

# SENATE BILL NO. 271

April 19, 2023, Introduced by Senators GEISS, SINGH, MCMORROW, CAVANAGH, IRWIN, SANTANA, SHINK, CHANG, CAMILLERI, HERTEL, MOSS, BAYER, BRINKS and ANTHONY and referred to the Committee on Energy and Environment.

A bill to amend 2008 PA 295, entitled "Clean and renewable energy and energy waste reduction act," by amending sections 3, 5, 7, 9, 11, 22, 28, 45, 47, and 49 (MCL 460.1003, 460.1005, 460.1007, 460.1009, 460.1011, 460.1022, 460.1028, 460.1045, 460.1047, and 460.1049), sections 3, 5, 7, 9, 11, 45, 47, and 49 as amended and sections 22 and 28 as added by 2016 PA 342, and by adding sections 32 and 53.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

- 1           Sec. 3. As used in this act:
- 2           (a) "Applicable regional transmission organization" means a

1 nonprofit, member-based organization governed by an independent  
 2 board of directors that serves as the regional transmission  
 3 organization approved by the Federal Energy Regulatory Commission  
 4 with oversight responsibility for the region that includes the  
 5 provider's service territory.

6 ~~(b) "Biomass" means any organic matter that is not derived~~  
 7 ~~from fossil fuels, that can be converted to usable fuel for the~~  
 8 ~~production of energy, and that replenishes over a human, not a~~  
 9 ~~geological, time frame, including, but not limited to, all of the~~  
 10 ~~following:~~

11 ~~(i) Agricultural crops and crop wastes.~~

12 ~~(ii) Short rotation energy crops.~~

13 ~~(iii) Herbaceous plants.~~

14 ~~(iv) Trees and wood, but only if derived from sustainably~~  
 15 ~~managed forests or procurement systems, as defined in section 261e~~  
 16 ~~of the management and budget act, 1984 PA 431, MCL 18.1261e.~~

17 ~~(v) Paper and pulp products.~~

18 ~~(vi) Precommercial wood thinning waste, brush, or yard waste.~~

19 ~~(vii) Wood wastes and residues from the processing of wood~~  
 20 ~~products or paper.~~

21 ~~(viii) Animal wastes.~~

22 ~~(ix) Wastewater sludge or sewage.~~

23 ~~(x) Aquatic plants.~~

24 ~~(xi) Food production and processing waste.~~

25 ~~(xii) Organic by-products from the production of biofuels.~~

26 **(b)** ~~(c)~~ "Board" means the wind energy resource zone board  
 27 created under section 143.

28 ~~(d) "Carbon dioxide emissions benefits" means that the carbon~~

1 ~~dioxide emissions per megawatt hour of electricity generated by the~~  
2 ~~advanced cleaner energy system are at least 85% less or, for an~~  
3 ~~integrated gasification combined cycle facility or an integrated~~  
4 ~~pyrolysis combined cycle facility, 70% less than the average carbon~~  
5 ~~dioxide emissions per megawatt hour of electricity generated from~~  
6 ~~all coal-fired electric generating facilities operating in this~~  
7 ~~state on January 1, 2008.~~

8 ~~(e) "Cogeneration facility" means a facility that produces~~  
9 ~~both electricity and useful thermal energy, such as heat or steam,~~  
10 ~~in a way that is more efficient than the separate production of~~  
11 ~~those forms of energy.~~

12 ~~(c) (f) "Commission" means the Michigan public service~~  
13 ~~commission.~~

14 ~~(d) (g) "Customer meter" means an electric meter of a~~  
15 ~~provider's retail customer. Customer meter does not include a~~  
16 ~~municipal water pumping meter or additional meters at a single site~~  
17 ~~that were installed specifically to support interruptible air~~  
18 ~~conditioning, interruptible water heating, net metering, or time-~~  
19 ~~of-day tariffs.~~

20 ~~(e) (h) "Distributed generation program" means the program~~  
21 ~~established by the commission under section 173.~~

22 Sec. 5. As used in this act:

23 (a) "Electric provider" means any of the following:

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

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

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

29 (iv) ~~Except as used in subpart C of part 2, an~~ **An** alternative

1 electric supplier licensed under section 10a of 1939 PA 3, MCL  
2 460.10a.

3 (b) "Eligible electric generator" means a methane digester or  
4 renewable energy system with a generation capacity limited to the  
5 customer's electric need and that does not exceed the following:

6 (i) For a renewable energy system, 150 kilowatts of aggregate  
7 generation at a single site.

8 (ii) For a methane digester, 550 kilowatts of aggregate  
9 generation at a single site.

10 (c) "Energy conservation" means the reduction of customer  
11 energy use through the installation of measures or changes in  
12 energy usage behavior.

13 (d) "Energy efficiency" means a decrease in customer  
14 consumption of electricity or natural gas achieved through measures  
15 or programs that target customer behavior, equipment, devices, or  
16 materials without reducing the quality of energy services.

17 (e) "Energy star" means the voluntary partnership among the  
18 United States Department of Energy, the United States Environmental  
19 Protection Agency, product manufacturers, local utilities, and  
20 retailers to help promote energy efficient products by labeling  
21 with the energy star logo, educate consumers about the benefits of  
22 energy efficiency, and help promote energy efficiency in buildings  
23 by benchmarking and rating energy performance.

