

SENATE BILL No. 755

September 13, 2005, Introduced by Senators PATTERSON, HAMMERSTROM, BASHAM, CLARK-COLEMAN, BARCIA, CROPSEY, HARDIMAN, JACOBS, TOY, OLSHOVE, JELINEK, ALLEN, CHERRY, KUIPERS, CLARKE, GARCIA, GOSCHKA, SCOTT and BISHOP and referred to the Committee on Technology and Energy.

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 provide for alternative energy suppliers; to provide for licensing; to include municipally owned utilities and other providers of energy under certain provisions of this act; to create a public service commission and to prescribe and define its powers and duties; to abolish the Michigan public utilities commission and to confer the powers and duties vested by law on the public service commission; to provide for the continuance, transfer, and completion of certain matters and proceedings; to abolish automatic adjustment clauses; to prohibit certain rate increases without notice and hearing; to qualify residential energy conservation programs permitted under state law for certain federal exemption; to create a fund; to provide for a restructuring of the manner in which energy is provided in this state; to encourage the utilization of resource recovery facilities; to prohibit certain acts and practices of providers of energy; to allow for the securitization of stranded costs; to reduce rates; to provide for appeals; to provide appropriations; to declare the effect and purpose of this act; to prescribe remedies and penalties; and to repeal acts and parts of acts,"

by amending sections 10a and 10d (MCL 460.10a and 460.10d), section

10a as amended by 2004 PA 88 and section 10d as amended by 2002 PA 609; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 10a. (1) No later than January 1, 2002, the commission
2 shall issue orders establishing the rates, terms, and conditions of
3 service that allow all retail customers of an electric utility or
4 provider to choose an alternative electric supplier. The orders
5 shall provide for full recovery of a utility's net stranded costs
6 and implementation costs as determined by the commission.

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

23 **(3) AS USED IN SECTIONS 10 THROUGH 10CC:**

24 **(A) "ALTERNATIVE ELECTRIC SERVICE" MEANS THE PROVISION OF**

1 ELECTRIC GENERATION SERVICE TO CUSTOMERS BY AN ALTERNATIVE ELECTRIC
2 SUPPLIER.

3 (B) "ALTERNATIVE ELECTRIC SUPPLIER" MEANS A PERSON, OTHER THAN
4 AN ELECTRIC UTILITY, SELLING ALTERNATIVE ELECTRIC SERVICE TO RETAIL
5 CUSTOMERS IN THIS STATE. ALTERNATIVE ELECTRIC SUPPLIER DOES NOT
6 INCLUDE A PERSON WHO PHYSICALLY DELIVERS ELECTRICITY DIRECTLY TO
7 RETAIL CUSTOMERS IN THIS STATE. AN ALTERNATIVE ELECTRIC SUPPLIER IS
8 NOT A PUBLIC UTILITY.

9 (C) "COMMISSION" MEANS THE MICHIGAN PUBLIC SERVICE COMMISSION.

10 (D) "CUSTOMER" MEANS AN INDIVIDUAL, SOLE PROPRIETORSHIP,
11 PARTNERSHIP, CORPORATION, ASSOCIATION, GOVERNMENTAL ENTITY, OR
12 OTHER LEGAL ENTITY AT A SINGLE LOCATION WITHIN THE ELECTRIC
13 UTILITY'S SERVICE AREA.

14 (E) "ELECTRIC UTILITY" MEANS THAT TERM AS DEFINED IN SECTION 2
15 OF THE ELECTRIC TRANSMISSION LINE CERTIFICATION ACT, 1995 PA 30,
16 MCL 460.562.

17 (F) "MERCHANT PLANT" MEANS ELECTRIC GENERATING EQUIPMENT AND
18 ASSOCIATED FACILITIES WITH A CAPACITY OF MORE THAN 100 KILOWATTS
19 LOCATED IN THIS STATE THAT ARE NOT OWNED AND OPERATED BY AN
20 ELECTRIC UTILITY.

