acquisition, and construction of a common
13 facility, or an addition or betterment to the common facility.
14 The agreement shall provide a uniform method of determining and
15 allocating operation and maintenance expenses of the joint facil-
16 ity or agency.

17 Sec. 4407. (1) A municipality may finance the cost of an
18 electric utility facility, or its share of the cost of an elec-
19 tric utility facility acquired jointly under sections 4412 to
20 4415 or sections 4416 to 4433 or other law, by any lawful means
21 available to the municipality, including the issuance of general
22 obligation bonds under charter authority, the issuance of revenue
23 bonds under the revenue bond act of 1933, Act No. 94 of the
24 Public Acts of 1933, being sections 141.101 to 141.139 of the
25 Michigan Compiled Laws, or the issuance of mortgage bonds under
26 charter authority.

1 (2) An agreement for the joint acquisition of facilities
2 entered into under this part shall be subject to provisions
3 contained in this and other law relating to the issuance of bonds
4 by the municipality.

5 (3) It is declared to be in the public interest and for a
6 public purpose that power utilities be permitted to participate
7 jointly in the development of electric facilities as provided in
8 this part as a means of achieving economies of scale and promot-
9 ing the economic development of the state and to this end the
10 issuance of revenue bonds is a public purpose.

11 (4) A municipality may pledge for the payment of the princi-
12 pal of, premium if any, and interest on the bonds, the revenues,
13 or a portion thereof, derived or to be derived from the ownership
14 and operation of the municipality's system or facilities for the
15 generation, transmission, or distribution of electric power or
16 energy, or its interest in a joint project or projects, except
17 that the proceeds of the bonds issued for a joint project and the
18 faith and credit of the municipality pledged for the bonds shall
19 be dedicated exclusively to the acquisition of the municipality's
20 undivided share of a joint project as specified in section 4406.

21 Sec. 4408. (1) To the extent of ownership by governmental
22 units or joint agencies, projects undertaken under joint venture
23 agreements authorized by sections 4412 to 4415 or joint agency
24 agreements authorized by sections 4416 to 4433 of this part are
25 exempt from assessment, collection, and levy of general or spe-
26 cial taxes of the state or its political subdivisions. Income
27 produced from municipal ownership in a joint venture or a joint

1 agency shall be exempt from taxation by the state or its
2 political subdivisions.

3 (2) A joint agency corporation formed under sections 4416 to
4 4433 shall not be required to pay taxes upon its income, exis-
5 tence, or franchise. The bonds and notes issued by a municipal-
6 ity in a joint venture agreement or a joint agency corporation,
7 their transfer and the income from the bonds and notes, including
8 a profit made on the sale of the bonds or notes, shall be exempt
9 from taxation within this state.

10 Sec. 4409. In connection with the ownership and operation
11 of an electric utility facility, whether owned individually or
12 jointly, the governing body of a municipal electric utility
13 system may enter into the necessary license agreements with fed-
14 eral, state, or Canadian regulatory agencies, and comply with
15 conditions imposed by the licensing agency, including, but not
16 limited to, actions necessary to preserve and protect the envi-
17 ronment, the acquisition of required public liability insurance,
18 including waiver of defenses and payment of retrospective premi-
19 ums, and other actions as may be necessary.

20 Sec. 4410. The governing body of a municipality or the
21 board of commissioners of a joint agency may make application and
22 enter into contracts for, and accept grants in aid and loans from
23 state and federal agencies and private and public organizations
24 for any purpose authorized by this part. The governing body of a
25 municipality or the board of commissioners of a joint agency may
26 do any or all of the following:

1 (a) Enter into and carry out contracts with the state or
2 federal government or an agency or institution thereof under
3 which the government, agency, or institution grants financial or
4 other assistance to the municipality or joint agency.

5 (b) Accept assistance or funds granted or loaned by the
6 state or federal government, with or without a contract.

7 (c) Agree to or comply with reasonable conditions that are
8 imposed upon a grant or loan accepted under this section.

9 (d) Make expenditures from funds granted or loaned.

10 Sec. 4411. (1) A municipality may take private property
11 under Act No. 149 of the Public Acts of 1911, being sections
12 213.21 to 213.25 of the Michigan Compiled Laws, and sections 8,
13 9, 10, 12, 13, 14, 16, and 17 of the uniform condemnation proce-
14 dures act, Act No. 87 of the Public Acts of 1980, being sections
15 213.58, 213.59, 213.60, 213.62, 213.63, 213.64, 213.66, and
16 213.67 of the Michigan Compiled Laws, for the purposes defined in
17 and authorized by this part, if the taking and use is necessary
18 for public purposes and for public benefit.

19 (2) A municipality shall not exercise its power of eminent
20 domain to acquire an existing electrical generation or transmis-
21 sion facility held in private ownership or a part of an electri-
22 cal generation or transmission facility held in private owner-
23 ship, without first securing in writing the approval of the
24 lawful private owner or owners. The acquired property may be
25 conveyed for use in joint agency or joint venture projects autho-
26 rized by this part in a manner and upon terms as the municipality
27 considers appropriate.

1 Sec. 4412. (1) A governmental unit may join in a joint
2 venture agreement to plan, finance, develop, construct, recon-
3 struct, acquire, improve, enlarge, better, own, operate, or main-
4 tain an undivided interest as a tenant in common in a project
5 situated within or without the state with 1 or more municipali-
6 ties, joint agencies, or power utilities and make plans and enter
7 into contracts in connection with a joint venture agreement, not
8 inconsistent with this part, as are necessary or appropriate.

9 (2) Before entering a joint venture agreement, the governing
10 body of a municipality shall determine the needs of the munici-
11 pality for power and energy based on engineering studies and
12 reports. In determining the future power requirements of a
13 municipality, all of the following shall be considered:

14 (a) The economies and efficiencies to be achieved in con-
15 structing on a large scale facilities for the generation and
16 transmission of electric power and energy.

17 (b) The municipality's need for reserve and peaking capac-
18 ity, and to meet obligations under pooling and reserve sharing
19 agreements reasonably related to its needs for power and energy
20 to which it is or may become a party.

21 (c) The estimated useful life of the project.

22 (d) The estimated time necessary for the planning, develop-
23 ment, acquisition, or construction of the project, and the length
24 of time required in advance to obtain, acquire, or construct
25 additional power supply.

1 (e) The reliability and availability of existing or
2 alternative power supply sources, and the cost of those existing
3 or alternative power supply sources.

4 Sec. 4413. (1) Under a joint venture agreement, each gov-
5 ernmental unit shall own an undivided interest in a project or
6 projects in proportion to the amount of money furnished or the
7 value of property or other consideration supplied by the govern-
8 mental unit for the planning, development, acquisition, or con-
9 struction of the project, and each governmental unit shall be
10 entitled to a percentage share of output and capacity from the
11 project equal to its undivided interest.

12 (2) Each governmental unit shall be severally liable for its
13 own acts, but shall not be jointly or severally liable for the
14 acts, omissions or obligations of other governmental units or
15 power utility party to the joint venture agreement, and money or
16 property or other consideration supplied by the governmental unit
17 shall not be credited or otherwise applied to the account of
18 another governmental unit or power utility, nor shall the undi-
19 vided share of a governmental unit in a project be charged
20 directly or indirectly with a debt or obligation of another gov-
21 ernmental unit or be subject to a lien as a result of a debt or
22 obligation of another governmental unit or power utility.

23 (3) The acquisition of a project may include, but not be
24 limited to, the purchase or lease of an existing, completed
25 project, or the purchase of a project under construction.

26 (4) A governmental unit participating in the joint planning,
27 financing, construction, reconstruction, acquisition,

1 improvement, enlargement, betterment, ownership, operation, or
2 maintenance of a project under this part may furnish money
3 derived from the proceeds of bonds, from the ownership and opera-
4 tion of its electrical system, or from any other source, and may
5 provide property, both real and personal, services, and other
6 considerations.

7 Sec. 4414. (1) A joint venture agreement entered into by
8 governmental units with respect to joint ownership in a project
9 shall contain those terms, conditions, and provisions, not incon-
10 sistent with this part, as the governing bodies of the governmen-
11 tal units determine to be in the interest of the governmental
12 units. The contracts shall be ratified by resolution of the gov-
13 erning body of each governmental unit in the manner as may be
14 prescribed by law or local charter.

15 (2) A contract shall include provisions relating to, but not
16 limited to, all of the following:

17 (a) The purpose or purposes of the contract.

18 (b) The duration of the contract.

19 (c) The method of appointing or employing the personnel nec-
20 essary in connection with the project.

21 (d) The method of financing the project, including the
22 apportionment of costs and revenues.

23 (e) The ownership interest of the parties in property used
24 or useful in connection with the project, and the procedures for
25 disposition of that property when the contract expires or is ter-
26 minated, or when the project is abandoned, decommissioned, or
27 dismantled.

1 (f) The prohibition or restrictions of the alienation or
2 partition of a governmental unit's undivided interest in a
3 project, which provisions shall not be subject to a law restrict-
4 ing covenants against alienation or partition.

5 (g) The construction of a project, which may include the
6 determination that a governmental unit jointly participating, or
7 a person, firm, or corporation, may construct the project as
8 agent for all parties to the joint venture agreement.

9 (h) The operation and maintenance of a project, which may
10 include a determination that a governmental unit jointly partici-
11 pating, or that a person, firm, or corporation, may operate and
12 maintain the project for all parties.

13 (i) Detailed project costs.

14 (j) The creation of a committee of representatives of the
15 governmental units or power utility jointly participating, which
16 committee shall have powers regarding the construction and opera-
17 tion of the project as the contract, not inconsistent with this
18 part, may provide.

19 (k) If 1 or more of the governmental units default in the
20 performance or discharge of its or their obligations with respect
21 to the project, the other party or parties may assume, pro rata
22 or otherwise, the obligations of the defaulting parties, and may
23 succeed to the rights and interest of the defaulting party or
24 parties in the project as may be agreed upon in the contract.

25 (l) Methods for amending the contract.

26 (m) Methods for terminating the contract.

1 (n) Any other necessary or proper matter.

2 Sec. 4415. (1) Capacity or output derived by a governmental
3 unit from its ownership share of a project not then required by
4 the governmental unit for its own use and for the use of its cus-
5 tomers may be sold or exchanged by the governmental unit for a
6 consideration and for a period and upon other terms and condi-
7 tions as may be determined by the parties to the sale.

