MICHIGAN PUBLIC SERVICE COMMISSION
Act 3 of 1939

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 powers and duties of certain state governmental officers and entities; 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 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.

History: 1939, Act 3, Imd. Eff. Feb. 15, 1939;—Am. 1978, Act 211, Imd. Eff. June 5, 1978;—Am. 1980, Act 139, Imd. Eff. May 29, 1980;—Am. 1982, Act 304, Imd. Eff. Oct. 13, 1982;—Am. 1982, Initiated Law, Eff. Dec. 2, 1982;—Am. 1982, Act 212, Eff. Nov. 22, 1982;—Am. 1989, Act 2, Imd. Eff. Apr. 3, 1989;—Am. 2000, Act 141, Imd. Eff. June 5, 2000;—Am. 2005, Act 190, Imd. Eff. Nov. 7, 2005;—Am. 2016, Act 341, Eff. Apr. 20, 2017.

The People of the State of Michigan enact:

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460.1 Public service commission; creation; members, appointment, qualifications, terms, vacancies.

Sec. 1. A commission to be known and designated as the "Michigan public service commission" is hereby created, which shall consist of 3 members, not more than 2 of whom shall be members of the same political party, appointed by the governor with the advice and consent of the senate. Each member shall be a citizen of the United States, and of the state of Michigan, and no member of said commission shall be pecuniarily interested in any public utility or public service subject to the jurisdiction and control of the commission. During his term no member shall serve as an officer or committee member of any political party organization or hold any office or be employed by any other commission, board, department or institution in this state. No commission member shall be retained or employed by any public utility or public service subject to the jurisdiction and control of the commission during the time he is acting as such commissioner, and for 6 months thereafter, and no member of the commission, who is a member of the bar of the state of Michigan, shall practice his profession or act as counselor or attorney in any court of this state during the time he is a member of said commission: Provided, however, This shall not require any commissioner to retire from, or dissolve any partnership, of which he is a member, but said partnership, while he is a member of the commission, shall not engage in public utility practice. Immediately upon the taking effect of this act, the offices of the present members of the Michigan public service commission are hereby abolished, and the members of the Michigan public service commission as herein created shall be appointed by the governor with the advice and consent of the senate, for terms of 6 years each: Provided, That of the members first appointed, 1 shall be appointed for a term of 2 years, 1 for a term of 4 years, and 1 for a term of 6 years. Upon the expiration of said terms successors shall be appointed with like qualifications and in like manner for terms of 6 years each, and until their successors are appointed and qualified. Vacancies shall be filled in the same manner as is provided for appointment in the first instance.

History: 1939, Act 3, Imd. Eff. Feb. 15, 1939;—Am. 1947, Act 337, Imd. Eff. July 3, 1947;—CL 1948, 460.1;—Am. 1951, Act 275, Eff. Sept. 28, 1951.

Transfer of powers: See MCL 16.331.

Compiler's note: For transfer of public service commission intact from department of licensing and regulatory affairs to Michigan agency for energy, see E.R.O. No. 2015-3, compiled at MCL 460.21.

For the transfer of the Michigan public service commission by type I transfer from Michigan agency for energy to the department of licensing and regulatory affairs, and abolishment of the Michigan agency for energy, see E.R.O. 2019-1, compiled at MCL 324.99923.

460.2 Public service commission; oath, chairman, removal, quorum, seal, offices.

Sec. 2. Members of said commission shall qualify by taking and subscribing to the constitutional oath of office, and shall hold office until the appointment and qualification of their successor. The governor shall designate 1 member to serve as chairman of the commission. Any member of the commission may be

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removed by the governor for misfeasance, malfeasance or nonfeasance in office after hearing. A vacancy in the commission shall not impair the right of the 2 remaining members to exercise all the powers of the commission. Two members of the commission shall at all times constitute a quorum. The commission shall adopt an official seal, of which all the courts shall take judicial notice and proceedings, orders and decrees may be authenticated thereby. It shall be the duty of the board of state auditors to provide suitable offices, supplies and equipment for said commission in the city of Lansing, the expenses thereof to be audited, allowed and paid in such manner and out of such funds as may be provided by law.

History: 1939, Act 3, Imd. Eff. Feb. 15, 1939;—CL 1948, 460.2;—Am. 1951, Act 228, Eff. Sept. 28, 1951.

460.3 Public service commission; salary and expenses of members; appointment of secretary, deputies, clerks, assistants, inspectors, heads of divisions, and employees; payment of salaries and expenses; employment and compensation of engineers and experts; actual and necessary expenses; duties.

Sec. 3. The salary of the chairman of the commission and of each of the other members and the schedule for reimbursement of expenses shall be established annually by the legislature. The commission may appoint a secretary and the deputies, clerks, assistants, inspectors, heads of divisions, and employees necessary for the proper exercise of the powers and duties of the commission. All salaries and other expenses incurred by the commission shall be paid out of funds appropriated by the legislature. All fees and other moneys received by the commission shall be paid over at the end of each month to the state treasurer, taking a receipt therefor. The commission may employ engineers and experts in public utilities and public service matters and fix their compensation for services, which may be paid out of the appropriation provided by the legislature. The engineers, inspectors, and employees shall be entitled to their actual and necessary expenses incurred in the performance of the work of the commission pursuant to the schedule established by the legislature. Each deputy, clerk, assistant, engineer, inspector, or expert shall perform the duties required by the commission. Each member of the commission shall devote his entire time to the performance of the duties of his office.

History: 1939, Act 3, Imd. Eff. Feb. 15, 1939;—Am. 1947, Act 337, Imd. Eff. July 3, 1947;—CL 1948, 460.3;—Am. 1951, Act 229, Eff. Sept. 28, 1951;—Am. 1957, Act 208, Imd. Eff. June 6, 1957;—Am. 1959, Act 162, Imd. Eff. July 16, 1959;—Am. 1961, Act 74, Eff. Sept. 8, 1961;—Am. 1975, Act 81, Imd. Eff. May 20, 1975.

460.4 Michigan public service commission; rights, privileges, and jurisdiction; meaning of certain references; review of order or decree.

Sec. 4. The Michigan public service commission shall have and exercise all rights, privileges, and the jurisdiction in all respects as has been conferred by law and exercised by the Michigan public utilities commission. Where reference is or has been made in any law to the "commission", the "Michigan public utilities commission", the "Michigan railroad commission", that reference shall be construed to mean the Michigan public service commission except that with respect to railroad, bridge, and tunnel companies, that reference shall be construed to mean the state transportation department. Any order or decree of the Michigan public service commission shall be subject to review in the manner provided for in section 26 of Act No. 300 of the Public Acts of 1909, being section 462.26 of the Michigan Compiled Laws.

History: 1939, Act 3, Imd. Eff. Feb. 15, 1939;—CL 1948, 460.4;—Am. 1972, Act 300, Imd. Eff. Dec. 19, 1972;—Am. 1987, Act 4, Eff. Apr. 1, 1987;—Am. 1993, Act 355, Imd. Eff. Jan. 14, 1994.

Administrative rules: R 460.851 et seq.; R 460.1451 et seq.; R 460.1951 et seq.; R 460.2101 et seq.; R 460.2212 et seq.; R 460.2501 et seq.; R 460.2601 et seq.; and R 460.3101 et seq. of the Michigan Administrative Code.

460.4a Effect of executive reorganization orders; funding; commission as autonomous entity; appointment of chairperson; transfers of authority.

Sec. 4a. (1) Except as otherwise provided under this act, the commission is subject to Executive Reorganization Order No. 2003-1, MCL 445.2011.

(2) Funding for the commission shall be as provided under 1972 PA 299, MCL 460.111 to 460.120, and as otherwise provided by law.

(3) The commission shall be an autonomous entity within the department of labor and economic growth. The statutory authority, powers, duties, and functions, including personnel, property, budgeting, records, procurement, and other management related functions, shall be retained by the commission. The department of labor and economic growth shall provide support and coordinated services as requested by the commission and shall be reimbursed for that service as provided under subsection (2).

(4) The chairperson of the commission shall be appointed as provided under section 2.

(5) Nothing in this section shall be construed to supersede the transfers of authority made under the following executive orders:

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(a) Executive Reorganization Order No. 2001-1, MCL 18.41.
(b) Executive Reorganization Order No. 2002-13, MCL 18.321.
(c) Executive Reorganization Order No. 2005-1, MCL 445.2021.
(d) Executive Reorganization Order No. 2007-21, MCL 18.45.
(e) Executive Reorganization Order No. 2007-22, MCL 18.46.
(f) Executive Reorganization Order No. 2007-23, MCL 18.47.

History: Add. 2008, Act 286, Imd. Eff. Oct. 6, 2008.

460.5 Public service commission; books, records, files.

Sec. 5. All books, records, files, papers, documents, and other property belonging to the Michigan public utilities commission shall be forthwith turned over to the Michigan public service commission and shall be continued as a part of the records, files, and other property of said commission. The Michigan public service commission shall in all respects be considered to be the successor in office of the Michigan public utilities commission in respect to all of the powers or duties now vested in or imposed upon said public utilities commission. Any unexpended balance of moneys in the state treasury and any fees or other moneys now owing to said public utilities commission shall be and the same are hereby transferred and assigned over to the Michigan public service commission hereby created, to be used and disposed of as provided by law.

History: 1939, Act 3, Imd. Eff. Feb. 15, 1939;—CL 1948, 460.5.

460.5a Annual report.

Sec. 5a. The Michigan public service commission shall make an annual report, summarizing the activities of the commission, to the governor and the legislature on or before the first Monday of March of each year. The annual report shall be a summary of commission activities and may include rules, opinions, and orders promulgated or entered by the commission during the calendar year covered by the annual report. The report shall also contain any other information which the commission considers to be of value.

History: Add. 1989, Act 33, Imd. Eff. May 26, 1989.

460.6 Public service commission; power and jurisdiction; "private, investor-owned wastewater utilities" defined.

Sec. 6. (1) The public service commission is vested with complete power and jurisdiction to regulate all public utilities in the state except a municipally owned utility, the owner of a renewable resource power production facility as provided in section 6d, and except as otherwise restricted by law. The public service commission is vested with the power and jurisdiction to regulate all rates, fares, fees, charges, services, rules, conditions of service, and all other matters pertaining to the formation, operation, or direction of public utilities. The public service commission is further granted the power and jurisdiction to hear and pass upon all matters pertaining to, necessary, or incident to the regulation of public utilities, including electric light and power companies, whether private, corporate, or cooperative; water, telegraph, oil, gas, and pipeline companies; motor carriers; private wastewater treatment facilities; and all public transportation and communication agencies other than railroads and railroad companies.

(2) A private, investor-owned wastewater utility may apply to the commission for rate regulation. If an application is filed under this subsection, the commission is vested with the specific grant of jurisdictional authority to regulate the rates, fares, fees, and charges of private, investor-owned wastewater utilities. As used in this subsection, "private, investor-owned wastewater utilities" means a utility that delivers wastewater treatment services through a sewage system and the physical assets of which are wholly owned by an individual or group of individual shareholders.

History: 1939, Act 3, Imd. Eff. Feb. 15, 1939;—CL 1948, 460.6;—Am. 1952, Act 240, Eff. Sept. 18, 1952;—Am. 1960, Act 44, Imd. Eff. Apr. 19, 1960;—Am. 1967, Act 125, Imd. Eff. June 27, 1967;—Am. 1969, Act 223, Imd. Eff. Aug. 6, 1969;—Am. 1980, Act 50, Imd. Eff. Mar. 25, 1980;—Am. 1992, Act 37, Imd. Eff. Apr. 21, 1992;—Am. 1993, Act 355, Imd. Eff. Jan. 14, 1994;—Am. 2005, Act 190, Imd. Eff. Nov. 7, 2005.

Administrative rules: R 460.11 et seq.; R 460.511 et seq.; R 460.915 et seq.; R 460.1451 et seq.; R 460.1951 et seq.; R 460.2011 et seq.; R 460.2051 et seq.; R 460.2101 et seq.; R 460.2211 et seq.; R 460.2601 et seq.; and R 460.3101 et seq. of the Michigan Administrative Code.

460.6a Gas, electric, or steam utility; commission approval to increase rates and charges or to amend rate or rate schedules; petition or application; notice and hearing; partial and immediate relief; issuance of temporary order; refund; interest; automatic fuel, purchased gas, or purchased steam adjustment clause; rules and procedures; adjustment clauses operating without notice and hearing abolished; separate hearing; recovery of cost; final

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decision; filing time extension; approval of transportation rate schedules or transportation contracts; forms and instructions; recovery of amount by merchant plant; limitation; adjustment; orders to permit recovery under subsections (9) and (10); revenue decoupling mechanism; tariff; definitions.

Sec. 6a. (1) A gas utility, electric utility, or steam utility shall not increase its rates and charges or alter, change, or amend any rate or rate schedules, the effect of which will be to increase the cost of services to its customers, without first receiving commission approval as provided in this section. A utility shall coordinate with the commission staff in advance of filing its general rate case application under this section to avoid resource challenges with applications being filed at the same time as applications filed under this section by other utilities. In the case of electric utilities serving more than 1,000,000 customers in this state, the commission may, if necessary, order a delay in filing an application to establish a 21-day spacing between filings of electric utilities serving more than 1,000,000 customers in this state. The utility shall place in evidence facts relied upon to support the utility's petition or application to increase its rates and charges, or to alter, change, or amend any rate or rate schedules. The commission shall require notice to be given to all interested parties within the service area to be affected, and all interested parties shall have a reasonable opportunity for a full and complete hearing. A utility may use projected costs and revenues for a future consecutive 12-month period in developing its requested rates and charges. The commission shall notify the utility within 30 days after filing, whether the utility's petition or application is complete. A petition or application is considered complete if it complies with the rate application filing forms and instructions adopted under subsection (8). If the application is not complete, the commission shall notify the utility of all information necessary to make that filing complete. If the commission has not notified the utility within 30 days of whether the utility's petition or application is complete, the application is considered complete. Concurrently with filing a complete application, or at any time after filing a complete application, a gas utility serving fewer than 1,000,000 customers in this state may file a motion seeking partial and immediate rate relief. After providing notice to the interested parties within the service area to be affected and affording interested parties a reasonable opportunity to present written evidence and written arguments relevant to the motion seeking partial and immediate rate relief, the commission shall make a finding and enter an order granting or denying partial and immediate relief within 180 days after the motion seeking partial and immediate rate relief was submitted. The commission has 12 months to issue a final order in a case in which a gas utility has filed a motion seeking partial and immediate rate relief.

(2) If the commission has not issued an order within 180 days of the filing of a complete application, the utility may implement up to the amount of the proposed annual rate request through equal percentage increases or decreases applied to all base rates. If the utility uses projected costs and revenues for a future period in developing its requested rates and charges, the utility may not implement the equal percentage increases or decreases before the calendar date corresponding to the start of the projected 12-month period. For good cause, the commission may issue a temporary order preventing or delaying a utility from implementing its proposed rates or charges. If a utility implements increased rates or charges under this subsection before the commission issues a final order, that utility shall refund to customers, with interest, any portion of the total revenues collected through application of the equal percentage increase that exceed the total that would have been produced by the rates or charges subsequently ordered by the commission in its final order. The commission shall allocate any refund required by this subsection among primary customers based upon their pro rata share of the total revenue collected through the applicable increase, and among secondary and residential customers in a manner to be determined by the commission. The rate of interest for refunds shall equal 5% plus the London interbank offered rate (LIBOR) for the appropriate time period. For any portion of the refund that, exclusive of interest, exceeds 25% of the annual revenue increase awarded by the commission in its final order, the rate of interest shall be the authorized rate of return on the common stock of the utility during the appropriate period. Any refund or interest awarded under this subsection shall not be included, in whole or in part, in any application for a rate increase by a utility. This subsection only applies to completed applications filed with the commission before the effective date of the amendatory act that added section 6t.

(3) This section does not impair the commission's ability to issue a show cause order as part of its rate-making authority. An alteration or amendment in rates or rate schedules applied for by a public utility that will not result in an increase in the cost of service to its customers may be authorized and approved without notice or hearing. There shall be no increase in rates based upon changes in cost of fuel, purchased gas, or purchased steam unless notice has been given within the service area to be affected, and there has been an opportunity for a full and complete hearing on the cost of fuel, purchased gas, or purchased steam. The rates charged by any utility under an automatic fuel, purchased gas, or purchased steam adjustment clause

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shall not be altered, changed, or amended unless notice has been given within the service area to be affected, and there has been an opportunity for a full and complete hearing on the cost of the fuel, purchased gas, or purchased steam.

(4) The commission shall adopt rules and procedures for the filing, investigation, and hearing of petitions or applications to increase or decrease utility rates and charges as the commission finds necessary or appropriate to enable it to reach a final decision with respect to petitions or applications within a period of time allotted by law to issue a final order after the filing of the complete petitions or applications. The commission shall not authorize or approve adjustment clauses that operate without notice and an opportunity for a full and complete hearing, and all such clauses are abolished. The commission may hold a full and complete hearing to determine the cost of fuel, purchased gas, purchased steam, or purchased power separately from a full and complete hearing on a general rate case and may hold that hearing concurrently with the general rate case. The commission shall authorize a utility to recover the cost of fuel, purchased gas, purchased steam, or purchased power only to the extent that the purchases are reasonable and prudent.

(5) Except as otherwise provided in this subsection and subsection (1), if the commission fails to reach a final decision with respect to a completed petition or application to increase or decrease utility rates within the 10-month period following the filing of the completed petition or application, the petition or application is considered approved. If a utility makes any significant amendment to its filing, the commission has an additional 10 months after the date of the amendment to reach a final decision on the petition or application. If the utility files for an extension of time, the commission shall extend the 10-month period by the amount of additional time requested by the utility.

(6) A utility shall not file a general rate case application for an increase in rates earlier than 12 months after the date of the filing of a complete prior general rate case application. A utility may not file a new general rate case application until the commission has issued a final order on a prior general rate case or until the rates are approved under subsection (5).

(7) The commission shall, if requested by a gas utility, establish load retention transportation rate schedules or approve gas transportation contracts as required for the purpose of serving industrial or commercial customers whose individual annual transportation volumes exceed 500,000 decatherms on the gas utility's system. The commission shall approve these rate schedules or approve transportation contracts entered into by the utility in good faith if the industrial or commercial customer has the installed capability to use an alternative fuel or otherwise has a viable alternative to receiving natural gas transportation service from the utility, the customer can obtain the alternative fuel or gas transportation from an alternative source at a price that would cause them not to use the gas utility's system, and the customer, as a result of their use of the system and receipt of transportation service, makes a significant contribution to the utility's fixed costs. The commission shall adopt accounting and rate-making policies to ensure that the discounts associated with the transportation rate schedules and contracts are recovered by the gas utility through charges applicable to other customers if the incremental costs related to the discounts are no greater than the costs that would be passed on to those customers as the result of a loss of the industrial or commercial customer's contribution to a utility's fixed costs.

(8) The commission shall adopt standard rate application filing forms and instructions for use in all general rate cases filed by utilities whose rates are regulated by the commission. For cooperative electric utilities whose rates are regulated by the commission, in addition to rate applications filed under this section, the commission shall continue to allow for rate filings based on the cooperative's times interest earned ratio. The commission may modify the standard rate application forms and instructions adopted under this subsection.

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

(10) The total aggregate additional amounts recoverable by merchant plants under subsection (9) in excess of the amounts paid under the contracts shall not exceed $1,000,000.00 per month for each affected electric utility. The $1,000,000.00 per month limit specified in this subsection shall be reviewed by the commission upon petition of the merchant plant filed no more than once per year and may be adjusted if the commission finds that the eligible merchant plants reasonably and prudently incurred actual fuel and variable operation

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and maintenance costs exceed the amount that those merchant plants are paid under the contract by more than $1,000,000.00 per month. The annual amount of the adjustments shall not exceed a rate equal to the United States consumer price index. The commission shall not make an adjustment unless each affected merchant plant files a petition with the commission. If the total aggregate amount by which the eligible merchant plants reasonably and prudently incurred actual fuel and variable operation and maintenance costs determined by the commission exceed the amount that the merchant plants are paid under the contract by more than $1,000,000.00 per month, the commission shall allocate the additional $1,000,000.00 per month payment among the eligible merchant plants based upon the relationship of excess costs among the eligible merchant plants. The $1,000,000.00 limit specified in this subsection, as adjusted, does not apply to actual fuel and variable operation and maintenance costs that are incurred due to changes in federal or state environmental laws or regulations that are implemented after October 6, 2008. The $1,000,000.00 per month payment limit under this subsection does not apply to merchant plants eligible under subsection (9) whose electricity is purchased by a utility that is using wood or wood waste or fuels derived from those materials for fuel in their power plants. As used in this subsection, "United States consumer price index" means the United States consumer price index for all urban consumers as defined and reported by the United States Department of Labor, Bureau of Labor Statistics.

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

(12) Subject to subsection (13), if requested by an electric utility with less than 200,000 customers in this state, the commission shall approve an appropriate revenue decoupling mechanism that adjusts for decreases in actual sales compared to the projected levels used in that utility's most recent rate case that are the result of implemented energy waste reduction, conservation, demand-side programs, and other waste reduction measures, if the utility first demonstrates the following to the commission:

(a) That the projected sales forecast in the utility's most recent rate case is reasonable.

(b) That the electric utility has achieved annual incremental energy savings at least equal to the lesser of the following:

(*i*) One percent of its total annual retail electricity sales in the previous year.

(*ii*) The amount of any incremental savings yielded by energy waste reduction, conservation, demand-side programs, and other waste reduction measures approved by the commission in that utility's most recent integrated resource plan.

(13) The commission shall consider the aggregate revenues attributable to revenue decoupling mechanisms, financial incentives, and shared savings mechanisms the commission has approved for an electric utility relative to energy waste reduction, conservation, demand-side programs, peak load reduction, and other waste reduction measures. The commission may approve an alternative methodology for a revenue decoupling mechanism authorized under subsection (12), a financial incentive authorized under section 75 of the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1075, or a shared savings mechanism authorized under section 6x if the commission determines that the resulting aggregate revenues from those mechanisms would not result in a reasonable and cost-effective method to ensure that investments in energy waste reduction, demand-side programs, peak load reduction, and other waste reduction measures are not disfavored when compared to utility supply-side investments. The commission's consideration of an alternative methodology under this subsection shall be conducted as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287.

(14) Within 1 year after the effective date of the amendatory act that added this subsection, the commission shall conduct a study on an appropriate tariff reflecting equitable cost of service for utility revenue requirements for customers who participate in a net metering program or distributed generation program under the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1001 to 460.1211. In any rate case filed after June 1, 2018, the commission shall approve such a tariff for inclusion in the rates of all customers participating in a net metering or distributed generation program under the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1001 to 460.1211. A tariff established under this subsection does not apply to customers participating in a net metering program under the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1001 to 460.1211, before the date that the commission establishes a tariff under this subsection, who continues to participate in the program at their current site or facility.

(15) Except as otherwise provided in this act, "utility" and "electric utility" do not include a municipally

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owned electric utility.

(16) As used in this section:

(a) "Full and complete hearing" means a hearing that provides interested parties a reasonable opportunity to present and cross-examine evidence and present arguments relevant to the specific element or elements of the request that are the subject of the hearing.

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

(c) "Steam utility" means a steam distribution company regulated by the commission.

History: Add. 1952, Act 243, Eff. Sept. 18, 1952;—Am. 1955, Act 172, Imd. Eff. June 13, 1955;—Am. 1972, Act 300, Imd. Eff. Dec. 19, 1972;—Am. 1982, Act 304, Imd. Eff. Oct. 13, 1982;—Am. 1982, Initiated Law, Eff. Dec. 2, 1982;—Am. 1982, Act 212, Eff. Nov. 22, 1982;—Am. 1992, Act 37, Imd. Eff. Apr. 21, 1992;—Am. 2008, Act 286, Imd. Eff. Oct. 6, 2008;—Am. 2016, Act 341, Eff. Apr. 20, 2017.

Constitutionality: In In re Proposals D & H (Michigan State Chamber of Commerce v. State of Michigan), 417 Mich 409 (1983), the Michigan Supreme Court held that Proposal H (Act 212 of 1982) prevails in its entirety over Proposal D. The Court declared further that Proposal H was not repealed by the enactment of Act 304 of 1982.

460.6b Gas utility rates based upon cost of purchased natural gas; authority of commission; acceptance of employment with utility by member of legislature.

Sec. 6b. If the rates of any gas utility shall be based, among other considerations, upon the cost of natural gas purchased by said gas utility which is in turn distributed by said gas utility to the public served by it, and the cost for such gas is regulated by the federal energy regulatory commission, the Michigan public service commission shall have the authority set forth in this section. In any proceeding to increase the rates and charges or to alter, change or amend any rate or rate schedule of a gas utility, the Michigan public service commission shall be permitted to and shall receive in evidence the rates, charges, classifications and schedules on file with the federal energy regulatory commission whereby the cost of gas purchased or received by such gas utility is fixed and determined. If, while such proceeding is pending before the Michigan public service commission, a proceeding shall be instituted or be pending before said federal energy regulatory commission, or on appeal therefrom in a court having jurisdiction, with respect to or affecting the cost of gas payable by such gas utility, said Michigan public service commission shall consider as an item of operating expense to said gas utility the cost of gas set forth in said rates, charges, classifications and schedules on file with the federal energy regulatory commission. If the cost of gas payable by said gas utility shall be reduced by the final order of the federal energy regulatory commission or the final decree of the court, if appealed thereto, and the Michigan public service commission shall have entered an order approving rates to said gas utility as aforesaid based upon the cost of gas set forth in the rates, charges, classifications and schedules on file with the federal energy regulatory commission which were later reduced as above set forth, the Michigan public service commission upon its own motion or upon complaint and after notice and hearing may proceed to order refund to the gas utility's customers of any sums refunded to the said gas utility for the period subsequent to the effective date of the Michigan public service commission order approving rates for the gas utility as above set forth. No member of this 81st Legislature shall accept an employment position with any utility in this state within 2 years after vacating his or her legislative office.

History: Add. 1952, Act 272, Imd. Eff. June 16, 1952;—Am. 1982, Act 304, Imd. Eff. Oct. 13, 1982;—Am. 1982, Initiated Law, Eff. Dec. 2, 1982;—Am. 1982, Act 212, Eff. Nov. 22, 1982.

Constitutionality: In In re Proposals D & H (Michigan State Chamber of Commerce v. State of Michigan), 417 Mich 409 (1983), the Michigan Supreme Court held that Proposal H (Act 212 of 1982) prevails in its entirety over Proposal D. The Court declared further that Proposal H was not repealed by the enactment of Act 304 of 1982.

460.6c Repealed. 2016, Act 341, Eff. Apr. 20, 2017.

Compiler's note: The repealed section pertained to energy conservation program, including energy conservation loan program, for residential customers of electric and gas utilities.

460.6d Owner of renewable resource power production facility; exemption from regulation and control of public service commission; definition.

Sec. 6d. (1) Notwithstanding any other provision of this act, the owner of a renewable resource power production facility shall not be subject to the regulation or control of the public service commission, if all of the following conditions are met:

(a) The owner of the renewable resource power production facility, before the construction of the renewable resource power production facility, was not a public utility subject to the jurisdiction of the public service commission.

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(b) The ownership of the renewable resource power production facility is ancillary to the financing of the facility.

(2) As used in this act, "renewable resource power production facility" means a facility having a rated power production capacity of 30 megawatts or less which produces electric energy by the use of biomass, waste, wood, hydroelectric, wind, and other renewable resources, or any combination of renewable resources, as the primary energy source.

History: Add. 1980, Act 50, Imd. Eff. Mar. 25, 1980.

460.6e Repealed. 2016, Act 341, Eff. Apr. 20, 2017.

Compiler's note: The repealed section pertained to review and impact of MCL 460.6d by legislative standing committees.

460.6f Repealed. 1984, Act 49, Imd. Eff. Apr. 12, 1984.

Compiler's note: The repealed section pertained to electric utility rates.

460.6g Definitions; regulation of rates, terms, and conditions of attachments by attaching parties; hearing; authorization; applicable procedures.

Sec. 6g. (1) As used in this section:

(a) "Attaching party" means any person, firm, corporation, partnership, or cooperatively organized association, other than a utility or a municipality, which seeks to construct attachments upon, along, under, or across public ways or private rights of way.

(b) "Attachment" means any wire, cable, facility, or apparatus for the transmission of writing, signs, signals, pictures, sounds, or other forms of intelligence or for the transmission of electricity for light, heat, or power, installed by an attaching party upon any pole or in any duct or conduit owned or controlled, in whole or in part, by 1 or more utilities.

(c) "Commission" means the Michigan public service commission created in section 1.

(d) "Utility" means any public utility subject to the regulation and control of the commission that owns or controls, or shares ownership or control of poles, ducts, or conduits used or useful, in whole or in part, for supporting or enclosing wires, cables, or other facilities or apparatus for the transmission of writing, signs, signals, pictures, sounds, or other forms of intelligence, or for the transmission of electricity for light, heat, or power.

(2) The commission shall regulate the rates, terms, and conditions of attachments by attaching parties. The commission, in regulating the rates, terms, and conditions of attachments by attaching parties, shall not require a hearing when approving the rates, terms, and conditions unless the attaching party or utility petitions the commission for a hearing. The commission shall ensure that the rates, terms, and conditions are just and reasonable and shall consider the interests of the attaching parties' customers as well as the utility and its customers.

(3) An attaching party shall obtain any necessary authorization before occupying public ways or private rights of way with its attachment.

(4) Procedures under this section shall be those applicable to any utility whose rates charged its customers are regulated by the commission, including the right to appeal a final decision of the commission to the courts.

History: Add. 1980, Act 470, Eff. Mar. 31, 1981.

460.6h Incorporation of gas cost recovery clause in rate or rate schedule of gas utility; definitions; order and hearing; filing gas cost recovery plan and 5-year forecast; gas supply and cost review; final or temporary order; incorporating gas cost recovery factors in rates; filing revised gas cost recovery plan; reopening gas supply and cost review; monthly statement of revenues; gas cost reconciliation; commission order; refunds, credits, or additional charges to include interest; apportionment; exemption; setting gas cost recovery factors in general rate case order.

Sec. 6h. (1) As used in this act:

(a) "Commission" or "public service commission" means the Michigan public service commission created in section 1.

(b) "Gas cost recovery clause" means an adjustment clause in the rates or rate schedule of a gas utility which permits the monthly adjustment of rates for gas in order to allow the utility to recover the booked costs of gas sold by the utility if incurred under reasonable and prudent policies and practices.

(c) "Gas cost recovery factor" means that element of the rates to be charged for gas service to reflect gas costs incurred by a gas utility and made pursuant to a gas cost recovery clause incorporated in the rates or rate

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schedules of a gas utility.

(d) “General rate case” means a proceeding before the commission in which interested parties are given notice and a reasonable opportunity for a full and complete hearing on a utility's total cost of service and all other lawful elements properly to be considered in determining just and reasonable rates.

(e) “Interested persons” means the attorney general, the technical staff of the commission, any intervenor admitted to 1 of the utility's 2 previous general rate cases, any intervenor admitted to 1 of the utility's 2 previous reconciliation hearings, or any association of utility customers which meets the requirements to intervene in a reconciliation hearing under the rules of practice and procedure of the commission as applicable.

(2) Pursuant to its authority under this act, the public service commission may incorporate a gas cost recovery clause in the rates or rate schedule of a gas utility, but is not required to do so. Any order incorporating a gas cost recovery clause shall be as a result of a hearing solely on the question of the inclusion of the clause in the rates or rate schedule, which hearing shall be conducted as a contested case pursuant to chapter 4 of Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 of the Michigan Compiled Laws, or, pursuant to subsection (17), as a result of a general rate case. Any order incorporating a gas cost recovery clause shall replace and rescind any previous purchased gas adjustment clause incorporated in the rates of the utility upon the effective date of the first gas cost recovery factor authorized for the utility under its gas cost recovery clause.

