

SENATE BILL No. 247

March 26, 2015, Introduced by Senator HORN 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 the title and sections 10 and 10a (MCL 460.10 and 460.10a), the title as amended by 2005 PA 190 and sections 10 and 10a as amended by 2008 PA 286.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE

2 An act to provide for the regulation and control of public and
3 certain private utilities and other services affected with a public
4 interest within this state; to provide for alternative energy
5 suppliers; to provide for licensing; to include municipally owned
6 utilities and other providers of energy under certain provisions of
7 this act; to create a public service commission and to prescribe
8 and define its powers and duties; to abolish the Michigan public
9 utilities commission and to confer the powers and duties vested by
10 law on the public service commission; to provide for the
11 continuance, transfer, and completion of certain matters and
12 proceedings; to abolish automatic adjustment clauses; to prohibit
13 certain rate increases without notice and hearing; to qualify
14 residential energy conservation programs permitted under state law
15 for certain federal exemption; to create a fund; ~~to provide for a~~
16 ~~restructuring of the manner in which energy is provided in this~~
17 ~~state;~~ to encourage the utilization of resource recovery
18 facilities; to prohibit certain acts and practices of providers of
19 energy; to allow for the securitization of stranded costs; to
20 reduce rates; to provide for appeals; to provide appropriations; to
21 declare the effect and purpose of this act; to prescribe remedies
22 and penalties; and to repeal acts and parts of acts.

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

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

1 ~~—— (a) To ensure that all retail customers in this state of~~
2 ~~electric power have a choice of electric suppliers.~~

3 (A) ~~(b)~~ To allow and encourage the Michigan public service
4 commission to ~~foster competition in this state in the provision of~~
5 ~~electric supply and~~ maintain regulation of electric supply for
6 customers who continue to choose supply from incumbent electric
7 utilities.

8 ~~—— (c) To encourage the development and construction of merchant~~
9 ~~plants which will diversify the ownership of electric generation in~~
10 ~~this state.~~

11 (B) ~~(d)~~ To ensure that all persons in this state are afforded
12 safe, reliable electric power at a reasonable rate.

13 (C) ~~(e)~~ To improve the opportunities for economic development
14 in this state and to promote financially healthy and competitive
15 utilities in this state.

16 (D) ~~(f)~~ To maintain, foster, and encourage robust, reliable,
17 and economic generation, distribution, and transmission systems to
18 provide this state's electric suppliers and generators an
19 opportunity to access regional sources of generation and wholesale
20 power markets and to ensure a reliable supply of electricity in
21 this state.

22 Sec. 10a. ~~(1) The commission shall issue orders establishing~~
23 ~~the rates, terms, and conditions of service that allow all retail~~
24 ~~customers of an electric utility or provider to choose an~~
25 ~~alternative electric supplier. The orders shall do all of the~~
26 ~~following:~~

27 ~~—— (a) Provide that no more than 10% of an electric utility's~~

~~average weather adjusted retail sales for the preceding calendar year may take service from an alternative electric supplier at any time.~~

~~—— (b) Set forth procedures necessary to administer and allocate the amount of load that will be allowed to be served by alternative electric suppliers, through the use of annual energy allotments awarded on a calendar year basis, and shall provide, among other things, that existing customers who are taking electric service from an alternative electric supplier at a facility on the effective date of the amendatory act that added this subdivision 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~~

1 ~~supplier for that facility during that calendar year.~~

2 (1) BEGINNING ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT
3 ADDED THIS SENTENCE, ALL OF THE FOLLOWING APPLY TO ELECTRIC SERVICE
4 IN THIS STATE:

5 (A) A CUSTOMER THAT RECEIVES ELECTRIC GENERATION SERVICE FROM
6 AN ELECTRIC UTILITY ON THE EFFECTIVE DATE OF THE AMENDATORY ACT
7 THAT ADDED THIS SENTENCE SHALL CONTINUE TO RECEIVE ELECTRIC
8 GENERATION SERVICE FROM THAT ELECTRIC UTILITY AND IS NOT ELIGIBLE
9 TO RECEIVE ELECTRIC GENERATION SERVICE FROM AN ALTERNATIVE ELECTRIC
10 SUPPLIER. ANY CUSTOMER THAT BECOMES A CUSTOMER AFTER THE EFFECTIVE
11 DATE OF THE AMENDATORY ACT THAT ADDED THIS SENTENCE IS ENTITLED TO
12 RECEIVE STANDARD TARIFF SERVICE AND IS NOT ELIGIBLE TO RECEIVE
13 ELECTRIC GENERATION SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER.

