

HOUSE BILL No. 5184

December 10, 2013, Introduced by Reps. Shirkey, Price, Lori, McMillin, Genetski, Kurtz, Poleski, Kelly and Yonker 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 and certain private utilities and other services affected with a public interest within this state; to provide for alternative energy suppliers; to provide for licensing; to include municipally owned utilities and other providers of energy under certain provisions of this act; to create a public service commission and to prescribe and define its powers and duties; to abolish the Michigan public utilities commission and to confer the powers and duties vested by law on the public service commission; to provide for the 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 6a, 6q, 6s, 10, 10a, 10c, 10e, 10g, 10q, and 10bb (MCL 460.6a, 460.6q, 460.6s, 460.10, 460.10a, 460.10c, 460.10e, 460.10g, 460.10q, and 460.10bb), sections 6a, 10, 10a, and 10g as amended and sections 6q and 6s as added by 2008 PA 286 and sections 10c, 10e, 10q, and 10bb as added by 2000 PA 141.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 6a. (1) A gas, ~~or~~ electric utility, **OR ELECTRIC**
 2 **DISTRIBUTION UTILITY** shall not increase its rates and charges or
 3 alter, change, or amend any rate or rate schedules, the effect of
 4 which will be to increase the cost of services to its customers,
 5 without first receiving commission approval as provided in this
 6 section. The utility shall place in evidence facts relied upon to
 7 support the utility's petition or application to increase its rates
 8 and charges, or to alter, change, or amend any rate or rate
 9 schedules. The commission shall require notice to be given to all
 10 interested parties within the service area to be affected, and all
 11 interested parties shall have a reasonable opportunity for a full
 12 and complete hearing. A utility may use projected costs and
 13 revenues for a future consecutive 12-month period in developing its
 14 requested rates and charges. The commission shall notify the
 15 utility within 30 days of filing, whether the utility's petition or
 16 application is complete. A petition or application is considered
 17 complete if it complies with the rate application filing forms and
 18 instructions adopted under subsection (6). A petition or
 19 application pending before the commission ~~prior to~~ **BEFORE** the
 20 adoption of filing forms and instructions ~~pursuant to~~ **UNDER**
 21 subsection (6) shall be evaluated based upon the filing

1 requirements in effect at the time the petition or application was
2 filed. If the application is not complete, the commission shall
3 notify the utility of all information necessary to make that filing
4 complete. If the commission has not notified the utility within 30
5 days of whether the utility's petition or application is complete,
6 the application is considered complete. If the commission has not
7 issued an order within 180 days of the filing of a complete
8 application, the utility may implement up to the amount of the
9 proposed annual rate request through equal percentage increases or
10 decreases applied to all base rates. For a petition or application
11 pending before the commission ~~prior to the effective date of the~~
12 ~~amendatory act that added this sentence, BEFORE OCTOBER 6, 2008,~~
13 the 180-day period commences on ~~the effective date of the~~
14 ~~amendatory act that added this sentence. OCTOBER 6, 2008.~~ If the
15 utility uses projected costs and revenues for a future period in
16 developing its requested rates and charges, the utility may not
17 implement the equal percentage increases or decreases ~~prior to~~
18 **BEFORE** the calendar date corresponding to the start of the
19 projected 12-month period. For good cause, the commission may issue
20 a temporary order preventing or delaying a utility from
21 implementing its proposed rates or charges. If a utility implements
22 increased rates or charges under this subsection before the
23 commission issues a final order, that utility shall refund to
24 customers, with interest, any portion of the total revenues
25 collected through application of the equal percentage increase that
26 exceed the total that would have been produced by the rates or
27 charges subsequently ordered by the commission in its final order.

1 The commission shall allocate any refund required by this section
2 among primary customers based upon their pro rata share of the
3 total revenue collected through the applicable increase, and among
4 secondary and residential customers in a manner to be determined by
5 the commission. The rate of interest for refunds shall equal 5%
6 plus the London interbank offered rate (LIBOR) for the appropriate
7 time period. For any portion of the refund which, exclusive of
8 interest, exceeds 25% of the annual revenue increase awarded by the
9 commission in its final order, the rate of interest shall be the
10 authorized rate of return on the common stock of the utility during
11 the appropriate period. Any refund or interest awarded under this
12 subsection shall not be included, in whole or in part, in any
13 application for a rate increase by a utility. Nothing in this
14 section impairs the commission's ability to issue a show cause
15 order as part of its rate-making authority. An alteration or
16 amendment in rates or rate schedules applied for by a public
17 utility that will not result in an increase in the cost of service
18 to its customers may be authorized and approved without notice or
19 hearing. There shall be no increase in rates based upon changes in
20 cost of fuel or purchased gas unless notice has been given within
21 the service area to be affected, ~~and~~ there has been an opportunity
22 for a full and complete hearing on the cost of fuel or purchased
23 gas, **AND IN THE CASE OF AN ELECTRIC DISTRIBUTION UTILITY, THAT**
24 **RECOVERY IS LIMITED TO THE COST OF FUEL, PURCHASED GAS, OR**
25 **PURCHASED POWER THE COMMISSION DETERMINES IS NECESSARY FOR THE**
26 **ELECTRIC DISTRIBUTION UTILITY TO PERFORM ITS OBLIGATIONS AS AN**
27 **ELECTRIC DISTRIBUTION UTILITY IN AN EFFICIENT MANNER.** The rates

1 charged by any utility pursuant to an automatic fuel or purchased
2 gas adjustment clause shall not be altered, changed, or amended
3 unless notice has been given within the service area to be
4 affected, and there has been an opportunity for a full and complete
5 hearing on the cost of the fuel or purchased gas.

6 (2) The commission shall adopt rules and procedures for the
7 filing, investigation, and hearing of petitions or applications to
8 increase or decrease utility rates and charges as the commission
9 finds necessary or appropriate to enable it to reach a final
10 decision with respect to petitions or applications within a period
11 of 12 months from the filing of the complete petitions or
12 applications. The commission shall not authorize or approve
13 adjustment clauses that operate without notice and an opportunity
14 for a full and complete hearing, and all such clauses shall be
15 abolished. The commission may hold a full and complete hearing to
16 determine the cost of fuel, purchased gas, or purchased power
17 separately from a full and complete hearing on a general rate case
18 and may be held concurrently with the general rate case. The
19 commission shall authorize a utility to recover the cost of fuel,
20 purchased gas, or purchased power only to the extent that the
21 purchases are reasonable and prudent, **AND IN THE CASE OF AN**
22 **ELECTRIC DISTRIBUTION UTILITY, THAT RECOVERY IS LIMITED TO THE COST**
23 **OF FUEL, PURCHASED GAS, OR PURCHASED POWER THE COMMISSION**
24 **DETERMINES IS NECESSARY FOR THE ELECTRIC DISTRIBUTION UTILITY TO**
25 **PERFORM ITS OBLIGATIONS AS AN ELECTRIC DISTRIBUTION UTILITY IN AN**
26 **EFFICIENT MANNER.** As used in this section:

27 (a) "Full and complete hearing" means a hearing that provides

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

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

10 (3) Except as otherwise provided in this subsection, if the
11 commission fails to reach a final decision with respect to a
12 completed petition or application to increase or decrease utility
13 rates within the 12-month period following the filing of the
14 completed petition or application, the petition or application is
15 considered approved. If a utility makes any significant amendment
16 to its filing, the commission has an additional 12 months from the
17 date of the amendment to reach a final decision on the petition or
18 application. If the utility files for an extension of time, the
19 commission shall extend the 12-month period by the amount of
20 additional time requested by the utility.

21 (4) A utility shall not file a general rate case application
22 for an increase in rates earlier than 12 months after the date of
23 the filing of a complete prior general rate case application. A
24 utility may not file a new general rate case application until the
25 commission has issued a final order on a prior general rate case or
26 until the rates are approved under subsection (3).

27 (5) The commission shall, if requested by a gas utility,

1 establish load retention transportation rate schedules or approve
2 gas transportation contracts as required for the purpose of
3 retaining industrial or commercial customers whose individual
4 annual transportation volumes exceed 500,000 decatherms on the gas
5 utility's system. The commission shall approve these rate schedules
6 or approve transportation contracts entered into by the utility in
7 good faith if the industrial or commercial customer has the
8 installed capability to use an alternative fuel or otherwise has a
9 viable alternative to receiving natural gas transportation service
10 from the utility, the customer can obtain the alternative fuel or
11 gas transportation from an alternative source at a price which
12 would cause them to cease using the gas utility's system, and the
13 customer, as a result of their use of the system and receipt of
14 transportation service, makes a significant contribution to the
15 utility's fixed costs. The commission shall adopt accounting and
16 rate-making policies to ensure that the discounts associated with
17 the transportation rate schedules and contracts are recovered by
18 the gas utility through charges applicable to other customers if
19 the incremental costs related to the discounts are no greater than
20 the costs that would be passed on to those customers as the result
21 of a loss of the industrial or commercial customer's contribution
22 to a utility's fixed costs.

23 ~~(6) Within 90 days of the effective date of the amendatory act~~
24 ~~that added this subsection, the~~ **THE** commission shall adopt standard
25 rate application filing forms and instructions for use in all
26 general rate cases filed by utilities whose rates are regulated by
27 the commission. For cooperative electric utilities whose rates are

1 regulated by the commission, in addition to rate applications filed
2 under this section, the commission shall continue to allow for rate
3 filings based on the cooperative's times interest earned ratio. The
4 commission may, in its discretion, modify the standard rate
5 application forms and instructions adopted under this subsection.