(3) In order to implement the gas cost recovery clause established pursuant to subsection (2), a utility annually shall file, pursuant to procedures established by the commission, if any, a complete gas cost recovery plan describing the expected sources and volumes of its gas supply and changes in the cost of gas anticipated over a future 12-month period specified by the commission and requesting for each of those 12 months a specific gas cost recovery factor. The plan shall be filed not less than 3 months before the beginning of the 12-month period covered by the plan. The plan shall describe all major contracts and gas supply arrangements entered into by the utility for obtaining gas during the specified 12-month period. The description of the major contracts and arrangements shall include the price of the gas, the duration of the contract or arrangement, and an explanation or description of any other term or provision as required by the commission. The plan shall also include the gas utility's evaluation of the reasonableness and prudence of its decisions to obtain gas in the manner described in the plan, in light of the major alternative gas supplies available to the utility, and an explanation of the legal and regulatory actions taken by the utility to minimize the cost of gas purchased by the utility.

(4) In order to implement the gas cost recovery clause established pursuant to subsection (2), a gas utility shall file, contemporaneously with the gas cost recovery plan described in subsection (3), a 5-year forecast of the gas requirements of its customers, its anticipated sources of supply, and projections of gas costs. The forecast shall include a description of all relevant major contracts and gas supply arrangements entered into or contemplated between the gas utility and its suppliers, a description of all major gas supply arrangements which the gas utility knows have been, or expects will be, entered into between the gas utility's principal pipeline suppliers and their major sources of gas, and such other information as the commission may require.

(5) If a utility files a gas cost recovery plan and a 5-year forecast as provided in subsections (3) and (4), the commission shall conduct a proceeding, to be known as a gas supply and cost review, for the purpose of evaluating the reasonableness and prudence of the plan, and establishing the gas cost recovery factors to implement a gas cost recovery clause incorporated in the rates or rate schedule of the gas utility. The gas supply and cost review shall be conducted as a contested case pursuant to chapter 4 of Act No. 306 of the Public Acts of 1969.

(6) In its final order in a gas supply and cost review, the commission shall evaluate the reasonableness and prudence of the decisions underlying the gas cost recovery plan filed by the gas utility pursuant to subsection (3), and shall approve, disapprove, or amend the gas cost recovery plan accordingly. In evaluating the decisions underlying the gas cost recovery plan, the commission shall consider the volume, cost, and reliability of the major alternative gas supplies available to the utility; the cost of alternative fuels available to some or all of the utility's customers; the availability of gas in storage; the ability of the utility to reduce or to eliminate any sales to out-of-state customers; whether the utility has taken all appropriate legal and regulatory actions to minimize the cost of purchased gas; and other relevant factors. The commission shall approve, reject, or amend the 12 monthly gas cost recovery factors requested by the utility in its gas cost recovery plan. The factors ordered shall be described in fixed dollar amounts per unit of gas, but may include specific amounts contingent on future events, including proceedings of the federal energy regulatory commission or its successor agency.

(7) In its final order in a gas supply and cost review, the commission shall evaluate the decisions underlying the 5-year forecast filed by a gas utility pursuant to subsection (4). The commission may also

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indicate any cost items in the 5-year forecast that on the basis of present evidence, the commission would be unlikely to permit the gas utility to recover from its customers in rates, rate schedules, or gas cost recovery factors established in the future.

(8) The commission, on its own motion or the motion of any party, may make a finding and enter a temporary order granting approval or partial approval of a gas cost recovery plan in a gas supply and cost recovery review, after first having given notice to the parties to the review, and after having afforded to the parties to the review a reasonable opportunity for a full and complete hearing. A temporary order made pursuant to this subsection shall be considered a final order for purposes of judicial review.

(9) If the commission has made a final or temporary order in a gas supply and cost review, the utility may each month incorporate in its rates for the period covered by the order any amounts up to the gas cost recovery factors permitted in that order. If the commission has not made a final or temporary order within 3 months of the submission of a complete gas cost recovery plan, or by the beginning of the period covered in the plan, whichever comes later, or if a temporary order has expired without being extended or replaced, then pending an order which determines the gas cost recovery factors, a gas utility may each month adjust its rates to incorporate all or a part of the gas cost recovery factors requested in its plan. Any amounts collected under the gas cost recovery factors before the commission makes its final order shall be subject to prompt refund with interest to the extent that the total amounts collected exceed the total amounts determined in the commission's final order to be reasonable and prudent for the same period of time.

(10) Not less than 3 months before the beginning of the third quarter of the 12-month period, the utility may file a revised gas cost recovery plan which shall cover the remainder of the 12-month period. Upon receipt of the revised gas cost recovery plan, the commission shall reopen the gas supply and cost review. In addition, the commission may reopen the gas supply and cost review on its own motion or on the showing of good cause by any party if at least 6 months have elapsed since the utility submitted its complete filing and if there are at least 60 days remaining in the 12-month period under consideration. A reopened gas supply and cost review shall be conducted as a contested case pursuant to chapter 4 of Act No. 306 of the Public Acts of 1969, and in accordance with subsections (3), (6), (8), and (9).

(11) Not more than 45 days following the last day of each billing month in which a gas cost recovery factor has been applied to customers' bills, the gas utility shall file with the commission a detailed statement for that month of the revenues recorded pursuant to the gas cost recovery factor and the allowance for cost of gas included in the base rates established in the latest commission order for the gas utility, and the cost of gas sold. The detailed statement shall be in the manner and form prescribed by the commission. The commission shall establish procedures for insuring that the detailed statement is promptly verified and corrected if necessary.

(12) Not less than once a year, and not later than 3 months after the end of the 12-month period covered by a gas utility's gas cost recovery plan, the commission shall commence a proceeding, to be known as a gas cost reconciliation, as a contested case pursuant to chapter 4 of Act No. 306 of the Public Acts of 1969. Reasonable discovery shall be permitted before and during the reconciliation proceeding in order to assist parties and interested persons in obtaining evidence concerning reconciliation issues including, but not limited to, the reasonableness and prudence of expenditures and the amounts collected pursuant to the clause. At the gas cost reconciliation the commission shall reconcile the revenues recorded pursuant to the gas cost recovery factor and the allowance for cost of gas included in the base rates established in the latest commission order for the gas utility with the amounts actually expensed and included in the cost of gas sold by the gas utility. The commission shall consider any issue regarding the reasonableness and prudence of expenses for which customers were charged if the issue could not have been considered adequately at a previously conducted gas supply and cost review.

(13) In its order in a gas cost reconciliation, the commission shall require a gas utility to refund to customers or credit to customers' bills any net amount determined to have been recovered over the period covered in excess of the amounts determined to have been actually expensed by the utility for gas sold, and to have been incurred through reasonable and prudent actions not precluded by the commission order in the gas supply and cost review. Such refunds or credits shall be apportioned among the customers of the utility utilizing procedures that the commission determines to be reasonable. The commission may adopt different procedures with respect to customers served under the various rate schedules of the utility and may, in appropriate circumstances, order refunds or credits in proportion to the excess amounts actually collected from each such customer during the period covered.

(14) In its order in a gas cost reconciliation, the commission shall authorize a gas utility to recover from customers any net amount by which the amount determined to have been recovered over the period covered was less than the amount determined to have been actually expensed by the utility for gas sold, and to have been incurred through reasonable and prudent actions not precluded by the commission order in the gas

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supply and cost review. For excess costs incurred through actions contrary to the commission's gas supply and cost review order, the commission shall authorize a utility to recover costs incurred for gas sold in the 12-month period in excess of the amount recovered over the period only if the utility demonstrates by clear and convincing evidence that the excess expenses were beyond the ability of the utility to control through reasonable and prudent actions. For excess costs incurred through actions consistent with commission's gas supply and cost review order, the commission shall authorize a utility to recover costs incurred for gas sold in the 12-month period in excess of the amount recovered over the period only if the utility demonstrates that the excess expenses were reasonable and prudent. Such amounts in excess of the amounts actually recovered by the utility for gas sold shall be apportioned among and charged to the customers of the utility utilizing procedures that the commission determines to be reasonable. The commission may adopt different procedures with respect to customers served under the various rate schedules of the utility and may, in appropriate circumstances, order charges to be made in proportion to the amounts which would have been paid by such customers if the amounts in excess of the amounts actually recovered by the utility for gas sold had been included in the gas cost recovery factors with respect to such customers during the period covered. Charges for such excess amounts shall be spread over a period that the commission determines to be appropriate.

(15) If the commission orders refunds or credits pursuant to subsection (13), or additional charges to customers pursuant to subsection (14), in its final order in a gas cost reconciliation, the refunds, credits, or additional charges shall include interest and shall be apportioned among the utility's customer classes in proportion to their respective usage during the reconciliation period. In determining the interest included in a refund, credit, or additional charge pursuant to this subsection, the commission shall consider, to the extent material and practicable, the time at which the excess recoveries or insufficient recoveries, or both, occurred. The commission shall determine a rate of interest for excess recoveries, refunds, and credits equal to the greater of the average short-term borrowing rate available to the gas utility during the appropriate period, or the authorized rate of return on the common stock of the gas utility during that same period. The commission shall determine a rate of interest for insufficient recoveries and additional charges equal to the average short-term borrowing rate available to the gas utility during the appropriate period.

(16) To avoid undue hardship or unduly burdensome or excessive cost, the commission may exempt a gas utility with fewer than 200,000 customers in the state of Michigan from 1 or more of the procedural provisions of this section or may modify the filing requirements of this section.

(17) Notwithstanding any other provision of this act, the commission may, upon application by a gas utility, set gas cost recovery factors, in a manner otherwise consistent with this act, in an order resulting from a general rate case. Within 120 days following the effective date of this section, for the purpose of setting gas cost recovery factors, the commission shall permit a gas utility to reopen a general rate case in which a final order was issued within 120 days before or after the effective date of this section or to amend an application or reopen the evidentiary record in a pending general rate case. If the commission sets gas cost recovery factors in an order resulting from a general rate case:

(a) The gas cost recovery factors shall cover a future period of 48 months or the number of months which elapse until the commission orders new gas cost recovery factors in a general rate case, whichever is the shorter period.

(b) Annual reconciliation proceedings shall be conducted pursuant to subsection (12) and if an annual reconciliation proceeding shows a recoverable amount pursuant to subsection (14), the commission shall authorize the gas utility to defer the amount and to accumulate interest on the amount pursuant to subsection (15), and in the next order resulting from a general rate case authorize the utility to recover the amount and interest from its customers in the manner provided in subsection (14).

(c) The gas cost recovery factors shall not be subject to revision pursuant to subsection (10).

History: Add. 1982, Act 304, Imd. Eff. Oct. 13, 1982.

460.6i Initial gas cost recovery plan; filing; alteration of rate schedule in accordance with existing purchased gas adjustment clause; charges in excess of base rates; revenues subject to existing reconciliation proceedings; purchased gas revenues subject to annual reconciliation; procedures; adjustment of rates pending approval or disapproval of gas cost recovery clause in final commission order.

Sec. 6i. (1) This section shall govern the initial filing and implementation of a gas cost recovery plan under section 6h(3).

(2) The initial gas cost recovery plan may be for a period of less than 12 months and shall be filed:

(a) By a gas utility with at least 1,000,000 residential customers in the state of Michigan, within 75 days after the effective date of this section.

(b) By a gas utility with more than 500,000 but fewer than 1,000,000 residential customers in the state of

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Michigan, within 90 days after the effective date of this section.

(c) By all other gas utilities subject to commission rate jurisdiction, within 30 months after the effective date of this section.

(3) Notwithstanding section 6a(3), until the expiration of 3 months plus the remainder of the then current billing month following the last day on which a gas utility is required to file its first gas cost recovery plan pursuant to subsection (2) of this section, the utility may alter its rate schedule in accordance with an existing purchased gas adjustment clause. Thereafter, the utility may make charges in excess of base rates for the cost of gas sold pursuant only to subsections (2) and (4) of this section. After the effective date of this section, any revenues resulting from an existing purchased gas adjustment clause and recorded for an annual reconciliation period ending prior to January 1, 1983 by a gas utility shall be subject to the existing reconciliation proceeding established by the commission for the utility. In this proceeding, the commission shall consider the reasonableness and prudence of expenditures charged pursuant to an existing purchased gas adjustment clause after the effective date of this section. On and after January 1, 1983, all purchased gas revenues received by a gas utility, whether included in base rates or collected pursuant to a purchased gas adjustment clause or a gas cost recovery clause, shall be subject to annual reconciliation with the cost of purchased gas. Such annual reconciliations shall be conducted in accordance with the reconciliation procedures described in section 6h(12) to (17), including the provisions for refunds, additional charges, deferral and recovery, and shall include consideration by the commission of the reasonableness and prudence of expenditures charged pursuant to any purchased gas adjustment clause in existence during the period being reconciled.

(4) Until the commission approves or disapproves a gas cost recovery clause in a final commission order in a contested case required by section 6h(2), a gas utility which had a purchased gas adjustment clause on the effective date of this section and which has applied for a gas cost recovery clause under section 6h may adjust its rates pursuant to section 6h(3) to (17), to include gas cost recovery factors.

History: Add. 1982, Act 304, Imd. Eff. Oct. 13, 1982.

460.6j Definitions; incorporation of power supply cost recovery clause in electric rates or rate schedule of electric utility; order and hearing; filing power supply cost recovery plan and 5-year forecast; power supply and cost review; final or temporary order; incorporating power supply cost recovery factors in rates; filing revised power supply cost recovery plan; reopening power supply and cost review; monthly statement of revenues; power supply cost reconciliation; commission order; refunds or credits or additional charges to customers; apportionment; interest; exemption; setting power supply cost recovery factors in general rate case order.

Sec. 6j. (1) As used in this act:

(a) "Long-term firm gas transportation" means a binding agreement entered into between the electric utility and a natural gas transmission provider for a set period of time to provide firm delivery of natural gas to an electric generation facility.

(b) "Power supply cost recovery clause" means a clause in the electric rates or rate schedule of an electric utility that permits the monthly adjustment of rates for power supply to allow the utility to recover the booked costs, including transportation costs, reclamation costs, and disposal and reprocessing costs, of fuel burned by the utility for electric generation and the booked costs of purchased and net interchanged power transactions by the utility incurred under reasonable and prudent policies and practices.

(c) "Power supply cost recovery factor" means that element of the rates to be charged for electric service to reflect power supply costs incurred by an electric utility and made pursuant to a power supply cost recovery clause incorporated in the rates or rate schedule of an electric utility.

(2) The public service commission may incorporate a power supply cost recovery clause in the electric rates or rate schedule of an electric utility. Any order incorporating a power supply cost recovery clause shall be as a result of a hearing solely on the question of the inclusion of the clause in the rates or rate schedule. A hearing under this subsection shall be conducted as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287, or, pursuant to subsection (18), as a result of a general rate case. Any order incorporating a power supply cost recovery clause shall replace and rescind any previous fuel cost adjustment clause or purchased and net interchanged power adjustment clause incorporated in the electric rates of the utility upon the effective date of the first power supply cost recovery factor authorized for the utility under its power supply cost recovery clause.

(3) In order to implement the power supply cost recovery clause established under subsection (2), an electric utility annually shall file, pursuant to procedures established by the commission, if any, a complete power supply cost recovery plan describing the expected sources of electric power supply and changes in the

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cost of power supply anticipated over a future 12-month period specified by the commission and requesting for each of those 12 months a specific power supply cost recovery factor. The utility shall file the plan not later than 3 months before the beginning of the 12-month period covered by the plan. The plan shall describe all major contracts and power supply arrangements entered into by the utility for providing power supply during the specified 12-month period. The description of the major contracts and arrangements shall include the price of fuel, the duration of the contract or arrangement, and an explanation or description of any other term or provision as required by the commission. For gas fuel supply contracts or arrangements, the description shall include whether the supply contracts or arrangements include long-term firm gas transportation and, if not, an explanation of how the utility proposes to ensure reliable and reasonably priced gas fuel supply to its generation facilities during the specified 12-month period. The plan shall also include the utility's evaluation of the reasonableness and prudence of its decisions to provide power supply in the manner described in the plan, in light of its existing sources of electrical generation, and an explanation of the actions taken by the utility to minimize the cost of fuel to the utility.

(4) In order to implement the power supply cost recovery clause established under subsection (2), a utility shall file, contemporaneously with the power supply cost recovery plan required by subsection (3), a 5-year forecast of the power supply requirements of its customers, its anticipated sources of supply, and projections of power supply costs, in light of its existing sources of electrical generation and sources of electrical generation under construction. The forecast shall include a description of all relevant major contracts and power supply arrangements entered into or contemplated by the utility, and any other information the commission may require.

(5) If an electric utility files a power supply cost recovery plan under subsection (3) and a 5-year forecast under subsection (4), the commission shall conduct a proceeding, to be known as a power supply and cost review, for the purpose of evaluating the reasonableness and prudence of the power supply cost recovery plan filed by a utility under subsection (3), and establishing the power supply cost recovery factors to implement a power supply cost recovery clause incorporated in the electric rates or rate schedule of the utility. The power supply and cost review shall be conducted as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287.

(6) In its final order in a power supply and cost review, the commission shall evaluate the reasonableness and prudence of the decisions underlying the power supply cost recovery plan filed by an electric utility under subsection (3), and shall approve, disapprove, or amend the power supply cost recovery plan accordingly. In evaluating the decisions underlying the power supply cost recovery plan, the commission shall consider the cost and availability of the electrical generation available to the utility; the cost of short-term firm purchases available to the utility; the availability of interruptible service; the ability of the utility to reduce or to eliminate any firm sales to out-of-state customers if the utility is not a multi-state utility whose firm sales are subject to other regulatory authority; whether the utility has taken all appropriate actions to minimize the cost of fuel; and other relevant factors. The commission shall approve, reject, or amend the 12 monthly power supply cost recovery factors requested by the utility in its power supply cost recovery plan. The factors shall not reflect items the commission could reasonably anticipate would be disallowed under subsection (13). The factors ordered shall be described in fixed dollar amounts per unit of electricity, but may include specific amounts contingent on future events.

(7) In its final order in a power supply and cost review, the commission shall evaluate the decisions underlying the 5-year forecast filed by a utility under subsection (4). The commission may also indicate any cost items in the 5-year forecast that, on the basis of present evidence, the commission would be unlikely to permit the utility to recover from its customers in rates, rate schedules, or power supply cost recovery factors established in the future.

(8) The commission, on its own motion or the motion of any party, may make a finding and enter a temporary order granting approval or partial approval of a power supply cost recovery plan in a power supply and cost recovery review, after first giving notice to the parties to the review, and after giving the parties to the review a reasonable opportunity for a full and complete hearing. A temporary order made under this subsection is considered a final order for purposes of judicial review.

(9) If the commission has made a final or temporary order in a power supply and cost review, an electric utility may each month incorporate in its rates for the period covered by the order any amounts up to the power supply cost recovery factors permitted in that order. If the commission has not made a final or temporary order within 3 months after the submission of a complete power supply cost recovery plan, or by the beginning of the period covered in the plan, whichever comes later, or if a temporary order has expired without being extended or replaced, then pending an order that determines the power supply cost recovery factors, a utility may each month adjust its rates to incorporate all or a part of the power supply cost recovery factors requested in its plan. Any amounts collected under the power supply cost recovery factors before the

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commission makes its final order is subject to prompt refund with interest to the extent that the total amounts collected exceed the total amounts determined in the commission's final order to be reasonable and prudent for the same period of time.

(10) Not later than 3 months before the beginning of the third quarter of the 12-month period described in subsection (3), an electric utility may file a revised power supply cost recovery plan that covers the remainder of the 12-month period. Upon receipt of the revised power supply cost recovery plan, the commission shall reopen the power supply and cost review. In addition, the commission may reopen the power supply and cost review on its own motion or on the showing of good cause by any party if at least 6 months have elapsed since the utility submitted its complete filing and if there are at least 60 days remaining in the 12-month period under consideration. A reopened power supply and cost review shall be conducted as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287, and in accordance with subsections (3), (6), (8), and (9).

(11) Not later than 45 days after the last day of each billing month in which a power supply cost recovery factor has been applied to customers' bills, an electric utility shall file with the commission a detailed statement for that month of the revenues recorded pursuant to the power supply cost recovery factor and the allowance for cost of power supply included in the base rates established in the latest commission order for the utility, and the cost of power supply. The detailed statement shall be in the manner and form prescribed by the commission. The commission shall establish procedures for insuring that the detailed statement is promptly verified and corrected if necessary.

(12) Not less than once a year, and not later than 3 months after the end of the 12-month period covered by an electric utility's power supply cost recovery plan, the commission shall commence a proceeding, to be known as a power supply cost reconciliation, as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. The commission shall permit reasonable discovery before and during the reconciliation proceeding in order to assist parties and interested persons in obtaining evidence concerning reconciliation issues including, but not limited to, the reasonableness and prudence of expenditures and the amounts collected pursuant to the clause. At the power supply cost reconciliation the commission shall reconcile the revenues recorded pursuant to the power supply cost recovery factors and the allowance for cost of power supply included in the base rates established in the latest commission order for the utility with the amounts actually expensed and included in the cost of power supply by the utility. The commission shall consider any issue regarding the reasonableness and prudence of expenses for which customers were charged if the issue was not considered adequately at a previously conducted power supply and cost review.

(13) In its order in a power supply cost reconciliation, the commission shall do all of the following:

(a) Disallow cost increases resulting from changes in accounting or rate-making expense treatment not previously approved by the commission. The commission may order the utility to pay a penalty of not more than 25% of the amount improperly collected. Costs incurred by the utility for penalty payments shall not be charged to customers.

(b) Not disallow the capacity charges for any facilities for which the electric utility would otherwise have a purchase obligation if the commission has approved capacity charges in a contract with a qualifying facility, as that term is defined by the Federal Energy Regulatory Commission pursuant to the public utilities regulatory policies act of 1978, Public Law 95-617, 92 Stat 3117, unless the commission has ordered revised capacity charges upon reconsideration under this subsection. A contract is valid and binding in accordance with its terms, and capacity charges paid pursuant to that contract are recoverable costs of the utility for rate-making purposes notwithstanding that the order approving that contract is later vacated, modified, or otherwise held to be invalid in whole or in part if the order approving the contract has not been stayed or suspended by a competent court within 30 days after the date of the order, or by July 29, 1987 if the order was issued after September 1, 1986 and before June 29, 1987. The commission shall determine the scope and manner of the review of capacity charges for a qualifying facility. Except as to approvals for qualifying facilities granted by the commission before June 1, 1987, proceedings before the commission seeking those approvals shall be conducted as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. The commission, upon its own motion or upon application of any person, may reconsider its approval of capacity charges for a qualifying facility in a contested case hearing after passage of a period necessary for financing the qualifying facility, if both of the following apply:

(*i*) The commission has first issued an order making a finding based on evidence presented in a contested case that there has been a substantial change in circumstances since the commission's initial approval.

(*ii*) The commission finding is set forth in a commission order subject to immediate judicial review.

The financing period for a qualifying facility during which previously approved capacity charges are not subject to commission reconsideration is 17.5 years, beginning with the date of commercial operation, for all

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qualifying facilities, except that the minimum financing period before reconsideration of the previously approved capacity charges is for the duration of the financing for a qualifying facility that produces electric energy by the use of biomass, waste, wood, hydroelectric, wind, and other renewable resources, or any combination of renewable resources, as the primary energy source.

(c) Disallow net increased costs attributable to a generating plant outage of more than 90 days in duration unless the utility demonstrates by clear and satisfactory evidence that the outage, or any part of the outage, was not caused or prolonged by the utility's negligence or by unreasonable or imprudent management.

(d) Disallow transportation costs attributable to capital investments to develop a utility's capability to transport fuel or relocate fuel at the utility's facilities and disallow unloading and handling expenses incurred after receipt of fuel by the utility.

(e) Disallow the cost of fuel purchased from an affiliated company to the extent that the fuel is more costly than fuel of requisite quality available at or about the same time from other suppliers with whom it would be comparably cost beneficial to deal.

(f) Disallow charges unreasonably or imprudently incurred for fuel not taken.

(g) Disallow additional costs resulting from unreasonably or imprudently renegotiated fuel contracts.

(h) Disallow penalty charges unreasonably or imprudently incurred.

(i) Disallow demurrage charges.

(j) Disallow increases in charges for nuclear fuel disposal unless the utility has received the prior approval of the commission.

(14) In its order in a power supply cost reconciliation, the commission shall require an electric utility to refund to customers or credit to customers' bills any net amount determined to have been recovered over the period covered in excess of the amounts determined to have been actually expensed by the utility for power supply, and to have been incurred through reasonable and prudent actions not precluded by the commission order in the power supply and cost review. The commission shall apportion the refunds or credits among the customers of the utility utilizing procedures that the commission determines to be reasonable. The commission may adopt different procedures with respect to customers served under the various rate schedules of the utility and may, in appropriate circumstances, order refunds or credits in proportion to the excess amounts actually collected from each such customer during the period covered.

(15) In its order in a power supply cost reconciliation, the commission shall authorize an electric utility to recover from customers any net amount by which the amount determined to have been recovered over the period covered was less than the amount determined to have been actually expensed by the utility for power supply, and to have been incurred through reasonable and prudent actions not precluded by the commission order in the power supply and cost review. For excess costs incurred through management actions contrary to the commission's power supply and cost review order, the commission shall authorize a utility to recover costs incurred for power supply in the reconciliation period in excess of the amount recovered over the period only if the utility demonstrates by clear and convincing evidence that the excess expenses were beyond the ability of the utility to control through reasonable and prudent actions. For excess costs incurred through management actions consistent with the commission's power supply and cost review order, the commission shall authorize a utility to recover costs incurred for power supply in the reconciliation period in excess of the amount recovered over the period only if the utility demonstrates that the level of those expenses resulted from reasonable and prudent management actions. The amounts in excess of the amounts actually recovered by the utility for power supply shall be apportioned among and charged to the customers of the utility utilizing procedures that the commission determines to be reasonable. The commission may adopt different procedures with respect to customers served under the various rate schedules of the utility and may, in appropriate circumstances, order charges to be made in proportion to the amounts that would have been paid by those customers if the amounts in excess of the amounts actually recovered by the utility for cost of power supply had been included in the power supply cost recovery factors with respect to those customers during the period covered. Charges for the excess amounts shall be spread over a period that the commission determines to be appropriate.

(16) If the commission orders refunds or credits under subsection (14), or additional charges to customers under subsection (15), in its final order in a power supply cost reconciliation, the refunds, credits, or additional charges shall include interest. In determining the interest included in a refund, credit, or additional charge under this subsection, the commission shall consider, to the extent material and practicable, the time at which the excess recoveries or insufficient recoveries, or both occurred. The commission shall determine a rate of interest for excess recoveries, refunds, and credits equal to the greater of the average short-term borrowing rate available to the utility during the appropriate period, or the authorized rate of return on the common stock of the utility during that same period. Costs incurred by the utility for refunds and interest on refunds shall not be charged to customers. The commission shall determine a rate of interest for insufficient

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recoveries and additional charges equal to the average short-term borrowing rate available to the utility during the appropriate period.

(17) To avoid undue hardship or unduly burdensome or excessive cost, the commission may do both of the following:

(a) Exempt an electric utility with fewer than 200,000 customers in this state from 1 or more of the procedural provisions of this section or may modify the filing requirements of this section.

(b) Exempt an energy utility organized as a cooperative corporation under sections 98 to 109 of 1931 PA 327, MCL 450.98 to 450.109, from 1 or more of the provisions of this section.

(18) Notwithstanding any other provision of this act, the commission may, upon application by an electric utility, set power supply cost recovery factors, in a manner otherwise consistent with this act, in an order resulting from a general rate case. By October 27, 1987, for the purpose of setting power supply cost recovery factors, the commission shall permit an electric utility to reopen a general rate case in which a final order was issued within 120 days before or after June 29, 1987 or to amend an application or reopen the evidentiary record in a pending general rate case. If the commission sets power supply cost recovery factors in an order resulting from a general rate case, all of the following apply:

(a) The power supply cost recovery factors shall cover a future period of 48 months or the number of months that elapse until the commission orders new power supply cost recovery factors in a general rate case, whichever is the shorter period.

(b) The commission shall conduct annual reconciliation proceedings under subsection (12) and if an annual reconciliation proceeding shows a recoverable amount under subsection (15), the commission shall authorize the electric utility to defer the amount and to accumulate interest on the amount under subsection (16), and in the next order resulting from a general rate case authorize the utility to recover the amount and interest from its customers in the manner provided in subsection (15).

(c) The power supply cost recovery factors are not subject to revision under subsection (10).

History: Add. 1982, Act 304, Imd. Eff. Oct. 13, 1982;—Am. 1987, Act 81, Imd. Eff. June 29, 1987;—Am. 2016, Act 341, Eff. Apr. 20, 2017.

460.6k Initial power supply cost recovery plan; filing; alteration of rate schedule in accordance with adjustment clause; charges in excess of base rate; revenues subject to existing reconciliation proceedings; revenues resulting from certain adjustment clauses subject to existing reconciliation proceedings; revenues subject to annual reconciliation; procedures; lag correction provision; adjustment of rates pending approval or disapproval of power supply cost recovery clause.

Sec. 6k. (1) This section governs the initial filing and implementation of a power supply cost recovery plan under section 6j(3).

(2) The initial power supply cost recovery plan may be for a period of less than 12 months and shall be filed as follows:

(a) By an electric utility subject to commission rate jurisdiction with at least 200,000 residential customers in the state of Michigan, by February 13, 1983.

(b) By all other electric utilities subject to commission rate jurisdiction, by January 13, 1984 in accordance with the provisions of this act which the commission determines to be appropriate for the individual utility.

(3) Notwithstanding section 6a(5), until the expiration of 3 months plus the remainder of the then current billing month following the last day on which a utility is required to file its first power supply cost recovery plan under subsection (2), the utility may alter its rate schedule in accordance with an existing fuel cost adjustment clause or purchased and net interchanged power adjustment clause. Thereafter, the utility may make charges in excess of base rates for the cost of power supply pursuant only to subsections (2) and (4). After October 13, 1982, any revenues resulting from an existing fuel cost adjustment clause or purchased and net interchanged power adjustment clause and recorded for an annual reconciliation period ending before January 1, 1983, by an electric utility are subject to the existing reconciliation proceeding established by the commission for the utility. In this proceeding, the commission shall consider the reasonableness and prudence of expenditures charged pursuant to an existing fuel cost adjustment clause or purchased and net interchanged power adjustment clause after October 13, 1982. On and after January 1, 1983, all fuel cost and purchased and net interchanged power revenues received by an electric utility, whether included in base rates or collected pursuant to a fuel or purchased and net interchanged power adjustment clause or a power supply cost recovery clause, are subject to annual reconciliation with the cost of fuel and purchased and net interchanged power. The annual reconciliations shall be conducted in accordance with the reconciliation procedures described in section 6j(12) to (18), including the provisions for refunds, additional charges, deferral and recovery, and shall include consideration by the commission of the reasonableness and prudence of expenditures charged

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pursuant to any fuel or purchased and net interchanged power adjustment clause in existence during the period being reconciled. If the utility has a lag correction provision included in its existing adjustment clauses, the commission shall allow any adjustment to rates attributable to that lag correction provision to be implemented for the 3 billing months immediately succeeding the final billing month in which the existing adjustment clauses as operative.

(4) Until the commission approves or disapproves a power supply cost recovery clause in a final commission order in a contested case required by section 6j(2), a utility that had a fuel cost adjustment clause or purchased and net interchanged power adjustment clause on October 13, 1982 and which has applied for a power supply cost recovery clause under section 6j may adjust its rates under section 6j(3) to (18), to include power supply cost recovery factors.

