

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5524

A bill to amend 1939 PA 3, entitled

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

by amending sections 6a, 10, 10a, 10b, 10d, 10g, 10p, 10r, 10x, and 10y (MCL 460.6a, 460.10, 460.10a, 460.10b, 460.10d, 460.10g,

460.10p, 460.10r, 460.10x, and 460.10y), section 6a as amended by 1992 PA 37, sections 10, 10b, 10p, 10r, 10x, and 10y as added by 2000 PA 141, section 10a as amended by 2004 PA 88, section 10d as amended by 2002 PA 609, and section 10g as amended by 2001 PA 48, and by adding sections 4a, 6q, 6s, 10dd, and 11.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 **SEC. 4A. (1) EXCEPT AS OTHERWISE PROVIDED UNDER THIS ACT, THE**
 2 **COMMISSION IS SUBJECT TO EXECUTIVE REORGANIZATION ORDER NO. 2003-1,**
 3 **MCL 445.2011.**

4 **(2) FUNDING FOR THE COMMISSION SHALL BE AS PROVIDED UNDER 1972**
 5 **PA 299, MCL 460.111 TO 460.120, AND AS OTHERWISE PROVIDED BY LAW.**

6 **(3) THE COMMISSION SHALL BE AN AUTONOMOUS ENTITY WITHIN THE**
 7 **DEPARTMENT OF LABOR AND ECONOMIC GROWTH. THE STATUTORY AUTHORITY,**
 8 **POWERS, DUTIES, AND FUNCTIONS, INCLUDING PERSONNEL, PROPERTY,**
 9 **BUDGETING, RECORDS, PROCUREMENT, AND OTHER MANAGEMENT RELATED**
 10 **FUNCTIONS, SHALL BE RETAINED BY THE COMMISSION. THE DEPARTMENT OF**
 11 **LABOR AND ECONOMIC GROWTH SHALL PROVIDE SUPPORT AND COORDINATED**
 12 **SERVICES AS REQUESTED BY THE COMMISSION AND SHALL BE REIMBURSED FOR**
 13 **THAT SERVICE AS PROVIDED UNDER SUBSECTION (2).**

14 **(4) THE CHAIRPERSON OF THE COMMISSION SHALL BE APPOINTED AS**
 15 **PROVIDED UNDER SECTION 2.**

16 Sec. 6a. (1) ~~When a finding or order is sought by a~~ **A** gas or
 17 electric utility ~~to~~ **SHALL NOT** increase its rates and charges or ~~to~~
 18 alter, change, or amend any rate or rate schedules, the effect of
 19 which will be to increase the cost of services to its customers,
 20 ~~notice shall be given within the service area to be affected~~
 21 **WITHOUT FIRST RECEIVING COMMISSION APPROVAL AS PROVIDED IN THIS**

1 **SECTION.** The utility shall place in evidence facts relied upon to
2 support the utility's petition or application to increase its rates
3 and charges, or to alter, change, or amend any rate or rate
4 schedules. ~~After first having given notice to the interested~~
5 ~~parties within the service area to be affected and affording~~
6 ~~interested parties a reasonable opportunity for a full and complete~~
7 ~~hearing, the commission, after submission of all proofs by any~~
8 ~~interested party, may in its discretion and upon written motion by~~
9 ~~the utility make a finding and enter an order granting partial and~~
10 ~~immediate relief. A finding or order shall not be authorized or~~
11 ~~approved ex parte, nor until the commission's technical staff has~~
12 ~~made an investigation and report.~~ **THE COMMISSION SHALL REQUIRE**
13 **NOTICE TO BE GIVEN TO ALL INTERESTED PARTIES WITHIN THE SERVICE**
14 **AREA TO BE AFFECTED, AND ALL INTERESTED PARTIES SHALL HAVE A**
15 **REASONABLE OPPORTUNITY FOR A FULL AND COMPLETE HEARING. A UTILITY**
16 **MAY USE PROJECTED COSTS AND REVENUES FOR A FUTURE CONSECUTIVE 12-**
17 **MONTH PERIOD IN DEVELOPING ITS REQUESTED RATES AND CHARGES. THE**
18 **COMMISSION SHALL NOTIFY THE UTILITY WITHIN 30 DAYS OF FILING,**
19 **WHETHER THE UTILITY'S PETITION OR APPLICATION IS COMPLETE. A**
20 **PETITION OR APPLICATION IS CONSIDERED COMPLETE IF IT COMPLIES WITH**
21 **THE RATE APPLICATION FILING FORMS AND INSTRUCTIONS ADOPTED UNDER**
22 **SUBSECTION (6). A PETITION OR APPLICATION PENDING BEFORE THE**
23 **COMMISSION PRIOR TO THE ADOPTION OF FILING FORMS AND INSTRUCTIONS**
24 **PURSUANT TO SUBSECTION (6) SHALL BE EVALUATED BASED UPON THE FILING**
25 **REQUIREMENTS IN EFFECT AT THE TIME THE PETITION OR APPLICATION WAS**
26 **FILED. IF THE APPLICATION IS NOT COMPLETE, THE COMMISSION SHALL**
27 **NOTIFY THE UTILITY OF ALL INFORMATION NECESSARY TO MAKE THAT FILING**

1 COMPLETE. IF THE COMMISSION HAS NOT NOTIFIED THE UTILITY WITHIN 30
2 DAYS OF WHETHER THE UTILITY'S PETITION OR APPLICATION IS COMPLETE,
3 THE APPLICATION IS CONSIDERED COMPLETE. IF THE COMMISSION HAS NOT
4 ISSUED AN ORDER WITHIN 180 DAYS OF THE FILING OF A COMPLETE
5 APPLICATION, THE UTILITY MAY IMPLEMENT UP TO THE AMOUNT OF THE
6 PROPOSED ANNUAL RATE REQUEST THROUGH EQUAL PERCENTAGE INCREASES OR
7 DECREASES APPLIED TO ALL BASE RATES. FOR A PETITION OR APPLICATION
8 PENDING BEFORE THE COMMISSION PRIOR TO THE EFFECTIVE DATE OF THE
9 AMENDATORY ACT THAT ADDED THIS SENTENCE, THE 180-DAY PERIOD
10 COMMENCES ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
11 THIS SENTENCE. IF THE UTILITY USES PROJECTED COSTS AND REVENUES FOR
12 A FUTURE PERIOD IN DEVELOPING ITS REQUESTED RATES AND CHARGES, THE
13 UTILITY MAY NOT IMPLEMENT THE EQUAL PERCENTAGE INCREASES OR
14 DECREASES PRIOR TO THE CALENDAR DATE CORRESPONDING TO THE START OF
15 THE PROJECTED 12-MONTH PERIOD. FOR GOOD CAUSE, THE COMMISSION MAY
16 ISSUE A TEMPORARY ORDER PREVENTING OR DELAYING A UTILITY FROM
17 IMPLEMENTING ITS PROPOSED RATES OR CHARGES. IF A UTILITY IMPLEMENTS
18 INCREASED RATES OR CHARGES UNDER THIS SUBSECTION BEFORE THE
19 COMMISSION ISSUES A FINAL ORDER, THAT UTILITY SHALL REFUND TO
20 CUSTOMERS, WITH INTEREST, ANY PORTION OF THE TOTAL REVENUES
21 COLLECTED THROUGH APPLICATION OF THE EQUAL PERCENTAGE INCREASE THAT
22 EXCEED THE TOTAL THAT WOULD HAVE BEEN PRODUCED BY THE RATES OR
23 CHARGES SUBSEQUENTLY ORDERED BY THE COMMISSION IN ITS FINAL ORDER.
24 THE COMMISSION SHALL ALLOCATE ANY REFUND REQUIRED BY THIS SECTION
25 AMONG PRIMARY CUSTOMERS BASED UPON THEIR PRO RATA SHARE OF THE
26 TOTAL REVENUE COLLECTED THROUGH THE APPLICABLE INCREASE, AND AMONG
27 SECONDARY AND RESIDENTIAL CUSTOMERS IN A MANNER TO BE DETERMINED BY