6 (7) If, on or before January 1, 2008, a merchant plant entered
7 into a contract with an initial term of 20 years or more to sell
8 electricity to an electric utility whose rates are regulated by the
9 commission with 1,000,000 or more retail customers in this state
10 and if, prior to January 1, 2008, the merchant plant generated
11 electricity under that contract, in whole or in part, from wood or
12 solid wood wastes, then the merchant plant shall, upon petition by
13 the merchant plant, and subject to the limitation set forth in
14 subsection (8), recover the amount, if any, by which the merchant
15 plant's reasonably and prudently incurred actual fuel and variable
16 operation and maintenance costs exceed the amount that the merchant
17 plant is paid under the contract for those costs. This subsection
18 does not apply to landfill gas plants, hydro plants, municipal
19 solid waste plants, or to merchant plants engaged in litigation
20 against an electric utility seeking higher payments for power
21 delivered pursuant to contract.

22 (8) The total aggregate additional amounts recoverable by
23 merchant plants ~~pursuant to~~ **UNDER** subsection (7) in excess of the
24 amounts paid under the contracts shall not exceed \$1,000,000.00 per
25 month for each affected electric utility. The \$1,000,000.00 per
26 month limit specified in this subsection shall be reviewed by the
27 commission upon petition of the merchant plant filed no more than

1 once per year and may be adjusted if the commission finds that the
2 eligible merchant plants reasonably and prudently incurred actual
3 fuel and variable operation and maintenance costs exceed the amount
4 that those merchant plants are paid under the contract by more than
5 \$1,000,000.00 per month. The annual amount of the adjustments shall
6 not exceed a rate equal to the United States consumer price index.
7 An adjustment shall not be made by the commission unless each
8 affected merchant plant files a petition with the commission. As
9 used in this subsection, "United States consumer price index" means
10 the United States consumer price index for all urban consumers as
11 defined and reported by the United States department of labor,
12 bureau of labor statistics. If the total aggregate amount by which
13 the eligible merchant plants reasonably and prudently incurred
14 actual fuel and variable operation and maintenance costs determined
15 by the commission exceed the amount that the merchant plants are
16 paid under the contract by more than \$1,000,000.00 per month, the
17 commission shall allocate the additional \$1,000,000.00 per month
18 payment among the eligible merchant plants based upon the
19 relationship of excess costs among the eligible merchant plants.
20 The \$1,000,000.00 limit specified in this subsection, as adjusted,
21 shall not apply with respect to actual fuel and variable operation
22 and maintenance costs that are incurred due to changes in federal
23 or state environmental laws or regulations that are implemented
24 ~~after the effective date of the amendatory act that added this~~
25 ~~subsection.~~ **OCTOBER 6, 2008.** The \$1,000,000.00 per month payment
26 limit under this subsection shall not apply to merchant plants
27 eligible under subsection (7) whose electricity is purchased by a

1 utility that is using wood or wood waste or fuels derived from
2 those materials for fuel in their power plants.

3 (9) The commission shall issue orders to permit the recovery
4 authorized under subsections (7) and (8) upon petition of the
5 merchant plant. The merchant plant shall not be required to alter
6 or amend the existing contract with the electric utility in order
7 to obtain the recovery under subsections (7) and (8). The
8 commission shall permit or require the electric utility whose rates
9 are regulated by the commission to recover from its ratepayers all
10 fuel and variable operation and maintenance costs that the electric
11 utility is required to pay to the merchant plant as reasonably and
12 prudently incurred costs.

13 Sec. 6q. (1) ~~A-EXCEPT AS PROVIDED IN SECTION 10G, A~~ person
14 shall not acquire, control, or merge, directly or indirectly, in
15 whole or in part, with a jurisdictional regulated utility nor shall
16 a jurisdictional regulated utility sell, assign, transfer, or
17 encumber its assets to another person without first applying to and
18 receiving the approval of the commission **UNDER THIS SECTION.**

19 (2) After notice and hearing, the commission shall issue an
20 order stating what constitutes acquisition, transfer of control,
21 merger activities, or encumbrance of assets that are subject to
22 this section. This section does not apply to the encumbrance,
23 assignment, acquisition, or transfer of assets that are encumbered,
24 assigned, acquired, transferred, or sold in the normal course of
25 business or to the issuance of securities or other financing
26 transactions not directly or indirectly involved in an acquisition,
27 merger, encumbrance, or transfer of control that is governed by

1 this section.

2 (3) The commission shall promulgate rules creating procedures
3 for the application process required under this section. The
4 application shall include, but is not limited to, all of the
5 following information:

6 (a) A concise summary of the terms and conditions of the
7 proposed acquisition, transfer, merger, or encumbrance.

8 (b) Copies of the material acquisition, transfer, merger, or
9 encumbrance documents if available.

10 (c) A summary of the projected impacts of the acquisition,
11 transfer, merger, or encumbrance on rates and electric service in
12 this state.

13 (d) Pro forma financial statements that are relevant to the
14 acquisition, transfer, merger, or encumbrance.

15 (e) Copies of the parties' public filings with other state or
16 federal regulatory agencies regarding the same acquisition,
17 transfer, merger, or encumbrance, including any regulatory orders
18 issued by the agencies regarding the acquisition, transfer, merger,
19 or encumbrance.

20 (4) Within 60 days from the date an application is filed under
21 this section, interested parties, including the attorney general,
22 may file comments with the commission on the proposed acquisition,
23 transfer, merger, or encumbrance.

24 (5) After notice and hearing and within 180 days from the date
25 an application is filed under this section, the commission shall
26 issue an order approving or rejecting the proposed acquisition,
27 transfer of control, merger, or encumbrance.

1 (6) All parties to an acquisition, transfer, merger, or
2 encumbrance subject to this section shall provide the commission
3 and the attorney general access to all books, records, accounts,
4 documents, and any other data and information the commission
5 considers necessary to effectively assess the impact of the
6 proposed acquisition, transfer, merger, or encumbrance.

7 (7) The commission shall consider among other factors all of
8 the following in its evaluation of whether or not to approve a
9 proposed acquisition, transfer, merger, or encumbrance:

10 (a) Whether the proposed action would have an adverse impact
11 on the rates of the customers affected by the acquisition,
12 transfer, merger, or encumbrance.

13 (b) Whether the proposed action would have an adverse impact
14 on the provision of safe, reliable, and adequate energy service in
15 this state.

16 (c) Whether the action will result in the subsidization of a
17 nonregulated activity of the new entity through the rates paid by
18 the customers of the jurisdictional regulated utility.

19 (d) Whether the action will significantly impair the
20 jurisdictional regulated utility's ability to raise necessary
21 capital or to maintain a reasonable capital structure.

22 (e) Whether the action is otherwise inconsistent with public
23 policy and interest.

24 **(F) WHETHER THE ACTION WILL HAVE AN ADVERSE IMPACT ON THE**
25 **COMPETITIVE RETAIL ELECTRIC MARKET.**

26 (8) In approving an acquisition, transfer, merger, or
27 encumbrance under this section, the commission may impose

1 reasonable terms and conditions on the acquisition, transfer,
2 merger, or encumbrance to protect the jurisdictional regulated
3 utility, including the division and allocation of the utility's
4 assets. A jurisdictional regulated utility may reject the terms and
5 conditions imposed by the commission and not proceed with the
6 transaction.

7 (9) In approving an acquisition, transfer, merger, or
8 encumbrance under this section, the commission may impose
9 reasonable terms and conditions on the acquisition, transfer,
10 merger, or encumbrance to protect the customers of the
11 jurisdictional regulated utility. A jurisdictional regulated
12 utility may reject the terms and conditions imposed by the
13 commission and not proceed with the transaction.

14 (10) Nonpublic information and materials submitted by a
15 jurisdictional regulated utility under this section clearly
16 designated by that utility as confidential are exempt from the
17 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. The
18 commission shall issue protective orders as necessary to protect
19 information designated by that utility as confidential.

20 (11) Nothing in this section alters the authority of the
21 attorney general to enforce federal and state antitrust laws.

22 (12) As used in this section:

23 (a) "Commission" means the Michigan public service commission.

24 (b) "Jurisdictional regulated utility" means a utility whose
25 rates are regulated by the commission. Jurisdictional regulated
26 utility does not include a telecommunication provider as defined in
27 the Michigan telecommunications act, 1991 PA 179, MCL 484.2101 to

1 ~~484.2604~~, **484.2603**, or a motor carrier as defined in the motor
2 carrier act, 1933 PA 254, MCL 475.1 to 479.43.

3 (c) "Person" means an individual, corporation, association,
4 partnership, utility, or any other legal private or public entity.

5 Sec. 6s. (1) An electric utility that proposes to construct an
6 electric generation facility, make a significant investment in an
7 existing electric generation facility, purchase an existing
8 electric generation facility, or enter into a power purchase
9 agreement for the purchase of electric capacity for a period of 6
10 years or longer may submit an application to the commission seeking
11 a certificate of necessity for that construction, investment, or
12 purchase if that construction, investment, or purchase costs
13 \$500,000,000.00 or more and a portion of the costs would be
14 allocable to retail customers in this state. A significant
15 investment in an electric generation facility includes a group of
16 investments reasonably planned to be made over a multiple year
17 period not to exceed 6 years for a singular purpose such as
18 increasing the capacity of an existing electric generation plant.
19 The commission shall not issue a certificate of necessity under
20 this section for any environmental upgrades to existing electric
21 generation facilities, ~~or~~ for a renewable energy system, **OR FOR ANY**
22 **ELECTRIC DISTRIBUTION UTILITY.**

23 (2) The commission may implement separate review criteria and
24 approval standards for electric utilities with less than 1,000,000
25 retail customers who seek a certificate of necessity for projects
26 costing less than \$500,000,000.00.