History: Add. 1982, Act 304, Imd. Eff. Oct. 13, 1982;—Am. 2016, Act 341, Eff. Apr. 20, 2017.

Compiler's note: In subsection (3), the phrase "adjustment clauses as operative", evidently should read "adjustment clauses are operative".

460.6*l* Insuring equitable representation of interests of energy utility customers; definitions; utility consumer participation board; creation; powers and duties; number and appointment of members; "utility" defined; member requirements; terms; vacancy; removal of member; meetings; quorum; election of chairperson and vice-chairperson; conducting business of board at public meeting; public notice; availability of writings to public; expense reimbursement and remuneration.

Sec. 6*l*. (1) For purposes of implementing sections 6a, 6h, 6j, 6s, and 6t, this section and section 6m provide a means of insuring equitable representation of the interests of energy utility customers.

(2) As used in this section and section 6m:

(a) "Annual receipts" means the payments received by the fund under section 6m(2)(a), (b), (c), and (d) during a calendar year.

(b) "Board" means the utility consumer participation board created under subsection (3).

(c) "Commission" means the Michigan public service commission.

(d) "Department" means the department of licensing and regulatory affairs.

(e) "Energy cost recovery proceeding" means any proceeding to establish or implement a gas cost recovery clause or a power supply cost recovery clause as provided in section 6h or 6j, to set gas cost recovery factors under section 6h(17), or to set power supply cost recovery factors under section 6j(18).

(f) "Energy utility" means each electric or gas company regulated by the commission.

(g) "Fund" means the utility consumer representation fund created in section 6m.

(h) "Household" means a single-family home, duplex, mobile home, seasonal dwelling, farm home, cooperative, condominium, or apartment that has normal household facilities such as a bathroom, individual cooking facilities, and kitchen sink facilities. Household does not include a penal or corrective institution, or a motel, hotel, or other similar structure if used as a transient dwelling.

(i) "Jurisdictional" means subject to rate regulation by the commission.

(j) "Net grant proceeds" means the annual receipts of the fund less the amounts reserved for the attorney general's use and the amounts expended for board expenses and operation.

(k) "Residential energy utility consumer" or "consumer" means a customer of an energy utility who receives utility service for use within an individual household or an improvement reasonably appurtenant to and normally associated with an individual household.

(*l*) "Residential tariff sales" means those sales by an energy utility that are subject to residential tariffs on file with the commission.

(m) "Utility consuming industry" means a person, sole proprietorship, partnership, association, corporation, or other entity that receives utility service ordinarily and primarily for use in connection with the manufacture, sale, or distribution of goods or the provision of services, but does not include a nonprofit organization representing residential utility customers.

(3) The utility consumer participation board is created within the department and shall exercise its powers and duties under this act independently of the department. The procurement and related management functions of the board shall be performed under the direction and supervision of the department. The board shall consist of 5 members appointed by the governor, 1 of whom shall be chosen from 1 or more lists of qualified persons submitted by the attorney general.

(4) For the purposes of subsection (5) only, "utility" means an electric or gas company located in or outside of this state.

(5) Each member of the board shall meet the following requirements:

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(a) Shall be an advocate for the interests of residential utility consumers, as demonstrated by the member's knowledge of and support for consumer interests and concerns in general or specifically related to utility matters.

(b) Shall not be, or shall not have been within the 5 years preceding appointment, a member of a governing body of, or employed in a managerial or professional or consulting capacity by a utility or an association representing utilities; an enterprise or professional practice that received over $1,500.00 in the year preceding the appointment as a supplier of goods or services to a utility or association representing utilities; or an organization representing employees of such a utility, association, enterprise, or professional practice, or an association that represents such an organization.

(c) Shall not have, or shall not have had within 1 year preceding appointment, a financial interest exceeding $1,500.00 in a utility, an association representing utilities, or an enterprise or professional practice that received over $1,500.00 in the year preceding the appointment as a supplier of goods or services to a utility or association representing utilities.

(d) Shall not be an officer or director of an applicant for a grant under section 6m.

(e) Shall not be a member of the immediate family of an individual who would be ineligible under subdivision (a), (b), (c), or (d).

(6) The members of the board shall be appointed for 2-year terms beginning with the first day of a legislative session in an odd-numbered year and ending on the day before the first day of the legislative session in the next odd-numbered year or when the members' successors are appointed, whichever occurs later. The governor shall not appoint a member to the board for a term commencing after the governor's term of office has ended. A vacancy shall be filled in the same manner as the original appointment. If the vacancy is created other than by expiration of a term, the member shall be appointed for the balance of the unexpired term of the member to be succeeded.

(7) The governor shall remove a member of the board if that member is absent for any reason from either 3 consecutive board meetings or more than 50% of the meetings held by the board in a calendar year. However, an individual who is removed due to absenteeism is eligible for reappointment to fill a vacancy that occurs in the board membership. The governor also shall remove a member of the board if the member is subsequently determined to be ineligible under subsection (5).

(8) The board shall hold bimonthly meetings and additional meetings as necessary. A quorum consists of 3 members. A majority vote of the members appointed and serving is necessary for a decision. At its first meeting following the appointment of new members, or as soon as possible after the first meeting, the board shall elect biennially from its membership a chairperson and a vice-chairperson.

(9) The board shall not act directly to represent the interests of residential utility consumers except through administration of the fund and grant program under this section.

(10) The business that the board may perform shall be conducted at a public meeting of the board held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of the meeting shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(11) A writing prepared, owned, used, in the possession of, or retained by the board in the performance of an official function shall be made available to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(12) A member of the board may be reimbursed for actual and necessary expenses, including travel expenses to and from each meeting held by the board, incurred in discharging the member's duties under this section and section 6m. In addition to expense reimbursement, a board member may receive remuneration from the board of $100.00 per meeting attended, not to exceed $1,000.00 in a calendar year. These limits shall be adjusted proportionately to an adjustment in the remittance amounts under section 6m(4) to allow for changes in the cost of living.

History: Add. 1982, Act 304, Imd. Eff. Oct. 13, 1982;—Am. 2000, Act 141, Imd. Eff. June 5, 2000;—Am. 2016, Act 341, Eff. Apr. 20, 2017.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Utility Consumer Participation Board from the Department of Management and Budget to the Department of Commerce, but not within the Public Service Commission, see E.R.O. No. 1993-9, compiled at MCL 460.20 of the Michigan Compiled Laws.

460.6m Utility consumer representation fund; creation as special fund; investment and release of money; remittance by energy utility; factor; action for recovery of disputed amount; action on application for energy cost recovery proceedings; conditions; acceptance of gift or grant; payment of operating costs and expenses; net grant proceeds to finance grant program; application form; consideration; encouraging representation of

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different consumer interests; criteria; joint filing; disbursements; notice of availability of fund; use of annual receipts and interest; retention of certain amounts; conditions applicable to grants; reports.

Sec. 6m. (1) The utility consumer representation fund is created as a special fund. The state treasurer shall be the custodian of the fund and shall maintain a separate account of the money in the fund. The money in the fund shall be invested in the bonds, notes, and other evidences of indebtedness issued or insured by the United States government and its agencies, and in prime commercial paper. The state treasurer shall release money from the fund, including interest earned, in the manner and at the time directed by the board.

(2) Except as provided in subsection (5), each energy utility that has applied to the commission for the initiation of an energy cost recovery proceeding shall remit to the fund before or upon filing its initial application for that proceeding, and on or before the first anniversary of that application, an amount of money determined by the board in the following manner:

(a) In the case of an energy utility company serving at least 100,000 customers in this state, its proportional share of $900,000.00 adjusted annually by a factor as provided in subsection (4). This adjusted amount shall become the new base amount to which the factor provided in subsection (4) is applied in the succeeding year. A utility's proportional share shall be calculated by dividing the company's jurisdictional total operating revenues for the preceding year, as stated in its annual report, by the total operating revenues for the preceding year of all energy utility companies serving at least 100,000 customers in this state. This amount shall be made available by the board for use by the attorney general for the purposes described in subsection (16).

(b) In the case of an energy utility company serving at least 100,000 residential customers in this state, its proportional share of $650,000.00 adjusted annually by a factor as provided in subsection (4). This adjusted amount shall become the new base amount to which the factor provided in subsection (4) is applied in the succeeding year. A utility's proportional share shall be calculated by dividing the company's jurisdictional gross revenues from residential tariff sales for the preceding year by the gross revenues from residential tariff sales for the preceding year of all energy utility companies serving at least 100,000 residential customers in this state. This amount shall be used for grants under subsection (10).

(c) In the case of an energy utility company serving fewer than 100,000 customers in this state, its proportional share of $100,000.00 adjusted annually by a factor as provided in subsection (4). This adjusted amount shall become the new base amount to which the factor provided in subsection (4) is applied in the succeeding year. A utility's proportional share shall be calculated by dividing the company's jurisdictional total operating revenues for the preceding year, as stated in its annual report, by the total operating revenues for the preceding year of all energy utility companies serving fewer than 100,000 customers in this state. This amount shall be made available by the board for use by the attorney general for the purposes described in subsection (16).

(d) In the case of an energy utility company serving fewer than 100,000 residential customers in this state, its proportional share of $100,000.00 adjusted annually by a factor as provided in subsection (4). This adjusted amount shall become the new base amount to which the factor provided in subsection (4) is applied in the succeeding year. A utility's proportional share shall be calculated by dividing the company's jurisdictional gross revenues from residential tariff sales for the preceding year by the gross revenues from residential tariff sales for the preceding year of all energy utility companies serving fewer than 100,000 residential customers in this state. This amount shall be used for grants under subsection (10).

(3) Payments made by an energy utility under subsection (2)(a) or (c) are operating expenses of the utility that the commission shall permit the utility to charge to its customers. Payments made by a utility under subsection (2)(b) or (d) are operating expenses of the utility that the commission shall permit the utility to charge to its residential customers.

(4) For purposes of subsection (2), the board shall set the factor at a level not to exceed the percentage increase in the index known as the consumer price index for urban wage earners and clerical workers, select areas, all items indexed, for the Detroit standard metropolitan statistical area, compiled by the Bureau of Labor Statistics of the United States Department of Labor, or any successor agency, that has occurred between January of the preceding year and January of the year in which the payment is required to be made. In the event that more than 1 such index is compiled, the index yielding the largest payment shall be the maximum allowable factor. The board shall advise utilities of the factor.

(5) The remittance requirements of this section do not apply to an energy utility organized as a cooperative corporation under sections 98 to 109 of 1931 PA 327, MCL 450.98 to 450.109, and grants from the fund shall not be used to participate in an energy cost recovery proceeding primarily affecting such a utility.

(6) In the event of a dispute between the board and an energy utility about the amount of payment due, the

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utility shall pay the undisputed amount and, if the utility and the board cannot agree, the board may initiate civil action in the circuit court for Ingham County for recovery of the disputed amount. The commission shall not accept or take action on an application for an energy cost recovery proceeding from an energy utility subject to this section that has not fully paid undisputed remittances required by this section.

(7) The commission shall not accept or take action on an application for an energy cost recovery proceeding from an energy utility subject to this section until 30 days after it has been notified by the board that the board is ready to process grant applications, will transfer funds payable to the attorney general immediately upon the receipt of those funds, and will within 30 days approve grants and remit funds to qualified grant applicants.

(8) The board may accept a gift or grant from any source to be deposited in the fund if the conditions or purposes of the gift or grant are consistent with this section.

(9) The costs of operation and expenses incurred by the board in performing its duties under this section and section 6*l*, including remuneration to board members, shall be paid from the fund. A maximum of 5% of the annual receipts of the fund may be budgeted and used to pay expenses other than grants made under subsection (10).

(10) The net grant proceeds shall finance a grant program from which the board may award to an applicant an amount that the board determines shall be used for the purposes set forth in this section.

(11) The board shall create and make available to applicants an application form. Each applicant shall indicate on the application how the applicant meets the eligibility requirements provided for in this section and how the applicant proposes to use a grant from the fund to participate in 1 or more proceedings as authorized in subsection (16) that have been or are expected to be filed. Each applicant shall also identify on the application any additional funds or resources, other than the grant funds being requested, that are to be used to participate in the proceeding for which the grant is being requested and how those funds or resources will be utilized. The board shall receive an application requesting a grant from the fund only from a nonprofit organization or a unit of local government in this state. The board shall consider only applications for grants containing proposals that are consistent with subsections (16) and (17) and that serve the interests of residential utility consumers. For purposes of making grants, the board may consider energy conservation, energy waste reduction, demand response, and rate design options to encourage energy conservation, energy waste reduction, and demand response, as well as the maintenance of adequate energy resources. The board shall not consider an application that primarily benefits the applicant or a service provided or administered by the applicant. The board shall not consider an application from a nonprofit organization if 1 of the organization's principal interests or unifying principles is the welfare of a utility or its investors or employees, or the welfare of 1 or more businesses or industries, other than farms not owned or operated by a corporation, that receive utility service ordinarily and primarily for use in connection with the profit-seeking manufacture, sale, or distribution of goods or services. Mere ownership of securities by a nonprofit organization or its members does not disqualify an application submitted by that organization.

(12) The board shall encourage the representation of the interests of identifiable types of residential utility consumers whose interests may differ, including various social and economic classes and areas of the state, and if necessary, may make grants to more than 1 applicant whose applications are related to a similar issue to achieve this type of representation. In addition, the board shall consider and balance the following criteria in determining whether to make a grant to an applicant:

(a) Evidence of the applicant's competence, experience, and commitment to advancing the interests of residential utility consumers.

(b) The anticipated involvement of the attorney general in a proceeding and whether activities of the applicant will be duplicative or supplemental to those of the attorney general.

(c) In the case of a nongovernmental applicant, the extent to which the applicant is representative of or has a previous history of advocating the interests of citizens, especially residential utility consumers.

(d) The anticipated effect of the proposal contained in the application on residential utility consumers, including the immediate and long-term impacts of the proposal.

(e) Evidence demonstrating the potential for continuity of effort and the development of expertise in relation to the proposal contained in the application.

(f) The uniqueness or innovativeness of an applicant's position or point of view as it relates to advocating for residential utility consumers concerning energy costs or rates, and the probability and desirability of that position or point of view prevailing.

(13) As an alternative to choosing between 2 or more applications that have similar proposals, the board may invite 2 or more of the applicants to file jointly and award a grant to be managed cooperatively.

(14) The board shall make disbursements pursuant to a grant in advance of an applicant's proposed actions as set forth in the application if necessary to enable the applicant to initiate, continue, or complete the

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proposed actions.

(15) Any notice to utility customers and the general public of hearings or other state proceedings in which grants from the fund may be used shall contain a notice of the availability of the fund and the address of the board.

(16) The annual receipts and interest earned, less administrative costs, may be used only for participation in administrative and judicial proceedings under sections 6a, 6h, 6j, 6s, and 6t, and in federal administrative and judicial proceedings that directly affect the energy costs or rates paid by energy utility customers in this state. Amounts that have been in the fund more than 12 months may be retained in the fund for future proceedings and any unexpended money in the fund shall be reserved to fulfill the purposes for which it was appropriated or may be returned to energy utility companies or used to offset their future remittances in proportion to their previous remittances to the fund, as the board and attorney general determine will best serve the interests of consumers.

(17) The following conditions apply to all grants from the fund:

(a) Disbursements from the fund may be used only to advocate the interests of residential energy utility customers concerning energy costs or rates and not for representation of merely individual interests.

(b) The board shall attempt to maintain a reasonable relationship between the payments from a particular energy utility and the benefits to consumers of that utility.

(c) The board shall coordinate the funded activities of grant recipients with those of the attorney general to avoid duplication of effort, particularly as it relates to the hiring of expert witnesses, to promote supplementation of effort, and to maximize the number of hearings and proceedings with intervenor participation.

(18) A recipient of a grant under subsection (10) may use the grant only for the advancement of the proposed action approved by the board, including, but not limited to, costs of staff, hired consultants and counsel, and research.

(19) A recipient of a grant under subsection (10) shall prepare for and participate in all discussions among the parties designed to facilitate settlement or narrowing of the contested issues before a hearing in order to minimize litigation costs for all parties.

(20) A recipient of a grant under subsection (10) shall file a report with the board within 90 days following the end of the year or a shorter period for which the grant is made. The report shall be made in a form prescribed by the board and is subject to audit by the board. The board shall include each report received under this subsection as part of the board's annual report required under subsection (22). The report under this subsection shall include the following information:

(a) An account of all grant expenditures made by the grant recipient. Expenditures shall be reported within the following categories:

(*i*) Employee and contract for services costs.

(*ii*) Costs of materials and supplies.

(*iii*) Filing fees and other costs required to effectively represent residential utility consumers as provided in this section.

(b) A detailed list of the regulatory issues raised by the grant recipient and how each issue was determined by the commission, court, or other tribunal.

(c) Any additional information concerning uses of the grant required by the board.

(21) On or before July 1 of each year, the attorney general shall file a report with the house and senate committees on appropriations and the house and senate committees with jurisdiction over energy and utility policy issues. The report shall include the following information:

(a) An account of all expenditures made by the attorney general of money received under this section. Expenditures shall be reported within the following categories:

(*i*) Employee and contract for services costs.

(*ii*) Costs of materials and supplies.

(*iii*) Filing fees and other costs required to effectively represent utility consumers as provided in this section.

(b) Any additional information concerning uses of the money received under this section required by the committees.

(22) On or before July 1 of each calendar year, the board shall submit a detailed report to the house and senate committees with jurisdiction over energy and utility policy issues regarding the discharge of duties and responsibilities under this section and section 6*l* during the preceding calendar year.

History: Add. 1982, Act 304, Imd. Eff. Oct. 13, 1982;—Am. 2014, Act 170, Imd. Eff. June 17, 2014;—Am. 2016, Act 341, Eff. Apr. 20, 2017.

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460.6n Restructuring of residential electric rates; hearings; revenue impact; purpose and basis of restructured rates; penalizing residential customers prohibited; informing public of conservation advantages; contents of customer's bill; costs; applicability of section.

Sec. 6n. (1) Not later than 4 months after the effective date of this section, the commission shall commence hearings to restructure residential electric rates established pursuant to former section 6f of this act. The restructuring may be independent of any pending case for rate reductions or increases or may be included within any general rate case proceeding. The revenue impact of the restructured rates shall be included and recognized solely within the residential class of customers.

(2) Rates restructured pursuant to this section shall encourage residential energy conservation and shall be based upon cost of service and other relevant factors.

(3) The commission shall ensure that electric utilities do not penalize residential customers for billings which are for more than 31 days of service in any monthly billing period.

(4) The commission shall take steps necessary to inform the public of the advantages of conservation. In addition to requiring the total charges for service to be reflected on a residential customer's bill, the commission shall require electric utilities to print on each residential customer's bill the total amount of electricity used, the rate for each block used by the customer, and the total charge for each block of electrical usage by the customer. All costs incurred by the electric utilities in carrying out the requirements of this subsection shall be included in the cost to serve the residential customer.

(5) This section shall apply only to electric utilities serving more than 200,000 residential customers in this state.

History: Add. 1984, Act 49, Imd. Eff. Apr. 12, 1984.

460.6o Definitions; power purchase agreements for purchase of capacity and energy from resource recovery facilities; rates, charges, terms, and conditions of service; scrap tire; applicability of section; dispute provisions; filing agreement; commencement of contested case proceeding; approval of agreement; energy rate component; capacity rate component; determination of reserve margin, reserve capacity, or other resource capability measurement; annual accounting.

Sec. 6o. (1) As used in this section:

(a) "Resource recovery facility" means a facility that meets all of the following requirements:

(*i*) Has machinery, equipment, and structures installed for the primary purpose of recovering energy through the incineration of qualified solid waste, qualified landfill gas, or scrap tires.

(*ii*) Utilizes at least 80% of its total annual fuel input in the form of qualified solid waste, at least 90% of its total annual fuel input in the form of qualified landfill gas, or 90% of its total annual fuel input in the form of scrap tires, exclusive of fuel used for normal start-up and shutdown.

(*iii*) Is a qualifying facility as defined by the federal energy regulatory commission pursuant to the public utility regulatory policies act of 1978, Public Law 95-617, 92 Stat. 3117.

(b) "Qualified landfill gas" means gas reclaimed from a type II landfill as defined in R 299.4105 of the Michigan administrative code.

(c) "Qualified solid waste" means solid waste that may be lawfully disposed of in a type II landfill as defined in R 299.4105 of the Michigan administrative code, and which is generated within this state.

(d) "Scrap tire", "scrap tire hauler", and "scrap tire processor" mean those terms as they are defined in part 169 (scrap tires) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being sections 324.16901 to 324.16909 of the Michigan Compiled Laws.

(2) Public utilities with more than 500,000 customers in this state shall enter into power purchase agreements for the purchase of capacity and energy from resource recovery facilities that incinerate qualified landfill gas; that incinerate qualified solid waste, at least 50.1% of which is generated within the service areas of the public utility; or, subject to the provisions of this section, that incinerate scrap tires, under rates, charges, terms, and conditions of service that, for these facilities, may differ from those negotiated, authorized, or prescribed for purchases from qualifying facilities that are not resource recovery facilities. If a resource recovery facility incinerates scrap tires, or any other tires that are obtained from outside the state, or if more than 50.1% of the scrap tires or other tires are obtained outside the public utility service area, the public utility may in partial satisfaction of its obligation under this subsection purchase capacity and energy from the facility but is not obligated by this act to purchase the facility's capacity and energy. A resource recovery facility that incinerates at least 90% of its total annual fuel input in the form of scrap tires shall accept all scrap tires that first became scrap tires in the state and that are delivered to the facility by a scrap tire processor or a scrap tire hauler. The first 6,000,000 of these scrap tires delivered to the resource recovery

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facility each year shall be charged a rate not greater than an amount equal to $34.50 per ton, increased each calendar quarter beginning July 1, 1990, by an amount equal to the increase in the all items version of the consumer price index for urban wage earners and clerical workers during the prior calendar quarter. Including power purchase agreements executed prior to June 30, 1989, this section does not apply after 120 megawatts of electric resource recovery facility capacity in a utility's service territory have been contracted and entered in commercial operation. Additionally, this section does not apply to more than the first 30 megawatts of scrap tire fueled resource recovery facility capacity in the state that has been contracted and entered in commercial operation. Excluding rate provisions, if 1 or more provisions of a purchase agreement remain in dispute, each party shall submit to the commission all of the purchase agreement provisions of their last best offer and a supporting brief. On each disputed provision, the commission shall within 60 days either select or reject with recommendation the offers submitted by either party.

(3) A power purchase agreement entered into by a public utility for the purchase of capacity and energy from a resource recovery facility shall be filed with the commission and a contested case proceeding shall commence immediately pursuant to chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 of the Michigan Compiled Laws. Notwithstanding section 6j, a power purchase agreement shall be considered approved if the commission does not approve or disapprove the agreement within 6 months of the date of the filing of the agreement. Approval pursuant to this subsection constitutes prior approval under section 6j(13)(b).

(4) The energy rate component of all power sales contracts for resource recovery facilities shall be equal to the avoided energy cost of the purchasing utility.

(5) When averaged over the term of the contract, the capacity rate component of all power sales contracts for resource recovery facilities may be equal to but not less than the full avoided cost of the utility as determined by the commission. In determining the capacity rate, the commission may assume that the utility needs capacity.

(6) Capacity purchased by a utility prior to January 1, 2000 under a power sales contract with a resource recovery facility shall not be considered directly or indirectly in determining the utility's reserve margin, reserve capacity, or other resource capability measurement. To insure compliance with this act, a resource recovery facility that incinerates scrap tires shall provide an annual accounting to the legislature and the commission. The annual accounting shall include the total amount of scrap tires incinerated at the resource recovery facility and the percentage of those scrap tires that prior to incineration were used within this state for their original intended purpose.

History: Add. 1989, Act 2, Imd. Eff. Apr. 3, 1989;—Am. 1990, Act 323, Imd. Eff. Dec. 21, 1990;—Am. 1994, Act 10, Imd. Eff. Feb. 24, 1994;—Am. 1996, Act 75, Imd. Eff. Feb. 26, 1996.

460.6p Rates subject to electric transmission line certification act.

Sec. 6p. The rates of an electric utility are subject to the electric transmission line certification act.

History: Add. 1995, Act 32, Imd. Eff. May 17, 1995.

460.6q Acquisition, control, or merger with jurisdictional regulated utility; approval of commission; notice and hearing; issuance of order; rules; filing comments; access to data and information; evaluation factors; terms and conditions; confidential information; definitions.

Sec. 6q. (1) A person shall not acquire, control, or merge, directly or indirectly, in whole or in part, with a jurisdictional regulated utility nor shall a jurisdictional regulated utility sell, assign, transfer, or encumber its assets to another person without first applying to and receiving the approval of the commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) In approving an acquisition, transfer, merger, or encumbrance under this section, the commission may impose reasonable terms and conditions on the acquisition, transfer, merger, or encumbrance to protect the jurisdictional regulated utility, including the division and allocation of the utility's assets. A jurisdictional regulated utility may reject the terms and conditions imposed by the commission and not proceed with the transaction.

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

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

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

(12) As used in this section:

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

(b) "Jurisdictional regulated utility" means a utility whose rates are regulated by the commission. Jurisdictional regulated utility does not include a telecommunication provider as defined in the Michigan telecommunications act, 1991 PA 179, MCL 484.2101 to 484.2604, or a motor carrier as defined in the motor carrier act, 1933 PA 254, MCL 475.1 to 479.43.

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

History: Add. 2008, Act 286, Imd. Eff. Oct. 6, 2008.

460.6r Definitions; steam supply cost recovery clause; filing steam supply cost recovery plan and 3-year forecast; requirements; steam supply and cost review; temporary or final order; filing detailed statement; commencement of steam supply cost reconciliation; order of refunds or credits; rate of interest; filing report with governor and legislature.

Sec. 6r. (1) As used in this section:

(a) "Booked cost of steam" includes all of the following:

(*i*) Retail gas purchases consisting of all costs for gas service including customer charges, distribution charges, and any gas cost recovery factor.

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(*ii*) Wholesale gas purchases, consisting of the contract cost of gas, transportation fuel, pipeline transportation fees, and any local transportation or distribution fees.

(*iii*) Storage gas charges, including the cost of gas, fuel, gas injection fees, withdrawal fees, and associated transportation fees.

(*iv*) The cost of financial hedging instruments approved by the commission such as futures and options, including premiums, settlement gains and losses, and commodity exchange and administration fees.

(*v*) Steam purchases, consisting of all costs for steam purchased including customer charges, distribution charges, and associated transportation fees.

(*vi*) Costs for other fuel purchases including, but not limited to, any coal, wood, garbage, tires, waste oil, fuel oil or other materials used as a fuel for the production of steam, and all customer charges, distribution charges, and associated transportation and storage fees.

(b) "Steam supply cost recovery clause" means a clause in the rates or rate schedule of a utility which permits the monthly adjustment of rates for steam supply to allow the utility to recover the booked costs of fuel burned by the utility for steam generation and the booked costs of purchased steam transactions by the utility incurred under reasonable and prudent policies and practices.

(c) "Steam supply cost recovery factor" means that element of the rates to be charged for steam service to reflect steam supply costs incurred by a utility and made pursuant to a steam supply cost recovery clause incorporated in the rates or rate schedule of a utility.

(d) "Utility" means a steam distribution company regulated by the commission.

(2) Pursuant to its authority under this act, the commission may incorporate a steam supply cost recovery clause in the steam rates or rate schedule of a utility. An order incorporating a steam supply cost recovery clause shall be the result of a hearing solely on the question of the inclusion of the clause in the rates or rate schedule. The hearing shall be conducted as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287.

(3) In order to implement the steam supply cost recovery clause established pursuant to subsection (2), a utility annually shall file a complete steam supply cost recovery plan describing the expected sources of steam supply and changes in the cost of steam supply anticipated over a future 12-month period specified by the commission and requesting for each of those 12 months a specific steam supply cost recovery factor. The utility shall file the steam supply cost recovery plan at least 3 months before the beginning of the 12-month period covered by the plan. The plan shall describe all major contracts and steam supply arrangements entered into by the utility for providing steam supply during the specified 12-month period including the price of fuel, the duration of the contract or arrangement, and an explanation or description of any other term or provision of the contract or arrangement as required by the commission. The plan shall also include the utility's evaluation of the reasonableness and prudence of its decisions to provide steam supply in the manner described in the plan, in light of its existing sources of steam generation, and an explanation of the actions taken by the utility to minimize the cost of fuel to the utility.

(4) In order to implement the steam supply cost recovery clause established pursuant to subsection (2), a utility shall file, contemporaneously with the steam supply cost recovery plan required by subsection (3), a 3-year forecast of the steam supply requirements of its customers, its anticipated sources of supply, and projections of steam supply costs, in light of its existing sources of steam generation and sources of steam generation under construction. The forecast shall include a description of all relevant major contracts and steam supply arrangements entered into or contemplated by the utility, and any other information the commission may require.

(5) If a utility files a steam supply cost recovery plan and a 3-year forecast as provided in subsections (3) and (4), the commission shall conduct a proceeding, to be known as a steam supply and cost review, to evaluate the reasonableness and prudence of the steam supply cost recovery plan filed by a utility pursuant to subsection (3), and establish the steam supply cost recovery factors to implement a steam supply cost recovery clause incorporated in the rates or rate schedule of the utility. The steam supply and cost review shall be conducted as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287.

(6) In its final order in a steam supply and cost review, the commission shall evaluate the reasonableness and prudence of the decisions underlying the steam supply cost recovery plan filed by the utility pursuant to subsection (3), and shall approve, disapprove, or amend the steam supply cost recovery plan accordingly. In evaluating the decisions underlying the steam supply cost recovery plan, the commission shall consider the cost and availability of the steam generation available to the utility, the cost of short-term firm purchases available to the utility, whether the utility has taken all appropriate actions to minimize the cost of fuel, and other relevant factors. The commission shall approve, reject, or amend the 12 monthly steam supply cost recovery factors requested by the utility in its steam supply cost recovery plan. The factors ordered shall be

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described in fixed dollar amounts per unit of steam, but may include specific amounts contingent on future events.

(7) In its final order in a steam supply and cost review, the commission shall evaluate the decisions underlying the 3-year forecast filed by a utility pursuant to subsection (4). The commission may also indicate any cost items in the 3-year forecast that, on the basis of present evidence, the commission would be unlikely to permit the utility to recover from its customers in rates, rate schedules, or steam supply cost recovery factors established in the future.

(8) The commission, on its own motion or the motion of any party, may make a finding and enter a temporary order granting approval or partial approval of a steam supply cost recovery plan in a steam supply and cost recovery review after first having given notice to the parties to the review and giving those parties a reasonable opportunity for a full and complete hearing. A temporary order made pursuant to this subsection is considered a final order for purposes of judicial review.

(9) If the commission has made a final or temporary order in a steam supply and cost review, the utility may each month incorporate in its rates for the period covered by the order any amount up to the steam supply cost recovery factors permitted in that order. If the commission has not made a final or temporary order within 3 months of the submission of a complete steam supply cost recovery plan, or by the beginning of the period covered in the plan, whichever comes later, or if a temporary order has expired without being extended or replaced, then, pending an order which determines the steam supply cost recovery factors, a utility may each month adjust its rates to incorporate all or a part of the steam supply cost recovery factors requested in its plan. Any amount collected under the steam supply cost recovery factors before the commission makes its final order shall be subject to prompt refund with interest to the extent that the total amount collected exceeds the total amount determined in the commission's final order to be reasonable and prudent for the same period of time.