24 (f) "Energy waste reduction", subject to subdivision (g),  
25 means all of the following:

26 (i) Energy efficiency.

27 (ii) Load management, to the extent that the load management  
28 reduces provider costs.

29 (iii) Energy conservation, but only to the extent that the

1 decreases in the consumption of electricity produced by energy  
2 conservation are objectively measurable and attributable to an  
3 energy waste reduction plan.

4 (g) Energy waste reduction does not include electric provider  
5 infrastructure projects that are approved for cost recovery by the  
6 commission other than as provided in this act.

7 (h) "Energy waste reduction credit" means a credit certified  
8 pursuant to section 87 that represents achieved energy waste  
9 reduction.

10 (i) "Energy waste reduction plan" means a plan under section  
11 71.

12 (j) "Energy waste reduction standard" means the minimum energy  
13 savings required to be achieved under section 77 or 78(1), as  
14 applicable.

15 (k) "Federal approval" means approval by the applicable  
16 regional transmission organization or other Federal Energy  
17 Regulatory Commission-approved transmission planning process of a  
18 transmission project that includes the transmission line. Federal  
19 approval may be evidenced in any of the following manners:

20 (i) The proposed transmission line is part of a transmission  
21 project included in the applicable regional transmission  
22 organization's board-approved transmission expansion plan.

23 (ii) The applicable regional transmission organization has  
24 informed the electric utility, affiliated transmission company, or  
25 independent transmission company that a transmission project  
26 submitted for an out-of-cycle project review has been approved by  
27 the applicable regional transmission organization, and the approved  
28 transmission project includes the proposed transmission line.

29 (iii) If, after October 6, 2008, the applicable regional

1 transmission organization utilizes another approval process for  
 2 transmission projects proposed by an electric utility, affiliated  
 3 transmission company, or independent transmission company, the  
 4 proposed transmission line is included in a transmission project  
 5 approved by the applicable regional transmission organization  
 6 through the approval process developed after October 6, 2008.

7 (iv) Any other Federal Energy Regulatory Commission-approved  
 8 transmission planning process for a transmission project.

9 Sec. 7. As used in this act:

10 ~~(a) "Gasification facility" means a facility located in this~~  
 11 ~~state that, using a thermochemical process that does not involve~~  
 12 ~~direct combustion, produces synthesis gas, composed of carbon~~  
 13 ~~monoxide and hydrogen, from carbon-based feedstocks (such as coal,~~  
 14 ~~petroleum coke, wood, biomass, hazardous waste, medical waste,~~  
 15 ~~industrial waste, and solid waste, including, but not limited to,~~  
 16 ~~municipal solid waste, electronic waste, and waste described in~~  
 17 ~~section 11514 of the natural resources and environmental protection~~  
 18 ~~act, 1994 PA 451, MCL 324.11514) and that uses the synthesis gas or~~  
 19 ~~a mixture of the synthesis gas and methane to generate electricity~~  
 20 ~~for commercial use. Gasification facility includes the transmission~~  
 21 ~~lines, gas transportation lines and facilities, and associated~~  
 22 ~~property and equipment specifically attributable to such a~~  
 23 ~~facility. Gasification facility includes, but is not limited to, an~~  
 24 ~~integrated gasification combined cycle facility and a plasma arc~~  
 25 ~~gasification facility.~~

26 (a) ~~(b)~~—"Incremental costs of compliance" means the net  
 27 revenue required by an electric provider to comply with the  
 28 renewable energy standard, calculated as provided under section 47.

29 (b) ~~(c)~~—"Independent transmission company" means that term as

1 defined in section 2 of the electric transmission line  
2 certification act, 1995 PA 30, MCL 460.562.

3 ~~(d) "Integrated gasification combined cycle facility" means a~~  
4 ~~gasification facility that uses a thermochemical process, including~~  
5 ~~high temperatures and controlled amounts of air and oxygen, to~~  
6 ~~break substances down into their molecular structures and that uses~~  
7 ~~exhaust heat to generate electricity.~~

8 ~~(e) "Integrated pyrolysis combined cycle facility" means a~~  
9 ~~pyrolysis facility that uses exhaust heat to generate electricity.~~

10 **(c)** ~~(f)~~ "LEED" means the leadership in energy and  
11 environmental design green building rating system developed by the  
12 United States Green Building Council.

13 **(d)** ~~(g)~~ "Load management" means measures or programs that  
14 target equipment or behavior to result in decreased peak  
15 electricity demand such as by shifting demand from a peak to an  
16 off-peak period.

17 **(e)** ~~(h)~~ "Megawatt", "megawatt hour", or "megawatt hour of  
18 electricity", unless the context implies otherwise, includes the  
19 steam equivalent of a megawatt or megawatt hour of electricity.