27 (3) An electric utility submitting an application under this

1 section may request 1 or more of the following:

2 (a) A certificate of necessity that the power to be supplied
3 as a result of the proposed construction, investment, or purchase
4 is needed.

5 (b) A certificate of necessity that the size, fuel type, and
6 other design characteristics of the existing or proposed electric
7 generation facility or the terms of the power purchase agreement
8 represent the most reasonable and prudent means of meeting that
9 power need.

10 (c) A certificate of necessity that the price specified in the
11 power purchase agreement will be recovered in rates from the
12 electric utility's customers.

13 (d) A certificate of necessity that the estimated purchase or
14 capital costs of and the financing plan for the existing or
15 proposed electric generation facility, including, but not limited
16 to, the costs of siting and licensing a new facility and the
17 estimated cost of power from the new or proposed electric
18 generation facility, will be recoverable in rates from the electric
19 utility's customers subject to subsection (4)(c).

20 (4) Within 270 days of the filing of an application under this
21 section, the commission shall issue an order granting or denying
22 the requested certificate of necessity. The commission shall hold a
23 hearing on the application. The hearing shall be conducted as a
24 contested case pursuant to chapter 4 of the administrative
25 procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. The
26 commission shall allow intervention by interested persons.
27 Reasonable discovery shall be permitted before and during the

1 hearing in order to assist parties and interested persons in
2 obtaining evidence concerning the application, including, but not
3 limited to, the reasonableness and prudence of the construction,
4 investment, or purchase for which the certificate of necessity has
5 been requested. The commission shall grant the request if it
6 determines all of the following:

7 (a) That the electric utility has demonstrated a need for the
8 power that would be supplied by the existing or proposed electric
9 generation facility or pursuant to the proposed power purchase
10 agreement through its approved integrated resource plan that
11 complies with subsection (11).

12 (b) The information supplied indicates that the existing or
13 proposed electric generation facility will comply with all
14 applicable state and federal environmental standards, laws, and
15 rules.

16 (c) The estimated cost of power from the existing or proposed
17 electric generation facility or the price of power specified in the
18 proposed power purchase agreement is reasonable. The commission
19 shall find that the cost is reasonable if, in the construction or
20 investment in a new or existing facility, to the extent it is
21 commercially practicable, the estimated costs are the result of
22 competitively bid engineering, procurement, and construction
23 contracts, or in a power purchase agreement, the cost is the result
24 of a competitive solicitation. Up to 150 days after an electric
25 utility makes its initial filing, it may file to update its cost
26 estimates if they have materially changed. No other aspect of the
27 initial filing may be modified unless the application is withdrawn

1 and refiled. A utility's filing updating its cost estimates does
2 not extend the period for the commission to issue an order granting
3 or denying a certificate of necessity. An affiliate of an electric
4 utility that serves customers in this state and at least 1 other
5 state may participate in the competitive bidding to provide
6 engineering, procurement, and construction services to that
7 electric utility for a project covered by this section.

8 (d) The existing or proposed electric generation facility or
9 proposed power purchase agreement represents the most reasonable
10 and prudent means of meeting the power need relative to other
11 resource options for meeting power demand, including energy
12 efficiency programs and electric transmission efficiencies.

13 (e) To the extent practicable, the construction or investment
14 in a new or existing facility in this state is completed using a
15 workforce composed of residents of this state as determined by the
16 commission. This subdivision does not apply to a facility that is
17 located in a county that lies on the border with another state.

18 (5) The commission may consider any other costs or information
19 related to the costs associated with the power that would be
20 supplied by the existing or proposed electric generation facility
21 or pursuant to the proposed purchase agreement or alternatives to
22 the proposal raised by intervening parties.

23 (6) In a certificate of necessity under this section, the
24 commission shall specify the costs approved for the construction of
25 or significant investment in the electric generation facility, the
26 price approved for the purchase of the existing electric generation
27 facility, or the price approved for the purchase of power pursuant

1 to the terms of the power purchase agreement.

2 (7) The utility shall annually file, or more frequent if
3 required by the commission, reports to the commission regarding the
4 status of any project for which a certificate of necessity has been
5 granted under subsection (4), including an update concerning the
6 cost and schedule of that project.

7 (8) If the commission denies any of the relief requested by an
8 electric utility, the electric utility may withdraw its application
9 or proceed with the proposed construction, purchase, investment, or
10 power purchase agreement without a certificate and the assurances
11 granted under this section.

12 (9) Once the electric generation facility or power purchase
13 agreement is considered used and useful or as otherwise provided in
14 subsection (12), the commission shall include in an electric
15 utility's retail rates all reasonable and prudent costs for an
16 electric generation facility or power purchase agreement for which
17 a certificate of necessity has been granted. The commission shall
18 not disallow recovery of costs an electric utility incurs in
19 constructing, investing in, or purchasing an electric generation
20 facility or in purchasing power pursuant to a power purchase
21 agreement for which a certificate of necessity has been granted, if
22 the costs do not exceed the costs approved by the commission in the
23 certificate. Once the electric generation facility or power
24 purchase agreement is considered used and useful or as otherwise
25 provided in subsection (12), the commission shall include in the
26 electric utility's retail rates costs actually incurred by the
27 electric utility that exceed the costs approved by the commission

1 only if the commission finds that the additional costs are
2 reasonable and prudent. If the actual costs incurred by the
3 electric utility exceed the costs approved by the commission, the
4 electric utility has the burden of proving by a preponderance of
5 the evidence that the costs are reasonable and prudent. The portion
6 of the cost of a plant, facility, or power purchase agreement which
7 exceeds 110% of the cost approved by the commission is presumed to
8 have been incurred due to a lack of prudence. The commission may
9 include any or all of the portion of the cost in excess of 110% of
10 the cost approved by the commission if the commission finds by a
11 preponderance of the evidence that the costs were prudently
12 incurred.

13 ~~(10) Within 90 days of the effective date of the amendatory~~
14 ~~act that added this section, the~~ **THE** commission shall adopt
15 standard application filing forms and instructions for use in all
16 requests for a certificate of necessity under this section. The
17 commission may, in its discretion, modify the standard application
18 filing forms and instructions adopted under this section.

19 (11) The commission shall establish standards for an
20 integrated resource plan that shall be filed by an electric utility
21 requesting a certificate of necessity under this section. An
22 integrated resource plan shall include all of the following:

23 (a) A long-term forecast of the electric utility's load growth
24 under various reasonable scenarios.

25 (b) The type of generation technology proposed for the
26 generation facility and the proposed capacity of the generation
27 facility, including projected fuel and regulatory costs under

1 various reasonable scenarios.

2 (c) Projected energy and capacity purchased or produced by the
3 electric utility pursuant to any renewable portfolio standard.

4 (d) Projected energy efficiency program savings under any
5 energy efficiency program requirements and the projected costs for
6 that program.

7 (e) Projected load management and demand response savings for
8 the electric utility and the projected costs for those programs.

9 (f) An analysis of the availability and costs of other
10 electric resources that could defer, displace, or partially
11 displace the proposed generation facility or purchased power
12 agreement, including additional renewable energy, energy efficiency
13 programs, load management, and demand response, beyond those
14 amounts contained in subdivisions (c) to (e).

15 (g) Electric transmission options for the electric utility.

16 (12) The commission shall allow financing interest cost
17 recovery in an electric utility's base rates on construction work
18 in progress for capital improvements approved under this section
19 prior to the assets being considered used and useful. Regardless of
20 whether or not the commission authorizes base rate treatment for
21 construction work in progress financing interest expense, an
22 electric utility shall be allowed to recognize, accrue, and defer
23 the allowance for funds used during construction related to equity
24 capital.

25 (13) As used in this section, "renewable energy system" means
26 that term as defined in **SECTION 11 OF** the clean, renewable, and
27 efficient energy act, **2008 PA 295, MCL 460.1011.**

1 Sec. 10. (1) Sections 10 through 10bb shall be known and may
2 be cited as the "customer choice and electricity reliability act".

3 (2) The purpose of sections 10a through 10bb is to do all of
4 the following:

5 (a) To ensure that all retail customers in this state of
6 electric power have a choice of electric **GENERATION** suppliers.

7 (b) To ~~allow and encourage~~ **ENSURE THAT** the Michigan public
8 service commission ~~to foster~~ **FOSTERS** competition in this state in
9 the provision of electric supply and ~~maintain~~ **MAINTAINS** regulation
10 of electric supply for customers who continue to choose supply from
11 incumbent electric utilities.

12 (c) To encourage the development and construction of
13 **INDEPENDENTLY OWNED** merchant **GENERATION** plants, ~~which will TO~~
14 **ENCOURAGE INNOVATION AND INVESTMENT OF GENERATION AND STORAGE**
15 **ASSETS, AND TO** diversify the ownership of electric generation in
16 this state.

17 (d) To ensure that all persons in this state are afforded
18 safe, reliable electric power ~~at a reasonable rate.~~ **FULLY AVAILABLE**
19 **AT MARKET COMPETITIVE RATES.**

20 (e) To improve the opportunities for economic development in
21 this state and to promote financially healthy and competitive
22 utilities in this state.