14 (B) A CUSTOMER THAT RECEIVES ELECTRIC GENERATION SERVICE FROM
15 AN ALTERNATIVE ELECTRIC SUPPLIER ON THE EFFECTIVE DATE OF THE
16 AMENDATORY ACT THAT ADDED THIS SENTENCE MAY SUBSEQUENTLY PROVIDE
17 NOTICE TO AN ELECTRIC UTILITY OF THE CUSTOMER'S DESIRE TO RECEIVE
18 STANDARD TARIFF SERVICE FROM THE ELECTRIC UTILITY DURING OR AT THE
19 CONCLUSION OF THE TERM OF ITS EXISTING CONTRACT WITH THE
20 ALTERNATIVE ELECTRIC SUPPLIER. IF A CUSTOMER ELECTS TO RECEIVE
21 STANDARD TARIFF SERVICE FROM AN ELECTRIC UTILITY UNDER THIS
22 SUBDIVISION, THE CUSTOMER IS NOT ELIGIBLE TO RECEIVE ELECTRIC
23 GENERATION SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER.

24 (C) A CUSTOMER THAT CHOOSES TO CONTINUE TO RECEIVE ELECTRIC
25 SUPPLY SERVICE FROM ALTERNATIVE ELECTRIC SUPPLIERS AS OF THE
26 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SENTENCE MAY
27 RETURN TO STANDARD TARIFF SERVICE FROM THE ELECTRIC UTILITY IF THE

1 CUSTOMER PROVIDES THE ELECTRIC UTILITY 5 YEARS' WRITTEN NOTICE OF
 2 THE INTENT TO RETURN TO STANDARD TARIFF SERVICE. THE ELECTRIC
 3 UTILITY HAS THE SOLE DISCRETION TO WAIVE THIS NOTICE REQUIREMENT.
 4 ANY INCREMENTAL COSTS ASSOCIATED WITH THE RETURN OF A CUSTOMER FROM
 5 AN ALTERNATIVE ELECTRIC SUPPLIER TO AN ELECTRIC UTILITY SHALL NOT
 6 BE BORNE BY ANY OTHER CUSTOMER OF AN ELECTRIC UTILITY OR BY THE
 7 ELECTRIC UTILITY.

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

17 (E) ~~(d)~~ Notwithstanding any other provision of this section,
 18 any customer operating an iron ore mining facility, iron ore
 19 processing facility, or both, located in the Upper Peninsula of
 20 this state, ~~shall be permitted to~~ MAY purchase all or any portion
 21 of its electricity from an alternative electric supplier. ~~7~~
 22 ~~regardless of whether the sales exceed 10% of the serving electric~~
 23 ~~utility's average weather adjusted retail sales.~~

24 (2) The commission shall issue orders establishing a licensing
 25 procedure for all alternative electric suppliers. To ensure
 26 adequate service to customers in this state, the commission shall
 27 require that an alternative electric supplier maintain an office

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

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

16 (4) No later than December 2, 2000, the commission shall
17 establish a code of conduct that ~~shall apply~~ **APPLIES** to all
18 electric utilities. The code of conduct shall include, but is not
19 limited to, measures to prevent cross-subsidization, information
20 sharing, and preferential treatment, between a utility's regulated
21 and unregulated services, whether those services are provided by
22 the utility or the utility's affiliated entities. The code of
23 conduct established under this subsection ~~shall also be applicable~~
24 **APPLIES** to electric utilities and alternative electric suppliers
25 consistent with section 10, this section, and sections 10b through
26 10cc.

27 (5) An electric utility may offer its customers an appliance

1 service program. Except as otherwise provided by this section, the
2 utility shall comply with the code of conduct established by the
3 commission under subsection (4). ~~As used in this section,~~
4 ~~"appliance service program" or "program" means a subscription~~
5 ~~program for the repair and servicing of heating and cooling systems~~
6 ~~or other appliances.~~

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

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

12 (b) Maintain separate books and records for the program,
13 access to which shall be made available to the commission upon
14 request.

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

19 (7) All costs directly attributable to an appliance service
20 program allowed under subsection (5) shall be allocated to the
21 program as required by this subsection. The direct and indirect
22 costs of employees, vehicles, equipment, office space, and other
23 facilities used in the appliance service program shall be allocated
24 to the program based upon the amount of use by the program as
25 compared to the total use of the employees, vehicles, equipment,
26 office space, and other facilities. The cost of the program shall
27 include administrative and general expense loading to be determined

1 in the same manner as the utility determines administrative and
2 general expense loading for all of the utility's regulated and
3 unregulated activities. A subsidy by a utility does not exist if
4 costs allocated as required by this subsection do not exceed the
5 revenue of the program.

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

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

12 (b) A customer's regulated utility service is not terminated
13 for nonpayment of the appliance service program portion of the
14 bill.

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

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

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

27 (b) Appropriately allocate costs as required under subsection

1 (7) when personnel employed at a utility's call center provide
2 appliance service program marketing information to a prospective
3 customer.