21 (G) "RENEWABLE ENERGY SOURCE" MEANS ENERGY GENERATED BY SOLAR,
22 WIND, GEOTHERMAL, BIOMASS, INCLUDING WASTE-TO-ENERGY AND LANDFILL
23 GAS, OR HYDROELECTRIC.

24 (4) ~~—(3)—~~ The commission shall issue orders to ensure that
25 customers in this state are not switched to another supplier or
26 billed for any services without the customer's consent.

27 (5) ~~—(4)—~~ No later than December 2, 2000, the commission shall

1 establish a code of conduct that shall apply to all electric
2 utilities. The code of conduct shall include, but is not limited
3 to, measures to prevent cross-subsidization, information sharing,
4 and preferential treatment, between a utility's regulated and
5 unregulated services, whether those services are provided by the
6 utility or the utility's affiliated entities. The code of conduct
7 established under this subsection shall also be applicable to
8 electric utilities and alternative electric suppliers consistent
9 with section 10, this section, and sections 10b through 10cc.

10 (6) ~~—(5)—~~ An electric utility may offer its customers an
11 appliance service program. Except as otherwise provided by this
12 section, the utility shall comply with the code of conduct
13 established by the commission under subsection ~~—(4)—~~ (5). As used
14 in this section, "appliance service program" or "program" means a
15 subscription program for the repair and servicing of heating and
16 cooling systems or other appliances.

17 (7) ~~—(6)—~~ A utility offering a program under subsection ~~—(5)—~~
18 (6) shall do all of the following:

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

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

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

1 utility bills.

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

16 (9) ~~—(8)—~~ A utility may include charges for its appliance
17 service program on its monthly billings to its customers if the
18 utility complies with all of the following requirements:

19 (a) All costs associated with the billing process, including
20 the postage, envelopes, paper, and printing expenses, are allocated
21 as required under subsection ~~—(7)—~~ (8).

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

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

1 (10) ~~—(9)—~~ In marketing its appliance service program to the
2 public, a utility shall do all of the following:

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

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

14 (c) Prior to enrolling a customer into the program, the
15 utility shall inform the potential customer of all of the
16 following:

17 (i) That appliance service programs may be available from
18 another provider.

19 (ii) That the appliance service program is not regulated by the
20 commission.

21 (iii) That a new customer shall have 10 days after enrollment to
22 cancel his or her appliance service program contract without
23 penalty.

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

1 (d) The utility name and logo may be used to market the
2 appliance service program provided that the program is not marketed
3 in conjunction with a regulated service. To the extent that a
4 program utilizes the utility's name and logo in marketing the
5 program, the program shall include language on all material
6 indicating that the program is not regulated by the commission.
7 Costs shall not be allocated to the program for the use of the
8 utility's name or logo.

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

15 (12) ~~—(11)—~~ Except as otherwise provided in this section, the
16 code of conduct with respect to an appliance service program shall
17 not require a utility to form a separate affiliate or division to
18 operate an appliance service program, impose further restrictions
19 on the sharing of employees, vehicles, equipment, office space, and
20 other facilities, or require the utility to provide other providers
21 of appliance repair service with access to utility employees,
22 vehicles, equipment, office space, or other facilities.

23 (13) ~~—(12)—~~ The orders issued by the commission before June 5,
24 2000 that allow customers of an electric utility to choose an
25 alternative electric supplier, including orders that determine and
26 authorize recovery of net stranded costs and implementation costs
27 and that confirm any voluntary commitments of electric utilities,

1 are in compliance with this act and enforceable by the commission.
2 An electric utility that has not had voluntary commitments to
3 provide customer choice previously approved by orders of the
4 commission shall file a restructuring plan to allow customers to
5 choose an alternative electric supplier no later than the date
6 ordered by the commission. The plan shall propose a methodology to
7 determine the electric utility's net stranded costs and
8 implementation costs.