23 (f) To maintain, foster, and encourage robust, reliable, and
24 economic generation, distribution, and transmission systems to
25 provide this state's electric suppliers and generators an
26 opportunity to access regional sources of generation and wholesale
27 power markets and to ensure a reliable supply of electricity in

1 this state.

2 (G) TO ENSURE EFFECTIVE COMPETITION IN THE PROVISION OF RETAIL
3 ELECTRIC SERVICE BY AVOIDING ANTICOMPETITIVE SUBSIDIES FLOWING FROM
4 A NONCOMPETITIVE RETAIL ELECTRIC SERVICE TO A COMPETITIVE RETAIL
5 ELECTRIC SERVICE OR TO A PRODUCT OR SERVICE OTHER THAN RETAIL
6 ELECTRIC SERVICE, AND FROM A COMPETITIVE RETAIL ELECTRIC SERVICE TO
7 A NONCOMPETITIVE RETAIL ELECTRIC SERVICE.

8 (H) TO ENSURE THAT RETAIL ELECTRIC SERVICE CONSUMERS ARE
9 PROTECTED FROM UNREASONABLE SALES PRACTICES, MARKET DEFICIENCIES,
10 AND MARKET POWER.

11 Sec. 10a. (1) The commission shall issue orders establishing
12 the rates, terms, and conditions of service that allow all retail
13 customers of an electric utility or provider **WITH LESS THAN**
14 **1,000,000 RETAIL CUSTOMERS ON THE EFFECTIVE DATE OF THE 2013**
15 **AMENDATORY ACT THAT AMENDED THIS SECTION** to choose an alternative
16 electric supplier. The orders **UNDER THIS SUBSECTION** shall do all of
17 the following:

18 (a) Provide that no more than 10% of an electric utility's
19 average weather-adjusted retail sales for the preceding calendar
20 year may take service from an alternative electric supplier at any
21 time.

22 (b) Set forth procedures necessary to administer and allocate
23 the amount of load that will be allowed to be served by alternative
24 electric suppliers, through the use of annual energy allotments
25 awarded on a calendar year basis, and shall provide, among other
26 things, that existing customers who are taking electric service
27 from an alternative electric supplier at a facility on ~~the~~

~~effective date of the amendatory act that added this subdivision~~
OCTOBER 6, 2008 shall be given an allocated annual energy allotment for that service at that facility, that customers seeking to expand usage at a facility served through an alternative electric supplier will be given next priority, with the remaining available load, if any, allocated on a first-come first-served basis. The procedures shall also provide how customer facilities will be defined for the purpose of assigning the annual energy allotments to be allocated under this section. The commission shall not allocate additional annual energy allotments at any time when the total annual energy allotments for the utility's distribution service territory is greater than 10% of the utility's weather-adjusted retail sales in the calendar year preceding the date of allocation. If the sales of a utility are less in a subsequent year or if the energy usage of a customer receiving electric service from an alternative electric supplier exceeds its annual energy allotment for that facility, that customer shall not be forced to purchase electricity from a utility, but may purchase electricity from an alternative electric supplier for that facility during that calendar year.

(c) Notwithstanding any other provision of this section, customers seeking to expand usage at a facility that has been continuously served through an alternative electric supplier since April 1, 2008 shall be permitted to purchase electricity from an alternative electric supplier for both the existing and any expanded load at that facility as well as any new facility constructed or acquired after ~~the effective date of the amendatory act that added this subdivision~~ OCTOBER 6, 2008 that is similar in

1 nature if the customer owns more than 50% of the new facility.

2 (d) Notwithstanding any other provision of this section, any
3 customer operating an iron ore mining facility, iron ore processing
4 facility, or both, located in the Upper Peninsula of this state,
5 shall be permitted to purchase all or any portion of its
6 electricity from an alternative electric supplier, regardless of
7 whether the sales exceed 10% of the serving electric utility's
8 average weather-adjusted retail sales.

9 (2) THE COMMISSION SHALL ISSUE ORDERS ESTABLISHING THE RATES,
10 TERMS, AND CONDITIONS OF SERVICE THAT ALLOW ALL RETAIL CUSTOMERS OF
11 AN ELECTRIC UTILITY OR PROVIDER WITH MORE THAN 1,000,000 RETAIL
12 CUSTOMERS ON THE EFFECTIVE DATE OF THE 2013 AMENDATORY ACT THAT
13 AMENDED THIS SECTION TO CHOOSE AN ALTERNATIVE ELECTRIC SUPPLIER.
14 THE ORDERS SHALL DO ALL OF THE FOLLOWING:

15 (A) PROVIDE THAT ALL CUSTOMERS OF AN ELECTRIC UTILITY WITH
16 MORE THAN 1,000,000 RETAIL CUSTOMERS AND ALL CUSTOMERS OF AN
17 ELECTRIC DISTRIBUTION UTILITY MAY TAKE SERVICE FROM AN ALTERNATIVE
18 ELECTRIC SUPPLIER.

19 (B) SET FORTH PROCEDURES NECESSARY TO ENSURE THAT CUSTOMERS OF
20 AN ELECTRIC DISTRIBUTION UTILITY OR OF AN ELECTRIC UTILITY THAT
21 DOES NOT COMPLETE A PLAN IN THE TIME PERIOD PROVIDED UNDER SECTION
22 10G ARE PROVIDED, ON A COMPARABLE AND NONDISCRIMINATORY BASIS, A
23 MARKET-BASED STANDARD TARIFF SERVICE FOR ELECTRIC GENERATION. THE
24 PROCEDURES SHALL INCLUDE THE FOLLOWING PROVISIONS:

25 (i) A COMPETITIVE BIDDING PROCESS TO ACQUIRE A WHOLESALE
26 PRODUCT CONSISTING OF ALL COMPETITIVE RETAIL ELECTRIC SERVICES
27 NECESSARY TO MAINTAIN ESSENTIAL ELECTRIC SERVICE TO STANDARD TARIFF

1 SERVICE CUSTOMERS, INCLUDING A FIRM SUPPLY OF LOAD FOLLOWING
2 ELECTRIC GENERATION SERVICE.

3 (ii) REASONABLE FINANCIAL AND TECHNICAL REQUIREMENTS TO
4 EVALUATE PROSPECTIVE BIDDERS IN ADVANCE OF A COMPETITIVE BIDDING
5 PROCESS TO ENSURE THAT ONLY BIDDERS THAT HAVE THE FINANCIAL AND
6 TECHNICAL INTEGRITY TO RELIABLY PROVIDE STANDARD TARIFF SERVICE ARE
7 ALLOWED TO PARTICIPATE.

8 (iii) RULES THAT PREVENT AN ELECTRIC DISTRIBUTION UTILITY OR
9 ELECTRIC UTILITY FROM PROVIDING ANY PORTION OF STANDARD TARIFF
10 SERVICE. HOWEVER, AN INDEPENDENT AFFILIATE OF AN ELECTRIC
11 DISTRIBUTION UTILITY OR ELECTRIC UTILITY MAY BE SELECTED AS A
12 STANDARD TARIFF SERVICE PROVIDER.

13 (iv) RULES TO PREVENT THE EXERCISE OF MARKET POWER, COLLUSION,
14 OR GAMING BY ENTITIES BIDDING TO SUPPLY STANDARD TARIFF SERVICE,
15 AND TO PREVENT AN ELECTRIC DISTRIBUTION UTILITY OR ELECTRIC UTILITY
16 FROM PROVIDING ANY OTHER COMPETITIVE ADVANTAGE TO AFFILIATES OF
17 THAT ELECTRIC DISTRIBUTION UTILITY OR ELECTRIC UTILITY IN THE
18 COMPETITIVE BIDDING PROCESS. THE COMMISSION SHALL NOT LIMIT
19 PARTICIPATION IN AN AUCTION ON THE BASIS OF THE PORTION OR QUANTITY
20 OF STANDARD TARIFF SERVICE ALREADY WON OR SUPPLIED BY A PARTICULAR
21 BIDDER.

22 (v) COMMISSION OR INDEPENDENT THIRD-PARTY REVIEW TO APPROVE
23 AND CERTIFY THE RESULTS AND AWARDS UNDER THE COMPETITIVE BIDDING
24 PROCESS.

25 (vi) A CONTINGENCY PLAN, FILED WITH AND APPROVED BY THE
26 COMMISSION, TO ENSURE THE CONTINUAL AVAILABILITY OF STANDARD TARIFF
27 SERVICE TO ALL CUSTOMERS IF A STANDARD TARIFF SERVICE PROVIDER

1 DEFAULTS ON ITS OBLIGATIONS OR A COMPETITIVE BID PROCESS FAILS TO
2 ATTRACT ANY BIDDERS. THE CONTINGENCY PLAN SHALL BE LIMITED TO THE
3 SHORTER OF EITHER 1 YEAR IN DURATION OR UNTIL A NEW COMPETITIVE BID
4 PROCESS CAN BE HELD. A NEW CONTINGENCY PLAN SHALL BE FILED WITH AND
5 APPROVED BY THE COMMISSION FOR EACH 1-YEAR PERIOD UNTIL A
6 COMPETITIVE BID PROCESS ATTRACTS AT LEAST 1 ACCEPTABLE BID.

7 (3) ~~(2)~~—The commission shall issue orders establishing a
8 licensing procedure for all alternative electric suppliers. To
9 ensure adequate service to customers in this state, the commission
10 shall require that an alternative electric supplier maintain an
11 office 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 (4) ~~(3)~~—The commission shall issue orders to ensure that
24 customers in this state are not switched to another supplier or
25 billed for any services without the customer's consent.