(10) Not less than 3 months before the beginning of the third quarter of the 12-month period, a utility may file a revised steam supply cost recovery plan which shall cover the remainder of the 12-month period. Upon receipt of a revised steam supply cost recovery plan, the commission shall reopen the steam supply and cost review. In addition, the commission may reopen the steam supply and cost review on its own motion or on the showing of good cause by any party if at least 6 months have elapsed since the utility submitted its complete filing and if there are at least 60 days remaining in the 12-month period under consideration. A reopened steam supply and cost review shall be conducted as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287, and in accordance with subsections (3), (6), (8), and (9).

(11) Not more than 45 days following the last day of each billing month in which a steam supply cost recovery factor has been applied to customers' bills, a utility shall file with the commission a detailed statement for that month of the revenues recorded pursuant to the steam supply cost recovery factor and the allowance for cost of steam supply included in the base rates established in the latest commission order for the utility, and the cost of steam supply. The detailed statement shall be in the manner and form prescribed by the commission. The commission shall establish procedures for insuring that the detailed statement is promptly verified and corrected if necessary.

(12) Not less than once a year, and not later than 3 months after the end of the 12-month period covered by a utility's steam supply cost recovery plan, the commission shall commence a proceeding, to be known as a steam supply cost reconciliation, as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. Reasonable discovery shall be permitted before and during the reconciliation proceeding in order to assist parties and interested persons in obtaining evidence concerning reconciliation issues, including, but not limited to, the reasonableness and prudence of expenditures and the amounts collected pursuant to the clause. At the steam supply cost reconciliation, the commission shall reconcile the revenues recorded pursuant to the steam supply cost recovery factors and the allowance for cost of steam supply included in the base rates established in the latest commission order for the utility with the amounts actually expensed and included in the cost of steam supply by the utility. The commission shall consider any issue regarding the reasonableness and prudence of expenses for which customers were charged if the issue was not considered adequately at a previously conducted steam supply and cost review.

(13) In its order in a steam supply cost reconciliation, the commission shall require a utility to refund to customers or credit to customers' bills any net amount determined to have been recovered over the period covered in excess of the amounts determined to have been actually expensed by the utility for steam supply, and to have been incurred through reasonable and prudent actions not precluded by the commission order in the steam supply and cost review. The refunds or credits shall be apportioned among the customers of the utility utilizing procedures that the commission determines are reasonable. The commission may adopt different procedures with respect to customers served under the various rate schedules of the utility and may,

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in appropriate circumstances, order refunds or credits in proportion to the excess amounts actually collected from each customer during the period covered.

(14) In its order in a steam supply cost reconciliation, the commission shall authorize a utility to recover from customers any net amount by which the amount determined to have been recovered over the period covered was less than the amount determined to have been actually expensed by the utility for steam supply, and to have been incurred through reasonable and prudent actions not precluded by the commission order in the steam supply and cost review. For excess costs incurred through management actions contrary to the commission's steam supply and cost review order, the commission shall authorize a utility to recover costs incurred for steam supply in the reconciliation period in excess of the amount recovered over the period only if the utility demonstrates by clear and convincing evidence that the excess expenses were beyond the ability of the utility to control through reasonable and prudent actions. For excess costs incurred through management actions consistent with the commission's steam supply and cost review order, the commission shall authorize a utility to recover costs incurred for steam supply in the reconciliation period in excess of the amount recovered over the period only if the utility demonstrates that the level of the expenses resulted from reasonable and prudent management actions. The amounts in excess of the amounts actually recovered by the utility for steam supply shall be apportioned among and charged to the customers of the utility utilizing procedures that the commission determines are reasonable. The commission may adopt different procedures with respect to customers served under the various rate schedules of the utility and may, in appropriate circumstances, order charges to be made in proportion to the amounts which would have been paid by those customers if the amounts in excess of the amounts actually recovered by the utility for cost of steam supply had been included in the steam supply cost recovery factors with respect to those customers during the period covered. Charges for the excess amounts shall be spread over a period that the commission determines is appropriate.

(15) If the commission orders refunds or credits pursuant to subsection (13), or additional charges to customers pursuant to subsection (14), in its final order in a steam supply cost reconciliation, the refunds, credits, or additional charges shall include interest. In determining the interest included in a refund, credit, or additional charge pursuant to this subsection, the commission shall consider, to the extent material and practicable, the time at which the excess recoveries or insufficient recoveries, or both, occurred. The commission shall determine a rate of interest for excess recoveries, refunds, and credits equal to the greater of the average short-term borrowing rate available to the utility during the appropriate period, or the authorized rate of return on the common stock of the utility during that same period. Costs incurred by the utility for refunds and interest on refunds shall not be charged to customers. The commission shall determine a rate of interest for insufficient recoveries and additional charges equal to the average short-term borrowing rate available to the utility during the appropriate period.

(16) The commission shall file a report with the governor and legislature 5 years after the effective date of the amendatory act that added this section, and every 5 years thereafter, that shall include recommendations for any needed legislation regarding this section.

History: Add. 2008, Act 132, Imd. Eff. May 21, 2008.

460.6s Electric generation facility; application; review criteria and approval standards; order granting or denying certificate of necessity; hearing; reports; inclusion of costs in utility's retail rates; refunds; interest; modifying or canceling approval of certificate of necessity; filing forms and instructions; integrated resource plan; financing interest cost recovery in utility's base rates; submission of alternative proposal; order subject to judicial review.

Sec. 6s. (1) An electric utility that proposes to construct an electric generation facility, make a significant investment in an existing electric generation facility, purchase an existing electric generation facility, or enter into a power purchase agreement for the purchase of electric capacity for a period of 6 years or longer may submit an application to the commission seeking a certificate of necessity for that construction, investment, or purchase if that construction, investment, or purchase costs $100,000,000.00 or more and a portion of the costs would be allocable to retail customers in this state. A significant investment in an electric generation facility includes a group of investments reasonably planned to be made over a multiple year period not to exceed 6 years for a singular purpose such as increasing the capacity of an existing electric generation plant. The commission shall not issue a certificate of necessity under this section for any environmental upgrades to existing electric generation facilities. If the application is for the construction of an electric generation facility of 225 megawatts or more or for the construction of an additional generating unit or units totaling 225 megawatts or more at an existing electric generation facility submitted as required under section 6t(13), the commission shall consolidate its proceedings under section 6t and this section. If the commission approves or denies an application for an electric generation facility under this section that has been submitted as required

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under section 6t(13), the provisions of this section prevail in a conflict with section 6t.

(2) The commission may implement separate review criteria and approval standards for electric utilities with less than 1,000,000 retail customers that seek a certificate of necessity for projects costing less than $100,000,000.00.

(3) An electric utility submitting an application under this section may request 1 or more of the following:

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

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

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

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

(4) Within 270 days after the filing of an application under this section, or, for an application for an electric generation facility submitted as required under section 6t(13), concurrently with a final order issued under section 6t, the commission shall issue an order granting or denying the requested certificate of necessity. The commission shall hold a hearing on the application. The hearing shall be conducted as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. The commission may allow intervention by persons under the rules of practice and procedure of the commission and shall allow intervention by existing suppliers of electric generation capacity under subsection (13), persons allowed to intervene in the contested case under section 6t, and interested persons. The commission shall permit reasonable discovery before and during the hearing in order to assist parties and interested persons in obtaining evidence concerning the application, including, but not limited to, the reasonableness and prudence of the construction, investment, or purchase for which the certificate of necessity has been requested. The commission shall grant the request if it determines all of the following:

(a) That the electric utility has demonstrated a need for the power that would be supplied by the existing or proposed electric generation facility or pursuant to the proposed power purchase agreement through its approved integrated resource plan under section 6t or subsection (11).

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

(c) The estimated cost of power from the existing or proposed electric generation facility or the price of power specified in the proposed power purchase agreement is reasonable. The commission shall find that the cost is reasonable if, in the construction or investment in a new or existing facility, to the extent it is commercially practicable, the estimated costs are the result of competitively bid engineering, procurement, and construction contracts, or in a power purchase agreement, the cost is the result of a competitive solicitation. Up to 150 days after an electric utility makes its initial filing, it may file to update its cost estimates if they have materially changed. No other aspect of the initial filing may be modified unless the application is withdrawn and refiled. A utility's filing updating its cost estimates does not extend the period for the commission to issue an order granting or denying a certificate of necessity. An affiliate of an electric utility that serves customers in this state and at least 1 other state may participate in the competitive bidding to provide engineering, procurement, and construction services to that electric utility for a project covered by this section.

(d) The existing or proposed electric generation facility or proposed power purchase agreement represents the most reasonable and prudent means of meeting the power need relative to other resource options for meeting power demand, including energy efficiency programs, electric transmission efficiencies, and any alternative proposals submitted under this section by existing suppliers of electric generation capacity under subsection (13) or other intervenors.

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

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

(6) In a certificate of necessity under this section, the commission shall specify the costs approved for the construction of or significant investment in the electric generation facility, the price approved for the purchase

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of the existing electric generation facility, or the price approved for the purchase of power pursuant to the terms of the power purchase agreement. For power purchase agreements that an electric utility enters into with an entity that is not affiliated with that electric utility after the effective date of the amendatory act that added section 6t, the commission shall consider and may authorize a financial incentive for that utility that does not exceed the electric utility's weighted average cost of capital.

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

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

(9) Once the electric generation facility or power purchase agreement is considered used and useful or as otherwise provided in subsection (12), the commission shall include in an electric utility's retail rates all reasonable and prudent costs for an electric generation facility or power purchase agreement for which a certificate of necessity has been granted. The commission shall not disallow recovery of costs an electric utility incurs in constructing, investing in, or purchasing an electric generation facility or in purchasing power pursuant to a power purchase agreement for which a certificate of necessity has been granted, if the costs do not exceed the costs approved by the commission in the certificate. The portion of the cost of a plant, facility, or power purchase agreement that exceeds the cost approved by the commission is presumed to have been incurred due to a lack of prudence. Once the electric generation facility or power purchase agreement is considered used and useful or as otherwise provided in subsection (12), the commission shall include in the electric utility's retail rates costs actually incurred by the electric utility that exceed the costs approved by the commission only if the commission finds by a preponderance of the evidence that the additional costs were prudently incurred. The commission shall disallow costs the commission finds have been incurred as the result of fraud, concealment, gross mismanagement, or lack of quality controls amounting to gross mismanagement. The commission shall also require refunds with interest to ratepayers of any of these costs already recovered through the electric utility's rates and charges. If the assumptions underlying an approved certificate of necessity, other than a certificate of necessity approved for a power purchase agreement for the purchase of electric capacity, materially change, an electric utility may request, or the commission on its own motion may initiate, a proceeding to review whether it is reasonable and prudent to complete an unfinished project for which a certificate of necessity has been granted. If the commission finds that completion of the project is no longer reasonable and prudent, the commission may modify or cancel approval of the certificate of necessity. Except for costs the commission finds an electric utility has incurred as the result of fraud, concealment, gross mismanagement, or lack of quality controls amounting to gross mismanagement, if commission approval is modified or canceled, the commission shall not disallow reasonable and prudent costs already incurred or committed to by contract by an electric utility. Once the commission finds that completion of the project is no longer reasonable and prudent, the commission may limit future cost recovery to those costs that could not be reasonably avoided.

(10) The commission shall adopt standard application filing forms and instructions for use in all requests for a certificate of necessity under this section. The commission may modify the standard application filing forms and instructions adopted under this section.

(11) The commission shall establish standards for an integrated resource plan that shall be filed by an electric utility requesting a certificate of necessity under this section. This subsection does not apply to an electric utility that has an approved integrated resource plan under section 6t. An integrated resource plan shall include all of the following:

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

(b) The type of generation technology proposed for the generation facility and the proposed capacity of the generation facility, including projected fuel and regulatory costs under various reasonable scenarios.

(c) Projected energy and capacity purchased or produced by the electric utility under any renewable portfolio standard.

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

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

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

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(g) Electric transmission options for the electric utility.

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

(13) An existing supplier of electric generation capacity currently producing at least 200 megawatts of firm electric generation capacity resources located in the independent system operator's zone in which the utility's load is served that seeks to provide electric generation capacity resources to the utility may submit a written proposal directly to the commission as an alternative to the construction, investment, or purchase for which the certificate of necessity is sought under this section. The entity submitting an alternative proposal under this subsection has standing to intervene and the commission shall allow reasonable discovery in the contested case proceeding conducted under this section. In evaluating an alternative proposal, the commission shall consider the cost of the alternative proposal and the submitting entity's qualifications, technical competence, capability, reliability, creditworthiness, and past performance. In reviewing an application, the commission may consider any alternative proposals submitted under this subsection. This subsection does not limit the ability of any other person to submit to the commission an alternative proposal to the construction, investment, or purchase for which a certificate of necessity is sought under this section and to petition for and be granted leave to intervene in the contested case proceeding conducted under this section under the rules of practice and procedure of the commission. This subsection does not authorize the commission to order or otherwise require an electric utility to adopt any alternative proposal submitted under this subsection.

(14) An order of the commission following a hearing under this section is subject to judicial review as provided under section 28 of article VI of the state constitution of 1963 and chapter 6 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.301 to 24.306, except that the filing of a petition for review must be filed in the court of appeals within 30 days after the order of the commission is issued and the court shall conduct the review as expeditiously as possible with lawful precedence over other matters.

History: Add. 2008, Act 286, Imd. Eff. Oct. 6, 2008;—Am. 2016, Act 341, Eff. Apr. 20, 2017.

460.6t Integrated resource plan.

Sec. 6t. (1) The commission shall, within 120 days of the effective date of the amendatory act that added this section and every 5 years thereafter, commence a proceeding and, in consultation with the Michigan agency for energy, the department of environmental quality, and other interested parties, do all of the following as part of the proceeding:

(a) Conduct an assessment of the potential for energy waste reduction in this state, based on what is economically and technologically feasible, as well as what is reasonably achievable.

(b) Conduct an assessment for the use of demand response programs in this state, based on what is economically and technologically feasible, as well as what is reasonably achievable. The assessment shall expressly account for advanced metering infrastructure that has already been installed in this state and seek to fully maximize potential benefits to ratepayers in lowering utility bills.

(c) Identify significant state or federal environmental regulations, laws, or rules and how each regulation, law, or rule would affect electric utilities in this state.

(d) Identify any formally proposed state or federal environmental regulation, law, or rule that has been published in the Michigan Register or the Federal Register and how the proposed regulation, law, or rule would affect electric utilities in this state.

(e) Identify any required planning reserve margins and local clearing requirements in areas of this state.

(f) Establish the modeling scenarios and assumptions each electric utility should include in addition to its own scenarios and assumptions in developing its integrated resource plan filed under subsection (3), including, but not limited to, all of the following:

(*i*) Any required planning reserve margins and local clearing requirements.

(*ii*) All applicable state and federal environmental regulations, laws, and rules identified in this subsection.

(*iii*) Any supply-side and demand-side resources that reasonably could address any need for additional generation capacity, including, but not limited to, the type of generation technology for any proposed generation facility, projected energy waste reduction savings, and projected load management and demand response savings.

(*iv*) Any regional infrastructure limitations in this state.

(*v*) The projected costs of different types of fuel used for electric generation.

(g) Allow other state agencies to provide input regarding any other regulatory requirements that should be included in modeling scenarios or assumptions.

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(h) Publish a copy of the proposed modeling scenarios and assumptions to be used in integrated resource plans on the commission's website.

(i) Before issuing the final modeling scenarios and assumptions each electric utility should include in developing its integrated resource plan, receive written comments and hold hearings to solicit public input regarding the proposed modeling scenarios and assumptions.

(2) A proceeding commenced under subsection (1) shall be completed within 120 days, and shall not be a contested case under chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. The determination of the modeling assumptions for integrated resource plans made under subsection (1) is not considered a final order for purposes of judicial review. The determinations made under subsection (1) are only subject to judicial review as part of the final commission order approving an integrated resource plan under this section.

(3) Not later than 2 years after the effective date of the amendatory act that added this section, each electric utility whose rates are regulated by the commission shall file with the commission an integrated resource plan that provides a 5-year, 10-year, and 15-year projection of the utility's load obligations and a plan to meet those obligations, to meet the utility's requirements to provide generation reliability, including meeting planning reserve margin and local clearing requirements determined by the commission or the appropriate independent system operator, and to meet all applicable state and federal reliability and environmental regulations over the ensuing term of the plan. The commission shall issue an order establishing filing requirements, including application forms and instructions, and filing deadlines for an integrated resource plan filed by an electric utility whose rates are regulated by the commission. The electric utility's plan may include alternative modeling scenarios and assumptions in addition to those identified under subsection (1).

(4) For an electric utility with fewer than 1,000,000 customers in this state whose rates are regulated by the commission, the commission may issue an order implementing separate filing requirements, review criteria, and approval standards that differ from those established under subsection (3). An electric utility providing electric tariff service to customers both in this state and in at least 1 other state may design its integrated resource plan to cover all its customers on that multistate basis. If an electric utility has filed a multistate integrated resource plan that includes its service area in this state with the relevant utility regulatory commission in another state in which it provides tariff service to retail customers, the commission shall accept that integrated resource plan filing for filing purposes in this state. However, the commission may require supplemental information if necessary as part of its evaluation and determination of whether to approve the plan. Upon request of an electric utility, the commission may adjust the filing dates for a multistate integrated resource plan filing in this state to place its review on the same timeline as other relevant state reviews.

(5) An integrated resource plan shall include all of the following:

(a) A long-term forecast of the electric utility's sales and peak demand under various reasonable scenarios.

(b) The type of generation technology proposed for a generation facility contained in the plan and the proposed capacity of the generation facility, including projected fuel costs under various reasonable scenarios.

(c) Projected energy purchased or produced by the electric utility from a renewable energy resource. If the level of renewable energy purchased or produced is projected to drop over the planning periods set forth in subsection (3), the electric utility must demonstrate why the reduction is in the best interest of ratepayers.

(d) Details regarding the utility's plan to eliminate energy waste, including the total amount of energy waste reduction expected to be achieved annually, the cost of the plan, and the expected savings for its retail customers.

(e) An analysis of how the combined amounts of renewable energy and energy waste reduction achieved under the plan compare to the renewable energy resources and energy waste reduction goal provided in section 1 of the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1001. This analysis and comparison may include renewable energy and capacity in any form, including generating electricity from renewable energy systems for sale to retail customers or purchasing or otherwise acquiring renewable energy credits with or without associated renewable energy, allowed under section 27 of the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1027, as it existed before the effective date of the amendatory act that added this section.

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

(g) Projected energy and capacity purchased or produced by the electric utility from a cogeneration resource.

(h) An analysis of potential new or upgraded electric transmission options for the electric utility.

(i) Data regarding the utility's current generation portfolio, including the age, capacity factor, licensing status, and remaining estimated time of operation for each facility in the portfolio.

(j) Plans for meeting current and future capacity needs with the cost estimates for all proposed construction

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and major investments, including any transmission or distribution infrastructure that would be required to support the proposed construction or investment, and power purchase agreements.

(k) An analysis of the cost, capacity factor, and viability of all reasonable options available to meet projected energy and capacity needs, including, but not limited to, existing electric generation facilities in this state.

(*l*) Projected rate impact for the periods covered by the plan.

(m) How the utility will comply with all applicable state and federal environmental regulations, laws, and rules, and the projected costs of complying with those regulations, laws, and rules.

(n) A forecast of the utility's peak demand and details regarding the amount of peak demand reduction the utility expects to achieve and the actions the utility proposes to take in order to achieve that peak demand reduction.

(o) The projected long-term firm gas transportation contracts or natural gas storage the electric utility will hold to provide an adequate supply of natural gas to any new generation facility.

(6) Before filing an integrated resource plan under this section, each electric utility whose rates are regulated by the commission shall issue a request for proposals to provide any new supply-side generation capacity resources needed to serve the utility's reasonably projected electric load, applicable planning reserve margin, and local clearing requirement for its customers in this state and customers the utility serves in other states during the initial 3-year planning period to be considered in each integrated resource plan to be filed under this section. An electric utility shall define qualifying performance standards, contract terms, technical competence, capability, reliability, creditworthiness, past performance, and other criteria that responses and respondents to the request for proposals must meet in order to be considered by the utility in its integrated resource plan to be filed under this section. Respondents to a request for proposals may request that certain proprietary information be exempt from public disclosure as allowed by the commission. A utility that issues a request for proposals under this subsection shall use the resulting proposals to inform its integrated resource plan filed under this section and include all of the submitted proposals as attachments to its integrated resource plan filing regardless of whether the proposals met the qualifying performance standards, contract terms, technical competence, capability, reliability, creditworthiness, past performance, or other criteria specified for the utility's request for proposals under this section. An existing supplier of electric generation capacity currently producing at least 200 megawatts of firm electric generation capacity resources located in the independent system operator's zone in which the utility's load is served that seeks to provide electric generation capacity resources to the utility may submit a written proposal directly to the commission as an alternative to any supply-side generation capacity resource included in the electric utility's integrated resource plan submitted under this section, and has standing to intervene in the contested case proceeding conducted under this section. This subsection does not require an entity that submits an alternative under this subsection to submit an integrated resource plan. This subsection does not limit the ability of any other person to submit to the commission an alternative proposal to any supply-side generation capacity resource included in the electric utility's integrated resource plan submitted under this section and to petition for and be granted leave to intervene in the contested case proceeding conducted under this section under the rules of practice and procedure of the commission. The commission shall only consider an alternative proposal submitted under this subsection as part of its approval process under subsection (8). The electric utility submitting an integrated resource plan under this section is not required to adopt any proposals submitted under this subsection. To the extent practicable, each electric utility is encouraged, but not required, to partner with other electric providers in the same local resource zone as the utility's load is served in the development of any new supply-side generation capacity resources included as part of its integrated resource plan.

(7) Not later than 300 days after an electric utility files an integrated resource plan under this section, the commission shall state if the commission has any recommended changes, and if so, describe them in sufficient detail to allow their incorporation in the integrated resource plan. If the commission does not recommend changes, it shall issue a final, appealable order approving or denying the plan filed by the electric utility. If the commission recommends changes, the commission shall set a schedule allowing parties at least 15 days after that recommendation to file comments regarding those recommendations, and allowing the electric utility at least 30 days to consider the recommended changes and submit a revised integrated resource plan that incorporates 1 or more of the recommended changes. If the electric utility submits a revised integrated resource plan under this section, the commission shall issue a final, appealable order approving the plan as revised by the electric utility or denying the plan. The commission shall issue a final, appealable order no later than 360 days after an electric utility files an integrated resource plan under this section. Up to 150 days after an electric utility makes its initial filing, the electric utility may file to update its cost estimates if those cost estimates have materially changed. A utility shall not modify any other aspect of the initial filing unless the utility withdraws and refiles the application. A utility's filing updating its cost estimates does not

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extend the period for the commission to issue an order approving or denying the integrated resource plan. The commission shall review the integrated resource plan in a contested case proceeding conducted pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. The commission shall allow intervention by interested persons including electric customers of the utility, respondents to the utility's request for proposals under this section, or other parties approved by the commission. The commission shall request an advisory opinion from the department of environmental quality regarding whether any potential decrease in emissions of sulfur dioxide, oxides of nitrogen, mercury, and particulate matter would reasonably be expected to result if the integrated resource plan proposed by the electric utility under subsection (3) was approved and whether the integrated resource plan can reasonably be expected to achieve compliance with the regulations, laws, or rules identified in subsection (1). The commission may take official notice of the opinion issued by the department of environmental quality under this subsection pursuant to R 792.10428 of the Michigan Administrative Code. Information submitted by the department of environmental quality under this subsection is advisory and is not binding on future determinations by the department of environmental quality or the commission in any proceeding or permitting process. This section does not prevent an electric utility from applying for, or receiving, any necessary permits from the department of environmental quality. The commission may invite other state agencies to provide testimony regarding other relevant regulatory requirements related to the integrated resource plan. The commission shall permit reasonable discovery after an integrated resource plan is filed and during the hearing in order to assist parties and interested persons in obtaining evidence concerning the integrated resource plan, including, but not limited to, the reasonableness and prudence of the plan and alternatives to the plan raised by intervening parties.

(8) The commission shall approve the integrated resource plan under subsection (7) if the commission determines all of the following:

(a) The proposed integrated resource plan represents the most reasonable and prudent means of meeting the electric utility's energy and capacity needs. To determine whether the integrated resource plan is the most reasonable and prudent means of meeting energy and capacity needs, the commission shall consider whether the plan appropriately balances all of the following factors:

(*i*) Resource adequacy and capacity to serve anticipated peak electric load, applicable planning reserve margin, and local clearing requirement.

(*ii*) Compliance with applicable state and federal environmental regulations.

(*iii*) Competitive pricing.

(*iv*) Reliability.

(*v*) Commodity price risks.

(*vi*) Diversity of generation supply.

(*vii*) Whether the proposed levels of peak load reduction and energy waste reduction are reasonable and cost effective. Exceeding the renewable energy resources and energy waste reduction goal in section 1 of the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1001, by a utility shall not, in and of itself, be grounds for determining that the proposed levels of peak load reduction, renewable energy, and energy waste reduction are not reasonable and cost effective.

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

(c) The plan meets the requirements of subsection (5).

(9) If the commission denies a utility's integrated resource plan, the utility, within 60 days after the date of the final order denying the integrated resource plan, may submit revisions to the integrated resource plan to the commission for approval. The commission shall commence a new contested case hearing under chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. Not later than 90 days after the date that the utility submits the revised integrated resource plan to the commission under this subsection, the commission shall issue an order approving or denying, with recommendations, the revised integrated resource plan if the revisions are not substantial or inconsistent with the original integrated resource plan filed under this section. If the revisions are substantial or inconsistent with the original integrated resource plan, the commission has up to 150 days to issue an order approving or denying, with recommendations, the revised integrated resource plan.

(10) If the commission denies an electric utility's integrated resource plan, the electric utility may proceed with a proposed construction, purchase, investment, or power purchase agreement contained in the integrated resource plan without the assurances granted under this section.

(11) In approving an integrated resource plan under this section, the commission shall specify the costs

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approved for the construction of or significant investment in an electric generation facility, the purchase of an existing electric generation facility, the purchase of power under the terms of the power purchase agreement, or other investments or resources used to meet energy and capacity needs that are included in the approved integrated resource plan. The costs for specifically identified investments, including the costs for facilities under subsection (12), included in an approved integrated resource plan that are commenced within 3 years after the commission's order approving the initial plan, amended plan, or plan review are considered reasonable and prudent for cost recovery purposes.

(12) Except as otherwise provided in subsection (13), for a new electric generation facility approved in an integrated resource plan that is to be owned by the electric utility and that is commenced within 3 years after the commission's order approving the plan, the commission shall finalize the approved costs for the facility only after the utility has done all of the following and filed the results, analysis, and recommendations with the commission:

(a) Implemented a competitive bidding process for all major engineering, procurement, and construction contracts associated with the construction of the facility.

(b) Implemented a competitive bidding process that allows third parties to submit firm and binding bids for the construction of an electric generation facility on behalf of the utility that would meet all of the technical, commercial, and other specifications required by the utility for the generation facility, such that ownership of the electric generation facility vests with the utility no later than the date the electric generation facility becomes commercially available.

(c) Demonstrated to the commission that the finalized costs for the new electric generation facility are not significantly higher than the initially approved costs under subsection (11). If the finalized costs are found to be significantly higher than the initially approved costs, the commission shall review and approve the proposed costs if the commission determines those costs are reasonable and prudent.

(13) If the capacity resource under subsection (12) is for the construction of an electric generation facility of 225 megawatts or more or for the construction of an additional generating unit or units totaling 225 megawatts or more at an existing electric generation facility, the utility shall submit an application to the commission seeking a certificate of necessity under section 6s.

(14) An electric utility shall annually, or more frequently if required by the commission, file reports to the commission regarding the status of any projects included in the initial 3-year period of an integrated resource plan approved under subsection (7).

(15) For power purchase agreements that a utility enters into after the effective date of the amendatory act that added this section with an entity that is not affiliated with that utility, the commission shall consider and may authorize a financial incentive for that utility that does not exceed the utility's weighted average cost of capital.

(16) Notwithstanding any other provision of law, an order by the commission approving an integrated resource plan may be reviewed by the court of appeals upon a filing by a party to the commission proceeding within 30 days after the order is issued. All appeals of the order shall be heard and determined as expeditiously as possible with lawful precedence over other matters. Review on appeal shall be based solely on the record before the commission and briefs to the court and is limited to whether the order conforms to the constitution and laws of this state and the United States and is within the authority of the commission under this act.

(17) The commission shall include in an electric utility's retail rates all reasonable and prudent costs specified under subsections (11) and (12) that have been incurred to implement an integrated resource plan approved by the commission. The commission shall not disallow recovery of costs an electric utility incurs in implementing an approved integrated resource plan, if the costs do not exceed the costs approved by the commission under subsections (11) and (12). If the actual costs incurred by the electric utility exceed the costs approved by the commission, the electric utility has the burden of proving by a preponderance of the evidence that the costs are reasonable and prudent. The portion of the cost of a plant, facility, power purchase agreement, or other investment in a resource that meets a demonstrated need for capacity that exceeds the cost approved by the commission is presumed to have been incurred due to a lack of prudence. The commission may include any or all of the portion of the cost in excess of the cost approved by the commission if the commission finds by a preponderance of the evidence that the costs are reasonable and prudent. The commission shall disallow costs the commission finds have been incurred as the result of fraud, concealment, gross mismanagement, or lack of quality controls amounting to gross mismanagement. The commission shall also require refunds with interest to ratepayers of any of these costs already recovered through the electric utility's rates and charges. If the assumptions underlying an approved integrated resource plan materially change, or if the commission believes it is unlikely that a project or program will become commercially operational, an electric utility may request, or the commission on its own motion may initiate, a proceeding to

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review whether it is reasonable and prudent to complete an unfinished project or program included in an approved integrated resource plan. If the commission finds that completion of the project or program is no longer reasonable and prudent, the commission may modify or cancel approval of the project or program and unincurred costs in the electric utility's integrated resource plan. Except for costs the commission finds an electric utility has incurred as the result of fraud, concealment, gross mismanagement, or lack of quality controls amounting to gross mismanagement, if commission approval is modified or canceled, the commission shall not disallow reasonable and prudent costs already incurred or committed to by contract by an electric utility. Once the commission finds that completion of the project or program is no longer reasonable and prudent, the commission may limit future cost recovery to those costs that could not be reasonably avoided.

(18) The commission may allow financing interest cost recovery in an electric utility's base rates on construction work in progress for capital improvements approved under this section prior to the assets' being considered used and useful. Regardless of whether or not the commission authorizes base rate treatment for construction work in progress financing interest expense, an electric utility may recognize, accrue, and defer the allowance for funds used during construction.

(19) An electric utility may seek to amend an approved integrated resource plan. Except as otherwise provided under this subsection, the commission shall consider the amendments under the same process and standards that govern the review and approval of a revised integrated resource plan under subsection (9). The commission may order an electric utility that seeks to amend an approved integrated resource plan under this subsection to file a plan review under subsection (21).

(20) An electric utility shall file an application for review of its integrated resource plan not later than 5 years after the effective date of the most recent commission order approving a plan, a plan amendment, or a plan review. The commission shall consider a plan review under the same process and standards established in this section for review and approval of an integrated resource plan. A commission order approving a plan review has the same effect as an order approving an integrated resource plan.

(21) The commission may, on its own motion or at the request of the electric utility, order an electric utility to file a plan review. The department of environmental quality may request the commission to order a plan review to address material changes in environmental regulations and requirements that occur after the commission's approval of an integrated resource plan. An electric utility must file a plan review within 270 days after the commission orders the utility to file a plan review.

(22) As used in this section, "long-term firm gas transportation" means a binding agreement entered into between the electric utility and a natural gas transmission provider for a set period of time to provide firm delivery of natural gas to an electric generation facility.

History: Add. 2016, Act 341, Eff. Apr. 20, 2017.

460.6u Study; review of performance-based regulation systems; report; authority of commission.

