

HOUSE BILL No. 5188

October 21, 2003, Introduced by Reps. Palsrok, Gaffney, Taub, Wojno, Garfield, Brandenburg, Whitmer, Gillard, Nofs, Amos, Murphy, Farrah, Vagnozzi, Tabor, Rocca, Ward, Howell, Hopgood, Hune, Bisbee, Palmer, Farhat, Richardville, Kooiman, Minore, Newell, Rivet, Hoogendyk, Koetje, Stahl, Sak, Milosch, LaJoy, Acciavatti, Emmons, Shaffer, Robertson, Moolenaar, Drolet, Ruth Johnson, Condino, Elkins, Sheltroun, Hummel, Gielegem, Accavitti, McConico and Casperson and referred to the Committee on Energy and Technology.

A bill to amend 1939 PA 3, entitled

"An act to provide for the regulation and control of public utilities and other services affected with a public interest within this state; to provide for alternative energy suppliers; to provide for licensing; to include municipally owned utilities and other providers of energy under certain provisions of this act; to create a public service commission and to prescribe and define its powers and duties; to abolish the Michigan public utilities commission and to confer the powers and duties vested by law on the public service commission; to provide for the continuance, transfer, and completion of certain matters and proceedings; to abolish automatic adjustment clauses; to prohibit certain rate increases without notice and hearing; to qualify residential energy conservation programs permitted under state law for certain federal exemption; to create a fund; to provide for a restructuring of the manner in which energy is provided in this state; to encourage the utilization of resource recovery facilities; to prohibit certain acts and practices of providers of energy; to allow for the securitization of stranded costs; to reduce rates; to provide for appeals; to provide appropriations; to declare the effect and purpose of this act; to prescribe remedies and penalties; and to repeal acts and parts of acts,"

by amending section 10a (MCL 460.10a), as added by 2000 PA 141.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 10a. (1) No later than January 1, 2002, the commission

1 shall issue orders establishing the rates, terms, and conditions
2 of service that allow all retail customers of an electric utility
3 or provider to choose an alternative electric supplier. The
4 orders shall provide for full recovery of a utility's net
5 stranded costs and implementation costs as determined by the
6 commission.

7 (2) The commission shall issue orders establishing a
8 licensing procedure for all alternative electric suppliers. To
9 ensure adequate service to customers in this state, the
10 commission shall require that an alternative electric supplier
11 maintain an office within ~~Michigan~~ **this state**, shall assure
12 that an alternative electric supplier has the necessary
13 financial, managerial, and technical capabilities, shall require
14 that an alternative electric supplier maintain records which the
15 commission considers necessary, and shall ensure an alternative
16 electric supplier's accessibility to the commission, to
17 consumers, and to electric utilities in this state. The
18 commission also shall require alternative electric suppliers to
19 agree that they will collect and remit to local units of
20 government all applicable users, sales, and use taxes. An
21 alternative electric supplier is not required to obtain any
22 certificate, license, or authorization from the commission other
23 than as required by this act.

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

27 (4) Within 180 days after ~~the effective date of the~~

1 ~~amendatory act that added this section~~ **June 5, 2000**, the
2 commission shall establish a code of conduct that shall apply to
3 all electric utilities. The code of conduct shall include, but
4 is not limited to, measures to prevent cross-subsidization,
5 information sharing, and preferential treatment, between a
6 utility's regulated and unregulated services, whether those
7 services are provided by the utility or the utility's affiliated
8 entities. The code of conduct established under this subsection
9 shall also be applicable to electric utilities and alternative
10 electric suppliers consistent with section 10, this section, and
11 sections 10b through ~~10bb~~ 10cc.

12 **(5) The commission shall ensure that the regulated rates of a**
13 **regulated utility do not subsidize programs offered by the**
14 **utility for the repair and servicing of heating and cooling**
15 **systems or other appliances. A regulated utility shall not**
16 **promote repair and servicing programs through use of utility bill**
17 **inserts or other promotional materials included in customer**
18 **utility bills. A code of conduct created under subsection (4)**
19 **does not apply to the utility's repair and servicing program if**
20 **the utility has less than 30% of the market share for the repair**
21 **and servicing of heating and cooling systems or other appliances**
22 **within the utility's service area. For purposes of this**
23 **subsection, a subsidy does not exist if the revenues of the**
24 **repair and servicing program exceed the incremental costs of the**
25 **program and the revenues of the program are credited to utility**
26 **customers in general rate cases.**

27 **(6) ~~(5)~~ The orders issued by the commission before ~~the~~**

1 ~~effective date of the amendatory act that added this section~~
2 **June 5, 2000** that allow customers of an electric utility to
3 choose an alternative electric supplier, including orders that
4 determine and authorize recovery of net stranded costs and
5 implementation costs and that confirm any voluntary commitments
6 of electric utilities, are in compliance with this act and
7 enforceable by the commission. An electric utility that has not
8 had voluntary commitments to provide customer choice previously
9 approved by orders of the commission shall file a restructuring
10 plan to allow customers to choose an alternative electric
11 supplier no later than the date ordered by the commission. The
12 plan shall propose a methodology to determine the electric
13 utility's net stranded costs and implementation costs.