26 (5) ~~(4) No later than December 2, 2000, the~~ **THE** commission
27 shall establish a code of conduct that shall apply to all electric

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

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

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

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

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

26 (c) Not promote or market the program through the use of
27 utility billing inserts, printed messages on the utility's billing

1 materials, or other promotional materials included with customers'
2 utility bills.

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

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

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

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

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

1 regulated service.

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

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

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

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

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

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

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

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

1 of another provider of appliance repair service.

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

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

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

24 (13) ~~(12)~~ This act does not prohibit or limit the right of a
25 person to obtain self-service power and does not impose a
26 transition, implementation, exit fee, or any other similar charge
27 on self-service power. A person using self-service power is not an

1 electric supplier, electric utility, or a person conducting an
2 electric utility business. As used in this subsection, "self-
3 service power" means any of the following:

4 (a) Electricity generated and consumed at an industrial site
5 or contiguous industrial site or single commercial establishment or
6 single residence without the use of an electric utility's **OR**
7 **ELECTRIC DISTRIBUTION UTILITY'S** transmission and distribution
8 system.

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

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

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

26 **(14)** ~~(13)~~ This act does not prohibit or limit the right of a
27 person to engage in affiliate wheeling and does not impose a

1 transition, implementation, exit fee, or any other similar charge
2 on a person engaged in affiliate wheeling. As used in this section:

3 (a) "Affiliate" means a person or entity that directly, or
4 indirectly through 1 or more intermediates, controls, is controlled
5 by, or is under common control with another specified entity. As
6 used in this subdivision, "control" means, whether through an
7 ownership, beneficial, contractual, or equitable interest, the
8 possession, directly or indirectly, of the power to direct or to
9 cause the direction of the management or policies of a person or
10 entity or the ownership of at least 7% of an entity either directly
11 or indirectly.

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

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

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

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

12 (16) ~~(15)~~ A customer who elects to receive service from an
13 alternative electric supplier may subsequently provide notice to
14 the electric utility of the customer's desire to receive standard
15 tariff service from the electric utility. The procedures in place
16 for each electric utility as of January 1, 2008 that set forth the
17 terms ~~pursuant to~~ **UNDER** which a customer receiving service from an
18 alternative electric supplier may return to full service from the
19 electric utility are ratified and shall remain in effect and may be
20 amended by the commission as needed. If an electric utility did not
21 have the procedures in place as of January 1, 2008, the commission
22 shall adopt those procedures.

23 (17) ~~(16)~~ The commission shall authorize rates that will
24 ensure that an electric utility that offered retail open access
25 service from 2002 through ~~the effective date of the amendatory act~~
26 ~~that added this subsection~~ **OCTOBER 6, 2008** fully recovers its
27 restructuring costs and any associated accrued regulatory assets.

1 This includes, but is not limited to, implementation costs,
2 stranded costs, and costs authorized ~~pursuant to~~ **UNDER** section
3 10d(4) as it existed ~~prior to the effective date of the amendatory~~
4 ~~act that added this subsection,~~ **BEFORE OCTOBER 6, 2008**, that have
5 been authorized for recovery by the commission in orders issued
6 ~~prior to the effective date of the amendatory act that added this~~
7 ~~subsection.~~ **BEFORE OCTOBER 6, 2008**. The commission shall approve
8 surcharges that will ensure full recovery of all such costs ~~within~~
9 ~~5 years of the effective date of the amendatory act that added this~~
10 ~~subsection.~~ **BY OCTOBER 6, 2013.**

11 (18) **WITHIN 6 MONTHS AFTER THE EFFECTIVE DATE OF THE**
12 **AMENDATORY ACT THAT ADDED THIS SUBSECTION, AN ELECTRIC UTILITY WITH**
13 **1,000,000 OR MORE RETAIL CUSTOMERS OR AN ELECTRIC DISTRIBUTION**
14 **UTILITY SHALL FILE A TARIFF WITH THE COMMISSION THAT PROVIDES**
15 **QUALIFYING ALTERNATIVE ELECTRIC SUPPLIERS WITH THE OPTION TO HAVE**
16 **THE UTILITY PURCHASE THEIR RECEIVABLES FOR ELECTRIC SALES THAT ARE**
17 **MADE TO RESIDENTIAL CUSTOMERS AND SMALL COMMERCIAL CUSTOMERS AND**
18 **CHARGED ON THE UTILITY'S BILL.**

19 (19) **UTILITIES SHALL PURCHASE THE RECEIVABLES FOR ENERGY**
20 **SERVICE OF ALTERNATIVE ELECTRIC SUPPLIERS UNDER SUBSECTION (18) AT**
21 **A JUST AND REASONABLE DISCOUNT RATE TO BE REVIEWED AND APPROVED BY**
22 **THE COMMISSION, AFTER NOTICE AND HEARING. THE DISCOUNT RATE SHALL**
23 **BE DESIGNED TO RECOVER ALL START-UP AND ONGOING COSTS, INCLUDING**
24 **UNCOLLECTIBLE AMOUNTS ASSOCIATED WITH THE ELECTRIC SUPPLY PROVIDED**
25 **BY THE ALTERNATIVE ELECTRIC SUPPLIER TO ITS CUSTOMERS, THAT ARE**
26 **INCREMENTALLY INCURRED BY THE UTILITY IN PROVIDING THE PURCHASE OF**
27 **RECEIVABLES SERVICES PROVIDED FOR IN THIS SECTION. THE COMMISSION**

1 SHALL BASE THE INITIAL DISCOUNT RATES, TO BE ESTABLISHED SEPARATELY
2 FOR RESIDENTIAL AND COMMERCIAL CLASSES THAT RECEIVE SERVICE FROM AN
3 ALTERNATIVE ELECTRIC SUPPLIER BUT ARE NOT TRANSPORT CUSTOMERS, ON
4 ALL OF THE FOLLOWING:

5 (A) THE UTILITY'S HISTORICAL BAD DEBT EXPERIENCE FOR A SIMILAR
6 PERIOD AND RATE CLASS.

7 (B) ANY WORKING CAPITAL COSTS ARISING FROM THE LAG IN
8 COLLECTIONS OF RECEIVABLES ASSOCIATED WITH THE UTILITY'S PURCHASE
9 OF RECEIVABLES.

10 (C) ESTIMATED INCREMENTAL START-UP COSTS.

11 (D) ADMINISTRATIVE COSTS ASSOCIATED WITH THE UTILITY'S
12 PURCHASE OF RECEIVABLES.

13 (20) IN SUBSEQUENT DISCOUNT RATES, FOLLOWING THE SETTING OF
14 THE INITIAL DISCOUNT RATE UNDER SUBSECTION (19), THE COMMISSION
15 SHALL USE THE AVERAGE OF THE HISTORICAL BAD DEBT EXPERIENCE FOR ALL
16 PARTICIPATING ALTERNATIVE ELECTRIC SUPPLIERS, WITHOUT ACCOUNTING
17 FOR THE HISTORICAL BAD DEBT OF THE UTILITY. THE COMMISSION SHALL
18 RETAIN CONTINUING JURISDICTION AND PRESCRIBE RECONCILIATION
19 PROCEDURES TO ANNUALLY RECONCILE THE UTILITY'S ACTUAL BAD DEBT
20 EXPERIENCE LIMITED TO THE PURCHASE OF RECEIVABLES PROGRAM BY
21 RESIDENTIAL AND SMALL COMMERCIAL CUSTOMERS WITHIN THE PROGRAM AND
22 THE ACTUAL INCURRED INCREMENTAL COSTS TO PROVIDE PURCHASE OF
23 RECEIVABLES SERVICES WITH THE COST ESTIMATES EMPLOYED IN SETTING
24 THE INITIAL OR ANY SUBSEQUENT DISCOUNT RATE, IMPLEMENTING
25 CORRESPONDING ADJUSTMENTS TO THE DISCOUNT RATE AS NECESSARY TO
26 EFFECT THE RECONCILIATIONS OR NEW COSTS RELATED TO THE PROGRAM THAT
27 WERE NOT PART OF THE ORIGINAL APPROVED COSTS. THE UTILITY SHALL USE

1 SIMILAR PROCESSES FOR COLLECTION FROM ALTERNATIVE ELECTRIC SUPPLIER
2 CUSTOMERS WHOSE RECEIVABLES ARE PURCHASED AS THOSE USED FOR UTILITY
3 CUSTOMERS. THE COMMISSION SHALL NOT ALLOW THE UTILITY TO RECOVER
4 UNCOLLECTIBLE AMOUNTS ASSOCIATED WITH THE ELECTRIC SUPPLY PROVIDED
5 BY THE ALTERNATIVE ELECTRIC SUPPLIER TO ITS CUSTOMERS UNLESS THE
6 UTILITY DEMONSTRATES TO THE COMMISSION THAT IT HAS INSTITUTED
7 COLLECTION METHODS THAT REFLECT BEST PRACTICES AS DETERMINED BY THE
8 COMMISSION.

9 (21) AS USED IN SUBSECTIONS (18) TO (20):

10 (A) "ADMINISTRATIVE COSTS" MEANS ALL OF THE ELECTRIC UTILITY'S
11 OR ELECTRIC DISTRIBUTION UTILITY'S COSTS INCURRED IN ITS
12 ADMINISTRATION OF THE PURCHASE OF RECEIVABLES PROGRAM.

