

HOUSE BILL No. 5042

November 3, 2015, Introduced by Reps. Chatfield, Glenn, Kelly, Hooker and Runestad and referred to the Committee on Energy Policy.

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 section 10a (MCL 460.10a), as amended by 2008 PA 286.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 10a. (1) The commission shall issue orders establishing
2 the rates, terms, and conditions of service that allow all retail
3 customers of an electric utility or provider to choose an
4 alternative electric supplier. The orders shall do all of the
5 following:

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

10 (b) Set forth procedures necessary to administer and allocate
11 the amount of load that will be allowed to be served by alternative
12 electric suppliers, through the use of annual energy allotments
13 awarded on a calendar year basis, and shall provide, among other
14 things, that existing customers ~~who~~ **THAT** are taking electric
15 service from an alternative electric supplier at a facility on ~~the~~
16 ~~effective date of the amendatory act that added this subdivision~~
17 **OCTOBER 6, 2008** shall be given an allocated annual energy allotment
18 for that service at that facility, that customers seeking to expand
19 usage at a facility served through an alternative electric supplier
20 will be given next priority, with the remaining available load, if
21 any, allocated on a first-come first-served basis. The procedures
22 shall also provide how customer facilities will be defined for the
23 purpose of assigning the annual energy allotments to be allocated
24 under this section. The commission shall not allocate additional
25 annual energy allotments at any time when the total annual energy

1 allotments for the utility's distribution service territory is
2 greater than 10% of the utility's weather-adjusted retail sales in
3 the calendar year preceding the date of allocation. If the sales of
4 a utility are less in a subsequent year or if the energy usage of a
5 customer receiving electric service from an alternative electric
6 supplier exceeds its annual energy allotment for that facility,
7 that customer shall not be forced to purchase electricity from a
8 utility, but may purchase electricity from an alternative electric
9 supplier for that facility during that calendar year.

10 (c) Notwithstanding any other provision of this section,
11 customers seeking to expand usage at a facility that has been
12 continuously served through an alternative electric supplier since
13 April 1, 2008 ~~shall be permitted to~~ **MAY** purchase electricity from
14 an alternative electric supplier for both the existing and any
15 expanded load at that facility as well as any new facility
16 constructed or acquired after ~~the effective date of the amendatory~~
17 ~~act that added this subdivision~~ **OCTOBER 6, 2008** that is similar in
18 nature if the customer owns more than 50% of the new facility.

19 (d) Notwithstanding any other provision of this section, any
20 customer operating an iron ore mining facility, iron ore processing
21 facility, or both, located in the Upper Peninsula of this state,
22 ~~shall be permitted to~~ **MAY** purchase all or any portion of its
23 electricity from an alternative electric supplier, regardless of
24 whether the sales exceed 10% of the serving electric utility's
25 average weather-adjusted retail sales.

26 **(E) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, A**
27 **FACILITY OWNED OR LEASED BY THIS STATE OR A POLITICAL SUBDIVISION**

1 OF THIS STATE MAY PURCHASE ALL OR ANY PORTION OF ITS ELECTRICITY
2 FROM AN ALTERNATIVE ELECTRIC SUPPLIER, REGARDLESS OF WHETHER THE
3 SALES EXCEED 10% OF THE SERVING ELECTRIC UTILITY'S AVERAGE WEATHER-
4 ADJUSTED RETAIL SALES. ANY CUSTOMER PURCHASING ELECTRICITY FROM AN
5 ALTERNATIVE ELECTRIC SUPPLIER UNDER THIS SUBDIVISION, OR ANY BEHIND
6 THE METER GENERATION OR SUPPLY, SHALL NOT COUNT TOWARD ANY LIMIT
7 SET FORTH IN SUBDIVISION (A). AS USED IN THIS SUBDIVISION,
8 "POLITICAL SUBDIVISION" MEANS A COUNTY, CITY, VILLAGE, TOWNSHIP, OR
9 AUTHORITY.