8 (2) Municipalities proposing to jointly plan, finance,
9 develop, own, and operate a project may, either jointly or sepa-
10 rately, apply to the appropriate agencies of the state, the fed-
11 eral government, another state, or another proper agency, for the
12 necessary licenses, permits, certificates, or approvals; may con-
13 struct, maintain, and operate the project in accordance with the
14 licenses, permits, certificates, or approvals; and may obtain,
15 hold, and use the licenses, permits, certificates, or approvals
16 in the same manner as the operating unit of any other power
17 utility.

18 (3) Municipalities participating in a joint project or
19 projects may enter into contracts for the exchange, interchange,
20 wheeling, pooling, or transmission of electric power and energy
21 produced by the project or projects with a municipality of this
22 state or another state owning electric distribution facilities,
23 with an electric membership corporation, with an electric utili-
24 ty, or with a state, federal, or municipal agency which owns
25 electric generation, transmission, or distribution facilities in
26 this state or another state.

1 (4) Personnel appointed by a municipality to work on a joint
2 project shall have the same authority, rights, privileges, and
3 immunities which the officers, agents, and employees of the
4 appointing municipality enjoy within the jurisdictional bounda-
5 ries of the municipality, whether within or without that territo-
6 ry, when the personnel are acting within the scope of their
7 authority or within the course of their employment.

8 (5) Municipalities party to a joint project authorized by
9 this part shall, following the end of each fiscal year, prepare
10 an annual report of the activities of the project, including a
11 complete operating and financial statement covering the opera-
12 tions of the project for that year. The municipalities shall
13 cause an audit of the books of records and accounts of the
14 project to be made not less than annually by a certified public
15 accountant, and the cost of the audit may be treated as part of
16 the cost of construction of the project, or as part of the
17 expense of administering the project covered by the audit.

18 Sec. 4416. (1) A joint agency is formed when the governing
19 bodies of 2 or more municipalities by resolution determine that
20 it is in the best interest of the municipalities engaged in gen-
21 eration, transmission, or distribution of electricity as of
22 January 13, 1977, in accomplishing the purposes of this part to
23 create a joint agency for the purpose of undertaking the plan-
24 ning, financing, development, acquisition, construction, recon-
25 struction, improvement, enlargement, betterment, operation, or
26 maintenance of a project or projects to supply electric power and
27 energy for their present or future needs as an alternative or

1 supplemental method of obtaining the benefits and assuming the
2 responsibilities of ownership in a project.

3 (2) In determining whether the creation of a joint agency
4 for this purpose is in the best interest of a municipality, the
5 governing body of each municipality shall consider, but shall not
6 be limited to, all of the following:

7 (a) Whether a separate entity may be able to finance the
8 cost of projects in a more economic and efficient manner.

9 (b) Whether financial market acceptance may be enhanced if
10 entity is responsible for issuing and selling all of the bonds
11 required for a project or projects in a timely and orderly manner
12 and with a uniform credit rating, instead of multiple entities
13 marketing their separate issues of bonds.

14 (c) Whether savings and other advantages may be obtained by
15 providing a separate entity responsible for the acquisition, con-
16 struction, ownership, and operation of a project or projects.

17 (d) Whether the existence of a separate entity will foster
18 the continuation of joint planning and undertaking of projects,
19 and the resulting economies and efficiencies to be realized from
20 the joint planning and undertaking will serve the interest of the
21 residents of the municipality. The determination made by the
22 governing body of a municipality hereunder shall be conclusive.

23 Sec. 4417. The joint agency shall be governed by a board of
24 commissioners appointed by the respective governing bodies of the
25 municipalities which are members of the joint agency. The gov-
26 erning body of each member municipality shall, by resolution,
27 appoint 1 commissioner who, at the discretion of the governing

1 body, may be an officer or an employee of the municipality. Each
2 commissioner shall serve at the pleasure of the governing body by
3 which he or she was appointed.

4 Sec. 4418. (1) The board of commissioners of a joint agency
5 shall annually elect 1 of the commissioners as chairperson,
6 another as vice-chairperson, and another person or persons, who
7 may or may not be a commissioner, as treasurer, secretary, and if
8 desired, assistant secretary. The office of treasurer may be
9 held by the secretary or assistant secretary. The board of com-
10 missioners may appoint additional officers as it considers
11 necessary.

12 (2) The secretary or assistant secretary of the joint agency
13 shall keep a record of the proceedings of the joint agency, and
14 the secretary shall be the custodian of all records, books, docu-
15 ments, and papers filed with the joint agency, the minutes or
16 journal of the joint agency, and its official seal. Either the
17 secretary or the assistant secretary of the joint agency may
18 cause copies to be made of all minutes and other records and doc-
19 uments of the joint agency and may give certificates under the
20 official seal of the joint agency to the effect that the copies
21 are true copies, and all persons dealing with the joint agency
22 may rely upon a certificate under the official seal of the joint
23 agency.

24 Sec. 4419. (1) A joint agency formed for the purposes pro-
25 vided in this part is a public body politic and corporate and the
26 powers conferred by this part shall be considered and held to be
27 the performance of an essential public function.

1 (2) Any combination of 2 or more municipalities described in
2 section 4416 may incorporate a joint agency by the adoption of
3 articles of incorporation by resolution of the governing body of
4 each municipality. The fact of adoption shall be endorsed on the
5 articles of incorporation by the chief executive officer and
6 clerk of the municipalities.

7 (3) The articles of incorporation shall be published at
8 least once in a newspaper generally circulating within the area
9 of each municipality. One printed copy of the articles of incor-
10 poration, certified as a true copy, with the date and place of
11 the publication, shall be filed with the county clerk of the
12 county or counties in which the incorporating municipalities are
13 located and with the secretary of state.

14 (4) The incorporation of the joint agency shall become
15 effective at the time provided in the articles of incorporation.

16 (5) The validity of the joint agency incorporation shall be
17 conclusive unless questioned in a court of competent jurisdiction
18 within 60 days after the filing of certified copies with the
19 county clerk and the secretary of state.

20 (6) The articles of incorporation shall state the name of
21 the joint agency, the names of the various incorporating munic-
22 palities, the purpose or purposes for which it is created, the
23 powers, duties, and limitations of the joint agency and its offi-
24 cers, the method of selecting its governing body, officers, and
25 employees, the person or persons who are charged with the respon-
26 sibility for causing the articles of incorporation to be
27 published and filed or who are charged with the responsibility in

1 connection with the incorporation of the joint agency, the place
2 of publication, and all other matters which the incorporating
3 municipalities shall consider advisable, all of which shall be
4 subject to the provisions of this part and of the constitution
5 and laws of the state.

6 (7) A municipality described in section 4416 which did not
7 join in the original incorporation of a joint agency may become a
8 member by amendment to the articles of incorporation adopted by
9 the governing body of the municipality and by the governing body
10 of each existing member municipality of the joint agency. Other
11 amendments may be made to the articles of incorporation if
12 adopted by the governing body of each municipality of the joint
13 agency. An amendment shall be endorsed, published, and certified
14 and printed copies filed in the same manner as the original arti-
15 cles of incorporation.

16 Sec. 4420. (1) A majority of the commissioners of a joint
17 agency shall constitute a quorum for the transaction of business
18 of the joint agency. A vacancy in the board of commissioners of
19 the joint agency shall not impair the rights of a quorum to exer-
20 cise all the rights and perform all the duties of the joint
21 agency. Action taken by the joint agency shall be authorized by
22 resolution at any regular or special meeting, and each resolution
23 shall take effect immediately. A vote of the majority of the
24 commissioners on the board of commissioners shall be necessary to
25 take action, or pass a resolution.

26 (2) A commissioner of a joint agency shall not receive
27 compensation for the performance of his or her duties but may be

1 reimbursed for actual and necessary expenses incurred while
2 engaged in the performance of his or her duties.

3 Sec. 4421. After the creation of a joint agency, another
4 municipality may become a member of the joint agency upon appli-
5 cation to the joint agency after the adoption of a resolution of
6 the governing body of the municipality as prescribed in section
7 4416 authorizing the municipality to participate, and with the
8 unanimous consent of the members of the joint agency evidenced by
9 the resolutions of each of their governing bodies. A municipal-
10 ity may withdraw from a joint agency, except that all contractual
11 rights acquired and obligations incurred while a member munici-
12 pality remain in full force and effect.

13 Sec. 4422. A joint agency shall have the rights and powers
14 necessary and convenient to carry out and effectuate the purposes
15 and provisions of this part, including but not limited to all of
16 the following:

17 (a) To adopt bylaws for the regulation of the affairs and
18 conduct of its business, and to prescribe rules, regulations, and
19 policies in connection with the performance of its functions and
20 duties.

21 (b) To adopt an official seal and alter the same at
22 pleasure.

23 (c) To maintain an office at a place or places as it may
24 determine.

25 (d) To sue and be sued in its own name, and to plead and be
26 impleaded.

1 (e) To receive, administer, and comply with the conditions
2 and requirements respecting a gift, grant, or donation of
3 property or money.

4 (f) To acquire by purchase, lease, gift, or otherwise, or to
5 obtain options for the acquisition of, real or personal property,
6 improved or unimproved, including less than a fee interest in
7 land.

8 (g) To sell, lease, exchange, transfer, or otherwise dispose
9 of, or to grant options for those purposes with respect to, real
10 or personal property or an interest therein.

11 (h) To pledge or assign money, rents, charges, or other rev-
12 enues or the proceeds derived by the joint agency from the sales
13 of real or personal property, insurance, or condemnation awards.

14 (i) To issue bonds of the joint agency for the purpose of
15 providing funds for any of its corporate purposes.

16 (j) To study, plan, finance, construct, reconstruct,
17 acquire, improve, enlarge, extend, better, own, operate, or main-
18 tain 1 or more projects, and to pay all or a part of the costs of
19 the projects from the proceeds of bonds of the joint agency or
20 from other funds made available to the joint agency.

21 (k) To authorize the construction, operation, or maintenance
22 of a project or projects by a person, firm, or corporation,
23 including a political subdivision or agency of another state.

24 (l) To acquire by lease, purchase, or otherwise an existing
25 project or a project under construction.

26 (m) To sell or otherwise dispose of a project or projects.

1 (n) To fix, charge, and collect rents, rates, fees, and
2 charges for electric power or energy or other services,
3 facilities, or commodities sold, furnished, or supplied through a
4 project.

5 (o) To generate, produce, transmit, deliver, exchange, pur-
6 chase or sell for resale only, electric power or energy, and to
7 enter into contracts for those purposes.