13 (B) "QUALIFYING ALTERNATIVE ELECTRIC SUPPLIER" MEANS AN
14 ALTERNATIVE ELECTRIC SUPPLIER THAT INCLUDES ITS CHARGES FOR
15 ELECTRIC SALES MADE IN A UTILITY'S SERVICE AREA ON THAT UTILITY'S
16 BILL.

17 (22) ~~(17)~~ As used in subsections (1) and ~~(15)~~ **(16)**:

18 (a) "Customer" means the building or facilities served through
19 a single existing electric billing meter and does not mean the
20 person, corporation, partnership, association, governmental body,
21 or other entity owning or having possession of the building or
22 facilities.

23 (b) "Standard tariff service" means, for each regulated
24 electric utility, the retail rates, terms, and conditions of
25 service approved by the commission for service to customers who do
26 not elect to receive generation service from alternative electric
27 suppliers.

1 Sec. 10c. (1) Except for a violation under section ~~10a(3)~~
2 **10A(4)** and as otherwise provided under this section, upon a
3 complaint or on the commission's own motion, if the commission
4 finds, after notice and hearing, that an electric utility or an
5 alternative electric supplier has not complied with a provision or
6 order issued under sections 10 through 10bb, the commission shall
7 order such remedies and penalties as necessary to make whole a
8 customer or other person who has suffered damages as a result of
9 the violation, including, but not limited to, 1 or more of the
10 following:

11 (a) Order the electric utility or alternative electric
12 supplier to pay a fine for the first offense of not less than
13 \$1,000.00 or more than \$20,000.00. For a second offense, the
14 commission shall order the person to pay a fine of not less than
15 \$2,000.00 or more than \$40,000.00. For a third and any subsequent
16 offense, the commission shall order the person to pay a fine of not
17 less than \$5,000.00 or more than \$50,000.00.

18 (b) Order a refund to the customer of any excess charges.

19 (c) Order any other remedies that would make whole a person
20 harmed, including, but not limited to, payment of reasonable
21 attorney fees.

22 (d) Revoke the license of the alternative electric supplier if
23 the commission finds a pattern of violations.

24 (e) Issue cease and desist orders.

25 (2) Upon a complaint or the commission's own motion, the
26 commission may conduct a contested case to review allegations of a
27 violation under section ~~10a(3)~~. **10A(4)**.

1 (3) If the commission finds that a person has violated section
2 ~~10a(3)~~, **10A(4)**, the commission shall order remedies and penalties
3 to protect customers and other persons who have suffered damages as
4 a result of the violation, including, but not limited to, 1 or more
5 of the following:

6 (a) Order the person to pay a fine for the first offense of
7 not less than \$20,000.00 or more than \$30,000.00. For a second and
8 any subsequent offense, the commission shall order the person to
9 pay a fine of not less than \$30,000.00 or more than \$50,000.00. If
10 the commission finds that the second or any of the subsequent
11 offenses were knowingly made in violation of section ~~10a(3)~~,
12 **10A(4)**, the commission shall order the person to pay a fine of not
13 more than \$70,000.00. Each unauthorized action made in violation of
14 section ~~10a(3)~~ **10A(4)** shall be a separate offense under this
15 subdivision.

16 (b) Order an unauthorized supplier to refund to the customer
17 any amount greater than the customer would have paid to an
18 authorized supplier.

19 (c) Order an unauthorized supplier to reimburse an authorized
20 supplier an amount equal to the amount paid by the customer that
21 should have been paid to the authorized supplier.

22 (d) Order the refund of any amounts paid by the customer for
23 unauthorized services.

24 (e) Order a portion between 10% to 50% of the fine ordered
25 under subdivision (a) be paid directly to the customer who suffered
26 the violation under section ~~10a(3)~~ **10A(4)**.

27 (f) If the person is licensed under this act, revoke the

1 license if the commission finds a pattern of violations of section
2 ~~10a(3)~~-**10A(4)**.

3 (g) Issue cease and desist orders.

4 (4) Notwithstanding subsection (3), a fine shall not be
5 imposed for a violation of section ~~10a(3)~~-**10A(4)** if the supplier
6 has otherwise fully complied with section ~~10a(3)~~-**10A(4)** and shows
7 that the violation was an unintentional and bona fide error which
8 occurred notwithstanding the maintenance of procedures reasonably
9 adopted to avoid the error. Examples of a bona fide error include
10 clerical, calculation, computer malfunction, programming, or
11 printing errors. An error in legal judgment with respect to a
12 supplier's obligations under section ~~10a(3)~~-**10A(4)** is not a bona
13 fide error. The burden of proving that a violation was an
14 unintentional and bona fide error is on the supplier.

15 (5) If the commission finds that a party's position in a
16 complaint filed under subsection (2) is frivolous, the commission
17 shall award to the prevailing party their costs, including
18 reasonable attorney fees, against the nonprevailing party and their
19 attorney.

20 Sec. 10e. (1) An electric utility shall take all necessary
21 steps to ensure that merchant plants are connected to the
22 transmission and distribution systems within their operational
23 control. If the commission finds, after notice and hearing, that an
24 electric utility has prevented or unduly delayed the ability of the
25 plant to connect to the facilities of the utility, the commission
26 shall order remedies designed to make whole the merchant plant,
27 including, but not limited to, reasonable attorney fees. The

1 commission may also order fines of not more than \$50,000.00 per day
2 that the electric utility is in violation of this subsection.

3 (2) A merchant plant may sell its capacity to alternative
4 electric suppliers, electric utilities, municipal electric
5 utilities, retail customers, or other persons. A merchant plant
6 making sales to retail customers is an alternative electric
7 supplier and shall obtain a license under section ~~10a(2)~~-10A(3).

8 (3) The commission shall establish standards for the
9 interconnection of merchant plants with the transmission and
10 distribution systems of electric utilities. The standards shall not
11 require an electric utility to interconnect with generating
12 facilities with a capacity of less than 100 kilowatts for parallel
13 operations. The standards shall be consistent with generally
14 accepted industry practices and guidelines and shall be established
15 to ensure the reliability of electric service and the safety of
16 customers, utility employees, and the general public. The merchant
17 plant will be responsible for all costs associated with the
18 interconnection unless the commission has otherwise allocated the
19 costs and provided for cost recovery.

20 (4) This section does not apply to interconnections or
21 transactions that are subject to the jurisdiction of the federal
22 energy regulatory commission.

23 Sec. 10g. (1) As used in ~~sections 10 through 10bb~~-THIS ACT:

24 (a) "Alternative electric supplier" means a person selling
25 electric generation service to retail customers in this state.
26 Alternative electric supplier does not include a person who
27 physically delivers electricity directly to retail customers in

1 this state. An alternative electric supplier is not a public
2 utility.

3 (b) "Commission" means the Michigan public service commission
4 created in section 1.

5 (C) "ELECTRIC DISTRIBUTION UTILITY" MEANS AN ELECTRIC UTILITY
6 THAT HAS DIVESTED OR TRANSFERRED ITS ELECTRIC GENERATING FACILITIES
7 UNDER THIS SECTION.

8 (D) ~~(e)~~—"Electric utility" means that term as defined in
9 section 2 of the electric transmission line certification act, 1995
10 PA 30, MCL 460.562. **ELECTRIC UTILITY DOES NOT INCLUDE AN ELECTRIC**
11 **DISTRIBUTION UTILITY.**

12 (E) "INDEPENDENT AFFILIATE" MEANS A PERSON OR ENTITY THAT
13 DIRECTLY, OR INDIRECTLY THROUGH 1 OR MORE INTERMEDIATES, IS
14 CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH, ANOTHER SPECIFIED
15 ENTITY.

16 (F) ~~(d)~~—"Independent transmission owner" means an independent
17 transmission company as that term is defined in section 2 of the
18 electric transmission line certification act, 1995 PA 30, MCL
19 460.562.

20 (G) "INTERESTED PARTY" MEANS ANY PERSON OR ALTERNATIVE
21 ELECTRIC SUPPLIER DIRECTLY OR INDIRECTLY AFFECTED BY THE PROPOSED
22 DIVESTITURE OR TRANSFER.

23 (H) ~~(e)~~—"Merchant plant" means electric generating equipment
24 and associated facilities with a capacity of more than 100
25 kilowatts located in this state that are not owned and operated by
26 an electric utility.

27 (I) ~~(f)~~—"Relevant market" means either the Upper Peninsula or

1 the Lower Peninsula of this state.

2 (J) ~~(g)~~ "Renewable energy source" means energy generated by
3 solar, wind, geothermal, biomass, including waste-to-energy and
4 landfill gas, or hydroelectric.

5 (2) A school district aggregating electricity for school
6 properties or an exclusive aggregator for public or private school
7 properties is not an electric utility or a public utility for the
8 purpose of that aggregation.

9 (K) "UNDUE MARKET POWER" MEANS ANTICOMPETITIVE OR
10 DISCRIMINATORY CONDUCT OR INFLUENCE, INCLUDING, BUT NOT LIMITED TO,
11 UNLAWFUL ACTS OF COLLUSION, THAT PREVENTS RETAIL ELECTRIC CUSTOMERS
12 IN THIS STATE FROM OBTAINING THE BENEFITS OF A PROPERLY FUNCTIONING
13 AND FULLY AVAILABLE COMPETITIVE RETAIL ELECTRIC MARKET.