20 **(f)** ~~(i)~~ "Modified net metering" means a utility billing method  
21 that applies the power supply component of the full retail rate to  
22 the net of the bidirectional flow of kilowatt hours across the  
23 customer interconnection with the utility distribution system,  
24 during a billing period or time-of-use pricing period. A negative  
25 net metered quantity during the billing period or during each time-  
26 of-use pricing period within the billing period reflects net excess  
27 generation for which the customer is entitled to receive credit  
28 under section 177(4). Under modified net metering, standby charges  
29 for distributed generation customers on an energy rate schedule

1 shall be equal to the retail distribution charge applied to the  
2 imputed customer usage during the billing period. The imputed  
3 customer usage is calculated as the sum of the metered on-site  
4 generation and the net of the bidirectional flow of power across  
5 the customer interconnection during the billing period. The  
6 commission shall establish standby charges under modified net  
7 metering for distributed generation customers on demand-based rate  
8 schedules that provide an equivalent contribution to utility system  
9 costs. A charge for net metering and distributed generation  
10 customers established pursuant to section 6a of 1939 PA 3, MCL  
11 460.6a, shall not be recovered more than once. This subdivision is  
12 subject to section 177(5).

13 Sec. 9. As used in this act:

14 (a) "Natural gas provider" means an investor-owned business  
15 engaged in the sale and distribution at retail of natural gas  
16 within this state whose rates are regulated by the commission.

17 (b) "Pet coke" means a solid carbonaceous residue produced  
18 from a coker after cracking and distillation from petroleum  
19 refining operations.

20 (c) "Plasma arc gasification facility" means a gasification  
21 facility that uses a plasma torch to break substances down into  
22 their molecular structures.

23 (d) "Provider" means an electric provider or a natural gas  
24 provider.

25 (e) "PURPA" means the public utility regulatory policies act  
26 of 1978, Public Law 95-617.

27 ~~(f) "Pyrolysis facility" means a facility that effects~~  
28 ~~thermochemical decomposition at elevated temperatures without the~~  
29 ~~participation of oxygen, from carbon-based feedstocks including,~~



1 ~~but not limited to, coal, wood, biomass, industrial waste, or solid~~  
2 ~~waste, but not including pet coke, hazardous waste, coal waste, or~~  
3 ~~scrap tires. Pyrolysis facility includes the transmission lines,~~  
4 ~~gas transportation lines and facilities, and associated property~~  
5 ~~and equipment specifically attributable to the facility. Pyrolysis~~  
6 ~~facility includes, but is not limited to, an integrated pyrolysis~~  
7 ~~combined cycle facility.~~

8 Sec. 11. As used in this act:

9 (a) "Renewable energy" means electricity or steam generated  
10 using a renewable energy system.

11 (b) "Renewable energy contract" means a contract to acquire  
12 renewable energy and the associated renewable energy credits from 1  
13 or more renewable energy systems.

14 (c) "Renewable energy credit" means a credit granted under a  
15 certification and tracking program established under section 41,  
16 which represents generated renewable energy.

17 (d) "Renewable energy credit portfolio" means the sum of the  
18 renewable energy credits achieved by a provider for a particular  
19 year.

20 (e) "Renewable energy credit standard" means a minimum  
21 renewable energy credit portfolio required under section 28 or  
22 former section 27.

23 (f) "Renewable energy plan" or "plan" means a plan approved  
24 under section 22 or former section 21 or 23 or found to comply with  
25 this act under former section 25, with any amendments adopted under  
26 this act. **A renewable energy plan starting in 2035 credits approved**  
27 **nuclear energy toward the clean energy requirement or renewable**  
28 **portfolio plan.**

29 (g) "Renewable energy resource" means a resource that

1 naturally replenishes over a human, not a geological, time frame  
 2 and that is ultimately derived from solar power, water power, or  
 3 wind power. Renewable energy resource does not include petroleum,  
 4 nuclear, natural gas, or coal. A renewable energy resource comes  
 5 from the sun or from thermal inertia of the earth and minimizes the  
 6 output of toxic material in the conversion of the energy and  
 7 includes, but is not limited to, all of the following:

8 ~~(i) Biomass.~~

9 (i) ~~(ii)~~ Solar and solar thermal energy.

10 (ii) ~~(iii)~~ Wind energy.

11 (iii) ~~(iv)~~ Kinetic energy of moving water, including all of the  
 12 following:

13 (A) Waves, tides, or currents.

14 (B) Water released through a dam.

15 (iv) ~~(v)~~ Geothermal energy.

16 (v) ~~(vi)~~ Thermal energy produced from a geothermal heat pump.

17 ~~(vii) Any of the following cleaner energy resources:~~

18 ~~(A) Municipal solid waste, including the biogenic and  
 19 anthropogenic fractions.~~

20 ~~(B) Landfill gas produced by municipal solid waste.~~

21 ~~(C) Fuel that has been manufactured in whole or significant  
 22 part from waste, including, but not limited to, municipal solid  
 23 waste. Fuel that meets the requirements of this subparagraph  
 24 includes, but is not limited to, material that is listed under 40  
 25 CFR 241.3(b) or 241.4(a) or for which a nonwaste determination is  
 26 made by the United States Environmental Protection Agency pursuant  
 27 to 40 CFR 241.3(c). Pet coke, hazardous waste, coal waste, or scrap  
 28 tires are not fuel that meets the requirements of this  
 29 subparagraph.~~

1 (h) "Renewable energy standard" means the minimum renewable  
2 energy capacity portfolio, if applicable, and the renewable energy  
3 credit portfolio required to be achieved under section 28 or former  
4 section 27.

5 (i) "Renewable energy system" means a facility, electricity  
6 generation system, or set of electricity generation systems that  
7 use 1 or more renewable energy resources to generate electricity or  
8 steam. Renewable energy system does not include any of the  
9 following:

10 (i) A hydroelectric pumped storage facility.