1 THE COMMISSION. THE RATE OF INTEREST FOR REFUNDS SHALL EQUAL 5%
2 PLUS THE LONDON INTERBANK OFFERED RATE (LIBOR) FOR THE APPROPRIATE
3 TIME PERIOD. FOR ANY PORTION OF THE REFUND WHICH, EXCLUSIVE OF
4 INTEREST, EXCEEDS 25% OF THE ANNUAL REVENUE INCREASE AWARDED BY THE
5 COMMISSION IN ITS FINAL ORDER, THE RATE OF INTEREST SHALL BE THE
6 AUTHORIZED RATE OF RETURN ON THE COMMON STOCK OF THE UTILITY DURING
7 THE APPROPRIATE PERIOD. ANY REFUND OR INTEREST AWARDED UNDER THIS
8 SUBSECTION SHALL NOT BE INCLUDED, IN WHOLE OR IN PART, IN ANY
9 APPLICATION FOR A RATE INCREASE BY A UTILITY. NOTHING IN THIS
10 SECTION IMPAIRS THE COMMISSION'S ABILITY TO ISSUE A SHOW CAUSE
11 ORDER AS PART OF ITS RATE-MAKING AUTHORITY. An alteration or
12 amendment in rates or rate schedules applied for by a public
13 utility that will not result in an increase in the cost of service
14 to its customers may be authorized and approved without notice or
15 hearing. There shall be no increase in rates based upon changes in
16 cost of fuel or purchased gas unless notice has been given within
17 the service area to be affected, and there has been an opportunity
18 for a full and complete hearing on the cost of fuel or purchased
19 gas. The rates charged by any utility pursuant to an automatic fuel
20 or purchased gas adjustment clause shall not be altered, changed,
21 or amended unless notice has been given within the service area to
22 be affected, and there has been an opportunity for a full and
23 complete hearing on the cost of the fuel or purchased gas.

24 (2) The commission shall adopt rules and procedures for the
25 filing, investigation, and hearing of petitions or applications to
26 increase or decrease utility rates and charges as the commission
27 finds necessary or appropriate to enable it to reach a final

1 decision with respect to petitions or applications within a period
2 of 9–12 months from the filing of the **COMPLETE** petitions or
3 applications. The commission shall not authorize or approve
4 adjustment clauses that operate without notice and an opportunity
5 for a full and complete hearing, and all such clauses shall be
6 abolished. The commission may hold a full and complete hearing to
7 determine the cost of fuel, purchased gas, or purchased power
8 separately from a full and complete hearing on **A** general rate case
9 and may be held concurrently with the general rate case. The
10 commission shall authorize a utility to recover the cost of fuel,
11 purchased gas, or purchased power only to the extent that the
12 purchases are reasonable and prudent. As used in this section:

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

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

23 ~~(3) If a final decision has not been reached upon a petition~~
24 ~~or application to increase or decrease utility rates within the 9-~~
25 ~~month period required by subsection (2), the commission shall give~~
26 ~~priority to the case and shall take such other action as it finds~~
27 ~~necessary or appropriate to expedite a final decision. If **EXCEPT AS**~~

1 OTHERWISE PROVIDED IN THIS SUBSECTION, IF the commission fails to
2 reach a final decision with respect to a COMPLETED petition or
3 application to increase or decrease utility rates within the 9-
4 month-12-MONTH period following the filing of the COMPLETED
5 petition or application, ~~the commission, within 15 days after~~
6 ~~expiration of the 9 month period, shall submit a written report to~~
7 ~~the governor and to the president of the senate and the speaker of~~
8 ~~the house of representatives stating the reasons a decision was not~~
9 ~~reached within the 9 month period and the actions being taken to~~
10 ~~expedite the decision. The commission shall submit a further report~~
11 ~~upon reaching a final decision providing full details with respect~~
12 ~~to the conduct of the case, including the time required for~~
13 ~~issuance of the commission's decision following the conclusion of~~
14 ~~hearings.~~ THE PETITION OR APPLICATION IS CONSIDERED APPROVED. IF A
15 UTILITY MAKES ANY SIGNIFICANT AMENDMENT TO ITS FILING, THE
16 COMMISSION HAS AN ADDITIONAL 12 MONTHS FROM THE DATE OF THE
17 AMENDMENT TO REACH A FINAL DECISION ON THE PETITION OR APPLICATION.
18 IF THE UTILITY FILES FOR AN EXTENSION OF TIME, THE COMMISSION SHALL
19 EXTEND THE 12-MONTH PERIOD BY THE AMOUNT OF ADDITIONAL TIME
20 REQUESTED BY THE UTILITY.

21 (4) A UTILITY SHALL NOT FILE A GENERAL RATE CASE APPLICATION
22 FOR AN INCREASE IN RATES EARLIER THAN 12 MONTHS AFTER THE DATE OF
23 THE FILING OF A COMPLETE PRIOR GENERAL RATE CASE APPLICATION. A
24 UTILITY MAY NOT FILE A NEW GENERAL RATE CASE APPLICATION UNTIL THE
25 COMMISSION HAS ISSUED A FINAL ORDER ON A PRIOR GENERAL RATE CASE OR
26 UNTIL THE RATES ARE APPROVED UNDER SUBSECTION (3).