14 (3) WITHIN 90 DAYS OF THE EFFECTIVE DATE OF THE AMENDATORY ACT
15 THAT ADDED THIS SUBSECTION, THE COMMISSION SHALL PROMULGATE RULES
16 TO ENSURE THAT ALL RETAIL CUSTOMERS IN THIS STATE OF AN ELECTRIC
17 UTILITY WITH 1,000,000 OR MORE RETAIL CUSTOMERS HAVE A CHOICE OF
18 ELECTRIC SUPPLIERS AND THAT NO SUCH ELECTRIC UTILITY EXHIBITS UNDUE
19 MARKET POWER. WITHIN 60 DAYS OF THE PROMULGATION OF THE RULES UNDER
20 THIS SUBSECTION, AN ELECTRIC UTILITY WITH 1,000,000 OR MORE RETAIL
21 CUSTOMERS SHALL FILE A PLAN WITH THE COMMISSION TO MITIGATE ANY
22 UNDUE MARKET POWER AND ENSURE THAT ALL RETAIL CUSTOMERS IN THIS
23 STATE HAVE A CHOICE OF ELECTRIC SUPPLIERS. A PLAN MAY INCLUDE, BUT
24 IS NOT LIMITED TO, 1 OF THE FOLLOWING:

25 (A) DIVESTITURE OF THE ELECTRIC UTILITY'S ELECTRIC GENERATING
26 FACILITIES IN A COMPETITIVE SALE.

27 (B) TRANSFER OF THE ELECTRIC UTILITY'S ELECTRIC GENERATING

1 FACILITIES TO AN INDEPENDENT AFFILIATE OF THE ELECTRIC UTILITY.

2 (4) THE COMMISSION SHALL PROMULGATE RULES CREATING PROCEDURES
3 FOR THE PLAN REQUIRED UNDER THIS SECTION. THE PLAN SHALL INCLUDE,
4 BUT IS NOT LIMITED TO, ALL OF THE FOLLOWING INFORMATION:

5 (A) A CONCISE SUMMARY OF THE TERMS AND CONDITIONS OF THE
6 PROPOSED PLAN.

7 (B) COPIES OF ANY MATERIAL DIVESTITURE OR TRANSFER DOCUMENTS
8 IF AVAILABLE.

9 (C) A SUMMARY OF ANY PROJECTED IMPACTS OF THE PLAN ON ELECTRIC
10 SERVICE IN THIS STATE.

11 (D) FINANCIAL STATEMENTS THAT ARE RELEVANT TO ANY DIVESTITURE
12 OR TRANSFER.

13 (5) WITHIN 60 DAYS FROM THE DATE A PLAN IS FILED UNDER THIS
14 SECTION, INTERESTED PARTIES, INCLUDING THE ATTORNEY GENERAL, MAY
15 FILE COMMENTS WITH THE COMMISSION ON THE PROPOSED PLAN.

16 (6) AFTER NOTICE AND HEARING AND WITHIN 180 DAYS FROM THE DATE
17 A PLAN IS FILED UNDER THIS SECTION, THE COMMISSION SHALL ISSUE AN
18 ORDER APPROVING OR REJECTING THE PROPOSED PLAN.

19 (7) AN ELECTRIC UTILITY SUBJECT TO THIS SECTION SHALL PROVIDE
20 ALL INTERESTED PARTIES ACCESS TO ALL BOOKS, RECORDS, ACCOUNTS,
21 DOCUMENTS, AND ANY OTHER DATA AND INFORMATION THE COMMISSION
22 CONSIDERS NECESSARY TO EFFECTIVELY ASSESS THE IMPACT OF THE
23 PROPOSED PLAN.

24 (8) IN ENSURING THAT ALL RETAIL CUSTOMERS IN THIS STATE OF ANY
25 ELECTRIC UTILITY WITH 1,000,000 OR MORE RETAIL CUSTOMERS HAVE A
26 CHOICE OF ELECTRIC SUPPLIERS AND THAT NO SUCH ELECTRIC UTILITY
27 EXHIBITS UNDUE MARKET POWER, THE COMMISSION SHALL CONSIDER ALL OF

1 THE FOLLOWING IN ITS ORDER AND DETERMINATION OF WHETHER OR NOT TO
2 APPROVE A PROPOSED PLAN:

3 (A) WHETHER THE PROPOSED ACTION WOULD HAVE AN ADVERSE IMPACT
4 ON THE RATES OF THE CUSTOMERS AFFECTED BY THE PLAN.

5 (B) WHETHER THE PROPOSED ACTION WOULD HAVE AN ADVERSE IMPACT
6 ON THE PROVISION OF SAFE, RELIABLE, AND ADEQUATE ELECTRIC SERVICE
7 IN THIS STATE.

8 (C) WHETHER THE PROPOSED ACTION IS OTHERWISE INCONSISTENT WITH
9 PUBLIC POLICY AND INTEREST.

10 (9) IN APPROVING A PLAN UNDER THIS SECTION, THE COMMISSION MAY
11 IMPOSE REASONABLE TERMS AND CONDITIONS ON THE PLAN TO PROTECT
12 ELECTRIC CUSTOMERS IN THIS STATE. IF THE COMMISSION DETERMINES THAT
13 A UTILITY SHOULD RECOVER STRANDED COSTS, THE TERMS AND CONDITIONS
14 SHALL INCLUDE A REQUIREMENT THAT NET STRANDED COSTS ARE RECOVERED
15 IN A WAY THAT RESULTS IN THE LOWEST TOTAL COSTS FOR THE CUSTOMERS
16 WHO ARE REQUIRED TO PAY THOSE NET STRANDED COSTS.

17 (10) NONPUBLIC INFORMATION AND MATERIALS SUBMITTED BY AN
18 ELECTRIC UTILITY UNDER THIS SECTION CLEARLY DESIGNATED BY THAT
19 UTILITY AS CONFIDENTIAL ARE EXEMPT FROM THE FREEDOM OF INFORMATION
20 ACT, 1976 PA 442, MCL 15.231 TO 15.246. THE COMMISSION SHALL ISSUE
21 PROTECTIVE ORDERS AS NECESSARY TO PROTECT INFORMATION DESIGNATED BY
22 THAT UTILITY AS CONFIDENTIAL.

23 (11) IF AN ELECTRIC UTILITY HAS DIVESTED OR TRANSFERRED ITS
24 ELECTRIC GENERATING FACILITIES ACCORDING TO A PLAN APPROVED UNDER
25 THIS SECTION, THE ELECTRIC UTILITY SHALL BECOME AN ELECTRIC
26 DISTRIBUTION UTILITY. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION
27 (13), AN ELECTRIC DISTRIBUTION UTILITY SHALL NOT OWN, OPERATE, OR

1 CONTROL ANY ELECTRIC GENERATION FACILITY.

2 (12) AN ELECTRIC DISTRIBUTION UTILITY HAS AN OBLIGATION TO
3 CONNECT AND PROVIDE REGULATED DISTRIBUTION SERVICE TO RETAIL
4 CUSTOMERS WITHIN THE ELECTRIC DISTRIBUTION UTILITY'S ASSIGNED
5 SERVICE AREA AT RATES AND ON TERMS AND CONDITIONS AS AUTHORIZED BY
6 THE COMMISSION.

7 (13) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, WITHIN 2
8 YEARS FROM THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
9 SUBSECTION, AN ELECTRIC UTILITY WITH 1,000,000 OR MORE RETAIL
10 CUSTOMERS OR AN ELECTRIC DISTRIBUTION UTILITY MAY NOT SELL OR OFFER
11 FOR SALE GENERATION SERVICE TO ANY RETAIL CONSUMER OF ELECTRIC
12 ENERGY IN THIS STATE, EITHER DIRECTLY OR THROUGH AN AFFILIATE,
13 UNLESS THE UTILITY IMPLEMENTS AND OPERATES UNDER A PLAN THAT IS
14 APPROVED BY THE COMMISSION UNDER THIS SECTION, IS CONSISTENT WITH
15 THE POLICIES SPECIFIED IN SECTION 10, AND DOES ALL OF THE
16 FOLLOWING:

17 (A) IF THE COMMISSION REQUIRES DIVESTITURE OR TRANSFER, AT A
18 MINIMUM, DIVESTS OR TRANSFERS ALL GENERATION ASSETS AND GENERATION-
19 RELATED BUSINESS ACTIVITIES EXCEPT FOR AN OWNERSHIP INTEREST IN A
20 GENERATION ASSET THAT THE COMMISSION DETERMINES IS NECESSARY FOR
21 THE ELECTRIC DISTRIBUTION UTILITY TO PERFORM ITS OBLIGATIONS AS AN
22 ELECTRIC DISTRIBUTION UTILITY IN AN EFFICIENT MANNER. DIVESTITURE
23 OR TRANSFER MAY BE IN WHOLE OR IN PART TO AN INDEPENDENT AFFILIATE
24 OF THE ELECTRIC DISTRIBUTION UTILITY FOR THE PROVISION OF
25 COMPETITIVE RETAIL ELECTRIC SERVICE, IF THE PLAN INCLUDES SEPARATE
26 ACCOUNTING REQUIREMENTS, THE CODE OF CONDUCT, AND OTHER MEASURES
27 NECESSARY TO EFFECTUATE THE POLICIES IN SECTION 10.

1 (B) PROPOSES A METHODOLOGY TO DETERMINE THE ELECTRIC
2 DISTRIBUTION UTILITY'S NET STRANDED COSTS AND IMPLEMENTATION COSTS,
3 IF ANY.