11 (ii) A hydroelectric facility that uses a dam constructed after  
12 October 6, 2008 unless the dam is a repair or replacement of a dam  
13 in existence on October 6, 2008 or an upgrade of a dam in existence  
14 on October 6, 2008 that increases its energy efficiency.

15 (iii) An incinerator unless the incinerator is a municipal solid  
16 waste incinerator as defined in section 11504 of the natural  
17 resources and environmental protection act, 1994 PA 451, MCL  
18 324.11504.

19 (j) "Revenue recovery mechanism" means the mechanism for  
20 recovery of incremental costs of compliance provided for under  
21 section 22.

22 Sec. 22. (1) Renewable energy plans and associated revenue  
23 recovery mechanisms filed by an electric provider, approved under  
24 former section 21 or 23 or found to comply with this act under  
25 former section 25 and in effect on ~~the effective date of the 2016~~  
26 ~~amendatory act that added this section, **April 20, 2017,**~~ remain in  
27 effect, subject to amendments as provided for under subsections (3)  
28 and (4).

29 (2) For an electric provider whose rates are regulated by the

1 commission, amended renewable energy plans shall establish a  
2 nonvolumetric mechanism for the recovery of the incremental costs  
3 of compliance within the electric provider's customer rates. The  
4 revenue recovery mechanism shall not result in rate impacts that  
5 exceed the monthly maximum retail rate impacts specified under  
6 section 45. The revenue recovery mechanism is subject to adjustment  
7 under sections 47(4) and 49.

8 (3) ~~Within 1 year after the effective date of the 2016~~  
9 ~~amendatory act that added this section,~~ **By April 20, 2024 and every**  
10 **2 years thereafter,** the commission shall review each electric  
11 provider's plan pursuant to a filing schedule established by the  
12 commission. **For the review required by April 20, 2024, the provider**  
13 **shall propose plan amendments to conform to increases in the**  
14 **renewable energy credit standards provided for by the amendatory**  
15 **act that added section 28(1)(d) and (e).** For an electric provider  
16 whose rates are regulated by the commission, the commission shall  
17 conduct a contested case hearing on the plan pursuant to the  
18 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to  
19 24.328. After the hearing, the commission shall approve, with any  
20 changes consented to by the electric provider, or reject the plan  
21 and any amendments to the plan. For all other electric providers,  
22 the commission shall provide an opportunity for public comment on  
23 the plan. After the applicable opportunity for public comment, the  
24 commission shall determine whether any amendment to the plan  
25 proposed by the provider complies with this act. For alternative  
26 electric suppliers, the commission shall approve, with any changes  
27 consented to by the electric provider, or reject any proposed  
28 amendments to the plan. For cooperative electric utilities and  
29 municipally owned utilities, the proposed amendment is adopted if

1 the commission determines that it complies with this act.

2 (4) If an electric provider proposes to amend its plan ~~after~~  
3 ~~the~~ **at a time other than a scheduled** review process under  
4 subsection (3), the electric provider shall file the proposed  
5 amendment with the commission. For an electric provider whose rates  
6 are regulated by the commission, if the proposed amendment would  
7 modify the revenue recovery mechanism, the commission shall conduct  
8 a contested case hearing on the amendment pursuant to the  
9 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to  
10 24.328. After the hearing and within 90 days after the amendment is  
11 filed, the commission shall approve, with any changes consented to  
12 by the electric provider, or reject the plan and the proposed  
13 amendment or amendments to the plan. For all other electric  
14 providers, the commission shall provide an opportunity for public  
15 comment on the amendment. After the applicable opportunity for  
16 public comment and within 90 days after the amendment is filed, the  
17 commission shall determine whether the proposed amendment to the  
18 plan complies with this act. For alternative electric suppliers,  
19 the commission shall approve, with any changes consented to by the  
20 electric provider, or reject any proposed amendments to the plan.  
21 For cooperative electric utilities and municipally owned utilities,  
22 the proposed amendment is adopted if the commission determines that  
23 it complies with this act.

24 (5) For an electric provider whose rates are regulated by the  
25 commission, the commission shall approve the plan or amendments to  
26 the plan if the commission determines **both of the following:**

27 (a) That the plan is reasonable and prudent. In making this  
28 determination, the commission shall take into consideration  
29 projected costs and whether or not projected costs in prior plans

1 were exceeded.

2 (b) That the plan is consistent with the purpose and goal set  
3 forth in section 1(2) and (3), **respectively**, and meets the  
4 renewable energy credit standard through ~~2021~~**2035**.

5 (6) If the commission rejects a proposed plan or amendment  
6 under this section, the commission shall explain in writing the  
7 reasons for its determination.

8 Sec. 28. (1) An electric provider shall achieve a renewable  
9 energy credit portfolio ~~as follows:~~**of at least the following:**

10 (a) In 2016 through 2018, ~~a renewable energy credit portfolio~~  
11 ~~that consists of at least~~ the same number of renewable energy  
12 credits as were required under former section 27.