9 (14) ~~—(13)—~~ This act does not prohibit or limit the right of a
10 person to obtain self-service power and does not impose a
11 transition, implementation, exit fee, or any other similar charge
12 on self-service power. A person using self-service power is not an
13 electric supplier, electric utility, or a person conducting an
14 electric utility business. As used in this subsection, "self-
15 service power" means any of the following:

16 (a) Electricity generated and consumed at an industrial site
17 or contiguous industrial site or single commercial establishment or
18 single residence without the use of an electric utility's
19 transmission and distribution system.

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

26 (c) A site or facility with load existing on June 5, 2000 that
27 is divided by an inland body of water or by a public highway, road,

1 or street but that otherwise meets this definition meets the
2 contiguous requirement of this subdivision regardless of whether
3 self-service power was being generated on June 5, 2000.

4 (d) A commercial or industrial facility or single residence
5 that meets the requirements of subdivision (a) or (b) meets this
6 definition whether or not the generation facility is owned by an
7 entity different from the owner of the commercial or industrial
8 site or single residence.

9 (15) —(14)— This act does not prohibit or limit the right of a
10 person to engage in affiliate wheeling and does not impose a
11 transition, implementation, exit fee, or any other similar charge
12 on a person engaged in affiliate wheeling. As used in this section:

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

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

27 (i) For at least 90 days during the period from January 1, 1996

1 to October 1, 1999, supplied by self-service power, but only to the
2 extent of the capacity reserved or load served by self-service
3 power during the period.

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

11 (16) ~~—(15)—~~ The rights of parties to existing contracts and
12 agreements in effect as of January 1, 2000 between electric
13 utilities and qualifying facilities, including the right to have
14 the charges recovered from the customers of an electric utility, or
15 its successor, shall not be abrogated, increased, or diminished by
16 this act, nor shall the receipt of any proceeds of the
17 securitization bonds by an electric utility be a basis for any
18 regulatory disallowance. Further, any securitization or financing
19 order issued by the commission that relates to a qualifying
20 facility's power purchase contract shall fully consider that
21 qualifying facility's legal and financial interests.

22 (17) ~~—(16)—~~ The commission shall, after a contested case
23 proceeding, issue annually an order approving for each electric
24 utility a true-up adjustment to reconcile any overcollections or
25 undercollections of the preceding 12 months to ensure the recovery
26 of all amounts of net stranded costs. The rates for customers
27 remaining with an incumbent electric utility will not be affected

1 by the true-up process under this subsection. The commission shall
2 review the electric utility's stranded cost recovery charges and
3 securitization charges implemented for the preceding 12 months, and
4 adjust the stranded cost recovery charge, by way of supplemental
5 surcharges or credits, to allow the netting of stranded costs.

6 (18) ~~—(17)—~~ The commission shall consider the reasonableness
7 and appropriateness of various methods to determine net stranded
8 costs, including, but not limited to, all of the following:

9 (a) Evaluating the relationship of market value to the net
10 book value of generation assets and purchased power contracts.

11 (b) Evaluating net stranded costs based on the market price of
12 power in relation to prices assumed by the commission in prior
13 orders.

14 (c) Any other method the commission considers appropriate.

15 (19) ~~—(18)—~~ The true-up adjustment adopted under subsection
16 ~~(16)—~~ (17) shall not result in a modification to the securitization
17 charge. The commission shall not adjust or change in any manner
18 securitization charges authorized by the commission in a financing
19 order issued under section 10i as a result of its review and any
20 action taken under subsection ~~—(16)—~~ (17).

21 (20) ~~—(19)—~~ After the time period described in section 10d(2),
22 the rates for retail customers that remain with or leave and later
23 return to the incumbent electric utility shall be determined in the
24 same manner as the rates were determined ~~—before the effective date~~
25 ~~of this section—~~ **JUNE 5, 2000.**

26 Sec. 10d. (1) Except as otherwise provided under subsection
27 (3) or unless otherwise reduced by the commission under subsection

1 (5), the commission shall establish the residential rates for each
2 electric utility with 1,000,000 or more retail customers in this
3 state as of May 1, 2000 that will result in a 5% rate reduction
4 from the rates that were authorized or in effect on May 1, 2000.
5 Notwithstanding any other provision of law or commission order,
6 rates for each electric utility with 1,000,000 or more retail
7 customers established under this subsection become effective on
8 June 5, 2000 and remain in effect until December 31, 2003 and all
9 other electric retail rates of an electric utility with 1,000,000
10 or more retail customers authorized or in effect as of May 1, 2000
11 shall remain in effect until December 31, 2003.