14 (7) ~~(6)~~ This act does not prohibit or limit the right of a
15 person to obtain self-service power ~~—~~ and ~~it~~ does not impose
16 a transition, implementation, exit fee, or any other similar
17 charge on self-service power. A person using self-service power
18 is not an electric supplier, electric utility, or a person
19 conducting an electric utility business. As used in this
20 subsection, "self-service power" means any of the following:

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

25 (b) Electricity generated primarily by the use of by-product
26 fuels, including waste water solids, ~~and the~~ **which** electricity
27 is consumed as part of a contiguous facility, with the use of an

1 electric utility's transmission and distribution system, but only
2 if the point or points of receipt of the power within the
3 facility are not greater than 3 miles distant from the point of
4 generation.

5 (c) A site or facility with load existing on ~~the effective~~
6 ~~date of the amendatory act that added this section~~ **June 5, 2000**
7 that is divided by an inland body of water or by a public
8 highway, road, or street but that otherwise meets this definition
9 meets the contiguous requirement of this subdivision regardless
10 of whether self-service power was being generated on ~~the~~
11 ~~effective date of the amendatory act that added this section~~
12 **June 5, 2000.**

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

18 **(8)** ~~-(7)-~~ This act does not prohibit or limit the right of a
19 person to engage in affiliate wheeling and does not impose a
20 transition, implementation, exit fee, or any other similar charge
21 on a person engaged in affiliate wheeling. As used in this
22 section:

23 (a) "Affiliate" means a person or entity that directly, or
24 indirectly through 1 or more intermediates, controls, is
25 controlled by, or is under common control with another specified
26 entity. As used in this subdivision, "control" means, whether
27 through an ownership, beneficial, contractual, or equitable

1 interest, the possession, directly or indirectly, of the power to
2 direct or to cause the direction of the management or policies of
3 a person or entity or the ownership of at least 7% of an entity
4 either directly or indirectly.

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

10 (i) For at least 90 days during the period from January 1,
11 1996 to October 1, 1999, supplied by self-service power, but only
12 to the extent of the capacity reserved or load served by
13 self-service power during the period.

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

22 (9) ~~-(8)-~~ The rights of parties to existing contracts and
23 agreements in effect as of January 1, 2000 between electric
24 utilities and qualifying facilities, including the right to have
25 the charges recovered from the customers of an electric utility,
26 or its successor, shall not be abrogated, increased, or
27 diminished by this act, nor shall the receipt of any proceeds of

1 the securitization bonds by an electric utility be a basis for
2 any regulatory disallowance. Further, any securitization or
3 financing order issued by the commission that relates to a
4 qualifying facility's power purchase contract shall fully
5 consider that qualifying facility's legal and financial
6 interests.

7 **(10)** ~~-(9)-~~ The commission shall, after a contested case
8 proceeding, issue annually an order approving for each electric
9 utility a true-up adjustment to reconcile any overcollections or
10 undercollections of the preceding 12 months to ensure the
11 recovery of all amounts of net stranded costs. The rates for
12 customers remaining with an incumbent electric utility will not
13 be affected by the true-up process under this subsection. The
14 commission shall review the electric utility's stranded cost
15 recovery charges and securitization charges implemented for the
16 preceding 12 months, and adjust the stranded cost recovery
17 charge, by way of supplemental surcharges or credits, to allow
18 the netting of stranded costs.

19 **(11)** ~~-(10)-~~ The commission shall consider the reasonableness
20 and appropriateness of various methods to determine net stranded
21 costs, including, but not limited to, all of the following:

22 (a) Evaluating the relationship of market value to the net
23 book value of generation assets and purchased power contracts.

24 (b) Evaluating net stranded costs based on the market price
25 of power in relation to prices assumed by the commission in prior
26 orders.

27 (c) Any other method the commission considers appropriate.

1 **(12)** ~~-(11)-~~ The true-up adjustment adopted under subsection
2 ~~-(9)-~~ **(10)** shall not result in a modification to the
3 securitization charge. The commission shall not adjust or change
4 in any manner securitization charges authorized by the commission
5 in a financing order issued under section 10i as a result of its
6 review and any action taken under subsection ~~-(9)-~~ **(10)**.

7 **(13)** ~~-(12)-~~ After the time period described in section
8 10d(2), the rates for retail customers that remain with or leave
9 and later return to the incumbent electric utility shall be
10 determined in the same manner as the rates were determined before
11 the effective date of this section.