4 (c) ~~Prior to~~ **BEFORE** enrolling a customer into the program, the
5 utility shall inform the potential customer of all of the
6 following:

7 (i) That appliance service programs may be available from
8 another provider.

9 (ii) That the appliance service program is not regulated by the
10 commission.

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

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

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

26 (10) This section does not prohibit the commission from
27 requiring a utility to include revenues from an appliance service

1 program in establishing base rates. If the commission includes the
2 revenues of an appliance service program in determining a utility's
3 base rates, the commission shall also include all of the costs of
4 the program as determined under this section.

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

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

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

24 (b) Electricity generated primarily by the use of by-product
25 fuels, including waste water solids, which electricity is consumed
26 as part of a contiguous facility, with the use of an electric
27 utility's transmission and distribution system, but only if the

1 point or points of receipt of the power within the facility are not
2 greater than 3 miles distant from the point of generation.

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

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

13 (13) This act does not prohibit or limit the right of a person
14 to engage in affiliate wheeling and does not impose a transition,
15 implementation, exit fee, or any other similar charge on a person
16 engaged in affiliate wheeling.

17 ~~As used in this section:~~

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

27 ~~—— (b) "Affiliate wheeling" means a person's use of direct access~~

~~service where an electric utility delivers electricity generated at a person's industrial site to that person or that person's affiliate at a location, or general aggregated locations, within this state that was either 1 of the following:~~

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

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

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

(15) ~~A-EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (1), A~~

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

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

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

1 (a) "Customer" means the building or facilities served through
2 a single existing electric billing meter and does not mean the
3 person, corporation, partnership, association, governmental body,
4 or other entity owning or having possession of the building or
5 facilities.

6 (b) "Standard tariff service" means, for each regulated
7 electric utility, the retail rates, terms, and conditions of
8 service approved by the commission for service to customers who do
9 not elect to receive generation service from alternative electric
10 suppliers.

11 (18) AS USED IN THIS SECTION:

12 (A) "AFFILIATE" MEANS A PERSON OR ENTITY THAT DIRECTLY, OR
13 INDIRECTLY THROUGH 1 OR MORE INTERMEDIATES, CONTROLS, IS CONTROLLED
14 BY, OR IS UNDER COMMON CONTROL WITH ANOTHER SPECIFIED ENTITY. AS
15 USED IN THIS SUBDIVISION, "CONTROL" MEANS, WHETHER THROUGH AN
16 OWNERSHIP, BENEFICIAL, CONTRACTUAL, OR EQUITABLE INTEREST, THE
17 POSSESSION, DIRECTLY OR INDIRECTLY, OF THE POWER TO DIRECT OR TO
18 CAUSE THE DIRECTION OF THE MANAGEMENT OR POLICIES OF A PERSON OR
19 ENTITY OR THE OWNERSHIP OF AT LEAST 7% OF AN ENTITY EITHER DIRECTLY
20 OR INDIRECTLY.

21 (B) "AFFILIATE WHEELING" MEANS A PERSON'S USE OF DIRECT ACCESS
22 SERVICE WHERE AN ELECTRIC UTILITY DELIVERS ELECTRICITY GENERATED AT
23 A PERSON'S INDUSTRIAL SITE TO THAT PERSON OR THAT PERSON'S
24 AFFILIATE AT A LOCATION, OR GENERAL AGGREGATED LOCATIONS, WITHIN
25 THIS STATE THAT WAS EITHER 1 OF THE FOLLOWING:

26 (i) FOR AT LEAST 90 DAYS DURING THE PERIOD FROM JANUARY 1, 1996
27 TO OCTOBER 1, 1999, SUPPLIED BY SELF-SERVICE POWER, BUT ONLY TO THE

1 EXTENT OF THE CAPACITY RESERVED OR LOAD SERVED BY SELF-SERVICE
2 POWER DURING THE PERIOD.

3 (ii) CAPABLE OF BEING SUPPLIED BY A PERSON'S COGENERATION
4 CAPACITY WITHIN THIS STATE THAT HAS HAD SINCE JANUARY 1, 1996 A
5 RATED CAPACITY OF 15 MEGAWATTS OR LESS, WAS PLACED IN SERVICE
6 BEFORE DECEMBER 31, 1975, AND HAS BEEN IN CONTINUOUS SERVICE SINCE
7 THAT DATE. A PERSON ENGAGING IN AFFILIATE WHEELING IS NOT AN
8 ELECTRIC SUPPLIER, AN ELECTRIC UTILITY, OR CONDUCTING AN ELECTRIC
9 UTILITY BUSINESS WHEN A PERSON ENGAGES IN AFFILIATE WHEELING.

10 (C) "APPLIANCE SERVICE PROGRAM" OR "PROGRAM" MEANS A
11 SUBSCRIPTION PROGRAM FOR THE REPAIR AND SERVICING OF HEATING AND
12 COOLING SYSTEMS OR OTHER APPLIANCES.

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