Sec. 6u. (1) Not later than 90 days after the effective date of the amendatory act that added this section, the commission shall commence a study in collaboration with representatives of each customer class, utilities whose rates are regulated by the commission, and other interested parties regarding performance-based regulation, under which a utility's authorized rate of return would depend on the utility achieving targeted policy outcomes.

(2) In the study required under this section, the commission shall review performance-based regulation systems that have been implemented in another state or country, including, but not limited to, the RIIO (revenue = incentives + innovation + outputs) model utilized in the United Kingdom.

(3) In reviewing various performance-based regulation systems, the commission shall evaluate, but not be limited to, all of the following factors:

(a) Methods for estimating the revenue needed by a utility during a multiyear pricing period, and a fair return, that uses forecasts of efficient total expenditures by the utility instead of distinguishing between operating and capital costs.

(b) Methods to increase the length of time between rate cases, to provide utilities with more opportunity to retain cost savings without the threat of imminent rate adjustments, and to encourage utilities to make investments that have extended payback periods.

(c) Options for establishing incentives and penalties that pertain to issues such as customer satisfaction, safety, reliability, environmental impact, and social obligations.

(d) Profit-sharing provisions that can spread efficiency gains among consumers and utility shareholders and can reduce the degree of downside risk associated with attempts at innovation.

(4) Not later than 1 year after the effective date of the amendatory act that added this section, the

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commission shall report and make recommendations in writing to the legislature and governor based on the result of the study conducted under this section.

(5) This section does not limit the commission's authority to authorize performance-based regulation.

History: Add. 2016, Act 341, Eff. Apr. 20, 2017.

460.6v Proceeding to reevaluate procedures and rates schedules; report; definitions.

Sec. 6v. (1) Notwithstanding any existing power purchase agreement, the commission shall, at least every 5 years, conduct a proceeding, as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287, to reevaluate the procedures and rates schedules including avoided cost rates, as originally established by the commission in an order dated March 17, 1981 in case no. U-6798, to implement title II, section 210, of the public utility regulatory policies act of 1978, as it relates to qualifying facilities from which utilities in this state have an obligation to purchase energy and capacity. Nothing in this section supersedes the provisions of PURPA or the Federal Energy Regulatory Commission's regulations and orders implementing PURPA.

(2) In setting rates for avoided costs, the commission shall take into consideration the factors regarding avoided costs set forth in PURPA and the Federal Energy Regulatory Commission's regulations and orders implementing PURPA.

(3) After an initial contested case under subsection (1), for a utility serving less than 1,000,000 electric customers in this state, the commission may conduct any periodic reevaluations of the procedures, rate schedules, and avoided cost rates for that utility using notice and comment procedures instead of a full contested case. The commission shall conduct the periodic reevaluation in a contested case under chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287, if a qualifying facility files a comment disputing the utility filing and requesting a contested case.

(4) An order issued by the commission under subsection (1) shall do all of the following:

(a) Ensure that the rates for purchases by an electric utility from, and rates for sales to, a qualifying facility shall, over the term of a contract, be just and reasonable and in the public interest, as defined by PURPA.

(b) Ensure that an electric utility does not discriminate against a qualifying facility with respect to the conditions or price for provision of maintenance power, backup power, interruptible power, and supplementary power or for any other service.

(c) Require that any prices charged by an electric utility for maintenance power, backup power, interruptible power, and supplementary power and all other such services are cost-based and just and reasonable.

(d) Establish a schedule of avoided cost price updates for each electric utility.

(e) Require electric utilities to publish on their websites template contracts for power purchase agreements for qualifying facilities of less than 3 megawatts that need not include terms for either price or duration of the contract. The terms of a template contract published under this subsection are not binding on either an electric utility or a qualifying facility and may be negotiated and altered upon agreement between an electric utility and a qualifying facility.

(5) Within 1 year after the effective date of the amendatory act that added this section, and every 2 years thereafter, the commission shall issue a report to the Michigan agency for energy and the standing committees of the senate and house of representatives with primary responsibility for energy and environmental issues. The report shall provide a description and status of qualifying facilities in this state, the current status of power purchase agreements of each qualifying facility, and the commission's efforts to comply with the requirements of PURPA.

(6) As used in this section:

(a) "Avoided costs" means that term as defined in 18 CFR 292.101.

(b) "Backup power" means electric energy or capacity supplied by an electric utility to replace electric energy ordinarily generated by a qualifying facility's own electric generation equipment during an unscheduled outage of the qualifying facility.

(c) "Maintenance power" means electric energy or capacity supplied by an electric utility during scheduled outages of the qualifying facility.

(d) "PURPA" means title II, section 210, of the public utility regulatory policies act of 1978.

(e) "Qualifying facility" or "facilities" means qualifying cogeneration facilities or qualifying small power production facilities from which an electric utility within this state has an obligation to purchase energy and capacity within the meaning of sections 201 and 210 of PURPA, 16 USC 796 and 824a-3, and associated federal regulations and orders.

(f) "Supplementary power" means electric energy or capacity supplied by an electric utility, regularly used by a qualifying facility in addition to the electric energy or capacity that the qualifying facility generates.

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History: Add. 2016, Act 341, Eff. Apr. 20, 2017.

460.6w Resource adequacy tariff that provides for capacity forward auction; option for state to implement prevailing state compensation mechanism for capacity; order to implement prevailing state compensation mechanism; contested case proceeding; finding; order to implement state reliability mechanism; capacity charge; establishment; determination; failure to meet requirements in subsection (8)(b); civil action for injunctive relief; definitions.

Sec. 6w. (1) If the appropriate independent system operator receives approval from the Federal Energy Regulatory Commission to implement a resource adequacy tariff that provides for a capacity forward auction, and includes the option for a state to implement a prevailing state compensation mechanism for capacity, then the commission shall examine whether the prevailing state compensation mechanism would be more cost-effective, reasonable, and prudent than the capacity forward auction for this state before the commission may order the prevailing state compensation mechanism to be implemented in any utility service territory in which the prevailing state compensation mechanism is not yet effective. Before the commission orders the implementation of the prevailing state compensation mechanism in 1 or more utility service territories, the commission shall hold a contested case hearing pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. The commission shall allow intervention by interested persons, alternative electric suppliers, and customers of alternative electric suppliers and the utility under consideration. At the conclusion of the proceeding, the commission shall make a finding for each utility service territory under consideration, based on clear and convincing evidence, as to whether or not the prevailing state compensation mechanism would be more cost-effective, reasonable, and prudent than the use of the capacity forward auction for this state in meeting the local clearing requirement and the planning reserve margin requirement. The contested case must be scheduled for completion by December 1 before the independent system operator's capacity forward auction for this state, and the commission's decision shall identify which utility service territories will be subject to the prevailing state compensation mechanism. If the commission implements the prevailing state compensation mechanism, it shall implement the prevailing state compensation mechanism for a minimum of 4 consecutive planning years unless such period conflicts with the federal tariff. The commission shall establish the charge as a capacity charge under subsection (3) and determine that charge consistent with the approved resource adequacy tariff of the appropriate independent system operator.

(2) If the appropriate independent system operator receives approval from the Federal Energy Regulatory Commission to implement a resource adequacy tariff that provides for a capacity forward auction, and does not include the option for a state to implement a prevailing state compensation mechanism for capacity, then the commission shall examine whether a state reliability mechanism established under subsection (8) would be more cost-effective, reasonable, and prudent than the capacity forward auction for this state before the commission may order the state reliability mechanism to be implemented in any utility service territory. Before the commission orders the implementation of the state reliability mechanism in 1 or more utility service territories, the commission shall hold a contested case hearing pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. The commission shall allow intervention by interested persons, alternative electric suppliers, and customers of alternative electric suppliers and the utility under consideration. At the conclusion of the proceeding, the commission shall make a finding for each utility service territory under consideration, based on clear and convincing evidence, as to whether or not the state reliability mechanism would be more cost-effective, reasonable, and prudent than the use of the capacity forward auction for this state in meeting the local clearing requirement and the planning reserve margin requirement. The contested case must be scheduled for completion by December 1 before the independent system operator's capacity forward auction for this state, and the commission's decision shall identify which utility service territories will be subject to the state reliability mechanism. If, by September 30, 2017, the Federal Energy Regulatory Commission does not put into effect a resource adequacy tariff that includes a capacity forward auction or a prevailing state compensation mechanism, then the commission shall establish a state reliability mechanism under subsection (8). The commission may commence a proceeding before October 1 if the commission believes orderly administration would be enabled by doing so. If the commission implements a state reliability mechanism, it shall be for a minimum of 4 consecutive planning years beginning in the upcoming planning year. A state reliability charge must be established in the same manner as a capacity charge under subsection (3) and be determined consistent with subsection (8).

(3) After the effective date of the amendatory act that added section 6t, the commission shall establish a capacity charge as provided in this section. A determination of a capacity charge must be conducted as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271

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to 24.287, after providing interested persons with notice and a reasonable opportunity for a full and complete hearing and conclude by December 1 of each year. The commission shall allow intervention by interested persons, alternative electric suppliers, and customers of alternative electric suppliers and the utility under consideration. The commission shall provide notice to the public of the single capacity charge as determined for each territory. No new capacity charge is required to be paid before June 1, 2018. The capacity charge must be applied to alternative electric load that is not exempt as set forth under subsections (6) and (7). If the commission elects to implement a capacity forward auction for this state as set forth in subsection (1) or (2), then a capacity charge shall not apply beginning in the first year that the capacity forward auction for this state is effective. In order to ensure that noncapacity electric generation services are not included in the capacity charge, in determining the capacity charge, the commission shall do both of the following and ensure that the resulting capacity charge does not differ for full service load and alternative electric supplier load:

(a) For the applicable term of the capacity charge, include the capacity-related generation costs included in the utility's base rates, surcharges, and power supply cost recovery factors, regardless of whether those costs result from utility ownership of the capacity resources or the purchase or lease of the capacity resource from a third party.

(b) For the applicable term of the capacity charge, subtract all non-capacity-related electric generation costs, including, but not limited to, costs previously set for recovery through net stranded cost recovery and securitization and the projected revenues, net of projected fuel costs, from all of the following:

(*i*) All energy market sales.

(*ii*) Off-system energy sales.

(*iii*) Ancillary services sales.

(*iv*) Energy sales under unit-specific bilateral contracts.

(4) The commission shall provide for a true-up mechanism that results in a utility charge or credit for the difference between the projected net revenues described in subsection (3) and the actual net revenues reflected in the capacity charge. The true-up shall be reflected in the capacity charge in the subsequent year. The methodology used to set the capacity charge shall be the same methodology used in the true-up for the applicable planning year.

(5) Not less than once every year, the commission shall review or amend the capacity charge in all subsequent rate cases, power supply cost recovery cases, or separate proceedings established for that purpose.

(6) A capacity charge shall not be assessed for any portion of capacity obligations for each planning year for which an alternative electric supplier can demonstrate that it can meet its capacity obligations through owned or contractual rights to any resource that the appropriate independent system operator allows to meet the capacity obligation of the electric provider. The preceding sentence shall not be applied in any way that conflicts with a federal resource adequacy tariff, when applicable. Any electric provider that has previously demonstrated that it can meet all or a portion of its capacity obligations shall give notice to the commission by September 1 of the year 4 years before the beginning of the applicable planning year if it does not expect to meet that capacity obligation and instead expects to pay a capacity charge. The capacity charge in the utility service territory must be paid for the portion of its load taking service from the alternative electric supplier not covered by capacity as set forth in this subsection during the period that any such capacity charge is effective.

(7) An electric provider shall provide capacity to meet the capacity obligation for the portion of that load taking service from an alternative electric supplier in the electric provider's service territory that is covered by the capacity charge during the period that any such capacity charge is effective. The alternative electric supplier has the obligation to provide capacity for the portion of the load for which the alternative electric supplier has demonstrated an ability to meet its capacity obligations. If an alternative electric supplier ceases to provide service for a portion or all of its load, it shall allow, at a cost no higher than the determined capacity charge, the assignment of any right to that capacity in the applicable planning year to whatever electric provider accepts that load.

(8) If a state reliability mechanism is required to be established under subsection (2), the commission shall do all of the following:

(a) Require, by December 1 of each year, that each electric utility demonstrate to the commission, in a format determined by the commission, that for the planning year beginning 4 years after the beginning of the current planning year, the electric utility owns or has contractual rights to sufficient capacity to meet its capacity obligations as set by the appropriate independent system operator, or commission, as applicable.

(b) Require, by the seventh business day of February each year, that each alternative electric supplier, cooperative electric utility, or municipally owned electric utility demonstrate to the commission, in a format determined by the commission, that for the planning year beginning 4 years after the beginning of the current planning year, the alternative electric supplier, cooperative electric utility, or municipally owned electric utility owns or has contractual rights to sufficient capacity to meet its capacity obligations as set by the

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appropriate independent system operator, or commission, as applicable. One or more municipally owned electric utilities may aggregate their capacity resources that are located in the same local resource zone to meet the requirements of this subdivision. One or more cooperative electric utilities may aggregate their capacity resources that are located in the same local resource zone to meet the requirements of this subdivision. A cooperative or municipally owned electric utility may meet the requirements of this subdivision through any resource, including a resource acquired through a capacity forward auction, that the appropriate independent system operator allows to qualify for meeting the local clearing requirement. A cooperative or municipally owned electric utility's payment of an auction price related to a capacity deficiency as part of a capacity forward auction conducted by the appropriate independent system operator does not by itself satisfy the resource adequacy requirements of this section unless the appropriate independent system operator can directly tie that provider's payment to a capacity resource that meets the requirements of this subsection. By the seventh business day of February in 2018, an alternative electric supplier shall demonstrate to the commission, in a format determined by the commission, that for the planning year beginning June 1, 2018, and the subsequent 3 planning years, the alternative electric supplier owns or has contractual rights to sufficient capacity to meet its capacity obligations as set by the appropriate independent system operator, or commission, as applicable. If the commission finds an electric provider has failed to demonstrate it can meet a portion or all of its capacity obligation, the commission shall do all of the following:

(*i*) For alternative electric load, require the payment of a capacity charge that is determined, assessed, and applied in the same manner as under subsection (3) for that portion of the load not covered as set forth in subsections (6) and (7). If a capacity charge is required to be paid under this subdivision in the planning year beginning June 1, 2018 or any of the 3 subsequent planning years, the capacity charge is applicable for each of those planning years.

(*ii*) For a cooperative or municipally owned electric utility, recommend to the attorney general that suit be brought consistent with the provisions of subsection (9) to require that procurement.

(*iii*) For an electric utility, require any audits and reporting as the commission considers necessary to determine if sufficient capacity is procured. If an electric utility fails to meet its capacity obligations, the commission may assess appropriate and reasonable fines, penalties, and customer refunds under this act.

(c) In order to determine the capacity obligations, request that the appropriate independent system operator provide technical assistance in determining the local clearing requirement and planning reserve margin requirement. If the appropriate independent system operator declines, or has not made a determination by October 1 of that year, the commission shall set any required local clearing requirement and planning reserve margin requirement, consistent with federal reliability requirements.

(d) In order to determine if resources put forward will meet such federal reliability requirements, request technical assistance from the appropriate independent system operator to assist with assessing resources to ensure that any resources will meet federal reliability requirements. If the technical assistance is rendered, the commission shall accept the appropriate independent system operator's determinations unless it finds adequate justification to deviate from the determinations related to the qualification of resources. If the appropriate independent system operator declines, or has not made a determination by February 28, the commission shall make those determinations.

(9) The attorney general or any customer of a municipally owned electric utility or cooperative electric utility may commence a civil action for injunctive relief against that municipally owned electric utility or cooperative electric utility if the municipally owned electric utility or cooperative electric utility fails to meet the applicable requirements of subsection (8)(b). The attorney general or customer shall commence an action under this subsection in the circuit court for the county in which the principal office of the municipally owned electric utility or cooperative electric utility is located. The attorney general or customer shall not file an action under this subsection unless the attorney general or customer gives the municipally owned electric utility or cooperative electric utility at least 60 days' written notice of the intent to sue, the basis for the suit, and the relief sought. Within 30 days after the municipally owned electric utility or cooperative electric utility receives written notice of the intent to sue, the municipally owned electric utility or cooperative electric utility and the attorney general or customer shall meet and make a good-faith attempt to determine if there is a credible basis for the action. The municipally owned electric utility or cooperative electric utility shall take all reasonable and prudent steps necessary to comply with the applicable requirements of subsection (8)(b) within 90 days after the meeting if there is a credible basis for the action. If the parties do not agree as to whether there is a credible basis for the action, the attorney general or customer may proceed to file the suit.

(10) The commission shall adjust the dates under this section if needed to ensure proper alignment with the appropriate independent system operator's procedures and requirements. However, any changes to the dates in this section must ensure that providers still meet applicable reliability requirements. The commission shall not permit a capacity charge to be assessed under this section for any year in which it has elected the capacity

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forward auction instead of the prevailing state compensation mechanism or the state reliability mechanism.

(11) Nothing in this act shall prevent the commission from determining a generation capacity charge under the reliability assurance agreement, rate schedule FERC No. 44 of the independent system operator known as PJM Interconnection, LLC, as approved by the Federal Energy Regulatory Commission in docket no. ER10-2710 or similar successor tariff.

(12) As used in this section:

(a) "Appropriate independent system operator" means the Midcontinent Independent System Operator.

(b) "Capacity forward auction" means an auction-based resource adequacy construct and the associated tariffs developed by the appropriate independent system operator for at least a portion of this state for 3 years forward or more.

(c) "Electric provider" means any of the following:

(*i*) Any person or entity that is regulated by the commission for the purpose of selling electricity to retail customers in this state.

(*ii*) A municipally owned electric utility in this state.

(*iii*) A cooperative electric utility in this state.

(*iv*) An alternative electric supplier licensed under section 10a.

(d) "Local clearing requirement" means the amount of capacity resources required to be in the local resource zone in which the electric provider's demand is served to ensure reliability in that zone as determined by the appropriate independent system operator for the local resource zone in which the electric provider's demand is served and by the commission under subsection (8).

(e) "Planning reserve margin requirement" means the amount of capacity equal to the forecasted coincident peak demand that occurs when the appropriate independent system operator footprint peak demand occurs plus a reserve margin that meets an acceptable loss of load expectation as set by the commission or the appropriate independent system operator under subsection (8).

(f) "Planning year" means June 1 through the following May 31 of each year.

(g) "Prevailing state compensation mechanism" means an option for a state to elect a prevailing compensation rate for capacity consistent with the requirements of the appropriate independent system operator's resource adequacy tariff.

(h) "State reliability mechanism" means a plan adopted by the commission in the absence of a prevailing state compensation mechanism to ensure reliability of the electric grid in this state consistent with subsection (8).

History: Add. 2016, Act 341, Eff. Apr. 20, 2017.

460.6x Shared saving mechanism.

Sec. 6x. (1) Subject to section 6a(13), in order to ensure equivalent consideration of energy waste reduction resources within the integrated resource planning process, the commission shall by January 1, 2021 authorize a shared savings mechanism for an electric utility to the extent that the electric utility has not otherwise capitalized the costs of the energy waste reduction, conservation, demand reduction, and other waste reduction measures.

(2) For an electric utility that achieves annual electric energy savings of at least 1% but not greater than 1.25% of its total annual weather-adjusted retail sales in megawatt hours in the previous calendar year, the shared savings incentive shall be 25% of the net benefits validated as a result of the programs implemented by the electric utility related to energy waste reduction, conservation, demand reduction, and other waste reduction. A shared savings mechanism authorized under this subsection shall not exceed 15% of the electric utility's expenditures associated with implementing energy waste reduction programs for the calendar year in which the shared savings mechanism was authorized. The commission shall determine net benefits by calculating the net present value of the lifetime avoided utility costs that are projected from the utility's energy waste reduction programs implemented in a calendar year less the utility expenditures associated with implementing the energy waste reduction program in that calendar year, including all overhead and administrative costs. The commission shall calculate net present value by using a discount rate of the utility's weighted average cost of capital in that calendar year.

(3) For an electric utility that achieves annual electric energy savings of greater than 1.25% but not greater than 1.5% of the total annual weather-adjusted retail sales in megawatt hours in the previous calendar year, the shared savings incentive shall be 27.5% of the net benefits validated as a result of the programs implemented by the electric utility related to energy waste reduction, conservation, demand reduction, and other waste reduction. A shared savings mechanism authorized under this subsection shall not exceed 17.5% of the electric utility's expenditures associated with implementing energy waste reduction programs for the calendar year in which the shared savings mechanism was authorized. The commission shall determine net

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benefits by calculating the net present value of the lifetime avoided utility costs that are projected from the utility's energy waste reduction programs implemented in a calendar year less the utility expenditures associated with implementing the energy waste reduction program in that calendar year, including all overhead and administrative costs. The commission shall calculate net present value by using a discount rate of the utility's weighted average cost of capital in that calendar year.

(4) For an electric utility that achieves annual electric energy savings greater than 1.5% of the total annual weather-adjusted retail sales in megawatt hours in the previous calendar year, the shared savings incentive shall be 30% of the net benefits validated as a result of the programs implemented by the electric utility related to energy waste reduction, conservation, demand reduction, and other waste reduction. A shared savings mechanism authorized under this subsection shall not exceed 20% of the electric utility's expenditures associated with implementing energy waste reduction programs for the calendar year in which the shared savings mechanism was authorized. The commission shall determine net benefits by calculating the net present value of the lifetime avoided utility costs that are projected from the utility's energy waste reduction programs implemented in a calendar year less the utility expenditures associated with implementing the energy waste reduction program in that calendar year, including all overhead and administrative costs. The commission shall calculate net present value by using a discount rate of the utility's weighted average cost of capital in that calendar year.

History: Add. 2016, Act 341, Eff. Apr. 20, 2017.

460.6z Discontinuing utility service to geographic area; abandonment application; proposal to retire electric generating plant; proposal to revise existing load balancing authority.

Sec. 6z. (1) A covered utility shall not discontinue utility service to a geographic area that the covered utility serves without first filing an abandonment application with the commission and obtaining approval from the commission to discontinue that service after notice and a contested case proceeding. The commission shall not approve any abandonment application filed under this section unless the commission determines that there is clear and convincing evidence that all affected customers would have access to affordable, reliable, and safe utility service from an alternative source. A covered utility does not have to file an abandonment application under this section if utility service is being discontinued to a specific parcel or parcels to enable another covered utility to provide service that the other covered utility is legally permitted to provide. As used in this subsection, "covered utility" means any of the following:

(a) A cooperative electric utility subject to the commission's jurisdiction for its service area, distribution performance standards, and quality of service.

(b) A rural gas cooperative.

(c) An electric utility, natural gas utility, or steam utility subject to the commission's rate-making jurisdiction.

(2) Not less than 30 days after an electric utility files a proposal to retire an electric generating plant with a regional transmission organization, the utility shall provide that proposal in its entirety to the commission.

(3) Not less than 60 days before an electric utility applies to the operating reliability subcommittee of the North American Electric Reliability Corporation for approval of a proposal to revise an existing load balancing authority, the electric utility shall do both of the following:

(a) File with the commission a full and complete report of the proposed revision.

(b) Serve a copy of the report required to be filed with the commission under subdivision (a) on all other electric utilities in this state.

History: Add. 2016, Act 341, Eff. Apr. 20, 2017.

460.7 Railroad labor unions; representatives; right to participate in hearings.

Sec. 7. Any elected or designated representatives of a recognized labor organization in the railroad industry which has a fiduciary relationship with its members and the health or safety of whose members in the course of their employment is affected by any action or inaction of the public service commission (including any rule, practice or order of said commission) or is affected by the violation of any statute whose enforcement is within the jurisdiction of the public service commission, shall have the right to file complaints or petition and appeal and be heard and participate fully as a party in interest in any hearings or investigations conducted by the public service commission in connection therewith: Provided, That the services rendered by such elected or designated representative shall be part of his regular duties and responsibilities, and he shall receive for such services no special compensation or fee from such organization or any individual member or members thereof, and such representation is limited to matters pertaining to the health or safety of such members in the course of their employment. This provision shall in no way affect representation authorized by Act No. 162 of the Public Acts of 1966.

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History: Add. 1967, Act 89, Eff. Nov. 2, 1967.

Former law: See section 7 of Act 3 of 1939, which was repealed by Act 267 of 1945.

460.8 Voluntary associations; hearings; persons entitled to appear; industrial representative.

Sec. 8. Any elected or designated representative of a voluntary association in the industry whose members have an economic interest in any matters covered by Act No. 254 of the Public Acts of 1933, as amended, being sections 475.1 to 479.49 of the Compiled Laws of 1948, shall have the right to appear and be fully heard and fully participate as a party of interest on behalf of his association only in any public hearing conducted by the public service commission relating to matters covered by Act No. 254 of the Public Acts of 1933, as amended, being sections 475.1 to 479.49 of the Compiled Laws of 1948. The same privilege shall be extended to an industrial representative; this section shall not be construed to affect in any way section 7 of this act as added by Act No. 89 of the Public Acts of 1967.

History: Add. 1968, Act 140, Imd. Eff. June 11, 1968.

Former law: See section 8 of Act 3 of 1939, which was repealed by Act 267 of 1945.

460.9 Definitions; customer switched to alternative gas supplier or natural gas utility; prohibitions; standards; rules; violation; remedies and penalties.

Sec. 9. (1) As used in this section:

(a) "Alternative gas supplier" or "supplier" means a person who sells natural gas at unregulated retail rates to customers located in this state, where the gas is delivered to customers by a natural gas utility that has a customer choice program. Retail sales in a customer choice program by an alternative gas supplier do not constitute public utility service.

(b) "Commission" means the Michigan public service commission in the department of consumer and industry services.

(c) "Customer" means an end-user of natural gas.

(d) "Customer choice program" means a program approved by the commission on application by a natural gas utility that allows retail customers to choose an alternative gas supplier.

(e) "Natural gas utility" means an investor-owned business engaged in the sale and distribution of natural gas within this state whose rates are regulated by the commission.

(2) An alternative gas supplier or natural gas utility shall not switch a customer to its gas supply without authorization of the customer. A natural gas utility shall not be found in violation of this subsection or a commission order issued under subsection (3), if the customer's service was switched by the natural gas utility under the applicable terms and conditions of a commission approved gas customer choice program or as the result of the default of an alternative gas supplier.

(3) The commission may issue orders to ensure that an alternative gas supplier or natural gas utility does not switch a customer to another supplier without the customer's written confirmation, confirmation through an independent third party, or other verification procedures subject to commission approval, confirming the customer's intent to make a switch and that the customer has approved the specific details of the switch.

(4) An alternative gas supplier or natural gas utility shall not include or add optional services in a customer's service package without the authorization of the customer.

(5) The commission may issue orders to ensure that an alternative gas supplier or natural gas utility does not include or add optional services in a customer's service package without the customer's written confirmation, confirmation through an independent third party, or other verification procedures approved by the commission confirming the customer's intent to receive the optional services.

(6) An alternative gas supplier or natural gas utility shall not solicit or enter into contracts subject to this section with customers in this state in a misleading, fraudulent, or deceptive manner.

(7) The commission may by order establish minimum standards for the form and content of all disclosures, explanations, or sales information relating to the sale of a natural gas commodity in a customer choice program and disseminated by an alternative gas supplier or natural gas utility to ensure that the disclosures, explanations, and sales information contain accurate and understandable information and enable a customer to make an informed decision relating to the purchase of a natural gas commodity. Any standards established under this subsection shall be developed to do all of the following:

(a) Not be unduly burdensome.

(b) Not unnecessarily delay or inhibit the initiation and development of competition among alternative gas suppliers or natural gas utilities in any market.

(c) Establish different requirements for disclosures, explanations, or sales information relating to different services or similar services to different natural gas supply classes of customers, whenever such different requirements are appropriate to carry out the provisions of this section.

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(8) The commission may adopt rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to implement this section.

(9) If after notice and hearing the commission finds a person has violated this section, the commission may order remedies and penalties to protect and make whole another person who has suffered an economic loss as a result of the violation, including, but not limited to, 1 or more of the following:

(a) Order the person to pay a fine for the first offense of not less than $20,000.00 or more than $30,000.00. For a second and any subsequent offense, the commission shall order the person to pay a fine of not less than $30,000.00 or more than $50,000.00. If the commission finds that the second or any of the subsequent offenses were knowingly made in violation of subsection (2) or (4), the commission shall order the person to pay a fine of not more than $70,000.00. Each switch made in violation of subsection (2) or service added in violation of subsection (4) shall be a separate offense under this subdivision.

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

(c) Order a portion between 10% to 50% of the fine assessed under subdivision (a) be paid directly to the customer who suffered the violation of subsection (2) or (4).

(d) Order the person to reimburse an authorized supplier an amount equal to the amount paid by the customer that should have been paid to the authorized supplier.

(e) If the person is licensed under this act, revoke the license if the commission finds a pattern of violations of subsection (2) or (4).

(f) Issue cease and desist orders.

(10) Notwithstanding subsection (9), a fine shall not be imposed for a violation if the person shows that the violation was an unintentional and bona fide error which occurred notwithstanding the maintenance of procedures reasonably adopted to avoid the error.

(11) A natural gas utility shall not be found in violation of this section for switching a customer's supplier or adding optional services to a customer's account if the switch or addition was made pursuant to the request or notice of an alternative gas supplier that is responsible under a customer choice program for obtaining the customer's approval.

History: Add. 2002, Act 634, Imd. Eff. Dec. 23, 2002.

460.9b Alternative gas suppliers; licensing procedure; maintenance of office; capabilities; records; tax remittance.

Sec. 9b. (1) The commission shall issue orders establishing a licensing procedure for all alternative gas suppliers participating in any natural gas customer choice program approved by the commission. An alternative gas supplier shall not do business in this state without first receiving a license under this act.

(2) An alternative gas supplier shall maintain an office within this state.

(3) The commission shall assure that an alternative gas supplier doing business in this state has the necessary financial, managerial, and technical capabilities and require the supplier to maintain records that the commission considers necessary.

(4) The commission shall require an alternative gas supplier to collect and remit to state and local units of government all applicable users, sales, and use taxes if the natural gas utility is not doing so on behalf of the supplier.

History: Add. 2002, Act 634, Imd. Eff. Dec. 23, 2002.

460.9c Customer on active duty in military; shut-off protection.

Sec. 9c. (1) Except as otherwise provided by this section, a provider of electric or gas service shall not discontinue the service to the residence of a qualifying customer who has made a filing under this section.

(2) In addition to protection provided under the Michigan military act, 1967 PA 150, MCL 32.501 to 32.851, a qualifying customer may apply for shut-off protection for electric or gas service by notifying the provider that he or she is in need of assistance because of a reduction in household income as the result of a call to active duty status in the military.

(3) A provider of service may request verification of the call to active duty status from the qualifying customer.

(4) A qualifying customer may receive shut-off protection from the provider of service under this section for up to 90 days. Upon application to the provider, the provider may grant the qualifying customer 1 or more extensions.

(5) A qualifying customer receiving assistance under this section shall notify the provider of the end of the call to active duty status as soon as that status is known.

(6) Unless waived by the provider, the shut-off protection provided under this section does not void or

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limit the obligation of the qualifying customer to pay for electric or gas services received during the time of assistance.

(7) A provider shall do all of the following:

(a) Establish a repayment plan requiring minimum monthly payments that allows the qualifying customer to pay any past due amounts over a reasonable time period not to exceed 1 year.

(b) Provide a qualifying customer with information regarding any governmental, provider, or other assistance programs.

(c) Provide qualifying customers with access to existing information on ways to minimize or conserve their service usage.

(8) This section does not affect or amend any commission rules or orders pertaining to billing standards. If the terms and conditions under subsection (7)(a) are not followed by the qualifying customer, the provider may follow the procedures in the commission's rules on consumer standards and billing practices for electric and gas residential service.

