



# HOUSE BILL No. 5205

December 9, 1999, Introduced by Reps. Bradstreet, Stallworth, Middaugh, Birkholz, Howell, Toy and Mortimer and referred to the Committee on Energy and Technology.

A bill to amend 1939 PA 3, entitled

"An act to provide for the regulation and control of public utilities and other services affected with a public interest within this state; to create a public service commission and to prescribe and define its powers and duties; to abolish the Michigan public utilities commission and to confer the powers and duties vested by law therein on the public service commission; to provide for the continuance, transfer, and completion of certain matters and proceedings; to abolish automatic adjustment clauses; to prohibit rate increases without notice and hearing; to qualify residential energy conservation programs permitted under state law for certain federal exemption; to provide for a restructuring of rates for certain utilities; to encourage the utilization of resource recovery facilities; to provide for appeals; to provide appropriations; to declare the effect of this act; to prescribe penalties; and to repeal all acts contrary to this act,"

(MCL 460.1 to 460.8) by adding sections 9h, 9i, and 9j.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 SEC. 9H. (1) A LOCAL DISTRIBUTION COMPANY THAT HAS A NON-
- 2 REGULATED MARKETING AFFILIATE THAT IS PROVIDING A MARKET-BASED
- 3 COMMODITY SERVICE IN THE AFFILIATED LOCAL DISTRIBUTION COMPANY'S

1 SERVICE TERRITORY SHALL COMPLY WITH A CODE OF CONDUCT THAT  
2 PROVIDES ALL OF THE FOLLOWING:

3 (A) THE COMPANY SHALL APPLY ANY TARIFF PROVISION RELATING TO  
4 TRANSPORTATION SERVICE IN THE SAME MANNER WITHOUT DISCRIMINATION  
5 TO ALL SIMILARLY SITUATED PERSONS.

6 (B) THE COMPANY SHALL NOT GIVE A MARKETING AFFILIATE OR CUS-  
7 TOMERS OF AN AFFILIATE PREFERENCE OVER ANY OTHER NONAFFILIATED  
8 GAS MARKETERS OR THEIR CUSTOMERS IN MATTERS RELATING TO SERVICE  
9 INCLUDING, BUT NOT LIMITED TO, TRANSPORTING, NOMINATING, BALANC-  
10 ING, METERING, BILLING, STORAGE, STANDBY SERVICE, CURTAILMENT  
11 POLICY, OR PRICE DISCOUNTS.

12 (C) THE COMPANY SHALL NOT COMMUNICATE TO ANY CUSTOMER, SUP-  
13 PLIER, OR THIRD PARTIES THAT ANY ADVANTAGE MAY ACCRUE TO THE CUS-  
14 TOMER, SUPPLIER, OR OTHER THIRD PARTY IN THE USE OF THE COMPANY'S  
15 SERVICES AS A RESULT OF THAT CUSTOMER, SUPPLIER, OR OTHER THIRD  
16 PARTY DEALING WITH A MARKETING AFFILIATE AND SHALL REFRAIN FROM  
17 GIVING ANY APPEARANCE THAT IT SPEAKS ON BEHALF OF AN AFFILIATE.

18 (D) THE COMPANY SHALL PROCESS ALL SIMILAR REQUESTS FOR SERV-  
19 ICE IN THE SAME MANNER AND WITHIN THE SAME PERIOD OF TIME.

20 (E) THE COMPANY SHALL NOT PROVIDE LEADS OR MARKET SENSITIVE  
21 INFORMATION REGARDING A CURRENT OR POTENTIAL CUSTOMER TO A MAR-  
22 KETING AFFILIATE. IF A CUSTOMER REQUESTS INFORMATION ABOUT  
23 MARKETERS, THE COMPANY SHALL PROVIDE A LIST OF ALL MARKETERS  
24 OPERATING ON ITS SYSTEM, INCLUDING AN AFFILIATE, BUT SHALL NOT  
25 PROMOTE THE AFFILIATE.

26 (F) IF A CUSTOMER MAKES A REQUEST IN WRITING THAT ITS  
27 HISTORICAL SALES AND TRANSPORTATION DATA BE PROVIDED TO A

1 PARTICULAR MARKETER OR MARKETERS IN GENERAL, THAT REQUEST SHALL  
2 BE HONORED BY THE COMPANY UNTIL INSTRUCTED OTHERWISE BY THE  
3 CUSTOMER.