10 (F) A RETAIL CUSTOMER PURCHASING ITS ELECTRICITY UNDER
11 SUBDIVISION (E) SHALL SUBMIT AN AFFIDAVIT TO THE COMMISSION
12 AFFIRMING THAT THE CUSTOMER MEETS AT LEAST 1 OF THE CRITERIA SET
13 FORTH IN SUBDIVISION (E). ANY CHALLENGES TO THE AFFIDAVIT OR THE
14 ELIGIBILITY OF THE RETAIL CUSTOMER SHALL BE SUBMITTED TO THE
15 COMMISSION WITHIN 10 DAYS OF THE AFFIDAVIT BEING FILED. IF THE
16 COMMISSION FINDS REASONABLE CAUSE FOR THE CHALLENGE, IT SHALL
17 COMMENCE AN INVESTIGATION, HOLD HEARINGS, AND ISSUE ITS FINDINGS
18 AND ORDER ON THE MATTER UNDER THE CONTESTED CASE PROVISIONS OF
19 CHAPTER 4 OF THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA
20 306, MCL 24.271 TO 24.287.

21 (2) The commission shall issue orders establishing a licensing
22 procedure for all alternative electric suppliers. To ensure
23 adequate service to customers in this state, the commission shall
24 require that an alternative electric supplier maintain an office
25 within this state, shall assure that an alternative electric
26 supplier has the necessary financial, managerial, and technical
27 capabilities, shall require that an alternative electric supplier

1 maintain records ~~which~~**THAT** the commission considers necessary, and
2 shall ensure an alternative electric supplier's accessibility to
3 the commission, to consumers, and to electric utilities in this
4 state. The commission also shall require alternative electric
5 suppliers to agree that they will collect and remit to local units
6 of government all applicable users, sales, and use taxes. An
7 alternative electric supplier is not required to obtain any
8 certificate, license, or authorization from the commission other
9 than as required by this act.

10 (3) The commission shall issue orders to ensure that customers
11 in this state are not switched to another supplier or billed for
12 any services without the customer's consent.

13 (4) ~~No later than December 2, 2000, the~~**THE** commission shall
14 establish a code of conduct that ~~shall apply~~**APPLIES** to all
15 electric utilities. The code of conduct shall include, but is not
16 limited to, measures to prevent cross-subsidization, information
17 sharing, and preferential treatment, between a utility's regulated
18 and unregulated services, whether those services are provided by
19 the utility or the utility's affiliated entities. The code of
20 conduct established under this subsection ~~shall~~**IS** also ~~be~~
21 applicable to electric utilities and alternative electric suppliers
22 consistent with section 10, this section, and sections 10b through
23 10cc.

24 (5) An electric utility may offer its customers an appliance
25 service program. Except as otherwise provided by this section, the
26 utility shall comply with the code of conduct established by the
27 commission under subsection (4). ~~As used in this section,~~

1 ~~"appliance service program" or "program" means a subscription~~
2 ~~program for the repair and servicing of heating and cooling systems~~
3 ~~or other appliances.~~

4 (6) A utility offering a program under subsection (5) shall do
5 all of the following:

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

9 (b) Maintain separate books and records for the program,
10 access to which shall be made available to the commission upon
11 request.

12 (c) Not promote or market the program through the use of
13 utility billing inserts, printed messages on the utility's billing
14 materials, or other promotional materials included with customers'
15 utility bills.

16 (7) All costs directly attributable to an appliance service
17 program allowed under subsection (5) shall be allocated to the
18 program as required by this subsection. The direct and indirect
19 costs of employees, vehicles, equipment, office space, and other
20 facilities used in the appliance service program shall be allocated
21 to the program based upon the amount of use by the program as
22 compared to the total use of the employees, vehicles, equipment,
23 office space, and other facilities. The cost of the program shall
24 include administrative and general expense loading to be determined
25 in the same manner as the utility determines administrative and
26 general expense loading for all of the utility's regulated and
27 unregulated activities. A subsidy by a utility does not exist if

1 costs allocated as required by this subsection do not exceed the
2 revenue of the program.

3 (8) A utility may include charges for its appliance service
4 program on its monthly billings to its customers if the utility
5 complies with all of the following requirements:

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

9 (b) A customer's regulated utility service is not terminated
10 for nonpayment of the appliance service program portion of the
11 bill.

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

15 (9) In marketing its appliance service program to the public,
16 a utility shall do all of the following:

17 (a) The list of customers receiving regulated service from the
18 utility shall be available to a provider of appliance repair
19 service upon request within 2 business days. The customer list
20 shall be provided in the same electronic format as such information
21 is provided to the appliance service program. A new customer shall
22 be added to the customer list within 1 business day of the date the
23 customer requested to turn on service.

24 (b) Appropriately allocate costs as required under subsection
25 (7) when personnel employed at a utility's call center provide
26 appliance service program marketing information to a prospective
27 customer.