13 (b) In 2019 and 2020, ~~a renewable energy credit portfolio of~~  
14 ~~at least 12.5%, as calculated under subsection (2)~~**12.5%.**

15 (c) In 2021, ~~a renewable energy credit portfolio of at least~~  
16 ~~15%, as calculated under subsection (2)~~**and each year thereafter**  
17 **through 2029, 15%.**

18 (d) **In 2030 and each year thereafter through 2034, 60%.**

19 (e) **In 2035 and each year thereafter, 100%.**

20 (2) An electric provider's renewable energy credit portfolio  
21 shall be calculated as follows:

22 (a) Determine the number of renewable energy credits used to  
23 comply with this subpart during the applicable year.

24 (b) Divide by 1 of the following at the option of the electric  
25 provider as specified in its renewable energy plan:

26 (i) The number of weather normalized megawatt hours of  
27 electricity sold by the electric provider during the previous year  
28 to retail customers in this state.

29 (ii) The average number of megawatt hours of electricity sold

1 by the electric provider annually during the previous 3 years to  
2 retail customers in this state.

3 (c) Multiply the quotient under subdivision (b) by 100.

4 (3) Subject to subsection (5), each electric provider shall  
5 meet the renewable energy credit standards with renewable energy  
6 credits obtained by 1 or more of the following means:

7 (a) Generating electricity from renewable energy systems for  
8 sale to retail customers.

9 (b) Purchasing or otherwise acquiring renewable energy credits  
10 with or without the associated renewable energy.

11 (4) For an electric provider whose rates are regulated by the  
12 commission, the electric provider shall submit a contract entered  
13 into for the purposes of subsection (3) to the commission for  
14 review and approval. If the commission approves the contract, it  
15 ~~shall be~~ **is** considered consistent with the electric provider's  
16 renewable energy plan. The commission shall not approve a contract  
17 based on an unsolicited proposal unless the commission determines  
18 that the unsolicited proposal provides opportunities that may not  
19 otherwise be available or commercially practical through a  
20 competitive bid process.

21 (5) An electric provider may substitute energy waste reduction  
22 credits for renewable energy credits otherwise required to meet the  
23 renewable energy credit standards if the substitution is approved  
24 by the commission. Under this subsection, energy waste reduction  
25 credits shall not be used by a provider to meet more than 10% of  
26 the renewable energy credit standard. One renewable energy credit  
27 shall be awarded per 1 energy waste reduction credit.

28 **Sec. 32. (1) Upon petition by an electric provider, the**  
29 **commission may for good cause grant an extension of a renewable**

1 energy standard deadline under section 28. For any specific  
2 deadline, the commission shall not grant more than 2 extensions.  
3 Each extension shall not exceed 1 year. An extension of a deadline  
4 does not affect a subsequent deadline.

5 (2) An electric provider that makes a good-faith effort to  
6 spend the full amount of costs authorized for recovery under  
7 section 47 and that complies with its approved plan, subject to any  
8 approved extensions, is considered to be in compliance with this  
9 subpart.

10 (3) As used in this section, "good cause" includes, but is not  
11 limited to, the electric provider's inability, as determined by the  
12 commission, to meet a renewable energy standard because of a  
13 renewable energy system feasibility limitation, including, but not  
14 limited to, any of the following:

15 (a) Renewable energy system site requirements; zoning, siting,  
16 or land use issues; permits, including environmental permits; any  
17 certificate of necessity process under section 6s of 1939 PA 3, MCL  
18 460.6s; or any other necessary governmental approvals that  
19 effectively limit availability of renewable energy systems, if the  
20 electric provider exercised reasonable diligence in attempting to  
21 secure the necessary governmental approvals. For purposes of this  
22 subdivision, "reasonable diligence" includes, but is not limited  
23 to, submitting timely applications for the necessary governmental  
24 approvals and making good-faith efforts to ensure that the  
25 applications are administratively complete and technically  
26 sufficient.

27 (b) High costs of or shortages of renewable energy system  
28 components or electrical equipment if the high costs or shortages  
29 effectively limit availability of renewable energy systems.



1 (c) Cost, availability, or time requirements for electric  
2 transmission and interconnection.

3 (d) Projected or actual unfavorable electric system  
4 reliability or operational impacts.

5 (e) Labor shortages that effectively limit availability of  
6 renewable energy systems.

7 (f) An order of a court of competent jurisdiction that  
8 effectively limits the availability of renewable energy systems.

9 Sec. 45. (1) For an electric provider whose rates are  
10 regulated by the commission, the commission shall determine the  
11 appropriate charges for the electric provider's tariffs that permit  
12 recovery of the ~~incremental cost of compliance~~ **costs authorized for**  
13 **recovery under section 47** subject to the retail rate impact limits  
14 set forth in subsection (2).

15 (2) ~~An electric provider shall recover the incremental cost of~~  
16 ~~compliance with the renewable energy standards.~~ An electric  
17 provider shall not comply with the renewable energy standards to  
18 the extent that, as determined by the commission, recovery of the  
19 ~~incremental cost of compliance~~ **costs authorized for recovery under**  
20 **section 47** will have a retail rate impact that exceeds any of the  
21 following:

22 (a) \$3.00 per month per residential customer meter.

23 (b) \$16.58 per month per commercial secondary customer meter.

24 (c) \$187.50 per month per commercial primary or industrial  
25 customer meter.

26 (3) The retail rate impact limits of subsection (2) apply only  
27 to the ~~incremental costs of compliance~~ **costs authorized for**  
28 **recovery under section 47** and do not apply to costs approved for  
29 recovery by the commission other than as provided in this act.