4 (G) TO THE EXTENT THE COMPANY PROVIDES TO A MARKETING AFFIL-  
5 IATE A DISCOUNT OR INFORMATION RELATED TO THE TRANSPORTATION,  
6 SALES, OR MARKETING OF NATURAL GAS THAT IS NOT READILY AVAILABLE  
7 OR GENERALLY KNOWN TO ANY OTHER MARKETER OR SUPPLIER, OR THAT HAS  
8 NOT BEEN AUTHORIZED BY A CUSTOMER, THE COMPANY SHALL PROVIDE  
9 DETAILS OF THE DISCOUNT OR INFORMATION CONTEMPORANEOUSLY TO ALL  
10 MARKETERS ON ITS SYSTEM THAT HAVE REQUESTED THE INFORMATION.

11 (H) THE COMPANY SHALL NOT CONDITION OR TIE ITS AGREEMENT TO  
12 RELEASE INTERSTATE PIPELINE CAPACITY TO ANY AGREEMENT BY A GAS  
13 MARKETER, CUSTOMER, SUPPLIER, OR PIPELINE TRANSPORTER RELATING TO  
14 ANY SERVICE IN WHICH A MARKETING AFFILIATE IS INVOLVED.

15 (I) THE COMPANY SHALL NOT CONDITION OR TIE AN AGREEMENT TO  
16 PROVIDE A TRANSPORTATION DISCOUNT TO ANY AGREEMENT BY A MARKETER,  
17 CUSTOMER, SUPPLIER, OR PIPELINE TRANSPORTER RELATING TO ANY SERV-  
18 ICE IN WHICH A MARKETING AFFILIATE IS INVOLVED.

19 (J) THE COMPANY'S OPERATING EMPLOYEES AND THE OPERATING  
20 EMPLOYEES OF A MARKETING AFFILIATE SHALL FUNCTION INDEPENDENTLY  
21 OF EACH OTHER, BE EMPLOYED BY SEPARATE CORPORATE ENTITIES, AND  
22 RESIDE IN SEPARATE OFFICES.

23 (K) THE COMPANY SHALL KEEP SEPARATE BOOKS OF ACCOUNTS AND  
24 RECORDS FROM THOSE OF A MARKETING AFFILIATE.

25 (2) THE COMMISSION SHALL NOT DO ANY OF THE FOLLOWING:

1 (A) IMPOSE ANY RESTRICTIONS ON THE USE OF A LOCAL  
2 DISTRIBUTION COMPANY'S NAME OR LOGO IN PROVIDING UNREGULATED  
3 SERVICES.

4 (B) REQUIRE A LOCAL DISTRIBUTION COMPANY TO DIVEST ITSELF OF  
5 ANY FUNCTIONS, ASSETS, PERSONNEL, PRODUCT LINES, BUSINESSES, OR  
6 OTHER RESOURCES.

7 (C) REQUIRE, DIRECTLY OR INDIRECTLY, THAT BENEFITS DERIVED  
8 BY A LOCAL DISTRIBUTION COMPANY FROM PROVIDING UNREGULATED SERV-  
9 ICES BE PASSED ON TO REGULATED SERVICE CUSTOMERS.

10 (D) EXCEPT AS OTHERWISE PROVIDED BY THIS ACT, REGULATE ANY  
11 ASPECT OF THE BUSINESS OR COMMERCIAL RELATIONSHIP BETWEEN THE  
12 LOCAL DISTRIBUTION COMPANY AND ANY GAS COMMODITY SUPPLIER.

13 (3) THE COMMISSION DOES NOT HAVE AUTHORITY OVER THE PROVID-  
14 ING OF UNREGULATED SERVICES.

15 (4) A LOCAL DISTRIBUTION COMPANY SHALL PROVIDE INFORMAL DIS-  
16 PUTE RESOLUTION PROCEDURES AVAILABLE TO ANY PERSON SEEKING TO  
17 RESOLVE A COMPLAINT CONCERNING ALLEGED VIOLATIONS OF ANY OF THE  
18 PROVISIONS OF SUBSECTION (1). THESE PROCEDURES SHALL BE IN ADDI-  
19 TION TO A PROCEEDING UNDER SECTION 9K.