(9) As used in this section, a “qualifying customer” means all of the following:

(a) A residential household where the income is reduced because the customer of record, or the spouse of the customer of record, is called to full-time active military service by the president of the United States or the governor of this state during a time of declared national or state emergency or war.

(b) Assistance is needed by the residential household to maintain electric and gas service.

(c) The residential household has notified the provider of the need for assistance and, if required, has provided verification of the call to active duty status.

History: Add. 2003, Act 204, Imd. Eff. Nov. 26, 2003.

460.9d Unauthorized use of electric or natural gas service causing unsafe connection; action to be taken by utility; reestablishment of service; abandonment or surrender of property; scope of section; definitions.

Sec. 9d. (1) If a utility observes an unsafe electric or natural gas service connection at a customer's location caused by unauthorized use of electric or natural gas service, the utility shall implement measures consistent with good utility practices intended to cure or to otherwise address the unsafe connection and may take appropriate action to deter future unauthorized use of electric or natural gas service at that location, including, but not limited to, installation of additional utility facilities.

(2) At any customer location where a utility has shut off electric or natural gas service 2 or more times during the prior 24 months because of unauthorized use of electric or natural gas service, a utility may refuse to provide electric or natural gas service to that location notwithstanding any other administrative rules or statutes if the utility determines that denying electric or natural gas service at that location will prevent the reoccurrence of the unauthorized use.

(3) A utility shall reestablish electric or natural gas service at a customer location if the person requesting service does 1 of the following:

(a) Proves that the person is the legal owner of the property by providing property ownership information and, prior to reconnection of service, pays for the actual cost to repair the utility's equipment and facilities located on the owner's property, all fees and deposits required under the utility's approved schedule of rates and tariffs, and all charges due to the utility for the prior unauthorized use that occurred during his or her ownership.

(b) Proves that the person is the legal owner of the property by providing property ownership information and provides a signed lease agreement that has been certified by the landlord that establishes the identity of the tenant responsible for the prior unauthorized use.

(4) If the legal owner cannot provide documentation establishing the identity of the tenant responsible for the prior unauthorized use and the owner does not agree to pay for the charges due to the utility for the prior unauthorized use, a utility may still reestablish electric or natural gas service if the owner proves that the owner is the legal owner of the property by providing property ownership information and agrees to payment of the additional fee for reestablishing electric or natural gas service at the location with multiple prior occurrences of unauthorized use as specified in the utility's approved schedule of rates and tariffs.

(5) If a person requesting electric or natural gas service cannot provide property ownership information, a utility may reestablish service if the person can provide all of the following:

(a) Residency information.

(b) All documentation, fees, and deposits required by R 460.106, R 460.109, R 460.110, and R 460.144 of the Michigan administrative code.

(c) Payment of any additional fee for reestablishing electric or natural gas service at a location with multiple prior occurrences of unauthorized use as specified in the utility's approved schedule of rates and

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tariffs.

(6) A property owner shall provide notice to a utility within 30 days after the owner abandons or surrenders a property. If a property owner does not provide notice to the utility within 30 days after the property owner's abandonment or surrender of a property, that property owner is liable, jointly and severally, for any unauthorized use that occurs at the property after the owner's abandonment or surrender of the property.

(7) Within 150 days of the effective date of the amendatory act that added this section, electric and natural gas utilities serving 1,000,000 or more customers shall establish and maintain a service in which landlords of rental properties in the utility's service territory who have registered with the utility for shut-off notifications are notified of locations where electric and natural gas services have been shut off because of unauthorized use.

(8) This section only applies to the unauthorized use of electric or natural gas service and does not apply to the providing of a telecommunication service or cable service or the attachment of facilities by a telecommunication or cable service provider to the utility poles, ducts, conduits, or trenches owned or controlled by an electric or natural gas utility. This section does not supersede, modify, or affect the validity of any statutes, administrative rules, utility tariffs, contracts, commission orders, or common law governing the rates, terms, and conditions of the use of electric or natural gas utility poles, ducts, conduits, and trenches.

(9) As used in this section:

(a) "Bypassing" means unmetered service that flows through a device connected between a service line and customer-owned facilities.

(b) "Meter tampering" means any act that affects the proper registration of service through a meter and affects the flow of energy.

(c) "Positive identification information" means a driver's license or identification card issued by this or another state, a military identification card, a passport, or other government-issued identification containing a photograph.

(d) "Property ownership information" means a recorded warranty deed, notarized closing papers, tax records, mortgage payment book, or copy of an insurance policy for the address identifying an individual or entity as the owner.

(e) "Residency information" means all of the following:

(*i*) Positive identification information.

(*ii*) A signed lease agreement that has been certified by the landlord for the location where electric or natural gas service is being requested.

(*iii*) Any first-class mail sent to the person requesting electric or natural gas service within the last 3 months at that person's previous residence.

(f) "Unauthorized use of electric or natural gas service" or "unauthorized use" means theft, fraud, interference, or diversion of electric or natural gas service, including, but not limited to, meter tampering, bypassing, and service restoration by anyone other than the utility or its representative.

(g) "Utility" means an electric or natural gas utility regulated by the public service commission.

History: Add. 2010, Act 128, Imd. Eff. July 21, 2010.

460.9m Service shutoff resulting in death or serious injury; notice to commission; investigation; civil action; "provider" defined.

Sec. 9m. (1) A provider shall notify the commission of any shutoff of service that results in death or serious injury. A provider shall supply to the commission any relevant information regarding the death or serious injury, including, but not limited to, the procedures followed during the shutoff.

(2) Upon notification or the commission's own motion, the commission may investigate any shutoff of service by a provider that results in death or serious injury. After completing its investigation, the commission may refer the matter to the attorney general for commencement of a civil action under section 9p.

(3) As used in this section, "provider" means a municipally owned electric or natural gas utility.

History: Add. 2009, Act 154, Imd. Eff. Nov. 23, 2009.

460.9o Identification of senior citizen customers; methods; compliance within certain time period; extension; definitions.

Sec. 9o. (1) A provider shall, in the ordinary course of business, make efforts to identify senior citizen customers by at least 1 of the following methods:

(a) Conducting customer interviews.

(b) Obtaining information from a consumer reporting agency or consumer reporting service.

(c) A personal or automated telephone call where direct contact is made with a member of the customer's household or a message is recorded on an answering machine or voice mail.

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(d) First-class mail.

(e) A personal visit to the customer.

(f) A written notice left at or on the customer's door.

(g) A bill insert.

(h) Any other method approved by the commission for regulated utilities.

(2) A provider shall comply with the requirements imposed in subsection (1) within 30 days after the effective date of the amendatory act that added this section. The provider's governing body may for good cause grant an extension to a provider for compliance with subsection (1).

(3) As used in this section:

(a) "Consumer reporting agency" means that term as defined in section 603 of the fair credit reporting act, 15 USC 1681a.

(b) "Provider" means a municipally owned electric or natural gas utility.

(c) "Senior citizen" means a provider customer who is 65 years of age or older.

History: Add. 2009, Act 173, Imd. Eff. Dec. 15, 2009.

460.9p Failure of utility to meet requirements of act; commencement of civil action; notice; compliance agreement; final order; costs of litigation; fines; construction and limitation of act.

Sec. 9p. (1) The attorney general, on his or her own motion or upon a referral from the commission in a case of serious injury or death, or any customer of a municipally owned electric or natural gas utility may commence a civil action for injunctive relief or imposition of a civil fine as provided in subsection (3) against that municipally owned electric or natural gas utility if the utility fails to meet the applicable requirements of this act. A municipally owned electric utility shall establish a complaint resolution process for its customers to resolve any allegations of violations of this act that have not resulted in a death or serious injury.

(2) An action under this section shall be commenced in the circuit court for the circuit in which the principal office of the municipally owned electric or natural gas utility is located. An action shall not be filed under this section unless the prospective plaintiff has given the prospective defendant at least 60 days' written notice of the prospective plaintiff's intent to sue, the basis for the suit, and the relief sought. Within 30 days after the prospective defendant receives written notice of the prospective plaintiff's intent to sue, the prospective defendant and plaintiff shall meet and make a good faith attempt to determine if there is a credible basis for the action. If both parties agree that there is a credible basis for the action, the prospective defendant shall take all reasonable and prudent steps necessary to comply with the applicable requirements of this act within 10 days of the meeting and may enter into a compliance agreement which may include the payment of a civil fine.

(3) In issuing a final order in an action brought under this section, a court may award costs of litigation, including reasonable attorney and expert witness fees, to the prevailing or substantially prevailing party. A court may order a municipally owned electric or natural gas utility to pay a civil fine for the first offense of not less than $1,000.00 or more than $20,000.00. For a second offense, the court may order the person to pay a fine of not less than $2,000.00 or more than $40,000.00. For a third and any subsequent offense, the court may order the person to pay a fine of not less than $5,000.00 or more than $50,000.00. A civil fine ordered under this section shall be deposited in the low income and energy efficiency fund.

(4) A municipally owned electric or natural gas utility or a customer of a municipally owned electric or natural gas utility is subject to this act only as expressly provided in this act. Nothing in this act shall give the commission the power to regulate a municipally owned electric or natural gas utility. Nothing in this section shall be construed to prevent a party from pursuing any other legal or equitable remedy that may be available to them.

History: Add. 2009, Act 172, Imd. Eff. Dec. 15, 2009.

460.9q Shut off or termination of service; conditions; reasons; notice requirements; prohibitions; attempts to contact customer; documentation; restoration of service; vulnerable household warmth fund; creation; use of funds; payments; distribution; priority; definitions.

Sec. 9q. (1) A provider may shut off service temporarily for reasons of health or safety or in a state or national emergency. When a provider shuts off service for reasons of health or safety, the provider shall leave a notice at the premises.

(2) Subject to the requirements of this act, a provider may shut off or terminate service to a residential customer for any of the following reasons:

(a) The customer has not paid a delinquent account that accrued within the last 6 years.

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(b) The customer has failed to provide a deposit or guarantee as required by the provider.

(c) The customer has engaged in unauthorized use of a provider's service.

(d) The customer has failed to comply with the terms and conditions of a payment plan entered into with the provider in accordance with the provider's rules.

(e) The customer has refused to arrange access at reasonable times for the purpose of inspection, meter reading, maintenance, or replacement of equipment that is installed upon the premises or for the removal of a meter.

(f) The customer misrepresented his or her identity for the purpose of obtaining a provider service or put service in another person's name without permission of the other person.

(g) The customer has violated any rules of the provider so as to adversely affect the safety of the customer or other individuals or the integrity of the provider's system.

(h) An individual living in the customer's residence meets both of the following:

(*i*) Has a delinquent account for service with the provider within the past 3 years that remains unpaid.

(*ii*) The individual lived in the customer's residence when all or part of the debt was incurred. The provider may transfer a prorated amount of the debt to the customer's account, based upon the length of time that the individual resided at the customer's residence. This subdivision does not apply if the individual was a minor while living in the customer's residence.

(3) A provider shall not shut off service unless it sends a notice to the customer by first-class mail or personally serves the notice not less than 10 days before the date of the proposed shutoff. A provider shall maintain a record of the date the notice was sent.

(4) Subject to the requirements of sections 9r and 9s, a provider's governing body shall establish a policy to allow a customer the opportunity to enter into a payment plan for an amount owed to the provider that is not in dispute, if a customer claims an inability to pay in full. A provider is not required to enter into a subsequent payment plan with a customer until the customer has complied fully with the terms of an existing or previous payment plan unless the customer demonstrates a significant change in economic circumstances and requests a modification of the payment plan. A provider is not required to enter into a subsequent payment plan with a customer who defaulted on the terms and conditions of a payment plan within the last 12 months.

(5) A notice of shutoff under subsection (3) shall contain all of the following information:

(a) The name and address of the customer, and the address at which service is provided, if different.

(b) A clear and concise statement of the reason for the proposed shutoff of service.

(c) The date on or after which the provider may shut off service, unless the customer takes appropriate action.

(d) That the customer has the right to enter into a payment plan with the provider for an amount owed to the provider that is not in dispute and that the customer is presently unable to pay in full.

(e) The telephone number and address of the provider where the customer may make inquiry, enter into a payment plan, or file a complaint.

(f) That the provider will postpone the shutoff of service if a certified medical emergency exists at the customer's residence and the customer informs and provides documentation to the provider of that medical emergency.

(g) That during the heating season the provider will postpone shutoff of service if a customer is an eligible low-income customer that enters into a winter protection payment plan with the provider and the customer provides documentation that the customer is actively seeking emergency assistance from an energy assistance program.

(h) The energy assistance telephone line number at the department of human services or an operating 2-1-1 system telephone number.

(6) Subject to the requirements of this act, a provider may shut off service to a customer on the date specified in the notice of shutoff or at a reasonable time following that date. If a provider does not shut off service and mails a subsequent notice, then the provider shall not shut off service before the date specified in the subsequent notice. Shutoff shall occur only between the hours of 8 a.m. and 4 p.m.

(7) A provider shall not shut off service on a day, or a day immediately preceding a day, when the services of the provider are not available to the general public for the purpose of restoring service.

(8) For an involuntary shutoff, at least 1 day before shutoff of service, the provider shall make at least 2 attempts to contact the customer by 1 or more of the following methods:

(a) A personal or automated telephone call where direct contact is made with a member of the customer's household or a message is recorded on an answering machine or voice mail.

(b) First-class mail.

(c) A personal visit to the customer.

(d) A written notice left at or on the customer's door.

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(e) Any other method approved by the commission for regulated utilities.

(9) A notice of shutoff sent under subsection (3) shall be considered as 1 attempt under subsection (8).

(10) The provider shall document all attempts to contact the customer under subsection (8).

(11) Immediately before the shutoff of service, an employee of the provider who is designated to perform that function may identify himself or herself to the customer or another responsible individual at the premises and may announce the purpose of his or her presence.

(12) When a provider employee shuts off service, the employee shall leave a notice. The notice shall state that service has been shut off and shall contain the address and telephone number of the provider where the customer may arrange to have service restored.

(13) For an involuntary shutoff using meters with remote shutoff and restoration ability, at least 1 day before shutoff of service, the provider shall make at least 2 attempts to contact the customer by 1 of the methods listed in subsection (8). Any notice shall state that the disconnection of service will be done remotely and that a provider representative will not return to the premises before disconnection. The provider shall document all attempts to contact the customer. If the provider contacts the customer or other responsible individual in the customer's household by telephone on the day service is to be shut off, the provider shall inform the customer or other responsible individual that shutoff of service is imminent and of the steps necessary to avoid shutoff. Unless the customer presents evidence that reasonably demonstrates that the claim is satisfied or is in dispute, or the customer makes payment, the employee may shut off service. If the provider complies with the notice requirements of this subsection, no further customer contact is required on the day service is to be shut off and the provider may shut off service.

(14) A provider shall not shut off service for any of the following reasons:

(a) The customer has not paid for concurrent service received at a separate metering point, residence, or location.

(b) The customer has not paid for service at a premises occupied by another person. A provider may shut off service in any of the following circumstances where proper notice has been given:

(*i*) If the customer supplies a written, notarized statement that the premises are unoccupied.

(*ii*) If the premises are occupied and the occupant agrees, in writing, to the shutoff of service.

(*iii*) If it is not feasible to provide service to the occupant as a customer without a major revision of existing distribution facilities.

(*iv*) If it is feasible to provide service to the occupant as a customer without a major revision of existing distribution facilities and the occupant refuses to put the account in their name.

(15) After a provider has shut off service, it shall restore service upon the customer's request when the cause has been cured or credit arrangements satisfactory to the provider have been made.

(16) When a provider is required to restore service at the customer's meter manually, the provider shall make reasonable efforts to restore service on the day the customer requests restoration. Except for reasons beyond its control, the provider shall restore service not later than the first working day after the customer's request.

(17) For providers using meter technology with remote shutoff and restoration capability, service shall be restored on the first working day after the customer requests restoration, except in the case of documented equipment failure.

(18) The provider may assess the customer a charge for restoring service or relocating the customer's meter.

(19) The vulnerable household warmth fund is created within the state treasury. The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments. Money in the fund at the close of the fiscal year shall be refunded among each rate schedule, based on the rate schedules in effect when the money was collected, proportional to the amount paid by each rate schedule. The commission shall ensure that each utility refunds those amounts to its customers. The commission shall be the administrator of the fund for auditing purposes.

(20) Money from the fund, upon appropriation, shall be used to provide payment or partial payment of bills for electricity, natural gas, propane, heating oil, or any other type of fuel used to heat the primary residence of a vulnerable customer during the 2011-2012 heating season. A payment under this subsection shall be in the form of a voucher or direct payment to the utility, provider, cooperative, or distributor of fuel. The amount accumulated in the fund shall not exceed $48,000,000.00.

(21) The department of human services and the commission shall ensure that, in distributing money from the fund, first priority is given to households that contain at least 1 of the following:

(a) A minor child.

(b) An eligible senior citizen.

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(c) A paraplegic, hemiplegic, quadriplegic, or totally and permanently disabled individual.

(22) Amounts that were, before the amendatory act that added this subsection, authorized by the commission to be collected in retail rates from the customers of an electric utility or natural gas utility with more than 1,000,000 customers in this state for contribution by the electric utility or natural gas utility to fund grants authorized by the commission in the June 28, 2011 order awarding low-income energy assistance grants in docket No. U-13129 are authorized for a period commencing with the effective date of the amendatory act that added this subsection, and continuing through September 30, 2012, or until $48,000,000.00 is accumulated in the fund from retail rates or appropriated funds, whichever occurs first. An electric utility or natural gas utility that collects money under this subsection shall remit that money to the state treasurer for deposit in the fund on a monthly basis no later than 30 days after the last day in each calendar month. The commission shall issue orders no later than September 30, 2012 reducing the retail rates of an electric utility or natural gas utility that collects money under this subsection by the annualized amount authorized for collection by this subsection and included in the retail rates of each electric utility or natural gas utility as established by the most recently completed rate case of the electric utility or natural gas utility before the effective date of the amendatory act that added this subsection.

(23) As used in this section:

(a) "Eligible senior citizen" means an individual who is 65 years of age or older.

(b) "Fund" means the vulnerable household warmth fund created in subsection (19).

(c) "Heating season" means that term as defined in section 9r.

(d) "Provider" means a municipally owned electric or natural gas utility.

(e) "Totally and permanently disabled" means a disability as defined in 42 USC 416.

(f) "Vulnerable customer" means either of the following:

(*i*) For an electric utility, provider, cooperative, or natural gas utility customer, a customer who meets both of the following:

(A) Has a household income that does not exceed 60% of the state median income, or receives any of the following:

(I) Assistance from a state emergency relief program.

(II) Food stamps.

(III) Medicaid.

(B) Has received a shut-off notice from the energy provider.

(*ii*) For a customer who uses a fuel other than electricity or natural gas to heat his or her residence, a customer who meets both of the following:

(A) Has a household income that does not exceed 60% of the state median income, or receives any of the following:

(I) Assistance from a state emergency relief program.

(II) Food stamps.

(III) Medicaid.

(B) Has received notice from their distributor of fuel that no further deliveries will be made to his or her residence due to nonpayment of prior bills.

History: Add. 2009, Act 171, Eff. Jan. 14, 2010;—Am. 2011, Act 274, Imd. Eff. Dec. 20, 2011.

460.9r Shut off of service by municipally owned electric utility; prohibitions; requirements; definitions.

Sec. 9r. (1) A municipally owned electric utility shall not shut off service to an eligible customer during the heating season for nonpayment of a delinquent account if the customer is an eligible senior citizen customer or if the eligible customer enters into a winter protection payment plan to pay to the utility a monthly amount equal to 7% of the estimated annual bill for the eligible customer or the eligible customer and the utility mutually agree upon a winter protection payment plan with different terms and the eligible customer demonstrates, within 14 days of requesting shut-off protection, that he or she has applied for state or federal heating assistance. If an arrearage exists at the time an eligible customer applies for protection from shutoff of service during the heating season, the utility shall permit the customer to pay the arrearage in equal monthly installments between the date of application and the start of the subsequent heating season.

(2) If a customer fails to comply with the terms and conditions of a winter protection payment plan, a municipally owned electric utility may shut off service after giving the customer a notice, by personal service or first-class mail, that contains all of the following information:

(a) That the customer has defaulted on the winter protection payment plan.

(b) The nature of the default.

(c) That unless the customer makes the payments that are past due within 10 days of the date of mailing,

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the municipally owned electric utility may shut off service.

(d) The date on or after which the municipally owned electric utility may shut off service, unless the customer takes appropriate action.

(e) That the customer may petition the municipally owned electric utility in accordance with the utility's rules disputing the claim before the date of the proposed shutoff of service, or bring an action pursuant to section 9p.

(f) That the utility will not shut off service pending the resolution of a dispute that is filed with the utility in accordance with this section.

(g) The telephone number and address of the utility where the customer may make inquiry, enter into a payment plan, or file a complaint.

(h) The energy assistance telephone line number at the department of human services or an operating 2-1-1 system telephone number.

(i) That the utility will postpone shutoff of service if a medical emergency exists at the customer's residence.

(j) That the utility may require a deposit and restoration charge if the supplier shuts off service for nonpayment of a delinquent account.

(3) As used in this section:

(a) "Eligible customer" means either an eligible low-income customer or an eligible senior citizen customer who demonstrates to the utility his or her eligibility.

(b) "Eligible low-income customer" means a customer whose household income does not exceed 150% of the poverty level, as published by the United States department of health and human services, or who receives any of the following:

(*i*) Assistance from a state emergency relief program.

(*ii*) Food stamps.

(*iii*) Medicaid.

(c) "Eligible senior citizen customer" means a utility customer who is 65 years of age or older and who advises the utility of his or her eligibility.

(d) "Heating season" means November 1 through March 31.

History: Add. 2009, Act 174, Eff. Jan. 14, 2010.

460.9s Postponement of service shutoff; conditions; definitions.

Sec. 9s. (1) A provider shall postpone a shutoff of service for not more than 21 days if the customer or a member of the customer's household is a critical care customer or has a certified medical emergency. The customer's certification shall identify the medical condition, any medical or life-supporting equipment being used, and the specific time period during which the shutoff of service will aggravate the medical emergency. The provider shall extend the postponement for further periods of not more than 21 days, not to exceed a total postponement of shutoff of service of 63 days, only if the customer provides additional certification that the customer or a member of the customer's household is a critical care customer or has a certified medical emergency. If shutoff of service has occurred without any postponement being obtained, the provider shall restore service for not more than 21 days, and shall continue the restoration for further periods of not more than 21 days, not to exceed a total restoration of service of 63 days in any 12-month period per household member. Annually, a provider is not required to grant shutoff extensions totaling more than 126 days per household.

(2) As used in this section:

(a) "Critical care customer" means a customer who requires, or has a household member who requires, home medical equipment or a life-support system, and who has provided appropriate documentation from a physician or medical facility to the provider identifying the medical equipment or life-support system and certifying that an interruption of service would be immediately life-threatening.

(b) "Medical emergency" means an existing medical condition of the customer or a member of the customer's household, as defined and certified by a physician or public health official on official stationery or company-provided form, that will be aggravated by the lack of utility service.

(c) "Provider" means a municipally owned electric or natural gas utility.

History: Add. 2009, Act 152, Imd. Eff. Nov. 23, 2009.

460.9t Low-income energy assistance fund.

Sec. 9t. (1) The low-income energy assistance fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and

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earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The department of licensing and regulatory affairs shall be the administrator of the fund for auditing purposes.

(5) Subject to the limitations imposed in this section, the department of human services shall expend money from the fund, upon appropriation, as provided in the Michigan energy assistance act, 2012 PA 615, MCL 400.1231 to 400.1236. The department of human services, in consultation with the public service commission, shall ensure that all money collected for the fund from a geographic area is returned, to the extent possible, to that geographic area.

(6) Subject to the limitations imposed in this subsection, the public service commission may, after an opportunity to comment, annually approve a low-income energy assistance funding factor no later than July 31 of each year for the subsequent fiscal year. The low-income energy assistance funding factor shall be the same across all customer classes and shall not exceed $1.00. The amount used by the public service commission to calculate a low-income energy assistance funding factor during each fiscal year shall not exceed $50,000,000.00 minus both the amount appropriated from the general fund in that fiscal year for home energy assistance and the amount remaining in the fund from the prior fiscal year. An electric utility, municipally owned electric utility, or cooperative electric utility that collects money under this subsection shall remit that money to the state treasurer for deposit in the fund on a monthly basis no later than 30 days after the last day in each calendar month. The electric utility, municipally owned electric utility, or cooperative electric utility shall list the low-income energy assistance funding factor as a separate line item on each customer's bill.

(7) An electric utility, municipally owned electric utility, or cooperative electric utility may elect to not collect a low-income energy assistance funding factor under this section by annually filing a notice with the public service commission by July 1. Notwithstanding any other provision of this act, an electric utility, municipally owned electric utility, or cooperative electric utility that elects to not collect a low-income energy assistance funding factor under this section shall not shut off service to any residential customer from November 1 to April 15 for nonpayment of a delinquent account.

(8) An electric utility, municipally owned electric utility, or cooperative electric utility that does not opt out under subsection (7), or an association representing a municipally owned electric utility or cooperative electric utility that does not opt out under subsection (7), shall annually provide to the public service commission by July 1 the number of retail billing meters it serves in this state that are subject to the low-income energy assistance funding factor.

(9) Nothing in this act gives the public service commission the power to regulate a municipally owned electric utility.

(10) As used in this section:

(a) "Fund" means the low-income energy assistance fund created in subsection (1).

(b) "Low-income energy assistance funding factor" means a nonbypassable surcharge on each retail billing meter payable monthly by every customer receiving a retail distribution service from an electric utility, municipally owned electric utility, or cooperative electric utility that does not opt out under subsection (7), regardless of the identity of the customer's electric generation supplier. The low-income energy assistance funding factor shall not be charged on more than 1 residential meter per residential site.

History: Add. 2013, Act 95, Imd. Eff. July 1, 2013.

460.10 MCL 460.10a to 460.10bb; purpose.

Sec. 10. The purpose of sections 10a through 10bb is to do all of the following:

(a) To ensure that all persons in this state are afforded safe, reliable electric power at a competitive rate.

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

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

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000;—Am. 2008, Act 286, Imd. Eff. Oct. 6, 2008;—Am. 2016, Act 341, Eff. Apr. 20, 2017.

Popular name: Customer Choice and Electricity Reliability Act

460.10a Alternative electric suppliers; orders establishing rates, terms, and conditions of service; licensing procedure; switching or billing for services without consent;

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self-service power; affiliate wheeling; rights of parties to existing contracts and agreements; receipt of standard tariff service; recovery of costs by electric utility offering retail open access service; definitions.

Sec. 10a. (1) The commission shall issue orders establishing the rates, terms, and conditions of service that allow retail customers to take service from an alternative electric supplier. The orders shall do all of the following:

(a) Except as otherwise provided in this section, 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 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. 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, provide that, if the commission determines that less than 10% of an electric utility's average weather-adjusted retail sales for the preceding calendar year is taking service from alternative electric suppliers, the commission shall set as a cap on the weather-adjusted retail sales that may take service from an alternative electric supplier, for the current calendar year and 5 subsequent calendar years, the percentage amount of weather-adjusted retail sales for the preceding calendar year rounded up to the nearest whole percentage. If the cap is not adjusted for 6 consecutive calendar years, the cap shall return to 10% in the calendar year following that sixth consecutive calendar year. If a utility that serves less than 200,000 customers in this state has not had any load served by an alternative electric supplier in the preceding 4 years, the commission shall adjust the cap in accordance with this provision for no more than 2 consecutive calendar years.

(d) 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 October 6, 2008 that is similar in nature if the customer owns more than 50% of the new facility.

(e) Provide that for an existing facility that is receiving 100% of its electric service from an alternative electric supplier on or after the effective date of the amendatory act that added section 6t, the owner of that facility may purchase electricity from an alternative electric supplier, regardless of whether the sales exceed 10% of the servicing electric utility's average weather-adjusted retail sales, for both the existing electric choice load at that facility and any expanded load arising after the effective date of the amendatory act that added section 6t at that facility as well as any new facility that is similar in nature to the existing facility, that is constructed or acquired by the customer on a site contiguous to the existing site or on a site that would be contiguous to an existing site in the absence of an existing public right-of-way, and the customer owns more than 50% of that facility. This subdivision does not authorize or permit an existing facility being served by an electric utility on standard tariff service on the effective date of the amendatory act that added section 6t to be served by an alternative electric supplier.

(f) Notwithstanding any other provision of this section, any customer operating an iron ore mining facility, iron ore processing facility, or both, located in the Upper Peninsula of this state, may purchase all or any portion of its electricity from an alternative electric supplier, regardless of whether the sales exceed 10% of the serving electric utility's average weather-adjusted retail sales, if that customer is in compliance with the terms of a settlement agreement requiring it to facilitate construction of a new power plant located in the Upper Peninsula of this state. A customer described in this subdivision and the alternative electric supplier that provides electric service to that customer are not subject to the requirements contained in the amendatory act that added section 6t and any administrative regulations adopted under that amendatory act. The commission's orders establishing rates, terms, and conditions of retail access service issued before the effective date of the amendatory act that added section 6t remain in effect with regard to retail open access provided under this subdivision.

(g) Provide that a customer on an enrollment queue waiting to take retail open access service as of December 31, 2015 shall continue on the queue and an electric utility shall add a new customer to the queue if the customer's prospective alternative electric supplier submits an enrollment request to the electric utility. A customer shall be removed from the queue by notifying the electric utility electronically or in writing.

(h) Require each electric utility to file with the commission not later than January 15 of each year a

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rank-ordered queue of all customers awaiting retail open access service under subdivision (g). The filing must include the estimated amount of electricity used by each customer awaiting retail open access service under subdivision (g). All customer-specific information contained in the filing under this subdivision is exempt from release under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and the commission shall treat that information as confidential information. The commission may release aggregated information as part of its annual report as long as individual customer information or data are not released.

(i) Provide that if the prospective alternative electric supplier of a customer next on the queue awaiting retail open access service is notified after the effective date of the amendatory act that added section 6t that less than 10% of an electric utility's average weather-adjusted retail sales for the preceding calendar year are taking service from an alternative electric supplier and that the amount of electricity needed to serve the customer's electric load is available under the 10% allocation, the customer may take service from an alternative electric supplier. The customer's prospective alternative electric supplier shall notify the electric utility within 5 business days after being notified whether the customer will take service from an alternative electric supplier. If the customer's prospective alternative electric supplier fails to notify the utility within 5 business days or if the customer chooses not to take retail open access service, the customer shall be removed from the queue of those awaiting retail open access service. The customer may subsequently be added to the queue as a new customer under the provisions of subdivision (g). A customer that elects to take service from an alternative electric supplier under this subdivision shall become service-ready under rules established by the commission and the utility's approved retail open access service tariffs.

(j) Provide that the commission shall ensure if a customer is notified that the customer's service from an alternative electric supplier will be terminated or restricted as a result of the alternative electric supplier limiting service in this state, the customer has 60 days to acquire service from a different alternative electric supplier. If the customer is a public entity, the time to acquire services from a different alternative electric supplier shall not be less than 180 days.

(k) Provide that as a condition of licensure, an alternative electric supplier meets all of the requirements of this act.

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

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

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

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

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

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

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

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

(6) The rights of parties to existing contracts and agreements in effect as of January 1, 2000 between

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electric utilities and qualifying facilities, including the right to have the charges recovered from the customers of an electric utility, or its successor, are not 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.

(7) A customer that 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 under procedures approved by the commission.

(8) The commission shall authorize rates that will ensure that an electric utility that offered retail open access service from 2002 through 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 under section 10d(4) as it existed before October 6, 2008, that have been authorized for recovery by the commission in orders issued before October 6, 2008. The commission shall approve surcharges that will ensure full recovery of all such costs by October 6, 2013.