4 (C) SATISFIES THE PUBLIC INTEREST IN PREVENTING UNFAIR
5 COMPETITIVE ADVANTAGE AND PREVENTING UNDUE MARKET POWER.

6 (D) ENSURES THAT THE ELECTRIC DISTRIBUTION UTILITY WILL NOT
7 EXTEND ANY UNDUE PREFERENCE OR ADVANTAGE TO ANY AFFILIATE,
8 DIVISION, OR PART OF THE ELECTRIC DISTRIBUTION UTILITY ENGAGED IN
9 THE BUSINESS OF SUPPLYING STANDARD TARIFF SERVICE, COMPETITIVE
10 RETAIL ELECTRIC SERVICE, OR ANY NONELECTRIC PRODUCT OR SERVICE,
11 INCLUDING, BUT NOT LIMITED TO, UTILITY RESOURCES SUCH AS TRUCKS,
12 TOOLS, OFFICE EQUIPMENT, OFFICE SPACE, SUPPLIES, CUSTOMER AND
13 MARKETING INFORMATION, ADVERTISING, BILLING AND MAILING SYSTEMS,
14 PERSONNEL, AND TRAINING, WITHOUT COMPENSATION BASED UPON FULLY
15 LOADED EMBEDDED COSTS CHARGED TO THE AFFILIATE.

16 (E) ENSURES THAT ANY AFFILIATE, DIVISION, OR PART OF AN
17 ELECTRIC DISTRIBUTION UTILITY WILL NOT RECEIVE UNDUE PREFERENCE OR
18 ADVANTAGE FROM ANY OTHER AFFILIATE, DIVISION, OR PART OF THE
19 ELECTRIC DISTRIBUTION UTILITY ENGAGED IN THE BUSINESS OF SUPPLYING
20 NONCOMPETITIVE RETAIL ELECTRIC SERVICE.

21 (14) AN ELECTRIC UTILITY MAY REJECT THE TERMS AND CONDITIONS
22 IMPOSED BY THE COMMISSION UNDER SUBSECTION (9) BY FILING DIFFERENT
23 TERMS AND CONDITIONS WITHIN 30 DAYS OF THE COMMISSION'S PROPOSAL.
24 IF THE DIFFERENT TERMS AND CONDITIONS PROPOSED BY THE ELECTRIC
25 UTILITY ARE NOT APPROVED BY THE COMMISSION, THEN THE ELECTRIC
26 UTILITY MUST COMPLY WITH THE TERMS AND CONDITIONS IMPOSED BY THE
27 COMMISSION AT THAT TIME AND PROCEED WITH THE TRANSACTION.

1 (15) IF AN ELECTRIC UTILITY HAS NOT COMPLETED A PLAN UNDER
2 THIS SECTION WITHIN 2 YEARS FROM THE EFFECTIVE DATE OF THE
3 AMENDATORY ACT THAT ADDED THIS SUBSECTION, THE COMMISSION SHALL
4 OBTAIN ELECTRIC SERVICE FOR THE CUSTOMERS OF THAT ELECTRIC UTILITY
5 AS PROVIDED IN SECTION 10A(2)(B).

6 (16) THE COMMISSION SHALL, AFTER A CONTESTED CASE PROCEEDING,
7 ANNUALLY ISSUE AN ORDER APPROVING FOR EACH ELECTRIC DISTRIBUTION
8 UTILITY A TRUE-UP ADJUSTMENT TO RECONCILE ANY OVERCOLLECTIONS OR
9 UNDERCOLLECTIONS OF THE PRECEDING 12 MONTHS TO ENSURE THE RECOVERY
10 OF ALL AMOUNTS OF NET STRANDED COSTS IN A COMPETITIVELY NEUTRAL
11 MANNER. THE COMMISSION SHALL REVIEW THE ELECTRIC DISTRIBUTION
12 UTILITY'S NET STRANDED COST RECOVERY CHARGES AND SECURITIZATION
13 CHARGES IMPLEMENTED FOR THE PRECEDING 12 MONTHS AND ADJUST THE
14 STRANDED COST RECOVERY CHARGE, BY WAY OF SUPPLEMENTAL SURCHARGES OR
15 CREDITS, TO ALLOW THE NETTING OF STRANDED COSTS. THE COMMISSION
16 SHALL CONSIDER THE REASONABLENESS AND APPROPRIATENESS OF VARIOUS
17 METHODS TO DETERMINE NET STRANDED COSTS, INCLUDING, BUT NOT LIMITED
18 TO, ALL OF THE FOLLOWING:

19 (A) EVALUATING THE RELATIONSHIP OF MARKET VALUE TO THE NET
20 BOOK VALUE OF GENERATION ASSETS AND PURCHASED POWER CONTRACTS.

21 (B) EVALUATING NET STRANDED COSTS BASED ON THE MARKET PRICE OF
22 POWER PLUS ANY REVENUES FROM A REGIONAL TRANSMISSION ORGANIZATION
23 OR OTHER SOURCES IN RELATION TO REVENUES ASSUMED BY THE COMMISSION
24 UNDER COST OF SERVICE REGULATION.

25 (C) ANY OTHER METHOD THE COMMISSION CONSIDERS APPROPRIATE.

26 (17) IF THE COMMISSION FINDS THAT A UTILITY EXHIBITS UNDUE
27 MARKET POWER, THE COMMISSION SHALL CONDUCT AN INVESTIGATION AND

1 REFER ITS FINDINGS TO THE ATTORNEY GENERAL, THE UNITED STATES
2 DEPARTMENT OF JUSTICE, THE UNITED STATES SECURITIES AND EXCHANGE
3 COMMISSION, OR THE FEDERAL ENERGY REGULATORY COMMISSION, AS
4 APPROPRIATE.

5 Sec. 10q. (1) A person shall not engage in the business of an
6 alternative electric supplier in this state unless the person
7 obtains and maintains a license issued under section 10a.

8 (2) In addition to any other information required by the
9 commission in connection with a licensing application, the
10 applicant shall be required to do both of the following:

11 (a) Provide information, including information as to the
12 applicant's safety record and its history of service quality and
13 reliability, as to the applicant's technical ability, as defined
14 under regulations of the commission, to safely and reliably
15 generate or otherwise obtain and deliver electricity and provide
16 any other proposed services.

17 (b) Demonstrate that the employees of the applicant that will
18 be installing, operating, and maintaining generation or
19 transmission facilities within this state, or any entity with which
20 the applicant has contracted to perform those functions within this
21 state, have the requisite knowledge, skills, and competence to
22 perform those functions in a safe and responsible manner in order
23 to provide safe and reliable service.

24 (3) The commission shall order the applicant to post a bond or
25 provide a letter of credit or other financial guarantee in a
26 reasonable amount established by the commission of not less than
27 \$40,000.00, if the commission finds after an investigation and

1 review that the requirement of a bond would be in the public
2 interest.

3 (4) Only investor-owned, cooperative, ~~or~~ municipal electric
4 utilities, **OR ELECTRIC DISTRIBUTION UTILITIES** shall own, construct,
5 or operate electric distribution facilities or electric meter
6 equipment used in the distribution of electricity in this state.
7 This subsection does not prohibit a self-service power provider
8 from owning, constructing, or operating electric distribution
9 facilities or electric metering equipment for the sole purpose of
10 providing or utilizing self-service power. This act does not affect
11 the current rights, if any, of a nonutility to construct or operate
12 a private distribution system on private property or private
13 easements. This does not preclude crossing of public rights-of-way.

14 (5) The commission shall not prohibit an electric utility from
15 metering and billing its customers for services provided by the
16 electric utility.

17 Sec. 10bb. (1) Aggregation may be used for the purchasing of
18 electricity and related services from an alternative electric
19 supplier.

20 (2) Local units of government, public and private schools,
21 universities, and community colleges may aggregate for the purpose
22 of purchasing electricity for themselves or for **RESIDENTIAL**
23 customers **AND SMALL COMMERCIAL CUSTOMERS** within their boundaries.
24 ~~with the written consent of each customer aggregated. Customers~~
25 **RESIDENTIAL CUSTOMERS AND SMALL COMMERCIAL CUSTOMERS** within a local
26 unit of government ~~shall continue to have the right to choose their~~
27 ~~electricity supplier and are not required to~~ **MAY CHOOSE NOT TO**

1 purchase electricity through the aggregator. LOCAL UNITS OF
2 GOVERNMENT MAY AGGREGATE FOR THE PURPOSE OF PURCHASING ELECTRICITY
3 FOR LARGE COMMERCIAL CUSTOMERS AND INDUSTRIAL CUSTOMERS WITHIN
4 THEIR BOUNDARIES WITH THE WRITTEN OR ELECTRONIC CONSENT OF EACH OF
5 THOSE CUSTOMERS AGGREGATED.

6 (3) As used in this section: ~~7 "aggregation"~~

7 (A) "AGGREGATION" means the combining of electric loads of
8 multiple retail customers or a single customer with multiple sites
9 to facilitate the provision of electric service to ~~such~~ **THOSE**
10 customers.

11 (B) "LARGE COMMERCIAL CUSTOMER" MEANS A COMMERCIAL CUSTOMER
12 WITH AN ELECTRIC DEMAND OF GREATER THAN 25 KILOWATTS.

13 (C) "SMALL COMMERCIAL CUSTOMER" MEANS A COMMERCIAL CUSTOMER
14 WITH AN ELECTRIC DEMAND OF 25 KILOWATTS OR LESS.