8 (p) To negotiate and to enter into contracts for the pur-
9 chase, sale, exchange, interchange, wheeling, pooling, transmis-
10 sion, or use of electric power and energy with a municipality in
11 this state or another state or a Canadian province owning elec-
12 tric distribution facilities, and electric membership corpora-
13 tion, a public utility, or a state, federal, or municipal agency
14 which owns electric generation, transmission, or distribution
15 facilities in this state or another state.

16 (q) To make and execute contracts and other instruments nec-
17 essary or convenient in the exercise of the powers and functions
18 of the joint agency under this part, including contracts with
19 persons, firms, corporation, and others.

20 (r) To apply to the appropriate agencies of the state, the
21 federal government, another state, or other property agency for
22 the necessary permits, licenses, certificates, or approvals, and
23 to construct, maintain, and operate projects in accordance with
24 the licenses, permits, certificates, or approvals, and to obtain,
25 hold, and use the licenses, permits, certificates, and approvals
26 in the same manner as another person or operating unit of another
27 person.

1 (s) To employ engineers, architects, attorneys, real estate
2 counselors, appraisers, financial advisors, and other consultants
3 and employees as may be required in the judgment of the joint
4 agency and to fix and pay their compensation from funds available
5 to the joint agency for that purpose.

6 (t) To do all acts and things necessary, convenient, or
7 desirable to carry out the purposes and to execute the powers
8 granted to the joint agency under this part.

9 Sec. 4423. Not more than 90 days after the initial election
10 of officers of the board of commissioners of the joint agency,
11 the board of commissioners shall do all of the following:

12 (a) Retain a general manager of the joint agency, on either
13 an acting or permanent basis.

14 (b) Establish broad policies covering all major operations
15 of the joint agency.

16 (c) Retain an independent certified public accounting firm
17 to provide annual financial audits.

18 (d) Adopt rules specifying quality control standards for
19 contractual professional services in accordance with rules estab-
20 lishing those criteria promulgated by the department or a board
21 or commission within that department.

22 Sec. 4424. (1) The general manager shall be the chief exec-
23 utive and operating officer of the joint agency. The general
24 manager shall exercise the management of the properties and busi-
25 ness of the joint agency and its employees. The general manager
26 shall direct the enforcement of all resolutions, rules, and
27 regulations of the board of commissioners, and shall enter into

1 contracts as necessary under the general control and direction of
2 the board of commissioners. The general manager shall serve at
3 the pleasure of the board of commissioners.

4 (2) Subject to the approval of the board of commissioners,
5 the general manager may appoint the officers, employees, and
6 agents necessary to carry out the general purposes of the joint
7 agency. If the joint agency operates a project described in sec-
8 tion 4401(1)(i), the general manager shall classify all the
9 offices, positions, and grades of regular employment required in
10 the project.

11 Sec. 4425. Before undertaking a project, a joint agency
12 shall, based upon engineering studies and reports meeting the
13 standards described in section 4423(d), determine that the
14 project is required to provide for the projected needs for power
15 and energy of its members from the date the project is estimated
16 to be placed in normal and continuous operation and for a reason-
17 able period of time thereafter. In determining the future power
18 requirements of members of a joint agency, the joint agency shall
19 consider all of the following:

20 (a) The economies and efficiencies to be achieved in con-
21 structing facilities for the generation and transmission of elec-
22 tric power and energy.

23 (b) The needs of the joint agency for reserve and peaking
24 capacity, and to meet obligations under pooling and reserve shar-
25 ing agreements reasonably related to its needs for power and
26 energy to which the joint agency is or may become a party.

1 (c) The estimated useful life of the project.

2 (d) The estimated time necessary for the planning,
3 development, acquisition, or construction of the project and the
4 length of time required in advance to obtain, acquire, or con-
5 struct additional power supply for members of the joint agency.

6 (e) The reliability and availability of existing alternative
7 power supplies and the cost of those existing alternative power
8 supplies.

9 Sec. 4426. A joint agency may not levy taxes nor may it
10 pledge the credit or taxing power of the state or a political
11 subdivision, except for the pledging of receipts of taxes, spe-
12 cial assessments, or charges collected by the state or a politi-
13 cal subdivision and returnable and payable by law or by contract
14 to the joint agency, and except for the pledge by a political
15 subdivision of the state or its full faith and credit in support
16 of its contractual obligations to the joint agency as authorized
17 by law. Projects of joint agencies shall be financed, in addi-
18 tion to other methods of financing provided by law, by any or all
19 of the following:

20 (a) Rents, rates, fees, and charges authorized under section
21 4422(n).

22 (b) Other income or revenues from whatever source available,
23 including contributions or appropriations of whatever nature, or
24 other revenues of the member municipalities of the joint agency.

25 (c) Grants, loans, or contributions from federal, state, or
26 other governmental units, and grants, contributions, gifts,
27 bequests, or other devices from public or private sources.

1 (d) The proceeds of taxes, special assessments, or charges
2 imposed pursuant to law by member municipalities of the joint
3 agency, then returned or paid to the joint agency pursuant to law
4 or contract.

5 Sec. 4427. (1) A joint agency may issue bonds to pay all or
6 part of project costs or to refund all or any part of the out-
7 standing bonds or notes of the joint agency. The bonds shall be
8 payable from and may be issued in anticipation of payment of the
9 proceeds of any of the methods of financing described in section
10 4426 or elsewhere in this part or as may be provided by law.

11 (2) A member municipality of the joint agency may contract
12 as provided in section 4428 or may contract to make payments,
13 appropriations, or contributions to the joint agency of the pro-
14 ceeds of taxes, special assessments, or charges imposed and col-
15 lected by the member municipality or out of other funds legally
16 available, and may pledge its full faith and credit in support of
17 its contractual obligation to the joint agency. The contractual
18 obligation shall not constitute an indebtedness of the municipal-
19 ity within a statutory or charter debt limitation.

20 (3) If the joint agency issues bonds in anticipation of pay-
21 ments, appropriations, or contributions to be made to the joint
22 agency under contract by a political subdivision having the power
23 to levy and collect ad valorem taxes, the political subdivision
24 may obligate itself by the contract, and may levy a tax on all
25 taxable property within the political subdivision, which tax as
26 to rate or amount will not be subject to limitation, as provided
27 in section 6 of article IX of the state constitution of 1963, for

1 contract obligations in anticipation of which bonds are issued to
2 provide sufficient money to fulfill its contractual obligation to
3 the joint agency.

4 (4) The bonds may be any of the following:

5 (a) Issued for any period of years not exceeding 50.

6 (b) Serial bonds or term bonds, or a combination of both
7 serial and term bonds.

8 (c) Issued for a consideration other than cash.

9 (d) For an amount that includes interest capitalized for a
10 period of not more than 10 years after the date of the bonds.

11 (e) Sold at public or private sale, as determined by the
12 joint agency, at a discount not to exceed 10%.

13 (f) Secured by revenues, contract payments, funds, or
14 investments and securities as determined by the joint agency.

15 (5) The resolution authorizing bonds may provide for the
16 appointment of 1 or more trustees for bondholders and a trustee
17 may be an individual or corporation domiciled or located within
18 or without the state and may be given appropriate powers whether
19 with or without the execution of an indenture.

20 (6) Unless an exception from prior approval is available
21 under subsection (10), bonds issued by any joint agency shall be
22 approved by the municipal finance commission or its successor
23 agency prior to their issuance but, except as provided by subsec-
24 tion (10), shall not otherwise be subject to the municipal
25 finance act, Act No. 202 of the Public Acts of 1943, being sec-
26 tions 131.1 to 139.3 of the Michigan Compiled Laws. Before
27 approving the issuance of the bonds, the municipal finance

1 commission or its successor agency shall determine that the
2 amount of the proposed issue is sufficient but not excessive,
3 that the revenue and properties pledged for the payment thereof
4 are sufficient, and that the bonds and the proceedings authoriz-
5 ing the same comply with this part and other applicable law.

6 (7) A municipality, governmental unit, private corporation,
7 firm, or individual may advance money or deliver property to the
8 joint agency to enable it to carry out or finance any of its
9 powers and duties. The joint agency may agree to repay an
10 advance or pay for the property within a period of not more than
11 10 years, from the proceeds of its bonds or from other funds
12 legally available for that purpose, with or without interest as
13 may be agreed at the time of the advance or delivery. The obli-
14 gation of the joint agency to make the repayment or payment may
15 be evidenced by contract or note, which contract or note may
16 pledge a source of payment determined by the joint agency.
17 Unless an exception from prior approval is available under sub-
18 section (10), the contract or note shall be subject to prior
19 approval by the municipal finance commission or its successor
20 agency.

21 (8) A municipality desiring to enter into a contract under
22 this section pledging the full faith and credit of the municipal-
23 ity shall authorize, by resolution of its governing body, the
24 execution of the contract. Subsequent to the adoption of the
25 resolution a notice shall be published in a newspaper of general
26 publication in the municipality and shall state all of the
27 following:

1 (a) That the governing body has adopted a resolution
2 authorizing execution of the contract.

3 (b) The purpose of the contract.

4 (c) The source of payment of the municipality's contractual
5 obligation.

6 (d) The right of referendum on the contract.

7 (e) Any other information as the governing body shall deter-
8 mine to be necessary to adequately inform all interested persons
9 of the nature of the obligation.

10 (9) The contract may be executed and delivered by the munic-
11 ipality upon approval by its governing body without a vote of the
12 electors, but the contract shall not become effective until the
13 expiration of 45 days after the date of publication of the
14 notice. If within the 45-day period a petition signed by at
15 least 10% or 15,000, whichever is the lesser, of the registered
16 electors residing within the limits of the municipality is filed
17 with the clerk requesting a referendum upon the contract, the
18 contract shall not become effective until approved by the vote of
19 a majority of the electors of the municipality at a general or
20 special election, which election shall be held within 180 days
21 after the filing of a petition. When any contract is to be
22 entered into by any township only on behalf of the unincorporated
23 area of the township, only the registered electors residing
24 within the unincorporated area of the township shall be qualified
25 to sign the petition and vote at the election.

26 (10) The requirement of subsections (6) and (7) for
27 obtaining the prior approval of the municipal finance commission

1 or its successor agency before issuing bonds, notes, or contracts
2 under this section shall be subject to sections 10 and 11 of
3 chapter III of Act No. 202 of the Public Acts of 1943, being sec-
4 tions 133.10 and 133.11 of the Michigan Compiled Laws, and the
5 department of treasury shall have the same authority as provided
6 by Act No. 202 of the Public Acts of 1943 to issue an order pro-
7 viding or denying an exception from the prior approval required
8 by subsections (6) and (7) for bonds, notes, and contracts autho-
9 rized by this section.