(9) As used in subsections (1) and (7):

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

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

(10) As used in this section:

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

(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.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000;—Am. 2003, Act 214, Imd. Eff. Dec. 2, 2003;—Am. 2004, Act 88, Imd. Eff. Apr. 22, 2004;—Am. 2008, Act 286, Imd. Eff. Oct. 6, 2008;—Am. 2016, Act 341, Eff. Apr. 20, 2017.

Popular name: Customer Choice and Electricity Reliability Act

460.10b Rates, terms, and conditions of new technologies; application to unbundle existing rate schedules; providing reliable and lower cost competitive rates; standby generation service; identification of retail market prices.

Sec. 10b. (1) The commission shall establish rates, terms, and conditions of electric service that promote and enhance the development of new generation, transmission, and distribution technologies.

(2) No later than 1 year from June 5, 2000, each electric utility shall file an application with the commission to unbundle its existing commercial and industrial rate schedules and separately identify and charge for their discrete services. No earlier than 1 year from June 5, 2000, the commission may order the electric utility to file an application to unbundle existing residential rate schedules. The commission may allow the unbundled rates to be expressed on residential billings in terms of percentages in order to simplify residential billing. The commission shall allow recovery by electric utilities of all just and reasonable costs incurred by electric utilities to implement and administer the provisions of this subsection.

(3) The orders issued under this act shall include, but are not limited to, the providing of reliable and lower cost competitive rates for all customers in this state.

(4) An electric utility is obligated, with commission oversight, to provide standby generation service for open access load on a best efforts basis until December 31, 2001 or the date established under section 10d(2)

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as it existed prior to the effective date of the amendatory act that added this sentence, whichever is later. The pricing for the electric generation standby service is equal to the retail market price of comparable standby service allowed under subsection (5). An electric utility is not required to interrupt firm off-system sales or firm service customers to provide standby generation service. Until the date established under section 10d(2) as it existed prior to the effective date of the amendatory act that added this sentence, standby generation service shall continue to be provided to nonopen access customers under regulated tariffs.

(5) The methodology for identifying the retail market price for electric generation service to be applied under this section shall be determined by the commission based upon market indices commonly relied upon in the electric generation industry, adjusted as appropriate to reflect retail market prices in the relevant market.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000;—Am. 2008, Act 286, Imd. Eff. Oct. 6, 2008.

Popular name: Customer Choice and Electricity Reliability Act

460.10c Determination of noncompliance; order of remedies and penalties; contested case; violation as unintentional and bona fide error; finding of frivolous complaint.

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

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

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

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

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

(e) Issue cease and desist orders.

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

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

(a) Order the person to pay a fine for the first offense of not less than $20,000.00 or more than $30,000.00. For a second and any subsequent offense, the commission shall order the person to pay a fine of not less than $30,000.00 or more than $50,000.00. If the commission finds that the second or any of the subsequent offenses were knowingly made in violation of section 10a(3), the commission shall order the person to pay a fine of not more than $70,000.00. Each unauthorized action made in violation of section 10a(3) is a separate offense under this subdivision.

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

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

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

(e) Order a portion between 10% to 50% of the fine ordered under subdivision (a) be paid directly to the customer that suffered the violation under section 10a(3).

(f) If the person is licensed under this act, revoke the license if the commission finds a pattern of violations of section 10a(3).

(g) Issue cease and desist orders.

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

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supplier.

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

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000;—Am. 2016, Act 341, Eff. Apr. 20, 2017.

Popular name: Customer Choice and Electricity Reliability Act

460.10d Electric utility serving less than 1,000,000 retail customers; utility issuing securitization bonds; compliance with federal rules, regulations, and standards; security recovery factor; protective orders; low-income and energy efficiency fund; refund; definitions.

Sec. 10d. (1) If an electric utility serving less than 1,000,000 retail customers in this state as of May 1, 2000 issues securitization bonds as allowed under this act, it has the same rights, duties, and obligations under this section as an electric utility serving 1,000,000 or more retail customers in this state as of May 1, 2000.

(2) The commission shall take the necessary steps to ensure that all electrical power generating facilities in this state comply with all rules, regulations, and standards of the federal environmental protection agency regarding mercury emissions.

(3) A covered utility may apply to the commission to recover enhanced security costs for an electric generating facility through a security recovery factor. If the commission approves a security recovery factor under subsection (5), the covered utility may recover those enhanced security costs.

(4) The commission shall require that notice of the application filed under subsection (3) be published by the covered utility within 30 days from the date the application was filed. The initial hearing by the commission shall be held within 20 days of the date the notice was published in newspapers of general circulation in the service territory of the covered utility.

(5) The commission may issue an order approving, rejecting, or modifying the security recovery factor. If the commission issues an order approving a security recovery factor, that order shall be issued within 120 days of the initial hearing required under subsection (4). In determining the security recovery factor, the commission shall only include costs that the commission determines are reasonable and prudent and that are jurisdictionally assigned to retail customers of the covered utility in this state. The costs included shall be net of any proceeds that have been or will be received from another source, including, but not limited to, any applicable insurance settlements received by the covered utility or any grants or other emergency relief from federal, state, or local governmental agencies for the purpose of defraying enhanced security costs. In its order, the commission shall designate a period for recovery of enhanced security costs, including a reasonable return on the unamortized balance, over a period not to exceed 5 years. The security recovery factor shall not be less than zero.

(6) No later than February 18, 2003, the commission shall by order prescribe the form for the filing of an application for a security recovery factor under subsection (3). If the commission or its designee determines that a filing is incomplete, it shall notify the covered utility within 10 days of the filing.

(7) Records or other information supplied by the covered utility in an application for recovery of security costs under subsection (3) that describe security measures, including, but not limited to, emergency response plans, risk planning documents, threat assessments, domestic preparedness strategies, and other plans for responding to acts of terrorism are not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall be treated as confidential by the commission.

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

(9) An electric or natural gas utility shall not charge a customer to help fund the low-income and energy efficiency fund. The commission shall not include the low-income and energy efficiency charge in an affected utility's base rates. By February 1, 2012, the commission shall commence on its own motion a proceeding for each affected utility to determine the manner in which all money in the low-income and energy efficiency fund, including any unspent funds returned by grantees, and all money being held in escrow for the low-income and energy efficiency fund will be refunded to customers. The refund shall be allocated among each rate schedule proportional to the amount paid by each rate schedule, except that the refund to customers using 10 megawatts or more shall be within at least 6.5% of the actual amount paid and escrowed by that customer. As used in this subsection, "affected utility" means a regulated electric or natural gas utility that was authorized by the commission to collect in retail rates an amount that was designated to be contributed to the low-income and energy efficiency fund, and that since July 21, 2011 has been holding that collected amount in escrow.

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(10) As used in this section:

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

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

(*ii*) An act that the person knows or has reason to know is dangerous to human life.

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

(b) "Covered utility" means an electric utility with 1,000,000 or more retail customers in this state as of May 1, 2000 or an electric utility subject to the rate provisions of commission orders in case numbers U-11181-R and U-12204.

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

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

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000;—Am. 2002, Act 609, Imd. Eff. Dec. 20, 2002;—Am. 2008, Act 286, Imd. Eff. Oct. 6, 2008;—Am. 2011, Act 276, Imd. Eff. Dec. 20, 2011.

Popular name: Customer Choice and Electricity Reliability Act

460.10e Connection of merchant plants to transmission and distribution systems; finding of prevention or delay; remedies; merchant plant; standards; exception.

Sec. 10e. (1) An electric utility shall take all necessary steps to ensure that merchant plants are connected to the transmission and distribution systems within their operational control. If the commission finds, after notice and hearing, that an electric utility has prevented or unduly delayed the ability of the plant to connect to the facilities of the utility, the commission shall order remedies designed to make whole the merchant plant, including, but not limited to, reasonable attorney fees. The commission may also order fines of not more than $50,000.00 per day that the electric utility is in violation of this subsection.

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

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

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

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10f Generation capacity in excess of utility's retail sales load; determination of total generating capacity; market power mitigation plan; application; approval; requirements of independent brokering trustee.

Sec. 10f. (1) If, after subtracting the average demand for each retail customer under contract that exceeds 15% of the utility's retail load in the relevant market, an electric utility has commercial control over more than 30% of the generating capacity available to serve a relevant market, the utility shall do 1 or more of the following with respect to any generation in excess of that required to serve its firm retail sales load, including a reasonable reserve margin:

(a) Divest a portion of its generating capacity.

(b) Sell generating capacity under a contract with a nonretail purchaser for a term of at least 5 years.

(c) Transfer generating capacity to an independent brokering trustee for a term of at least 5 years in blocks of at least 500 megawatts, 24 hours per day.

(2) The total generating capacity available to serve the relevant market shall be determined by the commission and shall equal the sum of the firm available transmission capability into the relevant market and

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the aggregate generating capacity located within the relevant market, less 1 or more of the following:

(a) If a municipal utility does not permit its retail customers to select alternative electric suppliers, the generating capacity owned by a municipal utility necessary to serve the retail native load.

(b) Generating capacity dedicated to serving on-site load.

(c) The generating capacity of any multistate electric supplier jurisdictionally assigned to customers of other states.

(3) Within 30 days after a commission determination of the total generating capacity under subsection (2) in a relevant market, an electric utility that exceeds the 30% limit shall file an application with the commission for approval of a market power mitigation plan. The commission shall approve the plan if it is consistent with this act or require modifications to the plan to make it consistent with this act. The utility retains the right to determine what specific actions to take to achieve compliance with this section.

(4) An independent brokering trustee shall be completely independent from and have no affiliation with the utility. The terms of any transfer of generating capacity shall ensure that the trustee has complete control over the marketing, pricing, and terms of the transferred capacity for at least 5 years and shall provide appropriate performance incentives to the trustee for marketing the transferred capacity.

(5) Upon application to the commission by the utility, the commission may issue an order approving a change in trustees during the 5-year term upon a showing that a trustee has failed to market the transferred generating capacity in a prudent and experienced manner.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000;—Am. 2016, Act 341, Eff. Apr. 20, 2017.

Popular name: Customer Choice and Electricity Reliability Act

460.10g Definitions; school properties.

Sec. 10g. (1) As used in sections 10 through 10bb:

(a) "Alternative electric supplier" means a person selling electric generation service to retail customers in this state. Alternative electric supplier does not include a person who physically delivers electricity directly to retail customers in this state. An alternative electric supplier is not a public utility.

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

(c) "Electric utility" means that term as defined in section 2 of the electric transmission line certification act, 1995 PA 30, MCL 460.562.

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

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

(f) "Relevant market" means either the Upper Peninsula or the Lower Peninsula of this state.

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

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

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000;—Am. 2001, Act 48, Imd. Eff. July 23, 2001;—Am. 2008, Act 286, Imd. Eff. Oct. 6, 2008.

Popular name: Customer Choice and Electricity Reliability Act

460.10h Definitions.

Sec. 10h. As used in this act:

(a) “Assignee” means an individual, corporation, or other legally recognized entity to which an interest in securitization property is transferred.

(b) “Commission” means the Michigan public service commission in the department of consumer and industry services.

(c) “Electric utility” means that term as defined in section 2 of the electric transmission line certification act, 1995 PA 30, MCL 460.562.

(d) “Financing order” means an order of the commission approving the issuance of securitization bonds and the creation of securitization charges and any corresponding utility rate reductions.

(e) “Financing party” means a holder of securitization bonds, including trustees, collateral agents, and other persons acting for the benefit of the holder.

(f) “Nonbypassable charge” means a charge in a financing order payable by a customer to an electric utility or its assignees or successors regardless of the identity of the customer's electric generation supplier.

(g) “Qualified costs” means an electric utility's regulatory assets as determined by the commission, adjusted by the applicable portion of related investment tax credits, plus any costs that the commission

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determines that the electric utility would be unlikely to collect in a competitive market, including, but not limited to, retail open access implementation costs and the costs of a commission approved restructuring, buyout or buy-down of a power purchase contract, together with the costs of issuing, supporting, and servicing securitization bonds and any costs of retiring and refunding the electric utility's existing debt and equity securities in connection with the issuance of securitization bonds. Qualified costs include taxes related to the recovery of securitization charges.

(h) "Securitization bonds" means bonds, debentures, notes, certificates of participation, certificates of a beneficial interest, certificates of ownership, or other evidences of indebtedness that are issued by an electric utility, its successors, or an assignee under a financing order, that have a term of not more than 15 years, and that are secured by or payable from securitization property. If certificates of participation, certificates of beneficial interest, or certificates of ownership are issued, references in this act to principal, interest, or premium shall refer to comparable amounts under those certificates.

(i) "Securitization charges" means nonbypassable amounts to be charged for the use or availability of electric services, approved by the commission under a financing order to fully recover qualified costs, that shall be collected by an electric utility, its successors, an assignee, or other collection agents as provided for in the financing order.

(j) "Securitization property" means the property described in section 10j.

History: Add. 2000, Act 142, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10i Financing order; recovery of qualified costs; conditions; amount; limitation on period for recovery of securitization charges; financing order as effective and irrevocable; evidence of indebtedness; time period to issue or reject; rehearing; appeal; retiring and refunding securitization bonds; retention of financial or legal services by commission.

Sec. 10i. (1) Upon the application of an electric utility, if the commission finds that the net present value of the revenues to be collected under the financing order is less than the amount that would be recovered over the remaining life of the qualified costs using conventional financing methods and that the financing order is consistent with the standards in subsection (2), the commission shall issue a financing order to allow the utility to recover qualified costs.

(2) In a financing order, the commission shall ensure all of the following:

(a) That the proceeds of the securitization bonds are used solely for the purposes of the refinancing or retirement of debt or equity.

(b) That securitization provides tangible and quantifiable benefits to customers of the electric utility.

(c) That the expected structuring and expected pricing of the securitization bonds will result in the lowest securitization charges consistent with market conditions and the terms of the financing order.

(d) That the amount securitized does not exceed the net present value of the revenue requirement over the life of the proposed securitization bonds associated with the qualified costs sought to be securitized.

(3) The financing order shall detail the amount of qualified costs to be recovered and the period over which the securitization charges are to be recovered, not to exceed 15 years.

(4) A financing order is effective in accordance with its terms, and the financing order, together with the securitization charges authorized in the order, shall be irrevocable and not subject to reduction, impairment, or adjustment by further action of the commission, except as provided under section 10k(3).

(5) Stocks, bonds, notes, or other evidence of indebtedness issued under a financing order of the commission shall be binding in accordance with their terms notwithstanding that the order of the commission is later vacated, modified, or otherwise held to be invalid in whole or in part.

(6) The commission shall after an expedited contested case proceeding issue a financing order or an order rejecting the application for a financing order no later than 90 days after the electric utility files its application.

(7) A financing order is only subject to rehearing by the commission on the motion of the applicant for securitization.

(8) Notwithstanding any other provision of law, a financing order may be reviewed by the court of appeals upon a filing by a party to the commission proceeding within 30 days after the financing order is issued. All appeals of a financing order shall be heard and determined as expeditiously as possible with lawful precedence over other matters. Review on appeal shall be based solely on the record before the commission and briefs to the court and shall be limited to whether the financing order conforms to the constitution and laws of this state and the United States and is within the authority of the commission under this act.

(9) At the request of an electric utility, the commission may adopt a financing order providing for retiring

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and refunding securitization bonds if the commission finds that the future securitization charges required to service the new securitization bonds, including transaction costs, will be less than the future securitization charges required to service the securitization bonds being refunded. On the retirement of the refunded securitization bonds, the commission shall adjust the related securitization charges accordingly.

(10) The commission shall have the authority to retain financial or legal services to assist in issuance of a financing order and to require the electric utility to pay the cost of the services. The payments shall be included as qualified costs defined in section 10h(g).

History: Add. 2000, Act 142, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10j Securitization property; rights and interests.

Sec. 10j. (1) Securitization property shall consist of the rights and interests of an electric utility, or its successor, under a financing order, including without limitation all of the following:

(a) The right to impose, collect, and receive securitization charges authorized in the financing order in an amount necessary to provide the full recovery of all qualified costs.

(b) The right under the financing order to obtain periodic adjustments of securitization charges under section 10k(3).

(c) All revenue, collections, payments, money, and proceeds arising out of the rights and interests described under this subsection.

(2) Securitization property shall constitute a present property right even though the imposition and collection of securitization charges depends on the further acts of the electric utility or others that have not yet occurred. The rights of an electric utility to securitization property before its sale to any assignee shall be considered a property interest in a contract. The financing order shall remain in effect and the securitization property shall continue to exist until the commission approved securitization bonds and expenses related to the bonds have been paid in full.

History: Add. 2000, Act 142, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10k Financing order; effect in connection with bankruptcy.

Sec. 10k. (1) The interest of an assignee or pledgee in securitization property and in the revenues and collections arising from that property are not subject to setoff, counterclaim, surcharge, or defense by the electric utility or any other person or in connection with the bankruptcy of the electric utility or any other entity. A financing order shall remain in effect and unabated notwithstanding the bankruptcy of the electric utility, its successors, or assignees.

(2) A financing order shall include terms ensuring that the imposition and collection of securitization charges authorized in the order are a nonbypassable charge.

(3) A financing order shall include a mechanism requiring that securitization charges be reviewed and adjusted by the commission at least annually, within 45 days of the anniversary date of the issuance of the securitization bonds, to correct any overcollections or undercollections of the preceding 12 months and to ensure the expected recovery of amounts sufficient to timely provide all payments of debt service and other required amounts and charges in connection with the securitization bonds.

History: Add. 2000, Act 142, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10*l* Agreement to transfer securitization property as true sale.

Sec. 10*l*. (1) An agreement by an electric utility or assignee to transfer securitization property that expressly states that the transfer is a sale or other absolute transfer signifies that the transaction is a true sale and is not a secured transaction and that title, legal and equitable, has passed to the entity to which the securitization property is transferred.

(2) A true sale under this section applies regardless of whether the purchaser has any recourse against the seller, or any other term of the parties' agreement, including the seller's retention of an equity interest in the securitization property, the fact that the electric utility acts as a collector of securitization charges relating to the securitization property, or the treatment of the transfer as a financing for tax, financial reporting, or other purposes.

History: Add. 2000, Act 142, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10m Lien and security interest; creation; changes in order or charges attachment;

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perfection; priority; sequestration and payment of revenues.

Sec. 10m. (1) A valid and enforceable lien and security interest in securitization property may be created only by a financing order and the execution and delivery of a security agreement with a financing party in connection with the issuance of securitization bonds.

(2) The lien and security interest shall attach automatically from the time that value is received for the bonds and shall be a continuously perfected lien and security interest in the securitization property and all proceeds of the property, whether accrued or not, shall have priority in the order of filing when a financing statement has been filed with respect to the security interest in accordance with the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102, and take precedence over any subsequent judicial and other lien creditor. In addition to the rights and remedies provided by this act, all rights and remedies with respect to a security interest provided by the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102, shall apply to the securitization property.

(3) Transfer of an interest in securitization property to an assignee shall be perfected against all third parties, including subsequent judicial and other lien creditors, when a financing statement has been filed with respect to the transfer in accordance with the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102.

(4) The priority of a lien and security interest under this section is not impaired by any later modification of the financing order or by the commingling of funds arising from securitization charges with other funds, and any other security interest that may apply to those funds shall be terminated when they are transferred to a segregated account for the assignee or a financing party. If securitization property has been transferred to an assignee, any proceeds of that property shall be held in trust for the assignee.

(5) In the event of default by the electric utility or its successors, in payment of revenues arising with respect to securitization property, the commission or a court of appropriate jurisdiction, upon the application of the financing party, and without limiting any other remedies available to the financing party, shall order the sequestration and payment to the financing party of revenues arising with respect to the securitization property. An order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the debtor, pledgor, or transferor of the property.

(6) Securitization property shall constitute an account as that term is defined under the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102.

(7) For purposes of this act and the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102, securitization property shall be in existence whether or not the revenue or proceeds in respect to the property have accrued and whether or not the value of the property right is dependent on the customers of an electric utility receiving service.

(8) Changes in the financing order or in the customer's securitization charges do not affect the validity, perfection, or priority of the security interest in the securitization property.

(9) The description of securitization property in a security agreement or other agreement or a financing statement is sufficient if it refers to this act and the financing order establishing the securitization property.

(10) This act shall control in any conflict between this act and any other law of this state regarding the attachment and perfection and the effect of perfection and priority of any security interest in securitization property.

(11) Notwithstanding the provisions of the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102, the law of the state of Michigan shall govern the perfection and the effect of perfection and priority of any security interest in the securizitation property.

History: Add. 2000, Act 142, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10n Securitization bonds; state pledge of certain conduct.

Sec. 10n. (1) Securitization bonds are not a debt or obligation of the state and are not a charge on its full faith and credit or taxing power.

(2) The state pledges, for the benefit and protection of the financing parties and the electric utility, that it will not take or permit any action that would impair the value of securitization property, reduce or alter, except as allowed under section 10k(3), or impair the securitization charges to be imposed, collected, and remitted to financing parties, until the principal, interest and premium, and any other charges incurred and contracts to be performed in connection with the related securitization bonds have been paid and performed in full. Any party issuing securitization bonds is authorized to include this pledge in any documentation relating to those bonds.

History: Add. 2000, Act 142, Imd. Eff. June 5, 2000.

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Popular name: Customer Choice and Electricity Reliability Act

460.10o Securitization bond; direct interest in acquisition, ownership, and disposition not used in determining tax; obligations of electric utility successor; assignee or financing party as public utility.

Sec. 10o. (1) The acquisition, ownership, and disposition of any direct interest in any securitization bond shall not be taken into account in determining whether a person is subject to any income tax, franchise tax, business activities tax, intangible property tax, excise tax, stamp tax, or any other tax imposed by this state or any agency or political subdivision of this state.

(2) Any successor to an electric utility, whether pursuant to any bankruptcy, reorganization, or other insolvency proceeding or pursuant to any merger or acquisition, sale or transfer, by operation of law, as a result of electric utility restructuring or otherwise, shall perform and satisfy all obligations of the electric utility under the amendatory act that added this section in the same manner and to the same extent as the electric utility, including, but not limited to, collecting and paying to the person entitled to revenues with respect to the securitization property.

(3) An assignee or financing party shall not be considered to be a public utility or person providing electric service solely by virtue of the transactions described in this act.

History: Add. 2000, Act 142, Imd. Eff. June 5, 2000;—Am. 2007, Act 180, Imd. Eff. Dec. 21, 2007.

Popular name: Customer Choice and Electricity Reliability Act

460.10p Establishment of industry worker transition program; adoption of service quality and reliability standards; compliance report; rules; benchmarks; method for gathering data; incentives and penalties; "jurisdictional utility" or "jurisdictional entity" defined.

Sec. 10p. (1) Each electric utility operating in this state shall establish an industry worker transition program that, in consultation with employees or applicable collective bargaining representatives, provides skills upgrades, apprenticeship and training programs, voluntary separation packages consistent with reasonable business practices, and job banks to coordinate and assist placement of employees into comparable employment at no less than the wage rates and substantially equivalent fringe benefits received before the transition.

(2) The costs resulting from subsection (1) include audited and verified employee-related restructuring costs that are incurred as a result of 2000 PA 141 or as a result of prior commission restructuring orders, including employee severance costs, employee retraining programs, early retirement programs, outplacement programs, and similar costs and programs, that have been approved and found to be prudently incurred by the commission.

(3) In the event of a sale, purchase, or any other transfer of ownership of 1 or more Michigan divisions or business units, or generating stations or generating units, of an electric utility, to either a third party or a utility subsidiary, the electric utility's contract and agreements with the acquiring entity or persons shall require all of the following for a period of at least 30 months:

(a) That the acquiring entity or persons hire a sufficient number of nonsupervisory employees to safely and reliably operate and maintain the station, division, or unit by making offers of employment to the nonsupervisory workforce of the electric utility's division, business unit, generating station, or generating unit.

(b) That the acquiring entity or persons not employ nonsupervisory employees from outside the electric utility's workforce unless offers of employment have been made to all qualified nonsupervisory employees of the acquired business unit or facility.

(c) That the acquiring entity or persons have a dispute resolution mechanism culminating in a final and binding decision by a neutral third party for resolving employee complaints or disputes over wages, fringe benefits, and working conditions.

(d) That the acquiring entity or persons offer employment at no less than the wage rates and substantially equivalent fringe benefits and terms and conditions of employment that are in effect at the time of transfer of ownership of the division, business unit, generating station, or generating unit. The wage rates and substantially equivalent fringe benefits and terms and conditions of employment shall continue for at least 30 months from the time of the transfer of ownership unless the employees, or where applicable collective bargaining representative, and the new employer mutually agree to different terms and conditions of employment within that 30-month period.

(4) The electric utility shall offer a transition plan to those employees who are not offered jobs by the entity because the entity has a need for fewer workers. If there is litigation concerning the sale, or other transfer of ownership of the electric utility's divisions, business units, generating stations, or generating units, the 30-month period under subsection (3) begins on the date the acquiring entity or persons take control or

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management of the divisions, business units, generating stations, or generating units of the electric utility.

(5) The commission shall adopt generally applicable service quality and reliability standards for the transmission, generation, and distribution systems of electric utilities and other entities subject to its jurisdiction, including, but not limited to, standards for service outages, distribution facility upgrades, repairs and maintenance, telephone service, billing service, operational reliability, and public and worker safety. In setting service quality and reliability standards, the commission shall consider safety, costs, local geography and weather, applicable codes, national electric industry practices, sound engineering judgment, and experience. The commission shall also include provisions to upgrade the service quality of distribution circuits that historically have experienced significantly below-average performance in relationship to similar distribution circuits.

(6) Annually, each jurisdictional utility or entity shall file its report with the commission detailing actions to be taken to comply with the service quality and reliability standards during the next calendar year and its performance in relation to the service quality and reliability standards during the prior calendar year. The annual reports shall contain that data as required by the commission, including the estimated cost of achieving improvements in the jurisdictional utility's or entity's performance with respect to the service quality and reliability standards.

(7) The commission shall analyze the data to determine whether the jurisdictional entities are properly operating and maintaining their systems and take corrective action if needed.

(8) By December 31, 2009, the commission shall review its existing rules under this section and amend the rules, if needed, under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to implement performance standards for generation facilities and for distribution facilities to protect end-use customers from power quality disturbances.

(9) Any standards or rules developed under this section shall be designed to do the following, as applicable:

(a) Establish different requirements for each customer class, whenever those different requirements are appropriate to carry out the provisions of this section, and to reflect different load and service characteristics of each customer class.

(b) Consider the availability and associated cost of necessary equipment and labor required to maintain or upgrade distribution and generating facilities.

(c) Ensure that the most cost-effective means of addressing power quality disturbances are promoted for each utility, including consideration of the installation of equipment or adoption of operating practices at the end-user's location.

(d) Take into account the extent to which the benefits associated with achieving a specified standard or improvement are offset by the incremental capital, fuel, and operation and maintenance expenses associated with meeting the specified standard or improvement.

(e) Carefully consider the time frame for achieving a specified standard, taking into account the time required to implement needed investments or modify operating practices.

(10) The commission shall also create benchmarks for individual jurisdictional entities within their rate-making process in order to accomplish the goals of this section to alleviate end-use customer power quality disturbances and promote power plant generating cost efficiency.

(11) The commission shall establish a method for gathering data from the industrial customer class to assist in monitoring power quality and reliability standards related to service characteristics of the industrial customer class.

(12) The commission may levy financial incentives and penalties upon any jurisdictional entity which exceeds or fails to meet the service quality and reliability standards.

(13) As used in this section, "jurisdictional utility" or "jurisdictional entity" means a jurisdictional regulated utility as that term is defined in section 6q.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000;—Am. 2008, Act 286, Imd. Eff. Oct. 6, 2008;—Am. 2016, Act 341, Eff. Apr. 20, 2017.

Popular name: Customer Choice and Electricity Reliability Act

460.10q Alternative electric supplier; license requirements.

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

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

(a) Provide information, including information as to the applicant's safety record and its history of service quality and reliability, as to the applicant's technical ability, as defined under regulations of the commission,

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to safely and reliably generate or otherwise obtain and deliver electricity and provide any other proposed services.

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

(3) The commission shall order the applicant to post a bond or provide a letter of credit or other financial guarantee in a reasonable amount established by the commission of not less than $40,000.00, if the commission finds after an investigation and review that the requirement of a bond would be in the public interest.

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

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

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10r Dissemination of disclosures, explanations, or sales information; standards; establishment of Michigan renewables energy program; plan.

Sec. 10r. (1) The commission shall establish minimum standards for the form and content of all disclosures, explanations, or sales information disseminated by a person selling electric service to ensure that the person provides adequate, accurate, and understandable information about the service that enables a customer to make an informed decision relating to the source and type of electric service purchased. The commission shall develop the standards to do all of the following:

(a) Not be unduly burdensome.

(b) Not unnecessarily delay or inhibit the initiation and development of competition for electric generation service in any market.

(c) Establish different requirements for disclosures, explanations, or sales information relating to different services or similar services to different classes of customers, whenever the different requirements are appropriate to carry out the purposes of this section.

(2) The commission shall require that all electric suppliers disclose in standardized, uniform format on the customer's bill with a bill insert, on customer contracts, or, for cooperatives, in periodicals issued by an association of rural electric cooperatives, information about the environmental characteristics of electricity products purchased by the customer, including all of the following:

(a) The average fuel mix, including categories for oil, gas, coal, solar, hydroelectric, wind, biofuel, nuclear, solid waste incineration, biomass, and other fuel sources. If a source fits into the other category, the specific source must be disclosed. A regional average, determined by the commission, may be used only for that portion of the electricity purchased by the customer for which the fuel mix cannot be discerned. As used in this subdivision, "biomass" means dedicated crops grown for energy production and organic waste.

(b) The average emissions, in pounds per megawatt hour, sulfur dioxide, carbon dioxide, and oxides of nitrogen. An emissions default, determined by the commission, may be used if the regional average fuel mix is being disclosed.

(c) The average of the high-level nuclear waste generated in pounds per megawatt hour.

(d) The regional average fuel mix and emissions profile as referenced in subdivisions (a), (b), and (c).

(3) The information required by subsection (2) shall be provided no more than twice annually, and be based on a rolling annual average. Emissions factors will be based on annual publicly available data by generation source.

(4) All of the information required to be provided under subsection (1) shall also be provided to the commission to be included on the commission's internet site.

(5) The Michigan agency for energy shall establish the Michigan renewables energy program. The program shall be designed to inform customers in this state of the availability and value of using renewable energy generation and the potential of reduced pollution. The program shall also be designed to promote the use of existing renewable energy sources and encourage the development of new facilities.

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(6) By July 3, 2009, each electric utility regulated by the commission shall file with the commission a plan for utilizing dispatchable customer-owned distributed generation within the context of its integrated resource planning process. Included in the utility's filing shall be proposals for enrolling and compensating customers for the utility's right to dispatch at-will the distributed generation assets owned by those customers and provisions requiring the customer to maintain these assets in a dispatchable condition. If an electric utility already has programs addressing the subject of the filing required under this subsection, the utility may refer to and take credit for those existing programs in its proposed plan.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000;—Am. 2008, Act 286, Imd. Eff. Oct. 6, 2008;—Am. 2016, Act 341, Eff. Apr. 20, 2017.

Popular name: Customer Choice and Electricity Reliability Act

460.10s Low-income and energy assistance programs; availability of federal funds.

Sec. 10s. The commission shall monitor the extent to which federal funds are available for low-income and energy assistance programs. If there is a reduction in the amount of the federal funds available to residents in this state, the commission shall conduct a hearing to determine the amount of funds available and the need, if any, for supplemental funding. Upon completion of the hearing, the commission shall prepare a report and submit it to the governor and the legislature.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10t Shut off of service; conditions; procedures; definitions.