1           (4) The incremental cost of compliance shall be calculated for  
2 a 20-year period beginning with approval of the renewable energy  
3 plan and shall be recovered on a levelized basis.

4           Sec. 47. (1) Subject to the retail rate impact limits under  
5 section 45, the commission shall consider all actual costs  
6 reasonably and prudently incurred in good faith to implement a  
7 commission-approved renewable energy plan by an electric provider  
8 whose rates are regulated by the commission to be a cost of service  
9 to be recovered by the electric provider. Subject to the retail  
10 rate impact limits under section 45, an electric provider whose  
11 rates are regulated by the commission shall recover through its  
12 retail electric rates all of the electric provider's incremental  
13 costs of compliance during the 20-year period beginning when the  
14 electric provider's plan is approved by the commission and all  
15 reasonable and prudent ongoing costs of compliance during and after  
16 that period. The recovery shall include, but is not limited to, the  
17 electric provider's authorized rate of return on equity for costs  
18 approved under this section, which shall remain fixed at the rate  
19 of return and debt to equity ratio that was in effect in the  
20 electric provider's base rates when the electric provider's  
21 renewable energy plan was approved.

22           (2) Incremental costs of compliance shall be calculated as  
23 follows:

24           (a) Determine the sum of the following costs to the extent  
25 those costs are reasonable and prudent and not already approved for  
26 recovery in electric rates as of October 6, 2008:

27           (i) Capital, operating, and maintenance costs of renewable  
28 energy systems, ~~or advanced cleaner energy systems,~~ including  
29 property taxes, insurance, and return on equity associated with an

1 electric provider's renewable energy systems, ~~or advanced cleaner~~  
 2 ~~energy systems,~~ including the electric provider's renewable energy  
 3 portfolio established to achieve compliance with the renewable  
 4 energy standards and any additional renewable energy systems ~~or~~  
 5 ~~advanced cleaner energy systems~~ that are built or acquired by the  
 6 electric provider to maintain compliance with the renewable energy  
 7 standards during the 20-year period beginning when the electric  
 8 provider's plan is approved by the commission.

9 (ii) Financing costs attributable to capital, operating, and  
 10 maintenance costs of capital facilities associated with renewable  
 11 energy systems ~~or advanced cleaner energy systems~~ used to meet the  
 12 renewable energy standard.

13 (iii) Costs that are not otherwise recoverable in rates approved  
 14 by the Federal Energy Regulatory Commission and that are related to  
 15 the infrastructure required to bring renewable energy systems ~~or~~  
 16 ~~advanced cleaner energy systems~~ used to achieve compliance with the  
 17 renewable energy standards on to the transmission system, including  
 18 interconnection and substation costs for renewable energy systems  
 19 ~~or advanced cleaner energy systems~~ used to meet the renewable  
 20 energy standard.

21 (iv) Ancillary service costs determined by the commission to be  
 22 necessarily incurred to ensure the quality and reliability of  
 23 renewable energy ~~or advanced cleaner energy~~ used to meet the  
 24 renewable energy standards, regardless of the ownership of a  
 25 renewable energy system. ~~or advanced cleaner energy technology.~~

26 (v) Except to the extent the costs are allocated under a  
 27 different subparagraph, all of the following:

28 (A) The costs of renewable energy credits purchased under this  
 29 act.

1 (B) The costs of contracts described in former section 33(1).

2 (vi) Expenses incurred as a result of state or federal  
3 governmental actions related to renewable energy systems ~~or~~  
4 ~~advanced cleaner energy systems~~ attributable to the renewable  
5 energy standards, including changes in tax or other law.

6 (vii) Any additional electric provider costs determined by the  
7 commission to be necessarily incurred to ensure the quality and  
8 reliability of renewable energy ~~or advanced cleaner energy~~ used to  
9 meet the renewable energy standards.

10 (b) Subtract from the sum of costs not already included in  
11 electric rates determined under subdivision (a) the sum of the  
12 following revenues:

13 (i) Revenue derived from the sale of environmental attributes  
14 associated with the generation of renewable energy ~~or advanced~~  
15 ~~cleaner energy systems~~ attributable to the renewable energy  
16 standards. Such revenue shall not be considered in determining  
17 power supply cost recovery factors under section 6j of 1939 PA 3,  
18 MCL 460.6j.

19 (ii) Interest on regulatory liabilities.

20 (iii) Tax credits specifically designed to promote renewable  
21 energy. ~~or advanced cleaner energy.~~

22 (iv) Revenue derived from the provision of renewable energy ~~or~~  
23 ~~advanced cleaner energy~~ to retail electric customers subject to a  
24 power supply cost recovery clause under section 6j of 1939 PA 3,  
25 MCL 460.6j, of an electric provider whose rates are regulated by  
26 the commission. After providing an opportunity for a contested case  
27 hearing for an electric provider whose rates are regulated by the  
28 commission, the commission shall annually establish a price per  
29 megawatt hour. An electric provider whose rates are regulated by