27 (5) THE COMMISSION SHALL, IF REQUESTED BY A GAS UTILITY,

1 ESTABLISH LOAD RETENTION TRANSPORTATION RATE SCHEDULES OR APPROVE
2 GAS TRANSPORTATION CONTRACTS AS REQUIRED FOR THE PURPOSE OF
3 RETAINING INDUSTRIAL OR COMMERCIAL CUSTOMERS WHOSE INDIVIDUAL
4 ANNUAL TRANSPORTATION VOLUMES EXCEED 500,000 DECATHERMS ON THE GAS
5 UTILITY'S SYSTEM. THE COMMISSION SHALL APPROVE THESE RATE SCHEDULES
6 OR APPROVE TRANSPORTATION CONTRACTS ENTERED INTO BY THE UTILITY IN
7 GOOD FAITH IF THE INDUSTRIAL OR COMMERCIAL CUSTOMER HAS THE
8 INSTALLED CAPABILITY TO USE AN ALTERNATIVE FUEL OR OTHERWISE HAS A
9 VIABLE ALTERNATIVE TO RECEIVING NATURAL GAS TRANSPORTATION SERVICE
10 FROM THE UTILITY, THE CUSTOMER CAN OBTAIN THE ALTERNATIVE FUEL OR
11 GAS TRANSPORTATION FROM AN ALTERNATIVE SOURCE AT A PRICE WHICH
12 WOULD CAUSE THEM TO CEASE USING THE GAS UTILITY'S SYSTEM, AND THE
13 CUSTOMER, AS A RESULT OF THEIR USE OF THE SYSTEM AND RECEIPT OF
14 TRANSPORTATION SERVICE, MAKES A SIGNIFICANT CONTRIBUTION TO THE
15 UTILITY'S FIXED COSTS. THE COMMISSION SHALL ADOPT ACCOUNTING AND
16 RATE-MAKING POLICIES TO ENSURE THAT THE DISCOUNTS ASSOCIATED WITH
17 THE TRANSPORTATION RATE SCHEDULES AND CONTRACTS ARE RECOVERED BY
18 THE GAS UTILITY THROUGH CHARGES APPLICABLE TO OTHER CUSTOMERS IF
19 THE INCREMENTAL COSTS RELATED TO THE DISCOUNTS ARE NO GREATER THAN
20 THE COSTS THAT WOULD BE PASSED ON TO THOSE CUSTOMERS AS THE RESULT
21 OF A LOSS OF THE INDUSTRIAL OR COMMERCIAL CUSTOMER'S CONTRIBUTION
22 TO A UTILITY'S FIXED COSTS.

23 (6) WITHIN 90 DAYS OF THE EFFECTIVE DATE OF THE AMENDATORY ACT
24 THAT ADDED THIS SUBSECTION, THE COMMISSION SHALL ADOPT STANDARD
25 RATE APPLICATION FILING FORMS AND INSTRUCTIONS FOR USE IN ALL
26 GENERAL RATE CASES FILED BY UTILITIES WHOSE RATES ARE REGULATED BY
27 THE COMMISSION. FOR COOPERATIVE ELECTRIC UTILITIES WHOSE RATES ARE

1 REGULATED BY THE COMMISSION, IN ADDITION TO RATE APPLICATIONS FILED
 2 UNDER THIS SECTION, THE COMMISSION SHALL CONTINUE TO ALLOW FOR RATE
 3 FILINGS BASED ON THE COOPERATIVE'S TIMES INTEREST EARNED RATIO. THE
 4 COMMISSION MAY, IN ITS DISCRETION, MODIFY THE STANDARD RATE
 5 APPLICATION FORMS AND INSTRUCTIONS ADOPTED UNDER THIS SUBSECTION.

<<(7) 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 A UTILITY WHOSE RATES ARE REGULATED BY THE COMMISSION WITH
 1,000,000 OR MORE RETAIL CUSTOMERS IN THIS STATE AND IF THE MERCHANT
 PLANT GENERATED ELECTRICITY UNDER THAT CONTRACT, IN WHOLE OR IN PART,
 FROM A RENEWABLE ENERGY RESOURCE, WOOD, WOOD WASTES, OR LANDFILL GAS,
 THEN THE MERCHANT PLANT SHALL 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.

(8) THE COMMISSION SHALL ISSUE ORDERS TO PERMIT THE RECOVERY
 AUTHORIZED UNDER SUBSECTION (7) THROUGH THE POWER SUPPLY COST RECOVERY
 PROCESS OF THE UTILITY WHOSE RATES ARE REGULATED BY THE COMMISSION UPON
 PETITION OF THE MERCHANT PLANT. THE MERCHANT PLANT SHALL NOT BE REQUIRED
 TO ALTER OR AMEND THE EXISTING CONTRACT WITH THE ELECTRIC UTILITY IN
 ORDER TO OBTAIN THE RECOVERY UNDER SUBSECTION (7). THE COMMISSION SHALL
 PERMIT OR REQUIRE THE UTILITY WHOSE RATES ARE REGULATED BY THE COMMISSION
 TO RECOVER FROM ITS RATEPAYERS FUEL AND VARIABLE OPERATION AND
 MAINTENANCE COSTS UNDER THE CONTRACT AS REASONABLY AND PRUDENTLY INCURRED
 COSTS.>>

6 SEC. 6Q. (1) A PERSON SHALL NOT ACQUIRE, CONTROL, OR MERGE,
 7 DIRECTLY OR INDIRECTLY, IN WHOLE OR IN PART, WITH A JURISDICTIONAL
 8 REGULATED UTILITY NOR SHALL A JURISDICTIONAL REGULATED UTILITY
 9 SELL, ASSIGN, TRANSFER, OR ENCUMBER ITS ASSETS TO ANOTHER PERSON
 10 WITHOUT FIRST APPLYING TO AND RECEIVING THE APPROVAL OF THE
 11 COMMISSION.

12 (2) AFTER NOTICE AND HEARING, THE COMMISSION SHALL ISSUE AN
 13 ORDER STATING WHAT CONSTITUTES ACQUISITION, TRANSFER OF CONTROL,
 14 MERGER ACTIVITIES, OR ENCUMBRANCE OF ASSETS THAT ARE SUBJECT TO
 15 THIS SECTION. THIS SECTION DOES NOT APPLY TO THE ENCUMBRANCE,
 16 ASSIGNMENT, ACQUISITION, OR TRANSFER OF ASSETS THAT ARE ENCUMBERED,
 17 ASSIGNED, ACQUIRED, TRANSFERRED, OR SOLD IN THE NORMAL COURSE OF
 18 BUSINESS OR TO THE ISSUANCE OF SECURITIES OR OTHER FINANCING
 19 TRANSACTIONS NOT DIRECTLY OR INDIRECTLY INVOLVED IN AN ACQUISITION,
 20 MERGER, ENCUMBRANCE, OR TRANSFER OF CONTROL THAT IS GOVERNED BY

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21 THIS SECTION.

22 (3) THE COMMISSION SHALL PROMULGATE RULES CREATING PROCEDURES
23 FOR THE APPLICATION PROCESS REQUIRED UNDER THIS SECTION. THE
24 APPLICATION SHALL INCLUDE, BUT IS NOT LIMITED TO, ALL OF THE
25 FOLLOWING INFORMATION:

26 (A) A CONCISE SUMMARY OF THE TERMS AND CONDITIONS OF THE
27 PROPOSED ACQUISITION, TRANSFER, MERGER, OR ENCUMBRANCE.

1 (B) COPIES OF THE MATERIAL ACQUISITION, TRANSFER, MERGER, OR
2 ENCUMBRANCE DOCUMENTS IF AVAILABLE.

3 (C) A SUMMARY OF THE PROJECTED IMPACTS OF THE ACQUISITION,
4 TRANSFER, MERGER, OR ENCUMBRANCE ON RATES AND ELECTRIC SERVICE IN
5 THIS STATE.

6 (D) PRO FORMA FINANCIAL STATEMENTS THAT ARE RELEVANT TO THE
7 ACQUISITION, TRANSFER, MERGER, OR ENCUMBRANCE.

8 (E) COPIES OF THE PARTIES' PUBLIC FILINGS WITH OTHER STATE OR
9 FEDERAL REGULATORY AGENCIES REGARDING THE SAME ACQUISITION,
10 TRANSFER, MERGER, OR ENCUMBRANCE, INCLUDING ANY REGULATORY ORDERS
11 ISSUED BY THE AGENCIES REGARDING THE ACQUISITION, TRANSFER, MERGER,
12 OR ENCUMBRANCE.