10 Sec. 4428. (1) A municipality which is a member of a joint
11 agency may contract to buy power and energy from the joint agency
12 required for the municipality's present or future requirements,
13 including the capacity and output of 1 or more specified
14 projects. The contract may provide that the member municipality
15 shall be obligated to make the payments required by the contract
16 whether or not a project is completed, operable, or operating,
17 and notwithstanding the suspension, interruption, interference,
18 reduction, or curtailment of the output of a project or the power
19 and energy contracted for, and that the payments under the con-
20 tract shall not be subject to a reduction whether by offset or
21 otherwise, and shall not be conditioned upon the performance or
22 nonperformance of the joint agency or another member of the joint
23 agency under the contract or other instrument.

24 (2) A contract with respect to the sale or purchase of
25 capacity or output of a project entered into between a joint
26 agency and its member municipalities may also provide that if 1
27 or more of the municipalities default in the payment of its or

1 their obligations with respect to the purchase of the capacity or
2 output, then the remaining member municipalities which are pur-
3 chasing capacity and output under the contract are required to
4 accept and pay for and shall be entitled proportionately to and
5 may use or otherwise dispose of the capacity or output which was
6 to be purchased by the defaulting municipality.

7 (3) Payments by a municipality under a contract for the pur-
8 chase of capacity and output from a joint agency shall be made
9 solely from the revenues derived from the ownership and operation
10 of the electric system of the municipality, and an obligation
11 under the contract shall not constitute a legal or equitable
12 pledge, charge, lien, or encumbrance upon property of the munici-
13 pality or upon the municipality's income, receipts, or revenues,
14 except the revenues of its electric system.

15 (4) A municipality is obligated to fix, charge, and collect
16 rents, rates, fees, and charges for electric power and energy and
17 other services, facilities, and commodities, sold, furnished, or
18 supplied through its electric systems sufficient to provide reve-
19 nues adequate to meet its obligations under the contract, and to
20 pay other amounts payable from or constituting a charge and lien
21 upon those revenues, including amounts sufficient to pay the
22 principal of and interest on general obligation bonds issued by
23 the municipality for purposes related to its electric system.

24 (5) A municipality which is a member of a joint agency may
25 furnish the joint agency with money derived solely from the
26 ownership and operation of its electric system or facilities and
27 provide the joint agency with personnel, equipment, and property,

1 both real and personal. A member municipality may also provide
2 services to a joint agency.

3 (6) A member municipality of a joint agency may contract
4 for, advance, or contribute funds derived solely from ownership
5 of its electric system or facilities to a joint agency as may be
6 agreed upon by the joint agency and the member municipality, and
7 the joint agency shall repay the advance or contribution from the
8 proceeds of bonds, from operating revenues, or from other funds
9 of the joint agency, together with interest as may be agreed upon
10 by the member municipality and the joint agency.

11 Sec. 4429. A joint agency may sell or exchange the excess
12 capacity or output of a project not then required by any of its
13 members for a consideration and for a period and upon terms and
14 conditions as may be determined by the parties. The sale or
15 exchange shall not be made with a municipality not engaged in the
16 generating, transmitting, or distributing of electricity as of
17 January 13, 1977, unless no other power utility is willing to
18 enter into a sale or exchange upon equally favorable terms and
19 conditions.

20 Sec. 4430. A joint agency may take private property under
21 Act No. 149 of the Public Acts of 1911, being sections 213.21 to
22 213.25 of the Michigan Compiled Laws, and the uniform condemna-
23 tion procedures act, Act No. 87 of the Public Acts of 1980, being
24 sections 213.51 to 213.77 of the Michigan Compiled Laws, or any
25 other applicable law as determined necessary by a joint agency
26 for carrying out its purpose, except that a joint agency shall
27 not exercise its power of eminent domain to acquire an existing

1 electrical generation or transmission facility or a part thereof
2 held in private ownership, including, without limitation, non-
3 profit corporation, without first securing in writing the
4 approval of the lawful private owner or owners.

5 Sec. 4431. (1) When the board of commissioners of a joint
6 agency and the governing bodies of its member municipalities
7 shall by resolution determine that the purposes for which the
8 joint agency was formed have been substantially fulfilled and
9 that bonds issued and other obligations incurred by the joint
10 agency have been fully paid or satisfied, the board of commis-
11 sioners and governing bodies may declare the joint agency to be
12 dissolved.

13 (2) On the effective date of the resolution, the title to
14 the funds and other properties owned by the joint agency at the
15 time of the dissolution shall vest in the member municipalities
16 of the joint agency as provided in this part and the bylaws of
17 the joint agency, and in accordance with section 4406.

18 Sec. 4432. A joint agency shall, following the close of
19 each fiscal year, submit a report of its activities for the pre-
20 ceding year to the governing bodies of its member
21 municipalities. The annual report shall set forth a complete
22 operating and financial statement covering the operations of the
23 joint agency during the preceding year, together with an audit of
24 its operations as prescribed in section 4433.

25 Sec. 4433. The joint agency shall annually cause an audit
26 of its books of records and accounts by a certified public
27 accountant, and the cost of the audit may be treated as part of

1 the cost of construction of a project or projects, or as part of
2 the expense of administration of a project covered by the audit.

3 ARTICLE 5

4 GAS UTILITIES

5 PART 51. GENERAL PROVISIONS

6 Sec. 5101. (1) If a gas utility applies to the commission
7 for a finding or order to increase its rates and charges or to
8 alter, change, or amend its rates or rate schedules, the effect
9 of which will be to increase the cost of services to its custom-
10 ers, notice shall be given within the service area to be
11 affected. The gas utility shall place in evidence facts relied
12 upon to support its application to increase its rates and charges
13 or to alter, change, or amend its rates or rate schedules.

14 (2) After giving notice to the interested parties within the
15 affected service area and affording interested parties a reason-
16 able opportunity for a full and complete hearing, the commission
17 after submission of all proofs by any interested party may upon
18 written motion by the gas utility make a finding and enter an
19 order granting partial and immediate relief. The commission
20 shall not authorize or approve a finding or order ex parte, nor
21 increase rates until the commission's technical staff has made an
22 investigation and report.

23 (3) The commission may authorize and approve an alteration
24 or amendment in rates or rate schedules applied for by a gas
25 utility that will not result in an increase in the cost of serv-
26 ice to its customers without notice or hearing.

1 (4) The commission shall not authorize or approve an
2 increase in rates based upon changes in cost of purchased gas
3 unless notice has been given within the affected service area,
4 and there has been an opportunity for a full and complete hearing
5 on the cost of purchased gas. The rates charged by a gas utility
6 under an automatic purchased gas adjustment clause shall not be
7 altered, changed, or amended unless notice has been given within
8 the affected service area, and there has been an opportunity for
9 a full and complete hearing on the cost of the purchased gas.

10 (5) The commission shall adopt rules and procedures for the
11 filing, investigating, and hearing of applications or petitions
12 to increase or decrease gas utility rates and charges as the com-
13 mission finds necessary or appropriate to enable it to reach a
14 final decision with respect to applications or petitions within 9
15 months after filing.

16 (6) Adjustment clauses that operate without notice and an
17 opportunity for a full and complete hearing are abolished and
18 shall not be authorized or approved by the commission.

19 (7) The commission may hold a full and complete hearing to
20 determine the cost of purchased gas separately from a full and
21 complete hearing on a general rate case. The hearing may be held
22 concurrently with the general rate case. The commission shall
23 authorize a gas utility to recover the cost of purchased gas only
24 to the extent that the purchases are reasonable and prudent.

25 (8) As used in this part:

26 (a) "Full and complete hearing" means a hearing that
27 provides interested parties a reasonable opportunity to present

1 and cross-examine evidence and present arguments relevant to the
2 specific element or elements of the request that are the subject
3 of the hearing.

4 (b) "General rate case" means a proceeding initiated by a
5 gas utility in an application filed with the commission that
6 alleges a revenue deficiency and requests an increase in the
7 schedule of rates or charges based on the utility's total cost of
8 providing service.

9 (9) If a final decision has not been reached upon an appli-
10 cation or petition to increase or decrease utility rates within
11 the 9-month period required by subsection (5), the commission
12 shall give priority to the case and shall take other action nec-
13 essary or appropriate to expedite a final decision. If the com-
14 mission fails to reach a final decision with respect to an appli-
15 cation or petition to increase or decrease utility rates within
16 the 9-month period required under subsection (5), the commission
17 shall submit a written report to the governor and to the presi-
18 dent of the senate and the speaker of the house of representa-
19 tives within 15 days after the 9-month period expires stating the
20 reasons a decision was not reached within the 9-month period and
21 the actions being taken to expedite the decision. The commission
22 shall submit a further report upon reaching a final decision pro-
23 viding full details with respect to the conduct of the case,
24 including the time required to issue the commission's decision
25 following the conclusion of hearings.

26 Sec. 5102. (1) This section applies if both of the
27 following criteria are met:

1 (a) The rates of a gas utility are based, among other
2 considerations, upon the cost of natural gas purchased by the gas
3 utility that is in turn distributed by the gas utility to the
4 public.

5 (b) The cost for that gas is regulated by the federal energy
6 regulatory commission.

7 (2) In a proceeding to increase the rates and charges or to
8 alter, change, or amend any rate or rate schedule of the gas
9 utility, the commission shall receive in evidence the rates,
10 charges, classifications, and schedules on file with the federal
11 energy regulatory commission by which the cost of the gas pur-
12 chased or received by the gas utility is determined.

13 (3) If a proceeding described in subsection (2) is pending
14 before the commission and a proceeding is instituted or pending
15 before or on appeal from the federal energy regulatory commission
16 with respect to or affecting the cost of gas payable by the gas
17 utility, the commission shall consider as an item of the gas
18 utility's operating expense the cost of gas set forth in those
19 rates, charges, classifications, and schedules on file with the
20 federal energy regulatory commission.

21 (4) If the commission has entered an order approving the
22 rates of a gas utility under subsection (3) and the federal
23 energy regulatory commission or the appellate court reduces the
24 cost of gas payable by the gas utility in final order, the com-
25 mission, upon its own motion or upon complaint and after notice
26 and hearing, may order a refund to the gas utility's customers of
27 any sum refunded to the gas utility for the period after the

1 effective date of the commission's order approving rates under
2 subsection (3).