12 (2) On and after December 31, 2003, rates for an electric
13 utility with 1,000,000 or more retail customers in this state as of
14 May 1, 2000 shall not be increased until the earlier of December
15 31, 2013 or until the commission determines, after notice and
16 hearing, that the utility meets the market test under section 10f
17 and has completed the transmission expansion provided for in the
18 plan required under section 10v. ~~The rates for commercial or~~
19 ~~manufacturing customers of an electric utility with 1,000,000 or~~
20 ~~more retail customers with annual peak demands of less than 15~~
21 ~~kilowatts shall not be increased before January 1, 2005.~~ There
22 shall be no cost shifting from customers with capped rates to
23 customers without capped rates as a result of this section. In no
24 event shall residential rates be increased before January 1, ~~2006~~
25 **2008** above the rates established under subsection (1).

26 (3) Subsections (1) and (2) do not apply to rates or charges
27 authorized by the commission under subsection (13).

1 (4) Beginning January 1, 2004, annual return of and on capital
2 expenditures in excess of depreciation levels incurred during and
3 before the time period described in subsection (2), and expenses
4 incurred as a result of changes in taxes, laws, or other state or
5 federal governmental actions incurred by electric utilities during
6 the period described in subsection (2), shall be accrued and
7 deferred for recovery. After notice and hearing, the commission
8 shall determine the amount of reasonable and prudent costs, if any,
9 to be recovered and the recovery period, which shall not exceed 5
10 years, and shall not commence until after the expiration of the
11 period described in subsection (2).

12 (5) If the commission authorizes an electric utility to use
13 securitization financing under section 10i, any savings resulting
14 from securitization shall be used to reduce retail electric rates
15 from those authorized or in effect as of May 1, 2000 as required
16 under subsection (1). A rate reduction under this subsection shall
17 not be less than the 5% required under subsection (1). The
18 financing order may provide that a utility shall only issue
19 securitization bonds in an amount equal to or less than requested
20 by the utility, but the commission shall not preclude the issuance
21 of an amount of securitization bonds sufficient to fund the rate
22 reduction required under subsection (1).

23 (6) Except for savings assigned to the low-income and energy
24 efficiency fund under subsection (7), securitization savings
25 greater than those used to achieve the 5% rate reduction under
26 subsection (1) shall be allocated by the commission to further rate
27 reductions or to reduce the level of any charges authorized by the

1 commission to recover an electric utility's stranded costs. The
2 commission shall allocate approved securitization, transition,
3 stranded, and other related charges and credits in a manner that
4 does not result in a reallocation of cost responsibility among the
5 different customer classes.

6 (7) If securitization savings exceed the amount needed to
7 achieve a 5% rate reduction for all customers, then, for a period
8 of 6 years, 100% of the excess savings, up to 2% of the electric
9 utility's commercial and industrial revenues, shall be allocated to
10 the low-income and energy efficiency fund administered by the
11 commission. The commission shall establish standards for the use of
12 the fund to provide shut-off and other protection for low-income
13 customers and to promote energy efficiency by all customer classes.
14 The commission shall issue a report to the legislature and the
15 governor every 2 years regarding the effectiveness of the fund.

16 (8) Except as provided under subsection (3), until the end of
17 the period described in subsection (2), the commission shall not
18 authorize any fees or charges that will cause the residential rate
19 reduction required under subsection (1) to be less than 5%.

20 (9) If an electric utility serving less than 1,000,000 retail
21 customers in this state as of May 1, 2000 issues securitization
22 bonds as allowed under this act, it shall have the same rights,
23 duties, and obligations under this section as an electric utility
24 serving 1,000,000 or more retail customers in this state as of May
25 1, 2000.