13 (4) WITHIN 60 DAYS FROM THE DATE AN APPLICATION IS FILED UNDER
14 THIS SECTION, INTERESTED PARTIES, INCLUDING THE ATTORNEY GENERAL,
15 MAY FILE COMMENTS WITH THE COMMISSION ON THE PROPOSED ACQUISITION,
16 TRANSFER, MERGER, OR ENCUMBRANCE.

17 (5) AFTER NOTICE AND HEARING AND WITHIN 180 DAYS FROM THE DATE
18 AN APPLICATION IS FILED UNDER THIS SECTION, THE COMMISSION SHALL
19 ISSUE AN ORDER APPROVING OR REJECTING THE PROPOSED ACQUISITION,
20 TRANSFER OF CONTROL, MERGER, OR ENCUMBRANCE.

21 (6) ALL PARTIES TO AN ACQUISITION, TRANSFER, MERGER, OR
22 ENCUMBRANCE SUBJECT TO THIS SECTION SHALL PROVIDE THE COMMISSION
23 AND THE ATTORNEY GENERAL ACCESS TO ALL BOOKS, RECORDS, ACCOUNTS,
24 DOCUMENTS, AND ANY OTHER DATA AND INFORMATION THE COMMISSION
25 CONSIDERS NECESSARY TO EFFECTIVELY ASSESS THE IMPACT OF THE
26 PROPOSED ACQUISITION, TRANSFER, MERGER, OR ENCUMBRANCE.

27 (7) THE COMMISSION SHALL CONSIDER AMONG OTHER FACTORS ALL OF

1 THE FOLLOWING IN ITS EVALUATION OF WHETHER OR NOT TO APPROVE A
2 PROPOSED ACQUISITION, TRANSFER, MERGER, OR ENCUMBRANCE:

3 (A) WHETHER THE PROPOSED ACTION WOULD HAVE AN ADVERSE IMPACT
4 ON THE RATES OF THE CUSTOMERS AFFECTED BY THE ACQUISITION,
5 TRANSFER, MERGER, OR ENCUMBRANCE.

6 (B) WHETHER THE PROPOSED ACTION WOULD HAVE AN ADVERSE IMPACT
7 ON THE PROVISION OF SAFE, RELIABLE, AND ADEQUATE ENERGY SERVICE IN
8 THIS STATE.

9 (C) WHETHER THE ACTION WILL RESULT IN THE SUBSIDIZATION OF A
10 NONREGULATED ACTIVITY OF THE NEW ENTITY THROUGH THE RATES PAID BY
11 THE CUSTOMERS OF THE JURISDICTIONAL REGULATED UTILITY.

12 (D) WHETHER THE ACTION WILL SIGNIFICANTLY IMPAIR THE
13 JURISDICTIONAL REGULATED UTILITY'S ABILITY TO RAISE NECESSARY
14 CAPITAL OR TO MAINTAIN A REASONABLE CAPITAL STRUCTURE.

15 (E) WHETHER THE ACTION IS OTHERWISE INCONSISTENT WITH PUBLIC
16 POLICY AND INTEREST.

17 (8) IN APPROVING AN ACQUISITION, TRANSFER, MERGER, OR
18 ENCUMBRANCE UNDER THIS SECTION, THE COMMISSION MAY IMPOSE
19 REASONABLE TERMS AND CONDITIONS ON THE ACQUISITION, TRANSFER,
20 MERGER, OR ENCUMBRANCE TO PROTECT THE JURISDICTIONAL REGULATED
21 UTILITY, INCLUDING THE DIVISION AND ALLOCATION OF THE UTILITY'S
22 ASSETS. A JURISDICTIONAL REGULATED UTILITY MAY REJECT THE TERMS AND
23 CONDITIONS IMPOSED BY THE COMMISSION AND NOT PROCEED WITH THE
24 TRANSACTION.

25 (9) IN APPROVING AN ACQUISITION, TRANSFER, MERGER, OR
26 ENCUMBRANCE UNDER THIS SECTION, THE COMMISSION MAY IMPOSE
27 REASONABLE TERMS AND CONDITIONS ON THE ACQUISITION, TRANSFER,

1 MERGER, OR ENCUMBRANCE TO PROTECT THE CUSTOMERS OF THE
2 JURISDICTIONAL REGULATED UTILITY. A JURISDICTIONAL REGULATED
3 UTILITY MAY REJECT THE TERMS AND CONDITIONS IMPOSED BY THE
4 COMMISSION AND NOT PROCEED WITH THE TRANSACTION.

5 (10) NONPUBLIC INFORMATION AND MATERIALS SUBMITTED BY A
6 JURISDICTIONAL REGULATED UTILITY UNDER THIS SECTION CLEARLY
7 DESIGNATED BY THAT UTILITY AS CONFIDENTIAL ARE EXEMPT FROM THE
8 FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246. THE
9 COMMISSION SHALL ISSUE PROTECTIVE ORDERS AS NECESSARY TO PROTECT
10 INFORMATION DESIGNATED BY THAT UTILITY AS CONFIDENTIAL.

11 (11) NOTHING IN THIS SECTION ALTERS THE AUTHORITY OF THE
12 ATTORNEY GENERAL TO ENFORCE FEDERAL AND STATE ANTITRUST LAWS.

13 (12) AS USED IN THIS SECTION:

14 (A) "COMMISSION" MEANS THE MICHIGAN PUBLIC SERVICE COMMISSION.

15 (B) "JURISDICTIONAL REGULATED UTILITY" MEANS A UTILITY WHOSE
16 RATES ARE REGULATED BY THE COMMISSION. JURISDICTIONAL REGULATED
17 UTILITY DOES NOT INCLUDE A TELECOMMUNICATION PROVIDER AS DEFINED IN
18 THE MICHIGAN TELECOMMUNICATIONS ACT, 1991 PA 179, MCL 484.2101 TO
19 484.2604, OR A MOTOR CARRIER AS DEFINED IN THE MOTOR CARRIER ACT,
20 1933 PA 254, MCL 475.1 TO 479.43.

21 (C) "PERSON" MEANS AN INDIVIDUAL, CORPORATION, ASSOCIATION,
22 PARTNERSHIP, UTILITY, OR ANY OTHER LEGAL PRIVATE OR PUBLIC ENTITY.

23 SEC. 6S. (1) AN ELECTRIC UTILITY THAT PROPOSES TO CONSTRUCT AN
24 ELECTRIC GENERATION FACILITY, MAKE A SIGNIFICANT INVESTMENT IN AN
25 EXISTING ELECTRIC GENERATION FACILITY, PURCHASE AN EXISTING
26 ELECTRIC GENERATION FACILITY, OR ENTER INTO A POWER PURCHASE
27 AGREEMENT FOR THE PURCHASE OF ELECTRIC CAPACITY FOR A PERIOD OF 7

1 YEARS OR LONGER MAY SUBMIT AN APPLICATION TO THE COMMISSION SEEKING
2 A CERTIFICATE OF NECESSITY FOR THAT CONSTRUCTION, INVESTMENT, OR
3 PURCHASE IF THAT CONSTRUCTION, INVESTMENT, OR PURCHASE COSTS
4 \$500,000,000.00 OR MORE AND A PORTION OF THE COSTS WOULD BE
5 ALLOCABLE TO RETAIL CUSTOMERS IN THIS STATE. A SIGNIFICANT
6 INVESTMENT IN AN ELECTRIC GENERATION FACILITY INCLUDES A GROUP OF
7 INVESTMENTS REASONABLY PLANNED TO BE MADE OVER A MULTIPLE YEAR
8 PERIOD NOT TO EXCEED 7 YEARS FOR A SINGULAR PURPOSE SUCH AS
9 INCREASING THE CAPACITY OF AN EXISTING ELECTRIC GENERATION PLANT.