3 PART 52. GAS COST RECOVERY

4 Sec. 5201. As used in this part:

5 (a) "Gas cost recovery clause" means an adjustment clause in
6 the rates or rate schedule of a gas utility that permits the
7 monthly adjustment of rates for gas to allow the gas utility to
8 recover the booked costs of gas sold by the gas utility if
9 incurred under reasonable and prudent policies and practices.

10 (b) "Gas cost recovery factor" means that element of the
11 rates to be charged for gas service to reflect gas costs incurred
12 by a gas utility and made under a gas cost recovery clause incor-
13 porated in the rates or rate schedules of a gas utility.

14 (c) "General rate case" means a proceeding before the com-
15 mission in which interested parties are given notice and a rea-
16 sonable opportunity for a full and complete hearing on a gas
17 utility's total cost of service and all other lawful elements
18 properly to be considered in determining just and reasonable
19 rates.

20 (d) "Interested person" means the attorney general, the
21 commission's technical staff, an intervenor admitted to 1 or both
22 of the gas utility's 2 previous general rate cases or to 1 or
23 both of the gas utility's 2 previous reconciliation hearings, or
24 an association of gas utility customers that meets the require-
25 ments to intervene in a reconciliation hearing under the
26 commission's rules of practice and procedure.

1 Sec. 5202. (1) The commission may incorporate a gas cost
2 recovery clause in the rates or rate schedule of a gas utility,
3 but is not required to do so.

4 (2) An order incorporating a gas cost recovery clause shall
5 be as a result of a hearing solely on the question of the inclu-
6 sion of the clause in the rates or rate schedule, which shall be
7 conducted as a contested case or under section 5216 as a result
8 of a general rate case.

9 (3) An order incorporating a gas cost recovery clause shall
10 replace and rescind any previous purchased gas adjustment clause
11 incorporated in the rates of the gas utility upon the effective
12 date of the first gas cost recovery factor authorized for the gas
13 utility under its gas cost recovery clause.

14 Sec. 5203. (1) To implement the gas cost recovery clause
15 established under section 5202, a gas utility annually shall file
16 a complete gas cost recovery plan describing the expected sources
17 and volumes of its gas supply and changes in the cost of gas
18 anticipated over a future 12-month period specified by the com-
19 mission and requesting for each of those 12 months a specific gas
20 cost recovery factor. The commission may establish procedures
21 pertaining to the filing.

22 (2) The plan shall be filed not less than 3 months before
23 the beginning of the 12-month period covered by the plan.

24 (3) The plan shall describe all major contracts and gas
25 supply arrangements entered into by the gas utility for obtaining
26 gas during the specified 12-month period. The description of the
27 major contracts and arrangements shall include the price of the

1 gas, the duration of the contract or arrangement, and an
2 explanation or description of any other term or provision
3 required by the commission.

4 (4) The plan shall also include the gas utility's evaluation
5 of the reasonableness and prudence of its decisions to obtain gas
6 in the manner described in the plan, in light of the major alter-
7 native gas supplies available to the gas utility, and an explana-
8 tion of the legal and regulatory actions taken by the gas utility
9 to minimize the cost of gas purchased by the gas utility.

10 Sec. 5204. To implement the gas cost recovery clause estab-
11 lished under section 5202, a gas utility shall file contemporane-
12 ously with the gas cost recovery plan a 5-year forecast of the
13 gas requirements of its customers, its anticipated sources of
14 supply, and projections of gas costs. The forecast shall include
15 a description of all relevant major contracts and gas supply
16 arrangements entered into or contemplated between the gas utility
17 and its suppliers, a description of all major gas supply arrange-
18 ments that the gas utility knows have been, or expects will be,
19 entered into between the gas utility's principal pipeline suppli-
20 ers and their major sources of gas, and other information the
21 commission requires.

22 Sec. 5205. (1) If a gas utility files a gas cost recovery
23 plan and a 5-year forecast, the commission shall conduct a gas
24 supply and cost review to evaluate the reasonableness and pru-
25 dence of the plan and establish the gas cost recovery factors to
26 implement a gas cost recovery clause incorporated in the rates or
27 rate schedule of the gas utility.

1 (2) The gas supply and cost review shall be conducted as a
2 contested case.

3 (3) In its final order in a gas supply and cost review, the
4 commission shall evaluate the reasonableness and prudence of the
5 decisions underlying the gas cost recovery plan of the gas util-
6 ity and shall approve, disapprove, or amend the gas cost recovery
7 plan accordingly.

8 (4) In evaluating the decisions underlying the gas cost
9 recovery plan, the commission shall consider all of the
10 following:

11 (a) The volume, cost, and reliability of the major alterna-
12 tive gas supplies available to the gas utility.

13 (b) The cost of alternative fuels available to some or all
14 of the gas utility's customers.

15 (c) The availability of gas in storage.

16 (d) The gas utility's ability to reduce or to eliminate any
17 sales to out-of-state customers.

18 (e) Whether the gas utility has taken all appropriate legal
19 and regulatory actions to minimize the cost of purchased gas.

20 (f) Other relevant factors.

21 (5) The commission shall approve, reject, or amend the 12
22 monthly gas cost recovery factors requested by the gas utility in
23 its gas cost recovery plan. The factors ordered shall be
24 described in fixed dollar amounts per unit of gas, but may
25 include specific amounts contingent on future events, including
26 proceedings of the federal energy regulatory commission or its
27 successor agency.

1 Sec. 5206. In its final order in a gas supply and cost
2 review, the commission shall evaluate the decisions underlying
3 the 5-year forecast of the gas utility. The commission may also
4 indicate any cost items in the 5-year forecast that on the basis
5 of present evidence, the commission would be unlikely to permit
6 the utility to recover from its customers in rates, rate sched-
7 ules, or gas cost recovery factors established in the future.

8 Sec. 5207. On its own motion or the motion of any party,
9 the commission may make a finding and enter a temporary order
10 granting approval or partial approval of a gas cost recovery plan
11 in a gas supply and cost recovery review, after first having
12 given notice to the parties to the review, and after having
13 afforded to the parties to the review a reasonable opportunity
14 for a full and complete hearing. A temporary order made under
15 this subsection is a final order for purposes of judicial
16 review.

17 Sec. 5208. (1) If the commission has made a final or tempo-
18 rary order in a gas supply and cost review, the gas utility may
19 each month incorporate in its rates for the period covered by the
20 order any amounts up to the gas cost recovery factors permitted
21 in that order.

22 (2) If the commission has not made a final or temporary
23 order within 3 months after a complete gas cost recovery plan is
24 submitted or by the beginning of the period covered in the plan,
25 whichever comes later, or, if a temporary order has expired with-
26 out being extended or replaced, then pending an order that
27 determines the gas cost recovery factors, a gas utility may each

1 month adjust its rates to incorporate all or a part of the gas
2 cost recovery factors requested in its plan.

3 (3) Any amounts collected under the gas cost recovery fac-
4 tors before the commission makes its final order are subject to
5 prompt refund with interest to the extent the total amounts col-
6 lected exceed the total amounts determined in the commission's
7 final order to be reasonable and prudent for the same period of
8 time.

9 Sec. 5209. (1) Not less than 3 months before the beginning
10 of the third quarter of the 12-month period, the gas utility may
11 file a revised gas cost recovery plan covering the remainder of
12 the 12-month period.

13 (2) Upon receipt of the revised gas cost recovery plan, the
14 commission shall reopen the gas supply and cost review. In addi-
15 tion, the commission may reopen the gas supply and cost review on
16 its own motion or on the showing of good cause by any party if at
17 least 6 months have elapsed since the gas utility submitted its
18 complete filing and if there are at least 60 days remaining in
19 the 12-month period under consideration.

20 (3) A reopened gas supply and cost review shall be conducted
21 as a contested case.

22 Sec. 5210. (1) Not more than 45 days following the last day
23 of each billing month in which a gas cost recovery factor has
24 been applied to customers' bills, the gas utility shall file with
25 the commission a detailed statement for that month of the reve-
26 nues recorded under the gas cost recovery factor, the allowance
27 for cost of gas included in the base rates established in the

1 latest commission order for the gas utility, and the cost of gas
2 sold.

3 (2) The commission shall prescribe the manner and form for
4 the detailed statement. The commission shall establish proce-
5 dures for insuring that the detailed statement is promptly veri-
6 fied and corrected if necessary.

7 Sec. 5211. (1) Not less than once a year, and not later
8 than 3 months after the end of the 12-month period covered by a
9 gas cost recovery plan of a gas utility, the commission shall
10 commence a gas cost reconciliation proceeding as a contested
11 case.

12 (2) Reasonable discovery shall be permitted before and
13 during the reconciliation proceeding to assist parties and inter-
14 ested persons in obtaining evidence concerning reconciliation
15 issues including, but not limited to, the reasonableness and pru-
16 dence of expenditures and the amounts collected pursuant to the
17 clause.

18 (3) At the gas cost reconciliation proceeding, the commis-
19 sion shall reconcile the revenues recorded under the gas cost
20 recovery factor and the allowance for cost of gas included in the
21 base rates established in the latest commission order for the gas
22 utility with the amounts actually expensed and included in the
23 cost of gas sold by the gas utility. The commission shall con-
24 sider any issue regarding the reasonableness and prudence of
25 expenses for which customers were charged if the issue could not
26 have been considered adequately at a previously conducted gas
27 supply and cost review.

1 Sec. 5212. (1) In its order in a gas cost reconciliation
2 proceeding, the commission shall require a gas utility to refund
3 to customers or credit to customers' bills any net amount deter-
4 mined to have been recovered over the period covered in excess of
5 the amounts determined to have been actually expensed by the gas
6 utility for gas sold and to have been incurred through reasonable
7 and prudent actions not precluded by the commission order in the
8 gas supply and cost review.

9 (2) The refunds or credits shall be apportioned among the
10 customers of the gas utility utilizing procedures that the com-
11 mission determines to be reasonable. The commission may adopt
12 different procedures with respect to customers served under the
13 various rate schedules of the gas utility and may, in appropriate
14 circumstances, order refunds or credits in proportion to the
15 excess amounts actually collected from each customer during the
16 period covered.

17 Sec. 5213. (1) In its order in a gas cost reconciliation,
18 the commission shall authorize a gas utility to recover from cus-
19 tomers any net amount by which the amount determined to have been
20 recovered over the period covered was less than the amount deter-
21 mined to have been actually expensed by the gas utility for gas
22 sold and to have been incurred through reasonable and prudent
23 actions not precluded by the commission order in the gas supply
24 and cost review.