26 (10) The commission shall take the necessary steps to ensure
27 that all electrical power generating facilities in this state

1 comply with all rules, regulations, and standards of the federal
2 environmental protection agency regarding mercury emissions.

3 (11) A covered utility may apply to the commission to recover
4 enhanced security costs for an electric generating facility through
5 a security recovery factor. If the commission action under
6 subsection (13) is approval of a security recovery factor, the
7 covered utility may recover those enhanced security costs.

8 (12) The commission shall require that notice of the
9 application filed under subsection (11) be published by the covered
10 utility within 30 days from the date the application was filed. The
11 initial hearing by the commission shall be held within 20 days of
12 the date the notice was published in newspapers of general
13 circulation in the service territory of the covered utility.

14 (13) The commission may issue an order approving, rejecting,
15 or modifying the security recovery factor. If the commission issues
16 an order approving a security recovery factor, that order shall be
17 issued within 120 days of the initial hearing required under
18 subsection (12). In determining the security recovery factor, the
19 commission shall only include costs that the commission determines
20 are reasonable and prudent and that are jurisdictionally assigned
21 to retail customers of the covered utility in this state. The costs
22 included shall be net of any proceeds that have been or will be
23 received from another source, including, but not limited to, any
24 applicable insurance settlements received by the covered utility or
25 any grants or other emergency relief from federal, state, or local
26 governmental agencies for the purpose of defraying enhanced
27 security costs. In its order, the commission shall designate a

1 period for recovery of enhanced security costs, including a
2 reasonable return on the unamortized balance, over a period not to
3 exceed 5 years. The security recovery factor shall not be less than
4 zero.

5 (14) ~~Within 60 days of the effective date of the amendatory~~
6 ~~act that added this subsection, the~~ **THE** commission shall by order
7 prescribe the form for the filing of an application for a security
8 recovery factor under subsection (11). If the commission or its
9 designee determines that a filing is incomplete, it shall notify
10 the covered utility within 10 days of the filing.

11 (15) Records or other information supplied by the covered
12 utility in an application for recovery of security costs under
13 subsection (11) that describe security measures, including, but not
14 limited to, emergency response plans, risk planning documents,
15 threat assessments, domestic preparedness strategies, and other
16 plans for responding to acts of terrorism are not subject to the
17 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and
18 shall be treated as confidential by the commission.

19 (16) The commission shall issue protective orders as are
20 necessary to protect the information found by the commission to be
21 confidential under this section.

22 (17) As used in this section:

23 (a) "Act of terrorism" means a willful and deliberate act that
24 is all of the following:

25 (i) An act that would be a violent felony under the laws of
26 this state, whether or not committed in this state.

27 (ii) An act that the person knows or has reason to know is

1 dangerous to human life.

2 (iii) An act that is intended to intimidate or coerce a civilian
3 population or influence or affect the conduct of government or a
4 unit of government through intimidation or coercion.

5 (b) "Covered utility" means an electric utility subject to the
6 rate freeze provisions of subsection (1), the rate cap provisions
7 of subsection (2), or the rate provisions of commission orders in
8 case numbers U-11181-R and U-12204.

9 (c) "Enhanced security costs" means reasonable and prudent
10 costs of new and enhanced security measures incurred before January
11 1, 2006 for an electric generating facility by a covered utility
12 that are required by federal or state regulatory security
13 requirements issued after September 11, 2001 or determined to be
14 necessary by the commission to provide reasonable security from an
15 act of terrorism. Enhanced security costs include increases in the
16 cost of insurance that are attributable to an increased terror
17 related risk and the costs of maintaining or restoring electric
18 service as the result of an act of terrorism.

19 (d) "Security recovery factor" means an unbundled charge for
20 all retail customers, except for customers of alternative electric
21 suppliers, to recover enhanced security costs that have been
22 approved by the commission.

23 Enacting section 1. Section 10g of 1939 PA 3, MCL 460.10g, is
24 repealed.