10 (2) THE COMMISSION MAY IMPLEMENT SEPARATE REVIEW CRITERIA AND
11 APPROVAL STANDARDS FOR ELECTRIC UTILITIES WITH LESS THAN 1,000,000
12 RETAIL CUSTOMERS WHO SEEK A CERTIFICATE OF NECESSITY FOR PROJECTS
13 COSTING LESS THAN \$500,000,000.00. NOTWITHSTANDING ANY OTHER
14 PROVISION OF THIS SECTION, THE CRITERIA ESTABLISHED UNDER THIS
15 SUBSECTION SHALL PROVIDE FOR THE ISSUANCE OF A CERTIFICATE OF
16 NECESSITY FOR ENVIRONMENTAL UPGRADES TO EXISTING ELECTRIC
17 GENERATION FACILITIES OR FOR A RENEWABLE ENERGY SYSTEM NOT INCLUDED
18 IN A RENEWABLE ENERGY RESOURCE PLAN.

19 (3) AN ELECTRIC UTILITY SUBMITTING AN APPLICATION UNDER THIS
20 SECTION MAY REQUEST 1 OR MORE OF THE FOLLOWING:

21 (A) A CERTIFICATE OF NECESSITY THAT THE POWER TO BE SUPPLIED
22 AS A RESULT OF THE PROPOSED CONSTRUCTION, INVESTMENT, OR PURCHASE
23 IS NEEDED.

24 (B) A CERTIFICATE OF NECESSITY THAT THE SIZE, FUEL TYPE, AND
25 OTHER DESIGN CHARACTERISTICS OF THE EXISTING OR PROPOSED ELECTRIC
26 GENERATION FACILITY OR THE TERMS OF THE POWER PURCHASE AGREEMENT
27 REPRESENT THE MOST REASONABLE AND PRUDENT MEANS OF MEETING THAT

1 POWER NEED.

2 (C) A CERTIFICATE OF NECESSITY THAT THE PRICE SPECIFIED IN THE
3 POWER PURCHASE AGREEMENT WILL BE RECOVERED IN RATES FROM THE
4 ELECTRIC UTILITY'S CUSTOMERS.

5 (D) A CERTIFICATE OF NECESSITY THAT THE ESTIMATED PURCHASE OR
6 CAPITAL COSTS OF THE EXISTING OR PROPOSED ELECTRIC GENERATION
7 FACILITY, INCLUDING, BUT NOT LIMITED TO, THE COSTS OF SITING AND
8 LICENSING A NEW FACILITY AND THE ESTIMATED COST OF POWER FROM THE
9 NEW OR PROPOSED ELECTRIC GENERATION FACILITY, WILL BE RECOVERABLE
10 IN RATES FROM THE ELECTRIC UTILITY'S CUSTOMERS SUBJECT TO
11 SUBSECTION (4) (C).

12 (4) WITHIN 270 DAYS OF THE FILING OF AN APPLICATION UNDER THIS
13 SECTION, THE COMMISSION SHALL ISSUE AN ORDER GRANTING OR DENYING
14 THE REQUESTED CERTIFICATE OF NECESSITY. THE COMMISSION SHALL HOLD A
15 HEARING ON THE APPLICATION. THE HEARING SHALL BE CONDUCTED AS A
16 CONTESTED CASE PURSUANT TO CHAPTER 4 OF THE ADMINISTRATIVE
17 PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.271 TO 24.287. THE
18 COMMISSION SHALL ALLOW INTERVENTION BY INTERESTED PERSONS.
19 REASONABLE DISCOVERY SHALL BE PERMITTED BEFORE AND DURING THE
20 HEARING IN ORDER TO ASSIST PARTIES AND INTERESTED PERSONS IN
21 OBTAINING EVIDENCE CONCERNING THE APPLICATION, INCLUDING, BUT NOT
22 LIMITED TO, THE REASONABLENESS AND PRUDENCE OF THE CONSTRUCTION,
23 INVESTMENT, OR PURCHASE FOR WHICH THE CERTIFICATE OF NECESSITY HAS
24 BEEN REQUESTED. THE COMMISSION SHALL GRANT THE REQUEST IF IT
25 DETERMINES ALL OF THE FOLLOWING:

26 (A) THAT THE ELECTRIC UTILITY HAS DEMONSTRATED A NEED FOR THE
27 POWER THAT WOULD BE SUPPLIED BY THE EXISTING OR PROPOSED ELECTRIC

1 GENERATION FACILITY OR PURSUANT TO THE PROPOSED POWER PURCHASE
2 AGREEMENT THROUGH ITS APPROVED INTEGRATED RESOURCE PLAN THAT
3 COMPLIES WITH SUBSECTION (11).

4 (B) THE INFORMATION SUPPLIED INDICATES THAT THE EXISTING OR
5 PROPOSED ELECTRIC GENERATION FACILITY WILL COMPLY WITH ALL
6 APPLICABLE STATE AND FEDERAL ENVIRONMENTAL STANDARDS, LAWS, AND
7 RULES.

8 (C) THE ESTIMATED COST OF POWER FROM THE EXISTING OR PROPOSED
9 ELECTRIC GENERATION FACILITY OR THE PRICE OF POWER SPECIFIED IN THE
10 PROPOSED POWER PURCHASE AGREEMENT IS REASONABLE. THE COMMISSION
11 SHALL FIND THAT THE COST IS REASONABLE IF, IN THE CONSTRUCTION OR
12 INVESTMENT IN A NEW OR EXISTING FACILITY, TO THE EXTENT IT IS
13 COMMERCIALY PRACTICABLE, THE ESTIMATED COSTS ARE THE RESULT OF
14 COMPETITIVELY BID ENGINEERING, PROCUREMENT, AND CONSTRUCTION
15 CONTRACTS, OR IN A POWER PURCHASE AGREEMENT, THE COST IS THE RESULT
16 OF A COMPETITIVE SOLICITATION. UP TO 150 DAYS AFTER AN ELECTRIC
17 UTILITY MAKES ITS INITIAL FILING, IT MAY FILE TO UPDATE ITS COST
18 ESTIMATES IF THEY HAVE MATERIALLY CHANGED. NO OTHER ASPECT OF THE
19 INITIAL FILING MAY BE MODIFIED UNLESS THE APPLICATION IS WITHDRAWN
20 AND REFILED. A UTILITY'S FILING UPDATING ITS COST ESTIMATES DOES
21 NOT EXTEND THE PERIOD FOR THE COMMISSION TO ISSUE AN ORDER GRANTING
22 OR DENYING A CERTIFICATE OF NECESSITY. AN AFFILIATE OF AN ELECTRIC
23 UTILITY THAT SERVES CUSTOMERS IN THIS STATE AND AT LEAST 1 OTHER
24 STATE MAY PARTICIPATE IN THE COMPETITIVE BIDDING TO PROVIDE
25 ENGINEERING, PROCUREMENT, AND CONSTRUCTION SERVICES TO THAT
26 ELECTRIC UTILITY FOR A PROJECT COVERED BY THIS SECTION.