25 (2) For excess costs incurred through actions contrary to
26 the commission's gas public supply and cost review order, the
27 commission shall authorize a gas utility to recover costs

1 incurred for gas sold in the 12-month period in excess of the
2 amount recovered over the period only if the gas utility demon-
3 strates by clear and convincing evidence that the excess expenses
4 were beyond the gas utility's ability to control through reason-
5 able and prudent actions.

6 (3) For excess costs incurred through actions consistent
7 with commission's gas supply and cost review order, the commis-
8 sion shall authorize a gas utility to recover costs incurred for
9 gas sold in the 12-month period in excess of the amount recovered
10 over the period only if the gas utility demonstrates that the
11 excess expenses were reasonable and prudent.

12 (4) The amounts in excess of the amounts actually recovered
13 by the gas utility for gas sold shall be apportioned among and
14 charged to the customers of the gas utility using procedures the
15 commission determines are reasonable. The commission may adopt
16 different procedures with respect to customers served under the
17 various rate schedules of the gas utility and may, in appropriate
18 circumstances, order charges to be made in proportion to the
19 amounts that would have been paid by those customers if the
20 amounts in excess of the amounts actually recovered by the gas
21 utility for gas sold had been included in the gas cost recovery
22 factors with respect to those customers during the period
23 covered.

24 (5) Charges for the excess amounts shall be spread over a
25 period the commission determines is appropriate.

26 Sec. 5214. (1) If the commission orders refunds or credits
27 under section 5212 or additional charges to customers under

1 section 5213, in its final order in a gas cost reconciliation,
2 the refunds, credits, or additional charges shall include inter-
3 est and shall be apportioned among the customer classes of the
4 gas utility in proportion to their respective usage during the
5 reconciliation period.

6 (2) In determining the interest included in a refund,
7 credit, or additional charge under this section, the commission
8 shall consider, to the extent material and practicable, when the
9 excess recoveries or insufficient recoveries, or both, occurred.

10 (3) The commission shall determine a rate of interest for
11 excess recoveries, refunds, and credits equal to the greater of
12 the average short-term borrowing rate available to the gas util-
13 ity during the appropriate period or the authorized rate of
14 return on the gas utility's common stock during that same
15 period.

16 (4) The commission shall determine a rate of interest for
17 insufficient recoveries and additional charges equal to the aver-
18 age short-term borrowing rate available to the gas utility during
19 the appropriate period.

20 Sec. 5215. To avoid undue hardship or unduly burdensome or
21 excessive cost, the commission may exempt a gas utility with
22 fewer than 200,000 customers in this state from 1 or more of the
23 procedural provisions of this part or may modify the filing
24 requirements of this part.

25 Sec. 5216. (1) Notwithstanding any other provision of this
26 act, the commission may, upon application by a gas utility, set

1 gas cost recovery factors, in a manner otherwise consistent with
2 this act, in an order resulting from a general rate case.

3 (2) If the commission sets gas cost recovery factors in an
4 order resulting from a general rate case, all of the following
5 apply:

6 (a) The gas cost recovery factors shall cover a future
7 period of 48 months or the number of months that elapse until the
8 commission orders new gas cost recovery factors in a general rate
9 case, whichever is the shorter period.

10 (b) Annual reconciliation proceedings shall be conducted
11 under section 5211, and if an annual reconciliation proceeding
12 shows a recoverable amount under section 5213, the commission
13 shall authorize the gas utility to defer the amount and to accu-
14 mulate interest on the amount under section 5214 and in the next
15 order resulting from a general rate case shall authorize the gas
16 utility to recover the amount and interest from its customers in
17 the manner provided in section 5213.

18 (c) The gas cost recovery factors shall not be revised under
19 section 5209.

20 ARTICLE 6

21 PIPELINE COMPANIES

22 PART 61. OIL PIPELINE COMPANIES

23 Sec. 6101. Every person exercising or claiming the right to
24 carry or transport crude oil or petroleum, or any crude oil or
25 petroleum product, by or through pipelines for hire, compensa-
26 tion, or otherwise, or exercising or claiming the right to engage
27 in the business of piping, transporting, or storing crude oil or

1 petroleum, or any crude oil or petroleum product, or engaging in
2 the business of buying, selling, or dealing in crude oil or
3 petroleum, within the limits of this state, shall not have the
4 right to conduct or engage in said business or operations or have
5 the right to locate, maintain, or operate the necessary pipe-
6 lines, fixtures, and equipment belonging to or used in connection
7 with such business or operations, on, over, along, across,
8 through, in, or under any present or future highway, or else-
9 where, within the state, or have the right of eminent domain or
10 any other rights concerning said business or operations except as
11 provided by this part. However, this part does not impair any
12 right that existed as of March 27, 1929 and that is valid,
13 vested, and incapable of revocation by any law of this state or
14 the United States.

15 Sec. 6102. For the purpose of acquiring necessary
16 rights-of-way, a person is granted the right of condemnation by
17 eminent domain, and the use of the highways in this state, for
18 the purpose of transporting petroleum by pipelines, and the loca-
19 tion, laying, constructing, maintaining, and operating the same.
20 Such condemnation proceedings shall be conducted in accordance
21 with the same procedure and in the same manner as is provided by
22 the laws of this state for the condemnation of rights-of-way by
23 railroad companies.

24 Sec. 6103. The commission shall be authorized to control,
25 investigate, and regulate persons exercising or claiming the
26 right to carry or transport crude oil or petroleum, or any crude
27 oil or petroleum product, by or through pipelines, for hire,

1 compensation, or otherwise, or exercising or claiming the right
2 to engage in the business of piping, transporting, or storing
3 crude oil or petroleum, or any crude oil or petroleum product, or
4 engaging in the business of buying, selling, or dealing in crude
5 oil or petroleum within the limits of this state. However, all
6 persons who are producers or refiners of crude oil or petroleum,
7 or operators of private trunk or gathering lines or other methods
8 of conveying such products, where the nature and extent of their
9 business is private, and where in the conduct of such business no
10 public interest is involved, are specifically excepted and
11 excluded from the terms of this part.

12 Sec. 6104. (1) An oil pipeline company claiming or exercis-
13 ing the right to carry or transport crude oil or petroleum or any
14 crude oil or petroleum products by pipeline for hire, compensa-
15 tion, or otherwise, within the limits of this state, as owner,
16 lessee, licensee, or under any other right or claim, or engaged
17 in the business of purchasing or storing crude oil or petroleum,
18 is a common purchaser of the crude oil, petroleum, or products.

19 (2) A common purchaser shall purchase all the petroleum in
20 the vicinity of, or that may be reasonably reached by, its pipe-
21 lines or gathering branches, without discrimination in favor of
22 producer or 1 person against another.

23 (3) A common purchaser shall fully perform all the duties of
24 a common purchaser. If it is unable to perform those duties, or
25 is legally excused from purchasing, transporting, or storing all
26 of the petroleum produced, the common purchaser shall purchase,
27 transport, or store petroleum from each person and producer

1 ratably in proportion to the average daily production and is
2 prohibited from discriminating in price or amount for like grades
3 of oil or facilities between producers or persons.

4 (4) If the common purchaser is also a producer, it is pro-
5 hibited from discriminating in favor of its own production or
6 storage or production or storage in which it is interested
7 directly or indirectly, in whole or in part. The common
8 purchaser's own production and storage shall be treated as that
9 of any other person or producer.

10 Sec. 6105. (1) An oil pipeline company engaged in the busi-
11 ness of carrying or transporting crude oil or petroleum, or any
12 crude oil or petroleum products for hire, compensation, or other-
13 wise, by pipeline within this state, is a common carrier of the
14 crude oil, petroleum, or products as at common law.

15 (2) A common carrier shall not allow any unjust or unlawful
16 discrimination, directly or indirectly, in favor of the carriage,
17 transportation, storage, or delivery of any crude, stock, or
18 storage oil or any products of crude, stock, or storage oil in
19 its possession or control, or in which it is interested directly
20 or indirectly.

21 Sec. 6106. (1) Before an oil pipeline exercises the right
22 of eminent domain or right-of-way pursuant to section 6104 or
23 exercises any other right conferred by this part, the oil pipe-
24 line company shall file with the commission an explicit autho-
25 rized acceptance of this part.

26 (2) If the exercise of the right involves pipelines, the oil
27 pipeline company shall also file a plat showing in detail the

1 points within this state between which, and the route along
2 which, the trunklines are proposed to be constructed the
3 intended size and capacity of the trunklines, and the location
4 and capacity of all pumping stations, gate valves, check valves,
5 connections, or appliances to be used, on the trunklines or
6 lines.

7 (3) The commission may require the proper party to promptly
8 file a plat showing in detail all the lines owned and operated by
9 the party, with full information as to the capacity, size, loca-
10 tion, and valves or connections required or used in its
11 operation.

12 Sec. 6107. (1) A person who violates this part or a commis-
13 sion order issued or regulation under this part is liable for a
14 state civil infraction of not less than \$100.00 or more than
15 \$20,000.00.

16 (2) An officer, agent, representative, employee, or servant
17 of a person who causes, aids, assists, or participates in a vio-
18 lation described in subsection (1) is guilty of a misdemeanor
19 punishable by imprisonment for not less than 30 days or more than
20 1 year or a fine of not less than \$100.00 or more than \$1,000.00,
21 or both.

22 PART 62. GAS PIPELINE COMPANIES

23 Sec. 6201. Every corporation, association, or person, now
24 or hereafter exercising or claiming the right to carry or trans-
25 port natural gas by or through pipe line or lines, for hire, com-
26 pensation, or otherwise, or now or hereafter exercising or
27 claiming the right to engage in the business of piping or

1 transporting natural gas, or any other person or persons, now or
2 hereafter engaging in the business of buying and selling or
3 transporting natural gas within the limits of this state, shall
4 not have or possess the right to conduct or engage in said busi-
5 ness or operations, in whole or in part, as above described, or
6 have or possess the right to locate, maintain, or operate the
7 necessary pipe lines, fixtures, and equipment thereto belonging,
8 or use in connection therewith, concerning the said business of
9 carrying or transporting natural gas as aforesaid, on, over,
10 along, across, through, in, or under any present or future high-
11 way, or part thereof, or elsewhere, within the state, or have or
12 possess the right of eminent domain, or any other right or
13 rights, concerning said business or operation, in whole or in
14 part, except as authorized by and subject to the provisions of
15 this part, except, further, and only such right or rights as may
16 already exist as of March 19, 1929 which are valid, vested, and
17 incapable of revocation by any law of this state or of the United
18 States.