1 (c) ~~Prior to~~ **BEFORE** enrolling a customer into the program, the
2 utility shall inform the potential customer of all of the
3 following:

4 (i) That appliance service programs may be available from
5 another provider.

6 (ii) That the appliance service program is not regulated by
7 the commission.

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

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

15 (d) The utility name and logo may be used to market the
16 appliance service program provided that the program is not marketed
17 in conjunction with a regulated service. ~~To the extent that~~ **IF** a
18 program utilizes the utility's name and logo in marketing the
19 program, the program shall include language on all material
20 indicating that the program is not regulated by the commission.
21 Costs shall not be allocated to the program for the use of the
22 utility's name or logo.

23 (10) This section does not prohibit the commission from
24 requiring a utility to include revenues from an appliance service
25 program in establishing base rates. If the commission includes the
26 revenues of an appliance service program in determining a utility's
27 base rates, the commission shall also include all of the costs of

1 the program as determined under this section.

2 (11) Except as otherwise provided in this section, the code of
3 conduct with respect to an appliance service program shall not
4 require a utility to form a separate affiliate or division to
5 operate an appliance service program, impose further restrictions
6 on the sharing of employees, vehicles, equipment, office space, and
7 other facilities, or require the utility to provide other providers
8 of appliance repair service with access to utility employees,
9 vehicles, equipment, office space, or other facilities.

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

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

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

27 (c) A site or facility with load existing on June 5, 2000 that

1 is divided by an inland body of water or by a public highway, road,
2 or street but that otherwise meets this definition meets the
3 contiguous requirement of this subdivision regardless of whether
4 self-service power was being generated on June 5, 2000.

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

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

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

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

1 (i) For at least 90 days during the period from January 1,
2 1996 to October 1, 1999, supplied by self-service power, but only
3 to the extent of the capacity reserved or load served by self-
4 service power during the period.

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

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

23 (15) A customer ~~who~~**THAT** elects to receive service from an
24 alternative electric supplier may subsequently provide notice to
25 the electric utility of the customer's desire to receive standard
26 tariff service from the electric utility. The procedures in place
27 for each electric utility as of January 1, 2008 that set forth the

1 terms ~~pursuant to~~ **UNDER** which a customer receiving service from an
2 alternative electric supplier may return to full service from the
3 electric utility are ratified, ~~and shall remain in effect~~, and may
4 be amended by the commission as needed. If an electric utility did
5 not have the procedures in place as of January 1, 2008, the
6 commission shall adopt those procedures.

7 (16) The commission shall authorize rates that will ensure
8 that an electric utility that offered retail open access service
9 from 2002 through ~~the effective date of the amendatory act that~~
10 ~~added this subsection~~ **OCTOBER 6, 2008** fully recovers its
11 restructuring costs and any associated accrued regulatory assets.
12 This includes, but is not limited to, implementation costs,
13 stranded costs, and costs authorized pursuant to section 10d(4) as
14 it existed ~~prior to the effective date of the amendatory act that~~
15 ~~added this subsection~~, **BEFORE OCTOBER 6, 2008**, that have been
16 authorized for recovery by the commission in orders issued ~~prior to~~
17 ~~the effective date of the amendatory act that added this~~
18 ~~subsection~~. **BEFORE OCTOBER 6, 2008**. The commission shall approve
19 surcharges that will ensure full recovery of all such costs ~~within~~
20 ~~5 years of the effective date of the amendatory act that added this~~
21 ~~subsection~~. **BY OCTOBER 6, 2013**.

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

23 (a) "Customer" means the building or facilities served through
24 a single existing electric billing meter and does not mean the
25 person, corporation, partnership, association, governmental body,
26 or other entity owning or having possession of the building or
27 facilities.

1 (b) "Standard tariff service" means, for each regulated
2 electric utility, the retail rates, terms, and conditions of
3 service approved by the commission for service to customers who do
4 not elect to receive generation service from alternative electric
5 suppliers.

6 (18) AS USED IN THIS SECTION, "APPLIANCE SERVICE PROGRAM" OR
7 "PROGRAM" MEANS A SUBSCRIPTION PROGRAM FOR THE REPAIR AND SERVICING
8 OF HEATING AND COOLING SYSTEMS OR OTHER APPLIANCES.

9 Enacting section 1. This amendatory act takes effect 90 days
10 after the date it is enacted into law.