27 (D) THE EXISTING OR PROPOSED ELECTRIC GENERATION FACILITY OR

1 PROPOSED POWER PURCHASE AGREEMENT REPRESENTS THE MOST REASONABLE
2 AND PRUDENT MEANS OF MEETING THE POWER NEED RELATIVE TO OTHER
3 RESOURCE OPTIONS FOR MEETING POWER DEMAND, INCLUDING ENERGY
4 EFFICIENCY PROGRAMS AND ELECTRIC TRANSMISSION EFFICIENCIES.

5 (E) TO THE EXTENT PRACTICABLE, THE CONSTRUCTION OR INVESTMENT
6 IN A NEW OR EXISTING FACILITY IN THIS STATE IS COMPLETED USING A
7 WORKFORCE COMPOSED OF RESIDENTS OF THIS STATE AS DETERMINED BY THE
8 COMMISSION. THIS SUBDIVISION DOES NOT APPLY TO A FACILITY THAT IS
9 LOCATED IN A COUNTY THAT LIES ON A BORDER WITH ANOTHER STATE.

10 (5) THE COMMISSION MAY CONSIDER ANY OTHER COSTS OR INFORMATION
11 RELATED TO THE COSTS ASSOCIATED WITH THE POWER THAT WOULD BE
12 SUPPLIED BY THE EXISTING OR PROPOSED ELECTRIC GENERATION FACILITY
13 OR PURSUANT TO THE PROPOSED PURCHASE AGREEMENT OR ALTERNATIVES TO
14 THE PROPOSAL RAISED BY INTERVENING PARTIES.

15 (6) IN A CERTIFICATE OF NECESSITY UNDER THIS SECTION, THE
16 COMMISSION SHALL SPECIFY THE COSTS APPROVED FOR THE CONSTRUCTION OF
17 OR SIGNIFICANT INVESTMENT IN THE ELECTRIC GENERATION FACILITY, THE
18 PRICE APPROVED FOR THE PURCHASE OF THE EXISTING ELECTRIC GENERATION
19 FACILITY, OR THE PRICE APPROVED FOR THE PURCHASE OF POWER PURSUANT
20 TO THE TERMS OF THE POWER PURCHASE AGREEMENT.

21 (7) THE UTILITY SHALL ANNUALLY FILE, OR MORE FREQUENT IF
22 REQUIRED BY THE COMMISSION, REPORTS TO THE COMMISSION REGARDING THE
23 STATUS OF ANY PROJECT FOR WHICH A CERTIFICATE OF NECESSITY HAS BEEN
24 GRANTED UNDER SUBSECTION (4), INCLUDING AN UPDATE CONCERNING THE
25 COST AND SCHEDULE OF THAT PROJECT.

26 (8) IF THE COMMISSION DENIES ANY OF THE RELIEF REQUESTED BY AN
27 ELECTRIC UTILITY, THE ELECTRIC UTILITY MAY WITHDRAW ITS APPLICATION

1 OR PROCEED WITH THE PROPOSED CONSTRUCTION, PURCHASE, INVESTMENT, OR
2 POWER PURCHASE AGREEMENT WITHOUT A CERTIFICATE AND THE ASSURANCES
3 GRANTED UNDER THIS SECTION.

4 (9) ONCE THE ELECTRIC GENERATION FACILITY OR POWER PURCHASE
5 AGREEMENT IS CONSIDERED USED AND USEFUL OR AS OTHERWISE PROVIDED IN
6 SUBSECTION (12), THE COMMISSION SHALL INCLUDE IN AN ELECTRIC
7 UTILITY'S RETAIL RATES ALL REASONABLE AND PRUDENT COSTS FOR AN
8 ELECTRIC GENERATION FACILITY OR POWER PURCHASE AGREEMENT FOR WHICH
9 A CERTIFICATE OF NECESSITY HAS BEEN GRANTED. THE COMMISSION SHALL
10 NOT DISALLOW RECOVERY OF COSTS AN ELECTRIC UTILITY INCURS IN
11 CONSTRUCTING, INVESTING IN, OR PURCHASING AN ELECTRIC GENERATION
12 FACILITY OR IN PURCHASING POWER PURSUANT TO A POWER PURCHASE
13 AGREEMENT FOR WHICH A CERTIFICATE OF NECESSITY HAS BEEN GRANTED, IF
14 THE COSTS DO NOT EXCEED THE COSTS APPROVED BY THE COMMISSION. ONCE
15 THE ELECTRIC GENERATION FACILITY OR POWER PURCHASE AGREEMENT IS
16 CONSIDERED USED AND USEFUL OR AS OTHERWISE PROVIDED IN SUBSECTION
17 (12), THE COMMISSION SHALL INCLUDE IN THE ELECTRIC UTILITY'S RETAIL
18 RATES COSTS ACTUALLY INCURRED BY THE ELECTRIC UTILITY THAT EXCEED
19 THE COSTS APPROVED BY THE COMMISSION ONLY IF THE COMMISSION FINDS
20 THAT THE ADDITIONAL COSTS ARE REASONABLE AND PRUDENT. IF THE ACTUAL
21 COSTS INCURRED BY THE ELECTRIC UTILITY EXCEED THE COSTS APPROVED BY
22 THE COMMISSION, THE ELECTRIC UTILITY HAS THE BURDEN OF PROVING BY A
23 PREPONDERANCE OF THE EVIDENCE THAT THE COSTS ARE REASONABLE AND
24 PRUDENT. THE PORTION OF THE COST OF A PLANT, FACILITY, OR POWER
25 PURCHASE AGREEMENT WHICH EXCEEDS 110% OF THE COST APPROVED BY THE
26 COMMISSION IS PRESUMED TO HAVE BEEN INCURRED DUE TO A LACK OF
27 PRUDENCE. THE COMMISSION MAY INCLUDE ANY OR ALL OF THE PORTION OF

1 THE COST IN EXCESS OF 110% OF THE COST APPROVED BY THE COMMISSION
2 IF THE COMMISSION FINDS BY A PREPONDERANCE OF THE EVIDENCE THAT THE
3 COSTS WERE PRUDENTLY INCURRED.

4 (10) WITHIN 90 DAYS OF THE EFFECTIVE DATE OF THE AMENDATORY
5 ACT THAT ADDED THIS SECTION, THE COMMISSION SHALL ADOPT STANDARD
6 APPLICATION FILING FORMS AND INSTRUCTIONS FOR USE IN ALL REQUESTS
7 FOR A CERTIFICATE OF NECESSITY UNDER THIS SECTION. THE COMMISSION
8 MAY, IN ITS DISCRETION, MODIFY THE STANDARD APPLICATION FILING
9 FORMS AND INSTRUCTIONS ADOPTED UNDER THIS SECTION.