20 SEC. 9I. (1) EXCEPT UNDER THE TERMS OF A MANDATORY PROTEC-  
21 TIVE ORDER, TRADE SECRETS AND COMMERCIAL OR FINANCIAL INFORMATION  
22 SUBMITTED BY A LOCAL DISTRIBUTION COMPANY OR LICENSED SUPPLIER  
23 UNDER THIS ACT ARE EXEMPT FROM THE FREEDOM OF INFORMATION ACT,  
24 1976 PA 442, MCL 15.231 TO 15.246.

25 (2) IF INFORMATION IS DISCLOSED UNDER A MANDATORY PROTECTIVE  
26 ORDER, THEN THE INFORMATION MAY BE INCLUDED IN THE COMMISSION'S  
27 EVIDENTIARY RECORD IF ADMISSIBLE AND REMAINS CONFIDENTIAL.

1           (3) THERE IS A REBUTTABLE PRESUMPTION THAT COST STUDIES,  
2 CUSTOMER USAGE DATA, MARKETING STUDIES, AND CONTRACTS BETWEEN GAS  
3 COMMODITY SUPPLIERS ARE TRADE SECRETS OR COMMERCIAL OR FINANCIAL  
4 INFORMATION PROTECTED UNDER SUBSECTION (1). THE BURDEN OF REMOV-  
5 ING THE PRESUMPTION IS WITH THE PARTY SEEKING TO HAVE THE INFOR-  
6 MATION DISCLOSED.

7           (4) THIS SECTION DOES NOT APPLY TO PROCEEDINGS CONDUCTED  
8 UNDER SECTION 6H.

9           SEC. 9J. (1) THE RATES AND RELATED ACCOUNTING PRACTICES FOR  
10 REGULATED SERVICE THAT WERE IN EFFECT FOR EACH LOCAL DISTRIBUTION  
11 COMPANY ON JULY 1, 1999 HAVE BEEN ESTABLISHED TO RECOVER THE  
12 COSTS PREVIOUSLY APPROVED FOR RECOVERY BY THE COMMISSION AND  
13 SHALL REMAIN IN EFFECT THROUGH DECEMBER 31, 2005. RATE ADJUST-  
14 MENTS OR RATE ADJUSTMENT MECHANISMS OR REFUNDS THAT HAVE THE  
15 EFFECT OF MODIFYING REGULATED SERVICE RATES SHALL NOT BE EFFEC-  
16 TIVE DURING THIS PERIOD, PROVIDED THAT THE PROVISIONS OF AN  
17 EXPERIMENTAL CUSTOMER CHOICE PLAN THAT WAS IN EFFECT AS OF JULY  
18 1, 1999 CONTINUES IN EFFECT FOR THE TERM OF THAT EXPERIMENTAL  
19 CUSTOMER CHOICE PLAN. AS OF JANUARY 1, 2006, RATES FOR REGULATED  
20 SERVICE SHALL REMAIN IN EFFECT, SUBJECT TO COMMISSION JURISDIC-  
21 TION AND THE APPLICABLE LAWS IN EFFECT ON JULY 1, 1999.

22           (2) THE FIXING OF RATES UNDER SUBSECTION (1) THROUGH  
23 DECEMBER 31, 2005 DOES NOT APPLY TO ANY LOCAL DISTRIBUTION COM-  
24 PANY SERVING LESS THAN 200,000 RETAIL CUSTOMERS THAT FILES A  
25 NOTICE WITH THE COMMISSION WITHIN 90 DAYS OF THE EFFECTIVE DATE  
26 OF THE AMENDATORY ACT THAT ADDED THIS SECTION ELECTING NOT TO BE  
27 SUBJECT TO SUBSECTION (1).

1       Enacting section 1. This amendatory act does not take  
2 effect unless all of the following bills of the 90th Legislature  
3 are enacted into law:

4       (a) Senate Bill No. \_\_\_\_\_ or House Bill No. 5201 (request  
5 no. 04283'99).

6       (b) Senate Bill No. \_\_\_\_\_ or House Bill No. 5202 (request  
7 no. 04283'99 a).

8       (c) Senate Bill No. \_\_\_\_\_ or House Bill No. 5203 (request  
9 no. 04283'99 b\*).

10       (d) Senate Bill No. \_\_\_\_\_ or House Bill No. 5204 (request  
11 no. 04283'99 c\*).

12       (e) Senate Bill No. \_\_\_\_\_ or House Bill No. 5207 (request  
13 no. 04283'99 e).