1 the commission may at any time petition the commission to revise  
2 the price. In setting the price per megawatt hour under this  
3 subparagraph, the commission shall consider factors including, but  
4 not limited to, projected capacity, energy, maintenance, and  
5 operating costs; information filed under section 6j of 1939 PA 3,  
6 MCL 460.6j; and information from wholesale markets, including, but  
7 not limited to, locational marginal pricing. This price shall be  
8 multiplied by the sum of the number of megawatt hours of renewable  
9 energy ~~and the number of megawatt hours of advanced cleaner energy~~  
10 used to maintain compliance with the renewable energy standard. The  
11 product shall be considered a booked cost of purchased and net  
12 interchanged power transactions under section 6j of 1939 PA 3, MCL  
13 460.6j. For energy purchased by such an electric provider under a  
14 renewable energy contract, ~~or advanced cleaner energy contract,~~ the  
15 price shall be the lower of the amount established by the  
16 commission or the actual price paid and shall be multiplied by the  
17 number of megawatt hours of renewable energy ~~or advanced cleaner~~  
18 ~~energy~~ purchased. The resulting value shall be considered a booked  
19 cost of purchased and net interchanged power under section 6j of  
20 1939 PA 3, MCL 460.6j.

21 (v) Revenue from wholesale renewable energy sales. ~~and~~  
22 ~~advanced cleaner energy sales.~~ Such revenue shall not be considered  
23 in determining power supply cost recovery factors under section 6j  
24 of 1939 PA 3, MCL 460.6j.

25 (vi) Any additional electric provider revenue considered by the  
26 commission to be attributable to the renewable energy standards.

27 (vii) Any revenues recovered in rates for renewable energy  
28 costs that are included under subdivision (a).

29 (3) The commission shall authorize an electric provider whose

1 rates are regulated by the commission to spend in any given month  
2 more to comply with this act and implement an approved renewable  
3 energy plan than the revenue actually generated by the revenue  
4 recovery mechanism. An electric provider whose rates are regulated  
5 by the commission shall recover its commission approved pre-tax  
6 rate of return on regulatory assets during the appropriate period.  
7 An electric provider whose rates are regulated by the commission  
8 shall record interest on regulatory liabilities at the average  
9 short-term borrowing rate available to the electric provider during  
10 the appropriate period. Any regulatory assets or liabilities  
11 resulting from the recovery of costs of renewable energy ~~or~~  
12 ~~advanced cleaner energy~~ attributable to renewable energy standards  
13 through the power supply cost recovery clause under section 6j of  
14 1939 PA 3, MCL 460.6j, shall continue to be reconciled under that  
15 section.

16 (4) If an electric provider's incremental costs of compliance  
17 in any given month during the 20-year period beginning when the  
18 electric provider's plan is approved by the commission are in  
19 excess of the revenue recovery mechanism as adjusted under section  
20 49 and in excess of the balance of any accumulated reserve funds,  
21 subject to the minimum balance established under section 49, the  
22 electric provider shall immediately notify the commission. The  
23 commission shall promptly commence a contested case hearing  
24 pursuant to the administrative procedures act of 1969, 1969 PA 306,  
25 MCL 24.201 to 24.328, and modify the revenue recovery mechanism so  
26 that the minimum balance is restored. However, if the commission  
27 determines that recovery of the incremental costs of compliance  
28 would otherwise exceed the maximum retail rate impacts specified  
29 under section 45, it shall set the revenue recovery mechanism for

1 that electric provider to correspond to the maximum retail rate  
2 impacts. Excess costs shall be accrued and deferred for recovery.  
3 Not later than the expiration of the 20-year period beginning when  
4 the electric provider's plan is approved by the commission, for an  
5 electric provider whose rates are regulated by the commission, the  
6 commission shall determine the amount of deferred costs to be  
7 recovered under the revenue recovery mechanism and the recovery  
8 period, which shall not extend more than 5 years beyond the  
9 expiration of the 20-year period beginning when the electric  
10 provider's plan is approved by the commission. The recovery of  
11 excess costs shall be proportional to the retail rate impact limits  
12 in section 45 for each customer class. The recovery of excess costs  
13 alone, or, if begun before the expiration of the 20-year period, in  
14 combination with the recovery of incremental costs of compliance  
15 under the revenue recovery mechanism, shall not exceed the retail  
16 rate impact limits of section 45 for each customer class.

17 (5) If, at the expiration of the 20-year period beginning when  
18 the electric provider's plan is approved by the commission, an  
19 electric provider whose rates are regulated by the commission has a  
20 regulatory liability, the refund to customer classes shall be  
21 proportional to the amounts paid by those customer classes under  
22 the revenue recovery mechanism.

23 (6) After achieving compliance with the renewable energy  
24 standard for 2015, the actual costs reasonably and prudently  
25 incurred to continue to comply with this subpart both during and  
26 after the conclusion of the 20-year period beginning when the  
27 electric provider's plan is approved by the commission shall be  
28 considered costs of service. The commission shall determine a  
29 mechanism for an electric provider whose rates are regulated by the

1 commission to recover these costs in its retail electric rates,  
 2 subject to the retail rate impact limits in section 45. Remaining  
 3 and future regulatory assets shall be recovered consistent with  
 4 subsections (3) and (4) and section 49.