10 (11) THE COMMISSION SHALL ESTABLISH STANDARDS FOR AN
11 INTEGRATED RESOURCE PLAN THAT SHALL BE FILED BY AN ELECTRIC UTILITY
12 REQUESTING A CERTIFICATE OF NECESSITY UNDER THIS SECTION. AN
13 INTEGRATED RESOURCE PLAN SHALL INCLUDE ALL OF THE FOLLOWING:

14 (A) A LONG-TERM FORECAST OF THE ELECTRIC UTILITY'S LOAD GROWTH
15 UNDER VARIOUS REASONABLE SCENARIOS.

16 (B) THE TYPE OF GENERATION TECHNOLOGY PROPOSED FOR THE
17 GENERATION FACILITY AND THE PROPOSED CAPACITY OF THE GENERATION
18 FACILITY, INCLUDING PROJECTED FUEL AND REGULATORY COSTS UNDER
19 VARIOUS REASONABLE SCENARIOS.

20 (C) PROJECTED ENERGY AND CAPACITY PURCHASED OR PRODUCED BY THE
21 ELECTRIC UTILITY PURSUANT TO ANY RENEWABLE PORTFOLIO STANDARD.

22 (D) PROJECTED ENERGY EFFICIENCY PROGRAM SAVINGS UNDER ANY
23 ENERGY EFFICIENCY PROGRAM REQUIREMENTS AND THE PROJECTED COSTS FOR
24 THAT PROGRAM.

25 (E) PROJECTED LOAD MANAGEMENT AND DEMAND RESPONSE SAVINGS FOR
26 THE ELECTRIC UTILITY AND THE PROJECTED COSTS FOR THOSE PROGRAMS.

27 (F) AN ANALYSIS OF THE AVAILABILITY AND COSTS OF OTHER

1 ELECTRIC RESOURCES THAT COULD DEFER, DISPLACE, OR PARTIALLY
2 DISPLACE THE PROPOSED GENERATION FACILITY OR PURCHASED POWER
3 AGREEMENT, INCLUDING ADDITIONAL RENEWABLE ENERGY, ENERGY EFFICIENCY
4 PROGRAMS, LOAD MANAGEMENT, AND DEMAND RESPONSE, BEYOND THOSE
5 AMOUNTS CONTAINED IN SUBDIVISIONS (C) TO (E).

6 (G) ELECTRIC TRANSMISSION OPTIONS FOR THE ELECTRIC UTILITY.

7 (12) THE COMMISSION SHALL ALLOW FINANCING INTEREST COST
8 RECOVERY IN AN ELECTRIC UTILITY'S BASE RATES ON CONSTRUCTION WORK
9 IN PROGRESS FOR CAPITAL IMPROVEMENTS APPROVED UNDER THIS SECTION
10 PRIOR TO THE ASSETS BEING CONSIDERED USED AND USEFUL. REGARDLESS OF
11 WHETHER OR NOT THE COMMISSION AUTHORIZES BASE RATE TREATMENT FOR
12 CONSTRUCTION WORK IN PROGRESS FINANCING INTEREST EXPENSE, AN
13 ELECTRIC UTILITY SHALL BE ALLOWED TO RECOGNIZE, ACCRUE, AND DEFER
14 THE ALLOWANCE FOR FUNDS USED DURING CONSTRUCTION RELATED TO EQUITY
15 CAPITAL.

16 (13) AS USED IN THIS SECTION, "RENEWABLE ENERGY SYSTEM" MEANS
17 THAT TERM AS DEFINED IN THE CLEAN, RENEWABLE, AND EFFICIENT ENERGY
18 ACT.

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

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

23 (a) To ensure that all retail customers in this state of
24 electric power have a choice of electric suppliers.

25 (b) To allow and encourage the Michigan public service
26 commission to foster competition in this state in the provision of
27 electric supply and maintain regulation of electric supply for

1 customers who continue to choose supply from incumbent electric
2 utilities.

3 (c) To encourage the development and construction of merchant
4 plants which will diversify the ownership of electric generation in
5 this state.

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

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

11 (F) TO MAINTAIN, FOSTER, AND ENCOURAGE ROBUST, RELIABLE, AND
12 ECONOMIC GENERATION, DISTRIBUTION, AND TRANSMISSION SYSTEMS TO
13 PROVIDE THIS STATE'S ELECTRIC SUPPLIERS AND GENERATORS AN
14 OPPORTUNITY TO ACCESS REGIONAL SOURCES OF GENERATION AND WHOLESALE
15 POWER MARKETS AND TO ENSURE A RELIABLE SUPPLY OF ELECTRICITY IN
16 THIS STATE.

17 ~~—— (3) Subsection (2) does not apply after December 31, 2003.~~

18 Sec. 10a. (1) ~~No later than January 1, 2002, the~~ **THE**
19 commission shall issue orders establishing the rates, terms, and
20 conditions of service that allow all retail customers of an
21 electric utility or provider to choose an alternative electric
22 supplier. ~~The orders shall provide for full recovery of a utility's~~
23 ~~net stranded costs and implementation costs as determined by the~~
24 ~~commission.~~ **THE ORDERS SHALL DO ALL OF THE FOLLOWING:**

25 (A) PROVIDE THAT NO MORE THAN 10% OF AN ELECTRIC UTILITY'S
26 AVERAGE WEATHER-ADJUSTED RETAIL SALES FOR THE PRECEDING CALENDAR
27 YEAR MAY TAKE SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER AT ANY

1 TIME.

2 (B) SET FORTH PROCEDURES NECESSARY TO ADMINISTER AND ALLOCATE
3 THE AMOUNT OF LOAD THAT WILL BE ALLOWED TO BE SERVED BY ALTERNATIVE
4 ELECTRIC SUPPLIERS, THROUGH THE USE OF ANNUAL ENERGY ALLOTMENTS
5 AWARDED ON A CALENDAR YEAR BASIS, AND SHALL PROVIDE, AMONG OTHER
6 THINGS, THAT EXISTING CUSTOMERS WHO ARE TAKING ELECTRIC SERVICE
7 FROM AN ALTERNATIVE ELECTRIC SUPPLIER AT A FACILITY ON THE
8 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBDIVISION
9 SHALL BE GIVEN AN ALLOCATED ANNUAL ENERGY ALLOTMENT FOR THAT
10 SERVICE AT THAT FACILITY, THAT CUSTOMERS SEEKING TO EXPAND USAGE AT
11 A FACILITY SERVED THROUGH AN ALTERNATIVE ELECTRIC SUPPLIER WILL BE
12 GIVEN NEXT PRIORITY, WITH THE REMAINING AVAILABLE LOAD, IF ANY,
13 ALLOCATED ON A FIRST-COME FIRST-SERVED BASIS. THE PROCEDURES SHALL
14 ALSO PROVIDE HOW CUSTOMER FACILITIES WILL BE DEFINED FOR THE
15 PURPOSE OF ASSIGNING THE ANNUAL ENERGY ALLOTMENTS TO BE ALLOCATED
16 UNDER THIS SECTION. THE COMMISSION SHALL NOT ALLOCATE ADDITIONAL
17 ANNUAL ENERGY ALLOTMENTS AT ANY TIME WHEN THE TOTAL ANNUAL ENERGY
18 ALLOTMENTS FOR THE UTILITY'S DISTRIBUTION SERVICE TERRITORY IS
19 GREATER THAN 10% OF THE UTILITY'S WEATHER ADJUSTED RETAIL SALES IN
20 THE CALENDAR YEAR PRECEDING THE DATE OF ALLOCATION. IF THE SALES OF
21 A UTILITY ARE LESS IN A SUBSEQUENT YEAR OR IF THE ENERGY USAGE OF A
22 CUSTOMER RECEIVING ELECTRIC SERVICE FROM AN ALTERNATIVE ELECTRIC
23 SUPPLIER EXCEEDS ITS ANNUAL ENERGY ALLOTMENT FOR THAT FACILITY,
24 THAT CUSTOMER SHALL NOT BE FORCED TO PURCHASE ELECTRICITY FROM A
25 UTILITY, BUT MAY PURCHASE ELECTRICITY FROM AN ALTERNATIVE ELECTRIC
26 SUPPLIER FOR THAT FACILITY DURING THAT CALENDAR YEAR.