19 Sec. 6202. For the purpose of acquiring necessary
20 rights-of-way, every such corporation, association or person is
21 hereby granted the right of condemnation by eminent domain, and
22 the use of the highways in this state, for the purpose of trans-
23 porting natural gas by pipe lines, and for locating, laying, con-
24 structing, maintaining, and operating the same; and such condem-
25 nation proceedings shall be conducted in accordance with the pro-
26 cedure and in the same manner as is provided by the laws of this
27 state for the condemnation of rights-of-way by railroad

1 companies: Provided, however, That no corporation, association
2 or person shall be granted such right of condemnation by eminent
3 domain or the right to use the highways of this state to lay or
4 construct, maintain, or operate a pipe line or lines for the
5 transmission or transportation of natural gas unless and except
6 such pipe line or lines are to be used solely and exclusively for
7 the transmission, transportation, and distribution of natural gas
8 within this state.

9 Sec. 6203. There is hereby granted to and vested in the
10 commission the power to control and regulate corporations, asso-
11 ciations, and persons engaged, directly or indirectly, in the
12 business of purchasing or selling or transporting natural gas for
13 public use; and the commission shall investigate any alleged
14 neglect or violation of the laws of the state by any corporation,
15 association, or person purchasing or selling natural gas and
16 transmitting or conveying the same by pipe line or lines for
17 public use: Provided, That nothing in this part shall be con-
18 strued to prevent oil and gas operators or producers of gas from
19 laying pipe lines to transport or transmit gas to drilling wells
20 within this state: And provided further, That factories or
21 industries in this state may transport or transmit gas through
22 pipe lines for their own use in plants located wholly within this
23 state without constituting themselves a common purchaser within
24 the terms of this part.

25 Sec. 6204. Every corporation, association, or person, now
26 or hereafter claiming or exercising the right to carry or
27 transport natural gas by pipe line or lines, for hire,

1 compensation, or otherwise, within the limits of this state, as
2 owner, lessee, licensee, or by virtue of any other right or
3 claim, or now engaged or hereafter engaging in the business of
4 purchasing and selling natural gas shall be a common purchaser
5 thereof, and shall purchase all the natural gas in the vicinity
6 of, or which may be reasonably reached by its pipe lines, or
7 gathering branches, without discrimination in favor of 1 producer
8 or 1 person as against another, and shall fully perform all the
9 duties of a common purchaser; but if it shall be unable to per-
10 form the same, or be legally excused from purchasing and trans-
11 porting all the natural gas produced or offered, then it shall
12 purchase and transport natural gas from each person or producer
13 ratably, in proportion to the average production, and such common
14 purchasers are hereby expressly prohibited from discriminating in
15 price or amount for like grades of natural gas or facilities as
16 between producers or persons; and in the event it is likewise a
17 producer, it is hereby prohibited from discrimination in favor of
18 its own production, or production in which it may be interested
19 directly or indirectly, in whole or in part, and its own produc-
20 tion shall be treated as that of any other person or producer.

21 Sec. 6205. The commission is hereby empowered and it is
22 made its duty to make regulations for the equitable purchasing,
23 taking, and collecting of all such gas, for the metering and
24 delivery of the same and for providing adequate facilities for
25 service demanded, which regulations shall apply to all persons
26 affected thereby in like manner; and it shall have authority to
27 relieve any such common purchaser, after due application, notice,

1 and hearing, from the obligation of purchasing gas of an inferior
2 quality or grade or from purchasing gas from wells which for eco-
3 nomic reasons are not at the time a practicable source of
4 supply.

5 Sec. 6206. All corporations, associations, and persons,
6 purchasing or collecting natural gas and transmitting or convey-
7 ing the same for hire, compensation, or otherwise by pipe line or
8 lines as a common carrier shall be a common carrier thereof as at
9 common law, and it shall be unlawful for any such common carrier
10 doing business within this state to give, either directly or
11 indirectly, any preference or advantage to any person, copartner-
12 ship, corporation or locality, in any respect whatsoever as to
13 rates, service, facilities for service or commodity delivered.

14 Sec. 6207. All corporations, associations, and persons,
15 whether producing or receiving gas from producers in any produc-
16 tion field are hereby prohibited from taking more than 25 per
17 centum of the daily natural flow of any gas well or wells,
18 unless, for good cause shown, under the exigencies of the partic-
19 ular case, the commission shall establish a higher or lower per
20 centum under the prescribed rules and regulations thereof.

21 Sec. 6208. Whenever the full production from any common
22 source or field of supply of natural gas in this state is in
23 excess of the market demands, then any common purchaser of such
24 natural gas as herein defined receiving production or output from
25 such source or field shall take therefrom only such proportion of
26 the available supply as may be marketed and utilized without
27 waste, as the natural flow of the well or wells owned or

1 controlled by such common purchaser bears to the total natural
2 flow or production of such common source or field, having due
3 regard to the acreage drained by each well, so as to prevent any
4 common purchaser from securing an unfair proportion therefrom;
5 and it shall be the duty of the commission and it is hereby
6 empowered to regulate and enforce the above provision, provided
7 that the commission may by proper order permit the taking of a
8 greater proportion by any common purchaser whenever or wherever
9 it shall determine a taking of such greater proportion reasonable
10 and equitable or conducive to public convenience or necessity.

11 Sec. 6209. Any corporation, association, or person within
12 the terms of this act desiring to construct transmission mains
13 for the transportation or conveying of natural gas from its
14 source to the locality or localities where utilized, shall submit
15 to the commission, accompanied by due application, a map or plat
16 of such proposed line or lines which it desires to construct,
17 showing the dimensions and character of such proposed pipe line
18 or lines, its compression stations, control valves, and connec-
19 tions, and shall first receive the approval of the commission of
20 such map, route and type of construction before proceeding with
21 the actual construction of such transmission lines, and it shall
22 be the duty of the commission to examine and inquire into the
23 necessity and practicability of such transmission line or lines
24 and to determine that such line or lines will when constructed
25 and in operation serve the convenience and necessities of the
26 public before approval of such map and proposed transmission line
27 or lines: Provided, That persons, associations, or corporations

1 having already acquired the rights of common purchasers and
2 common carriers as of March 19, 1929 shall be required to file
3 the map or plat provided for in this section only.

4 Sec. 6210. A common purchaser or common carrier of natural
5 gas, before receiving the gas for transmission or delivery, shall
6 file with the commission a schedule of the rates and price at
7 which the common purchaser or common carrier will receive gas at
8 delivery stations from a well, field, or source of supply, as
9 well as the rates or charges at which the common purchaser or
10 common carrier will deliver gas to connecting carriers or dis-
11 tributing lines or customers, and, if the common purchaser or
12 common carrier is operating as a carrier for hire, the rates and
13 charges which the common purchaser or common carrier will charge
14 for the service to be performed by it. A common purchaser or
15 common carrier operating as a carrier for hire also shall file a
16 copy of each contract for purchasing, receiving, or supplying
17 gas. The price to be paid and the rates and charges shall be
18 stated and set up in the manner and form required by the commis-
19 sion and outlined in the rules of the commission for filing of
20 rates of artificial gas utilities or pursuant to rules and condi-
21 tions of service adopted by the commission, which the commission
22 may make for the regulation of common purchasers and common car-
23 riers of natural gas. Thereafter, a common purchaser or common
24 carrier of natural gas may alter or amend its price paid, rates,
25 charges, and conditions of service by application to and approval
26 by the commission in the same manner and by the same process and
27 under the same legal limitations and like right as are now

1 provided by statute for the regulation by the commission of the
2 rates for electricity transmitted in this state and process of
3 appeal provided in article 4.

4 Sec. 6211. Every common purchaser or common carrier of nat-
5 ural gas shall file with the commission a true and verified copy
6 of the contract for the sale and purchase of gas entered into
7 between the producer or producers and such common purchaser or
8 common carrier, within 30 days after the making thereof.

9 Sec. 6212. Every common purchaser and common carrier of
10 natural gas is hereby required to file with the commission on or
11 before April first of each year, upon blanks to be prescribed and
12 furnished by the commission, an annual statement of its income,
13 expenses, operating and corporate accounts for the preceding cal-
14 endar year, including the state of its finances in capital secur-
15 ities, fixed capital and other related corporate or balance sheet
16 accounts and including also statistical data relating to the pro-
17 duction, purchase, transmission and sales of gas by such common
18 purchasers and common carriers of natural gas, its equipment
19 facilities and customers, said statement to be verified by the
20 oath of some officer of the utility knowing the facts stated
21 therein.

22 Sec. 6213. The commission shall have the power and author-
23 ity and it is hereby made its duty to prescribe the manner and
24 the form or system of accounts, financial records, and operating
25 memoranda or data to be set up and kept by all common purchasers
26 and common carriers of natural gas and every common purchaser and
27 common carrier of natural gas existing and operating within this

1 state is hereby required to set up and keep its books of
2 accounts, records and memoranda in the manner and form prescribed
3 by the commission.

4 Sec. 6214. The commission shall have authority to prevent
5 the waste of natural gas in producing operations and in the
6 piping and distribution thereof and to make rules and regulations
7 for that purpose. It is hereby authorized and empowered to do
8 all things necessary for the conservation of natural gas in con-
9 nection with the production, piping and distribution thereof and
10 to establish such other rules and regulations as will be neces-
11 sary to carry into effect this part, to conserve the natural gas
12 resources of the state and to preserve the public peace, safety,
13 and convenience in relation thereto.

14 Sec. 6215. Any corporation, association, or person, violat-
15 ing any provision of this part or any order or regulation of the
16 commission made pursuant thereto, shall be deemed guilty of an
17 unlawful act and shall be liable to a penalty of not less than
18 100 dollars, nor more than 20,000 dollars. Any officer, agent,
19 representative, employee, or servant of any corporation or asso-
20 ciation or any person who causes, aids or assists, or partici-
21 pates in any such unlawful act shall be deemed guilty of a misde-
22 meanor, and on conviction thereof shall be liable to a fine of
23 not less than 100 dollars, nor more than 1,000 dollars, or to
24 imprisonment in the county jail not less than 30 days, nor more
25 than 1 year, or to both such fine and imprisonment in the discre-
26 tion of the court. Said penalty shall be exclusive of civil
27 liability.

1 Sec. 6216. Nothing in this part contained shall be
2 construed to vest the commission with regulatory control and
3 authority over any natural gas utility owned and operated by a
4 municipal corporation nor to in any way infringe upon the author-
5 ity of the duly constituted official bodies having charge of such
6 municipally owned utilities.