5 ~~(7) As used in this section:~~

6 ~~(a) "Advanced cleaner energy" means electricity generated~~  
 7 ~~using an advanced cleaner energy system.~~

8 ~~(b) "Advanced cleaner energy system" means any of the~~  
 9 ~~following:~~

10 ~~(i) A gasification facility.~~

11 ~~(ii) A cogeneration facility.~~

12 ~~(iii) A coal-fired electric generating facility if 85% or more~~  
 13 ~~of the carbon dioxide emissions are captured and permanently~~  
 14 ~~geologically sequestered or used for other commercial or industrial~~  
 15 ~~purposes that do not result in release of carbon dioxide to the~~  
 16 ~~atmosphere.~~

17 ~~(iv) A hydroelectric pumped storage facility.~~

18 ~~(v) An electric generating facility or system that uses~~  
 19 ~~technologies not in commercial operation on October 6, 2008 and~~  
 20 ~~that the commission determines has carbon dioxide emissions~~  
 21 ~~benefits or will significantly reduce other regulated air~~  
 22 ~~emissions.~~

23 Sec. 49. (1) This section applies only to an electric provider  
 24 whose rates are regulated by the commission. The commission shall  
 25 commence an annual proceeding, to be known as a renewable cost  
 26 reconciliation, for each electric provider whose rates are  
 27 regulated by the commission. The renewable cost reconciliation  
 28 proceeding shall be conducted as a contested case pursuant to the  
 29 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to



1 24.328. Reasonable discovery shall be permitted before and during  
2 the reconciliation proceeding to assist in obtaining evidence  
3 concerning reconciliation issues including, but not limited to, the  
4 reasonableness and prudence of expenditures and the amounts  
5 collected pursuant to the revenue recovery mechanism.

6 (2) At the renewable cost reconciliation, an electric provider  
7 may propose any necessary modifications of the revenue recovery  
8 mechanism to ensure the electric provider's recovery of its  
9 incremental cost of compliance with the renewable energy standards.

10 (3) The commission shall reconcile the pertinent revenues  
11 recorded and the allowance for the nonvolumetric revenue recovery  
12 mechanism with the amounts actually expensed and projected  
13 according to the electric provider's renewable energy plan. The  
14 commission shall consider any issue regarding the reasonableness  
15 and prudence of expenses for which customers were charged in the  
16 relevant reconciliation period. In its order, the commission shall  
17 do all of the following:

18 (a) Make a determination of an electric provider's compliance  
19 with the renewable energy standards.

20 (b) Adjust the revenue recovery mechanism for the incremental  
21 costs of compliance. The commission shall ensure that the retail  
22 rate impacts under this renewable cost reconciliation revenue  
23 recovery mechanism do not exceed the maximum retail rate impacts  
24 specified under section 45. The commission shall ensure that the  
25 recovery mechanism is projected to maintain a minimum balance of  
26 accumulated reserve so that a regulatory asset does not accrue.

27 (c) Establish the price per megawatt hour for renewable energy  
28 ~~and advanced cleaner energy~~ capacity and for renewable energy ~~and~~  
29 ~~advanced cleaner energy~~ to be recovered through the power supply

1 cost recovery clause under section 6j of 1939 PA 3, MCL 460.6j, as  
2 outlined in section 47(2)(b)(iv).

3 (d) Adjust, if needed, the minimum balance of accumulated  
4 reserve funds described in subdivision (b).

5 (4) If an electric provider has recorded a regulatory  
6 liability in any given month during the 20-year period beginning  
7 when the electric provider's renewable energy plan was approved by  
8 the commission, interest on the regulatory liability balance shall  
9 be accrued at the average short-term borrowing rate available to  
10 the electric provider during the appropriate period, and shall be  
11 used to fund incremental costs of compliance incurred in subsequent  
12 periods within the 20-year period beginning when the electric  
13 provider's plan was approved by the commission.

14 ~~(5) As used in this section, "advanced cleaner energy" means~~  
15 ~~that term as defined in section 47.~~

16 **Sec. 53. The attorney general or any customer of a municipally**  
17 **owned electric utility or a cooperative electric utility that is**  
18 **member-regulated under the electric cooperative member-regulation**  
19 **act, 2008 PA 167, MCL 460.31 to 460.39, may commence a civil action**  
20 **for injunctive relief against that municipally owned electric**  
21 **utility or cooperative electric utility if the municipally owned**  
22 **electric utility or cooperative electric utility fails to meet the**  
23 **applicable requirements of this subpart or an order issued or rule**  
24 **promulgated under this subpart. The attorney general or customer**  
25 **shall commence an action under this section in the circuit court**  
26 **for the circuit in which the principal office of the municipally**  
27 **owned electric utility or cooperative electric utility is located.**  
28 **The attorney general or customer shall not file an action under**  
29 **this section unless the attorney general or customer has given the**

1 municipally owned electric utility or cooperative electric utility  
2 at least 60 days' written notice of the intent to sue, the basis  
3 for the suit, and the relief sought. Within 30 days after the  
4 municipally owned electric utility or cooperative electric utility  
5 receives written notice of the intent to sue, the municipally owned  
6 electric utility or cooperative electric utility and the attorney  
7 general or customer shall meet and make a good-faith attempt to  
8 determine if there is a credible basis for the action. The  
9 municipally owned electric utility or cooperative electric utility  
10 shall take all reasonable and prudent steps necessary to comply  
11 with the applicable requirements of this subpart or an order issued  
12 or rule promulgated under this subpart within 90 days after the  
13 meeting if there is a credible basis for the action. If the parties  
14 do not agree as to whether there is a credible basis for the  
15 action, the attorney general or customer may proceed to file the  
16 suit.

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