Sec. 10t. (1) An electric utility or alternative electric supplier shall not shut off service to an eligible customer during the heating season for nonpayment of a delinquent account if the customer is an eligible senior citizen customer or if the customer pays to the utility or supplier a monthly amount equal to 7% of the estimated annual bill for the eligible customer and the eligible customer demonstrates, within 14 days of requesting shutoff protection, that he or she has applied for state or federal heating assistance. If an arrearage exists at the time an eligible customer applies for protection from shutoff of service during the heating season, the utility or supplier shall permit the customer to pay the arrearage in equal monthly installments between the date of application and the start of the subsequent heating season.

(2) An electric utility or alternative electric supplier may shut off service to a customer as provided in part 7 of the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1201 to 460.1211, or to an eligible low-income customer who does not pay the monthly amounts required under subsection (1) after giving notice in the manner required by rules. The utility or supplier is not required to offer a settlement agreement to an eligible low-income customer who fails to make the monthly payments required under subsection (1).

(3) If a customer fails to comply with the terms and conditions of this section, an electric utility may shut off service on its own behalf or on behalf of an alternative electric supplier after giving the customer a notice, by personal service or first-class mail, that contains all of the following information:

(a) That the customer has not paid the per-meter charge described in section 205 of the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1205, or the customer has defaulted on the winter protection plan.

(b) The nature of the default.

(c) That unless the customer makes the payments that are past due within 10 days of the date of mailing, the utility or supplier may shut off service.

(d) The date on or after which the utility or supplier may shut off service, unless the customer takes appropriate action.

(e) That the customer has the right to file a complaint disputing the claim of the utility or supplier before the date of the proposed shutoff of service.

(f) That the customer has the right to request a hearing before a hearing officer if the complaint cannot be otherwise resolved and that the customer shall pay to the utility or supplier that portion of the bill that is not in dispute within 3 days of the date that the customer requests a hearing.

(g) That the customer has the right to represent himself or herself, to be represented by an attorney, or to be assisted by any other person of his or her choice in the complaint process.

(h) That the utility or supplier will not shut off service pending the resolution of a complaint that is filed with the utility in accordance with this section.

(i) The telephone number and address of the utility or supplier where the customer may make inquiry, enter into a settlement agreement, or file a complaint.

(j) That the customer should contact a social services agency immediately if the customer believes he or

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she might be eligible for emergency economic assistance.

(k) That the utility or supplier will postpone shutoff of service if a medical emergency exists at the customer's residence.

(*l*) That the utility or supplier may require a deposit and restoration charge if the supplier shuts off service for nonpayment of a delinquent account.

(4) An electric utility is not required to shut off service under this section to an eligible customer for nonpayment to an alternative electric supplier.

(5) The commission shall establish an educational program to ensure that eligible customers are informed of the requirements and benefits of this section.

(6) As used in this section:

(a) "Eligible customer" means either an eligible low-income customer or an eligible senior citizen customer.

(b) "Eligible low-income customer" means a customer whose household income does not exceed 150% of the poverty level, as published by the United States Department of Health and Human Services, or who receives any of the following:

(*i*) Assistance from a state emergency relief program.

(*ii*) Food stamps.

(*iii*) Medicaid.

(c) "Eligible senior citizen customer" means a utility or supplier customer who is 65 years of age or older and who advises the utility of his or her eligibility.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000;—Am. 2016, Act 341, Eff. Apr. 20, 2017.

Popular name: Customer Choice and Electricity Reliability Act

460.10u Report.

Sec. 10u. The commission shall compile a report by February 1 of each year that shall be posted on the commission's internet website and disseminated by any other means that the commission determines will properly notify the citizens of this state. A copy of the report shall be provided to the governor and the legislature. The report shall include all of the following:

(a) The status of competition for the supplying of electricity in this state.

(b) Recommendations for legislation, if any.

(c) Actions taken by the commission to implement measures necessary to protect consumers from unfair or deceptive business practices by utilities, alternative electric suppliers, and other market participants.

(d) Information regarding consumer education programs, approved by the commission, to inform consumers of all relevant information regarding the purchase of electricity and related services from alternative electric suppliers.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000;—Am. 2011, Act 274, Imd. Eff. Dec. 20, 2011.

Popular name: Customer Choice and Electricity Reliability Act

460.10v Joint plan to expand available transmission capability.

Sec. 10v. (1) Electric utilities serving more than 100,000 retail customers in this state shall file, by January 1, 2001, a joint plan with the commission detailing measures to permanently expand, within 2 years of the effective date of this section, the available transmission capability by at least 2,000 megawatts over the available transmission capability in place as of January 1, 2000.

(2) The joint plan shall detail all actions including additional facilities required, the proposed schedule for accomplishing the actions, the cost of the actions, and the proposed ratemaking treatment for the costs. The joint plan shall also identify all actions and facilities that are required of other transmission owners, including out-of-state entities, to accommodate the actions described in the joint plan.

(3) The commission may order modifications to the joint plan to make it consistent with this act. If the electric utilities are unable to agree upon a joint plan to meet the requirements of this act, the commission shall conduct a hearing to establish a joint plan. The commission shall authorize recovery from benefitting customers of all reasonable and prudent costs incurred by transmission owners for authorized actions taken and facilities installed to meet the requirements of this section that are not recovered through FERC transmission rates.

(4) If an electric utility or an affiliate that is the owner of the transmission assets is denied cost recovery of the reasonable and prudent costs expended to implement the joint plan, then the electric utility or affiliate shall have no further obligation to implement the joint plan. If an electric utility or its affiliate is subsequently granted cost recovery, then the obligation to implement the original joint plan is required. If cost recovery of the reasonable and prudent costs of implementing the joint plan is denied, an electric utility or its affiliate

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shall develop a new joint plan as provided under this section.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10w Investor-owned electric utility; FERC approval.

Sec. 10w. (1) Each investor-owned electric utility in this state shall, at the utility's option, either join a FERC approved multistate regional transmission system organization or other FERC approved multistate independent transmission organization or divest its interest in its transmission facilities to an independent transmission owner.

(2) An investor-owned electric utility that is party to a legitimate filing that was pending before the FERC on December 31, 2001 which is seeking FERC approval of a proposed multistate regional transmission system organization shall be considered to be in compliance with this section. Subsection (3) shall apply if FERC rejects a pending filing or if the electric utility withdraws from the filing or from a regional transmission system organization. This section does not provide guidance to FERC with respect to any pending filing.

(3) If an electric utility has not complied with this section by December 31, 2001, the commission shall direct the electric utility to join a FERC approved multistate regional transmission system organization selected by the commission.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10x Cooperative electric utility; requirements.

Sec. 10x. (1) Any retail customer of a cooperative with a peak load of 1 megawatt or greater shall be provided the opportunity to choose an alternative electric supplier subject to the provisions in section 10a.

(2) The commission shall not require a cooperative electric utility or an independent investor-owned utility with fewer than 60 employees to maintain separate facilities, operations, or personnel, used to deliver electricity to retail customers, provide retail electric service, or to be an alternative electric supplier.

(3) Any debt service recovery charge, or other charge approved by the commission for a cooperative electric utility serving primarily at wholesale may, upon application by its member cooperative or cooperatives, be assessed by and collected through its member cooperative or cooperatives.

(4) The commission shall not prohibit a cooperative electric utility from metering and billing its customers for electric services provided by the cooperative electric utility.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000;—Am. 2008, Act 286, Imd. Eff. Oct. 6, 2008.

Popular name: Customer Choice and Electricity Reliability Act

460.10y Municipally owned utility; requirements.

Sec. 10y. (1) The governing body of a municipally owned utility shall determine whether it will permit retail customers receiving delivery service from the municipally owned utility to choose an alternative electric supplier, subject to the implementation of rates, charges, terms, and conditions referred to in subsection (5).

(2) Except with the written consent of the municipally owned utility, a person shall not provide delivery service or customer account service to a customer that is currently receiving or within the previous 3 years has received that service from a municipally owned utility. As used in this subsection, "customer" means only the building or facilities served rather than the individual, association, partnership, corporation, governmental body, or other entity taking service.

(3) With respect to any electric utility regarding delivery service to customers located outside of the municipal boundaries of the municipality that owns the utility, a governing body of a municipally owned utility may elect to operate in compliance with R 460.3411 of the Michigan Administrative Code, as in effect on June 5, 2000. However, compliance with R 460.3411(13) of the Michigan Administrative Code is not required for the municipally owned utility. Concurrent with the filing of an election under this subsection with the commission, the municipally owned utility shall serve a copy of the election on the electric utility. Beginning 30 days after service of the copy of the election, the electric utility shall, as to the electing municipally owned utility, be subject to the terms of R 460.3411 of the Michigan Administrative Code as in effect on June 5, 2000. The commission shall decide disputes arising under this subsection subject to judicial review and enforcement.

(4) A municipally owned utility and an electric utility that provides delivery service in the same municipality as the municipally owned utility may enter into a written agreement to define the territorial boundaries of each utility's delivery service area and any other terms and conditions as necessary to provide delivery service. The agreement is not effective unless approved by the governing body of the municipally

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owned utility and the commission. The governing body of the municipally owned utility and the commission shall annually review and supervise compliance with the terms of the agreement. At the request of a party to the agreement, disputes arising under the agreement shall be decided by the commission subject to judicial review and enforcement.

(5) If the governing body of a municipally owned utility establishes a program to permit any of its customers the opportunity to choose an alternative electric supplier, the governing body of the municipally owned utility has exclusive jurisdiction to do all of the following:

(a) Set delivery service rates applicable to services provided by the municipally owned utility that shall not be unduly discriminatory.

(b) Determine the amount and types of, and recovery mechanism for, stranded and transition costs that will be charged.

(c) Establish rules, terms of access, and conditions that it considers appropriate for the implementation of a program to allow customers to choose an alternative electric supplier.

(6) Complaints alleging unduly discriminatory rates or other noncompliance arising under subsection (5) must be filed in the circuit court for the county in which the municipally owned utility is located.

(7) This section does not prevent or limit a municipally owned utility from selling electricity at wholesale. A municipally owned utility selling at wholesale is not considered to be an alternative electric supplier and is not subject to regulation by the commission.

(8) This section does not impair the contractual rights of a municipally owned utility or customer under an existing contract.

(9) Contracts or other records pertaining to the sale of electricity by a municipally owned utility that are in the possession of a public body and that contain specific pricing or other confidential or proprietary information may be exempted from public disclosure requirements by the governing body of a municipally owned utility. Upon a showing of good cause, a court or the commission may order disclosure subject to appropriate confidentiality provisions.

(10) This section does not affect the validity of the order relating to the terms and conditions of service in the Traverse City area that was issued August 25, 1994, by the commission at the request of consumers power company and the light and power board of the city of Traverse City.

(11) As provided in section 6, the commission does not have jurisdiction over a municipally owned utility.

(12) If an entity purchases 1 or more divisions or business units, or generating stations or generating units, of a municipal electric utility, the acquiring entity's contract and agreements with the selling municipality shall require all of the following for a period of at least 30 months:

(a) That the acquiring entity or persons hires a sufficient number of employees to safely and reliably operate and maintain the station, division, or unit by first making offers of employment to the workforce of the municipal electric utility's division, business unit, or generating unit.

(b) That the acquiring entity or persons not employ employees from outside the municipal electric utility's workforce unless offers of employment have been made to all qualified employees of the acquired business unit or facility.

(c) That the acquiring entity or persons have a dispute resolution mechanism culminating in a final and binding decision by a neutral third party for resolving employee complaints or disputes over wages, fringe benefits, and working conditions.

(d) That the acquiring entity or persons offer employment at no less than the wage rates and substantially equivalent fringe benefits and terms and conditions of employment that are in effect at the time of transfer of ownership of the division, business unit, generating station, or generating unit. The wage rates and substantially equivalent fringe benefits and terms and conditions of employment must continue for at least 30 months from the time of the transfer of ownership unless the employees, or where applicable collective bargaining representative, and the new employer mutually agree to different terms and conditions of the employment within that 30-month period.

(e) An acquiring entity is exempt from the obligations in this subsection if the selling municipality transfers all displaced municipal electric utility employees to positions of employment within the municipality at no less than the wage rates and substantially equivalent fringe benefits and terms and conditions of employment that are in effect at the time of transfer. The wage rates and substantially equivalent fringe benefits and terms and conditions of employment must continue for at least 30 months from the time of the transfer unless the employees, or where applicable collective bargaining representative, and the municipality mutually agree to different terms and conditions of the employment within that 30-month period.

(13) As used in this section:

(a) "Delivery service" means the providing of electric transmission or distribution to a retail customer.

(b) "Municipality" means any city, village, or township.

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(c) "Customer account services" means billing and collection, provision of a meter, meter maintenance and testing, meter reading, and other administrative activity associated with maintaining a customer account.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000;—Am. 2008, Act 286, Imd. Eff. Oct. 6, 2008;—Am. 2018, Act 515, Imd. Eff. Dec. 28, 2018.

Popular name: Customer Choice and Electricity Reliability Act

460.10z Provisions of act as severable.

Sec. 10z. Effective on the date the first securitization bonds are issued under this act, if any provision of this act or portion of this act is held to be invalid or is invalidated, superseded, replaced, repealed, or expires for any reason, that occurrence does not affect the validity or continuation of the amendatory act that added this section, or any part of those provisions, or any other provision of this act that is relevant to the issuance, administration, payment, retirement, or refunding of securitization bonds or to any actions of the electric utility, its successors, an assignee, a collection agent, or a financing party, which shall remain in full force and effect.

History: Add. 2000, Act 142, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10aa Impairment of contractual rights under existing contract.

Sec. 10aa. Nothing in this act impairs the contractual rights of electric utilities or customers under an existing contract that has been approved by the commission under section 11 of 1909 PA 300, MCL 462.11.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10bb Aggregation; use; definition.

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

(2) Local units of government, public and private schools, universities, and community colleges may aggregate for the purpose of purchasing electricity for themselves or for customers within their boundaries with the written consent of each customer aggregated. Customers within a local unit of government shall continue to have the right to choose their electricity supplier and are not required to purchase electricity through the aggregator.

(3) As used in this section, "aggregation" means the combining of electric loads of multiple retail customers or a single customer with multiple sites to facilitate the provision of electric service to such customers.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10cc Provisions as severable; certain rate reductions as void.

Sec. 10cc. (1) Except as otherwise provided under subsection (2), if any provision of this act is found to be invalid or unconstitutional, the remaining provisions shall not be affected and will remain in full force and effect.

(2) If any provision of this act is found to be invalid or unconstitutional in a manner which prevents the issuance of securitization bonds that would otherwise be allowed, the rate reductions required under section 10d shall also be void and the rates shall return to those in effect on May 1, 2000.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10dd Appropriation; hiring full-time positions to implement act.

Sec. 10dd. (1) For the fiscal year ending September 30, 2017, there is appropriated to the commission from the assessments imposed under 1972 PA 299, MCL 460.111 to 460.120, the amount of $1,950,000.00 to hire 13 full-time equated positions to implement the provisions of the amendatory act that added section 6t.

(2) For the fiscal year ending September 30, 2017, there is appropriated to the attorney general from the assessments imposed under 1972 PA 299, MCL 460.111 to 460.120, the amount of $150,000.00 to hire 1.0 full-time equated position to implement the provisions of the amendatory act that added section 6t.

(3) For the fiscal year ending September 30, 2017, there is appropriated to the Michigan administrative hearing system from the assessments imposed under 1972 PA 299, MCL 460.111 to 460.120, the amount of $600,000.00 to hire 4.0 full-time equated positions to implement the provisions of the amendatory act that added section 6t.

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(4) For the fiscal year ending September 30, 2017, there is appropriated to the department of environmental quality from the assessments imposed under 1972 PA 299, MCL 460.111 to 460.120, the amount of $150,000.00 to hire 1.0 full-time equated position to implement the provisions of the amendatory act that added section 6t.

(5) For the fiscal year ending September 30, 2017, there is appropriated to the Michigan agency for energy from the assessments imposed under 1972 PA 299, MCL 460.111 to 460.120, the amount of $260,000.00 to hire 2.0 full-time equated positions to implement the provisions of the amendatory act that added section 6t.

History: Add. 2008, Act 286, Imd. Eff. Oct. 6, 2008;—Am. 2016, Act 341, Eff. Apr. 20, 2017.

460.10ee Code of conduct; value-added programs and services; definitions.

Sec. 10ee. (1) The commission shall establish a code of conduct that applies to all utilities. The code of conduct shall include, but is not limited to, measures to prevent cross-subsidization, preferential treatment, and, except as otherwise provided under this section, information sharing, between a utility's regulated electric, steam, or natural gas services and unregulated programs and services, whether those services are provided by the utility or the utility's affiliated entities. The code of conduct established under this section is also applicable to electric utilities and alternative electric suppliers consistent with sections 10 through 10cc.

(2) A utility may offer its customers value-added programs and services if those programs or services do not harm the public interest by unduly restraining trade or competition in an unregulated market.

(3) Assets of a utility may be used in the operation of an unregulated value-added program or service if the unregulated value-added program or service compensates the utility as provided under this section for the proportional use of the assets of the utility. Except as otherwise provided in subsection (11), assets include the use of the utility's name and logo.

(4) A utility shall notify the commission of its intent to offer its customers value-added programs and services before offering those programs to its customers.

(5) The commission may initiate informal proceedings to determine if any program or service offered under this section potentially violates subsection (2) or (3). If the commission determines that a potential violation exists, the commission shall conduct formal proceedings to determine whether a violation has occurred and order corrective actions under this act. An informal proceeding allowed under this subsection is not required as a prerequisite to a formal complaint.

(6) A utility offering a value-added program or service under this section shall do all of the following:

(a) Provide the commission with written notice and a description of any newly offered value-added program or service.

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

(c) Maintain separate books and records for the program or service and provide an annual report to the commission showing how all of the utility's costs associated with the unregulated value-added program or service were allocated to the unregulated program or service. The annual report shall show to what extent the utility's rates were affected by the allocations. The utility may include this report as part of a request for rate relief.

(7) A utility offering an unregulated value-added program or service under this section shall not promote or market the program or service through the use of utility billing inserts, printed messages on the utility's billing materials, or other promotional materials included with customers' utility bills.

(8) All utility costs directly attributable to a value-added program or service allowed under this section shall be allocated to the program or service as required by this section. The direct and indirect costs of all utility assets used in the operation of the program or service shall be allocated to the program or service based on the proportional use by the program or service as compared to the total use of those assets by the utility. The cost of the program or service includes administrative and general expense loading to be determined in the same manner as the utility determines administrative and general expense loading for all of the utility's regulated and unregulated activities.

(9) A utility may include charges for its value-added programs and services offered under this section on its monthly billings to its customers if the utility complies with all of the following:

(a) The proportional share of all costs associated with the billing process, including the postage, envelopes, paper, and printing expenses, are allocated as required under subsection (8).

(b) A customer's regulated utility service is not terminated for nonpayment of the value-added program or service portions of the bill.

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

(10) In marketing a value-added program or service offered under this section to the public, a utility shall

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do all of the following:

(a) In the manner and to the extent allowed by commission rule or order, provide upon request to a provider of a similar program or service any lists of customers receiving regulated service that the utility provides to its value-added programs or services. The customer list shall be provided within 5 business days of the request on a nondiscriminatory basis. A new customer shall be added to the customer list within 1 business day of the date the customer requests to enroll in the program or service.

(b) Appropriately allocate utility costs as required under subsection (8) when personnel employed at a utility's call center provide program marketing information to a prospective customer or customer service support for program payment issues to customers participating in a program or service offered under this section.

(c) Before enrolling a customer into the program or service offered under this section, the utility shall inform the potential customer of all of the following:

(*i*) That the program or service may be available from another provider.

(*ii*) That the program or service is not regulated by the commission.

(*iii*) That a new residential customer has 10 days after enrollment to cancel his or her program or service contract without penalty.

(*iv*) That the customer's regulated rates and conditions of service provided by the utility are not affected by enrollment in the program or service or by the decision of the customer to obtain the program or service from another provider.

(d) The utility name and logo may be used to market programs and services offered under this section if the utility complies with both of the following:

(*i*) Does not market the program or service in conjunction with a regulated service.

(*ii*) Clearly indicates on all marketing materials that the program or service is not regulated by the commission.

(11) For programs or services directly operated by a utility, costs shall not be allocated to the program or service for the use of the utility's name or logo.

(12) Except as otherwise provided in this subsection, the commission shall include only the revenues received by a utility to recover costs directly attributable to a value-based program or service under subsection (8) in determining a utility's base rates. The utility shall file with the commission the percentage of additional revenues over those that are allocated to recover costs directly attributable to a value-added program or service under subsection (8) that the utility wishes to include as an offset to the utility's base rates. Following a notice and hearing, the commission shall approve or modify the amount to be included as an offset to the utility's base rates.

(13) Except as otherwise provided in this section, the code of conduct shall not require a utility operating or offering a value-added program or service under this section as part of its regulated service to form a separate affiliate or division, impose further restrictions on the sharing of employees, vehicles, equipment, office space, and other facilities, or require the utility to provide other providers of appliance repair service or value-added programs or services with access to utility employees, vehicles, equipment, office space, or other facilities.

(14) In addition to any penalties allowed under section 10c, for violations of this section a utility shall pay all reasonable costs incurred by the prevailing party.

(15) A utility that offers value-added programs or services under this section shall file an annual report with the commission that provides a list of its offered value-added programs and services, the estimated market share occupied by each value-added program and service offered by the utility, and a detailed accounting of how the costs for the value-added programs and services were apportioned between the utility and the value-added programs and services. The utility shall certify to the commission that it is complying with the requirements of this section. The commission may conduct an audit of the books and records of the utility and the value-added programs and services to ensure compliance with this section.

(16) As used in this section:

(a) "Utility" means an electric, steam, or natural gas utility regulated by the commission.

(b) "Value-added programs and services" means programs and services that are utility or energy related, including, but not limited to, home comfort and protection, appliance service, building energy performance, alternative energy options, or engineering and construction services. Value-added programs and services do not include energy optimization or energy waste reduction programs paid for by utility customers as part of their regulated rates.

History: Add. 2016, Act 341, Eff. Apr. 20, 2017.

460.10ff Energy ombudsman.

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Sec. 10ff. (1) Effective January 1, 2017, the energy ombudsman is established in the Michigan agency for energy. The individual serving as energy ombudsman shall meet both of the following requirements:

(a) Understand the rate-making process and instruments to enable the energy ombudsman to provide rate information and track trends related to energy costs for businesses and individuals in this state.

(b) Possess the knowledge necessary to measure historic, ongoing, and future energy costs for businesses and individuals in this state based on the actions of the executive, legislative, and judicial branches of state government.

(2) The energy ombudsman shall do all of the following:

(a) Serve as a liaison for businesses and individuals in the state by guiding energy issues, problems, and disputes from businesses and individuals to the appropriate entity, agency, or venue for resolution.

(b) Monitor the activities of the commission, the Michigan agency for energy, and other regulatory entities of this state whose decisions affect businesses and individuals with respect to energy and communicate those entities' decisions, policy changes, and developments to businesses and individuals in this state. the issues the energy ombudsman shall monitor include, but are not limited to, all of the following:

(*i*) Renewable sources of energy.

(*ii*) Energy efficiency.

(*iii*) Net metering.

(*iv*) Combined heat and power.

(*v*) Distributed generation.

(*vi*) On-bill financing.

(c) Convene regular meetings in this state to share information and developments pertaining to energy issues, policies, and administrative processes affecting businesses and individuals in this state.

(d) Monitor the implementation of the code of conduct established by the commission under section 10ee and compile and annually publish statistics on unregulated services that are provided by utilities and their affiliates.

History: Add. 2016, Act 341, Eff. Apr. 20, 2017.

460.10gg Long-term industrial load rate; findings of commission.

Sec. 10gg. (1) Notwithstanding any other provision of this act, the commission may establish long-term industrial load rates for industrial customers as provided in this section. An electric utility may propose a long-term industrial load rate in a general rate case filing or in a stand-alone proceeding. The commission shall approve the long-term industrial load rate proposed by the electric utility if the commission finds all of the following:

(a) The cost of service for the capacity needed to serve the industrial customer under the proposed long-term industrial load rate is based on 1 or more designated power supply resources.

(b) The proposed long-term industrial load rate requires the industrial customer to enter into a contract for a term equal to either of the following:

(*i*) The term of the electric utility power purchase agreement or agreements, that must not be less than 15 years, for 1 or more designated power supply resources if the resources are an electric utility power purchase agreement or agreements.

(*ii*) The expected remaining life of 1 or more designated power supply resources if the resources are utility-owned resources.

(c) The proposed long-term industrial load rate requires that the industrial customer have an annual average electric demand of at least 200 megawatts at 1 site at the time the contract for a term is entered into, have an annual load factor of at least 75% at the time the contract for a term is entered into, and must demonstrate that the industrial customer would not purchase standard tariff service from the electric utility except under the long-term industrial load rate. The industrial customer demonstrates that it would not purchase standard tariff service from the electric utility except under the long-term industrial load rate if any of the following conditions exist:

(*i*) The customer has available self-service power in a quantity equal to the contract demand level.

(*ii*) The customer, or an entity acting on the customer's behalf, has entered the applicable regional transmission organization's generation interconnection queue for a new generation resource that, if constructed, would qualify as self-service power in a quantity equal to the contract demand level. Entering the applicable regional transmission organization's interconnection queue means compliance with all applicable interconnection application requirements, such as payment of the application fee, disclosure of the technical requirements, payment of the definitive planning phase studying funding deposit, demonstration of site control, and payment of all other applicable per-megawatt fees or deposits, as required by the regional transmission organization.

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(d) The proposed long-term industrial load rate is only available to the industrial customer for service at a site where the industrial customer's annual average electric demand is at least 200 megawatts at the time the contract for a term is entered into. The contract for a term must be for a minimum of 100 megawatts of firm contracted capacity.

(e) If the resource designated in a contract executed under the long-term industrial load rate is a utility-owned resource, then the proposed long-term industrial load rate is based on all of the following:

(*i*) The electric utility's levelized cost of capacity, including fixed operation and maintenance expense, associated with the designated power supply resource at the time the customer contract is executed.

(*ii*) The electric utility's actual variable fuel and actual variable operation and maintenance expense based on the customer's actual energy consumption and associated with the designated power supply resource.

(*iii*) The electric utility's actual energy and capacity market purchases, if any, based on the customer's actual consumption. The amount of capacity needed to serve a qualifying long-term industrial load is based on the capacity needed by the electric utility to comply with its regional transmission organization's load-serving resource requirement based on the amount of contractual firm and interruptible capacity supplied to the industrial customer.

(f) If the designated resource associated with a contract executed under the long-term industrial load rate is an electric utility power purchase agreement or agreements, then the proposed long-term industrial load rate is based on recovering all costs associated with the designated power purchase agreement or agreements.

(g) The proposed long-term industrial load rate ensures that the electric utility recovers its direct costs to provide transmission and distribution service to the industrial customer based on the dedicated distribution service costs and transmission service costs incurred specifically to serve the industrial customer, as approved by the commission.

(2) A long-term industrial load rate may contain other terms and conditions proposed by the electric utility.

(3) The commission shall approve any contract for a term proposed by an electric utility under a long-term industrial load rate authorized under this section if there is a net benefit to the electric utility's customers resulting from the industrial customer taking service under the long-term industrial load rate compared to the industrial customer not purchasing standard tariff service from the electric utility. In determining whether a net benefit exists, the commission may consider any benefit, including, but not limited to, benefits to customers as a result of the following:

(a) System peak demand reduction due to ability to curtail, engage in demand response, or participate in federal load management programs.

(b) Avoidance of new production capacity costs and risks for other ratepayers.

(c) Ability to reduce system costs, such as by contributing to volt-var control.

(4) If the customer taking service under a long-term industrial load rate will contribute to the electric utility's fixed distribution or transmission costs that otherwise would have been recovered from the electric utility's other customers as compared to the customer not purchasing standard tariff service from the electric utility, then the commission shall determine that a net benefit exists under subsection (3).

(5) An electric utility may submit a proposal for a long-term industrial load rate and a proposed contract for a term under the proposed long-term industrial load rate in the same proceeding.

(6) If an electric utility proposes a long-term industrial load rate in a stand-alone proceeding, that proceeding must be conducted as a contested case under chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.288, and must be supported by a complete cost of service study, rate design, and proposed tariffs reflecting the impact of the long-term industrial load rate on other customer rates. A stand-alone proceeding filed under this section must not be expanded to result in any changes to the electric utility's overall revenue requirement. The commission shall issue a final order in a stand-alone proceeding conducted under this section no later than 270 days after an electric utility files an application requesting approval of a long-term industrial load rate.

(7) A contract for a term executed under a long-term industrial load rate approved under this section is considered reasonable and prudent for the contract's entire term.

(8) A designated power supply resource that is an electric utility power purchase agreement or agreements may be a power purchase agreement or agreements with an affiliate of the electric utility.

(9) A single customer may not aggregate load from multiple sites to meet the requirements of this section. Multiple customers may not aggregate load to meet the requirements of this section.

(10) As used in this section:

(a) "Annual load factor" means a load factor calculated as an average of the prior 12 monthly load factors. Each monthly load factor must be determined by dividing the customer's actual monthly kilowatt hours consumption by the product of the customer's monthly maximum on peak demand and the number of hours in the month.

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(b) "Contract for a term" means an agreement executed between an electric utility and industrial customer under a long-term industrial load rate authorized by this section.

(c) "Electric utility power purchase agreement" means an agreement executed between an electric utility and an electric generation facility not owned by the electric utility for the purchase of energy and capacity.

(d) "Long-term industrial load rate" means a rate approved by the commission under this section.

(e) "Self-service power" means that term as defined in section 10a(4).

(f) "Site" means an industrial site or contiguous industrial site or single commercial establishment. A site that is divided by an inland body of water or by a public highway, road, or street but that otherwise meets this definition meets the contiguous requirement.

(g) "Standard tariff service" means the retail rates, terms, and conditions of service approved by the commission for service to customers.

History: Add. 2018, Act 348, Imd. Eff. Oct. 24, 2018.

460.11 Establishment of electric rates; establishment of eligible low-income customer or senior citizen customer rates; public and private schools, universities, and community colleges rate schedules.

Sec. 11. (1) Except as otherwise provided in this subsection, the commission shall ensure the establishment of electric rates equal to the cost of providing service to each customer class. In establishing cost of service rates, the commission shall ensure that each class, or sub-class, is assessed for its fair and equitable use of the electric grid. If the commission determines that the impact of imposing cost of service rates on customers of an electric utility would have a material impact on customer rates, the commission may approve an order that implements those rates over a suitable number of years. The commission shall ensure that the cost of providing service to each customer class is based on the allocation of production-related costs based on using the 75-0-25 method of cost allocation and transmission costs based on using the 100% demand method of cost allocation. The commission may modify this method if it determines that this method of cost allocation does not ensure that rates are equal to the cost of service.

(2) Notwithstanding any other provision of this act, the commission may establish eligible low-income customer or eligible senior citizen customer rates. Upon filing of a rate increase request, a utility shall include proposed eligible low-income customer and eligible senior citizen customer rates and a method to allocate the revenue shortfall attributed to the implementation of those rates upon all customer classes. As used in this subsection, "eligible low-income customer" and "eligible senior citizen customer" mean those terms as defined in section 10t.

(3) Notwithstanding any other provision of this section, the commission shall establish rate schedules that ensure that public and private schools, universities, and community colleges are charged retail electric rates that reflect the actual cost of providing service to those customers. Electric utilities regulated under this section shall file with the commission tariffs to ensure that public and private schools, universities, and community colleges are charged electric rates as provided in this subsection.

History: Add. 2008, Act 286, Imd. Eff. Oct. 6, 2008;—Am. 2014. Act 169, Imd. Eff. June 17, 2014;—Am. 2016, Act 341, Eff. Apr. 20, 2017.

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