7 PART 63. GAS SAFETY STANDARDS

8 Sec. 6301. As used in this part:

9 (a) "Gas" means natural gas, flammable gas, or gas that is
10 toxic or corrosive.

11 (b) "Person" means an individual, firm, joint venture, part-
12 nership, corporation, association, municipality, cooperative
13 association, or joint stock association, and includes a trustee,
14 receiver, assignee, or personal representative of such an
15 entity.

16 (c) "Pipeline facilities" includes, but is not limited to,
17 new and existing pipelines, rights-of-way, and any equipment,
18 facility, or building used in the transportation of gas or the
19 treatment of gas during the course of transportation.

20 (d) "Transportation of gas" means the gathering, transmis-
21 sion, or distribution of gas by pipeline or the storage of gas.
22 Transportation of gas does not include the gathering of gas in
23 rural locations that lie outside the limits of an incorporated or
24 unincorporated city, town, village, or other designated residen-
25 tial or commercial area such as a subdivision, business center,
26 shopping center, community development, or similar populated area
27 that the commission defines as a nonrural area. Transportation

1 of gas includes gathering lines located in or occupying the
2 property of schools, hospitals, churches, parks, or similar
3 public places.

4 Sec. 6302. (1) The commission shall promulgate rules and
5 prescribe safety standards for pipeline facilities and the trans-
6 portation of gas. In prescribing safety standards, the commis-
7 sion shall consider all of the following:

8 (a) Relevant available pipeline safety data.

9 (b) Whether the standards are appropriate for the particular
10 type of pipeline transportation.

11 (c) The extent to which the standards will contribute to
12 public safety.

13 (2) If a person engaged in the transportation of gas or the
14 operation of pipeline facilities applies, the commission, after
15 notice and opportunity for a hearing and under the terms and con-
16 ditions and to the extent the commission considers appropriate,
17 may waive in whole or in part compliance with any standard estab-
18 lished under this part if the waiver is not inconsistent with gas
19 pipeline safety. When it issues the waiver, the commission shall
20 state the reasons for its issuance.

21 Sec. 6303. A person who engages in the transportation of
22 gas or who owns or operates a pipeline facility shall do all of
23 the following:

24 (a) Comply with any standard the commission prescribes.

25 (b) File and comply with a plan of inspection and mainte-
26 nance as required by section 6304.

1 (c) Permit access to and the copying of records, make
2 reports and provide information, and permit entry and inspection
3 as required by sections 6305 and 6306.

4 Sec. 6304. A person who engages in the transportation of
5 gas or who owns or operates pipeline facilities shall file with
6 the commission a plan for inspection and maintenance of each
7 pipeline facility owned or operated by the person and any changes
8 in the plan, in accordance with the commission's rules. If the
9 commission finds that the plan is inadequate to achieve pipeline
10 safety, it shall require the plan to be revised, after notice and
11 opportunity for a hearing. In determining the adequacy of any
12 plan, the commission shall consider all of the following:

13 (a) Relevant available pipeline safety data.

14 (b) Whether the plan is appropriate for the particular type
15 of pipeline transportation.

16 (c) The extent to which the plan will contribute to the
17 public safety.

18 Sec. 6305. (1) A person who engages in the transportation
19 of gas or who owns or operates pipeline facilities shall estab-
20 lish and maintain records, make reports, and provide information
21 as the commission reasonably requires to enable it to determine
22 whether the person has acted or is acting in compliance with the
23 standards established under this part.

24 (2) Upon the request of the commission, the person shall
25 permit the commission or a person authorized by the commission to
26 inspect the person's books, papers, records, or other relevant

1 documents to determine whether the person has acted or is acting
2 in compliance with the standards established under this part.

3 Sec. 6306. (1) The commission may conduct an inspection or
4 investigation as necessary to aid in the enforcement of this part
5 and the standards established under this part. The commission
6 shall furnish the attorney general any information obtained indi-
7 cating noncompliance with the standards for appropriate action.

8 (2) To enforce this part, officers, employees, or agents
9 authorized by the commission, upon presenting appropriate creden-
10 tials to the person in charge of the pipeline facilities, may
11 enter and inspect pipeline facilities at reasonable times, in a
12 reasonable manner, and with reasonable promptness.

13 Sec. 6307. (1) Accident reports made by a commission
14 employee or agent are available for use in any civil, criminal,
15 or other judicial proceeding arising out of the accident and the
16 officer, employee, or agent may be required to testify in the
17 proceedings.

18 (2) The report shall be made available to the public in a
19 manner that does not identify individuals. All reports on
20 research projects, demonstration projects, and other related
21 activities are public information.

22 Sec. 6308. (1) All information reported to or otherwise
23 obtained by the commission or its representative under section
24 6305, 6306, or 6307 that contains or relates to a trade secret
25 referred to in section 1905 of chapter 93 of title 18 of the
26 United States Code, 18 U.S.C. 1905, is confidential for the
27 purposes of that section. The information may be disclosed to

1 other officers and employees concerned with carrying out this
2 part or when relevant in any proceeding under this part.

3 (2) This section does not authorize the withholding of
4 information by the commission or a commission employee or agent
5 from a standing committee of the legislature concerned with gas.

6 Sec. 6309. (1) The commission may conduct research, test-
7 ing, development, and training necessary to carry out this part.

8 (2) Upon request, the commission shall furnish to the fed-
9 eral department of transportation any information it has concern-
10 ing the safety of materials, operations, devices, or processes
11 relating to the transportation of gas or the operation of pipe-
12 line facilities.

13 (3) The commission may advise, assist, and cooperate with
14 other state departments and agencies and other interested public
15 and private agencies and persons in planning and developing
16 safety standards and methods for inspecting and testing to deter-
17 mine compliance with safety standards.

18 Sec. 6310. (1) This part does not apply to a pipeline
19 facility or the transportation of gas subject to the jurisdiction
20 of the federal energy regulatory commission under the natural gas
21 act, chapter 556, 52 Stat. 821, 15 U.S.C. 717 to 717w.

22 (2) This part applies to a person engaged in interstate com-
23 merce other than a person subject to the jurisdiction of the fed-
24 eral energy regulatory commission.

25 Sec. 6311. (1) A person who violates this part or a rule
26 promulgated under this part is liable for a state civil
27 infraction of not more than \$10,000.00 for each violation for

1 each day that the violation persists, except that the maximum
2 civil penalty shall not exceed \$500,000.00 for any related series
3 of violations.

4 (2) In determining the amount of the fine, the commission
5 shall consider all of the following:

6 (a) The effect on the ability of the person charged to con-
7 tinue in business.

8 (b) The nature, circumstances, and gravity of the
9 violation.

10 (c) Any good faith effort by the person charged to comply
11 with the requirements of this part.

12 (d) The degree of culpability of the person charged.

13 (e) The history of prior violations of the person charged.

14 (f) The ability of the person charged to pay.

15 (g) Other matters as justice requires.

16 (3) The amount of the penalty stipulated may be deducted
17 from a sum the state owes the person charged or may be recovered
18 in a civil action in the Ingham county circuit court.

19 (4) A person who willfully and knowingly defaces, damages,
20 removes, or destroys a pipeline sign or right-of-way marker
21 required under this part is guilty of a misdemeanor punishable by
22 imprisonment for not more than 1 year or by a fine of not more
23 than \$5,000.00, or both, for each offense.

24 Sec. 6312. (1) The Ingham county circuit court has juris-
25 diction to restrain violations of this part, including restrain-
26 ing transportation of gas or operation of a pipeline facility,

1 and to enforce standards established under this part upon
2 petition by the attorney general.

3 (2) If practical, the commission shall give notice to any
4 person against whom an action for injunctive relief is contem-
5 plated and afford that person an opportunity to be heard. Except
6 in the case of a knowing and willful violation, the commission
7 shall also afford the person a reasonable opportunity to achieve
8 compliance. The failure to give notice and afford the opportu-
9 nity does not preclude the granting of appropriate relief.

10

ARTICLE 7

11

SAVINGS CLAUSES AND REPEALER

12

PART 71. SAVINGS CLAUSES

13 Sec. 7101. A proceeding before the commission on the effec-
14 tive date of this act shall continue under this act.

15 Sec. 7102. This act does not repeal or alter the content or
16 effect of orders that were issued under an act repealed by this
17 act and codified as a part or section of this act.

18 Sec. 7103. If this act directs the commission or other
19 agency to promulgate rules and rules exist on the date the
20 requirement to promulgate rules takes effect that the commission
21 or agency believes adequately cover the matter, the commission or
22 agency may determine that new rules are not required or may delay
23 the promulgation of new rules until the commission or agency con-
24 siders it advisable.

25 Sec. 7104. (1) The repeal of any statute by this act does
26 not relinquish any penalty, forfeiture, or liability, whether
27 criminal or civil in nature.

1 (2) The repealed statute shall be treated as still remaining
2 in force as necessary to institute or sustain any proper action
3 or prosecution for the enforcement of the penalty, forfeiture, or
4 liability.

5 Sec. 7105. All complaints pending before the commission as
6 of the effective date of this act and all investigations, exami-
7 nations, proceedings, and cases undertaken, commenced, or insti-
8 tuted by the commission before the effective date of this act may
9 be heard, conducted, and continued to final determination, and
10 all pending actions or proceedings brought by or against the com-
11 mission may be prosecuted or defended in the same manner.

PART 72. REPEALER

1
2 Sec. 7201. The following acts and parts of acts are
3 repealed:

4				<u>MICHIGAN</u>
5				<u>COMPILED LAWS</u>
6	<u>YEAR OF ACT</u>	<u>PUBLIC ACT NUMBER</u>	<u>SECTION NUMBER</u>	<u>SECTIONS</u>
7	1909	106		460.551 to 460.559
8	1909	266		460.601 to 460.604
9	1909	300		462.2 to 462.50
10	1919	419		460.54 to 460.62
11	1921	347		460.651 to 460.652
12	1923	94		460.351 to 460.352
13	1929	9		483.101 to 483.120
14	1929	16		483.1 to 483.11
15	1929	69		460.501 to 460.506
16	1939	3	1 to 6p and 8	460.1 to 460.8
17	1965	380	231	16.331
18	1969	165		483.151 to 483.162
19	1972	299		460.111 to 460.120
20	1974	53		460.701 to 460.718
21	1976	448		460.801 to 460.848
22	1982	191		10.81 to 10.89
23	1995	30		460.561 to 460.575

24 Sec. 7202. Executive Reorganization Order No. 1993-9, being
25 section 460.20 of the Michigan Compiled Laws, is repealed.