27 (C) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION,

House Bill No. 5524 as amended June 27, 2008

1 CUSTOMERS SEEKING TO EXPAND USAGE AT A FACILITY THAT HAS BEEN
2 CONTINUOUSLY SERVED THROUGH AN ALTERNATIVE ELECTRIC SUPPLIER SINCE
3 APRIL 1, 2008 SHALL BE PERMITTED TO PURCHASE ELECTRICITY FROM AN
4 ALTERNATIVE ELECTRIC SUPPLIER FOR BOTH THE EXISTING AND ANY
5 EXPANDED LOAD AT THAT FACILITY <<AS WELL AS ANY NEW FACILITY CONSTRUCTED
AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
SUBDIVISION THAT IS SIMILAR IN NATURE AND UNDER COMMON OWNERSHIP WITH THE
EXISTING FACILITY>>.

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

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

25 (4) No later than December 2, 2000, the commission shall
26 establish a code of conduct that shall apply to all electric
27 utilities. The code of conduct shall include, but is not limited

1 to, measures to prevent cross-subsidization, information sharing,
2 and preferential treatment, between a utility's regulated and
3 unregulated services, whether those services are provided by the
4 utility or the utility's affiliated entities. The code of conduct
5 established under this subsection shall also be applicable to
6 electric utilities and alternative electric suppliers consistent
7 with section 10, this section, and sections 10b through 10cc.

8 (5) An electric utility may offer its customers an appliance
9 service program. Except as otherwise provided by this section, the
10 utility shall comply with the code of conduct established by the
11 commission under subsection (4). As used in this section,
12 "appliance service program" or "program" means a subscription
13 program for the repair and servicing of heating and cooling systems
14 or other appliances.

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

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

20 (b) Maintain separate books and records for the program,
21 access to which shall be made available to the commission upon
22 request.

23 (c) Not promote or market the program through the use of
24 utility billing inserts, printed messages on the utility's billing
25 materials, or other promotional materials included with customers'
26 utility bills.

27 (7) All costs directly attributable to an appliance service

1 program allowed under subsection (5) shall be allocated to the
2 program as required by this subsection. The direct and indirect
3 costs of employees, vehicles, equipment, office space, and other
4 facilities used in the appliance service program shall be allocated
5 to the program based upon the amount of use by the program as
6 compared to the total use of the employees, vehicles, equipment,
7 office space, and other facilities. The cost of the program shall
8 include administrative and general expense loading to be determined
9 in the same manner as the utility determines administrative and
10 general expense loading for all of the utility's regulated and
11 unregulated activities. A subsidy by a utility does not exist if
12 costs allocated as required by this subsection do not exceed the
13 revenue of the program.

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

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

20 (b) A customer's regulated utility service is not terminated
21 for nonpayment of the appliance service program portion of the
22 bill.

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

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

1 (a) The list of customers receiving regulated service from the
2 utility shall be available to a provider of appliance repair
3 service upon request within 2 business days. The customer list
4 shall be provided in the same electronic format as such information
5 is provided to the appliance service program. A new customer shall
6 be added to the customer list within 1 business day of the date the
7 customer requested to turn on service.

8 (b) Appropriately allocate costs as required under subsection
9 (7) when personnel employed at a utility's call center provide
10 appliance service program marketing information to a prospective
11 customer.

12 (c) Prior to enrolling a customer into the program, the
13 utility shall inform the potential customer of all of the
14 following:

15 (i) That appliance service programs may be available from
16 another provider.

17 (ii) That the appliance service program is not regulated by the
18 commission.

19 (iii) That a new customer shall have 10 days after enrollment to
20 cancel his or her appliance service program contract without
21 penalty.

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

26 (d) The utility name and logo may be used to market the
27 appliance service program provided that the program is not marketed

1 in conjunction with a regulated service. To the extent that a
2 program utilizes the utility's name and logo in marketing the
3 program, the program shall include language on all material
4 indicating that the program is not regulated by the commission.
5 Costs shall not be allocated to the program for the use of the
6 utility's name or logo.

7 (10) This section does not prohibit the commission from
8 requiring a utility to include revenues from an appliance service
9 program in establishing base rates. If the commission includes the
10 revenues of an appliance service program in determining a utility's
11 base rates, the commission shall also include all of the costs of
12 the program as determined under this section.

13 (11) Except as otherwise provided in this section, the code of
14 conduct with respect to an appliance service program shall not
15 require a utility to form a separate affiliate or division to
16 operate an appliance service program, impose further restrictions
17 on the sharing of employees, vehicles, equipment, office space, and
18 other facilities, or require the utility to provide other providers
19 of appliance repair service with access to utility employees,
20 vehicles, equipment, office space, or other facilities.

21 ~~———— (12) The orders issued by the commission before June 5, 2000~~
22 ~~that allow customers of an electric utility to choose an~~
23 ~~alternative electric supplier, including orders that determine and~~
24 ~~authorize recovery of net stranded costs and implementation costs~~
25 ~~and that confirm any voluntary commitments of electric utilities,~~
26 ~~are in compliance with this act and enforceable by the commission.~~
27 ~~An electric utility that has not had voluntary commitments to~~

1 ~~provide customer choice previously approved by orders of the~~
2 ~~commission shall file a restructuring plan to allow customers to~~
3 ~~choose an alternative electric supplier no later than the date~~
4 ~~ordered by the commission. The plan shall propose a methodology to~~
5 ~~determine the electric utility's net stranded costs and~~
6 ~~implementation costs.~~

7 (12) ~~(13)~~ This act does not prohibit or limit the right of a
8 person to obtain self-service power and does not impose a
9 transition, implementation, exit fee, or any other similar charge
10 on self-service power. A person using self-service power is not an
11 electric supplier, electric utility, or a person conducting an
12 electric utility business. As used in this subsection, "self-
13 service power" means any of the following:

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

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

24 (c) A site or facility with load existing on June 5, 2000 that
25 is divided by an inland body of water or by a public highway, road,
26 or street but that otherwise meets this definition meets the
27 contiguous requirement of this subdivision regardless of whether

1 self-service power was being generated on June 5, 2000.

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

7 (13) ~~(14)~~ This act does not prohibit or limit the right of a
8 person to engage in affiliate wheeling and does not impose a
9 transition, implementation, exit fee, or any other similar charge
10 on a person engaged in affiliate wheeling. As used in this section:

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

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

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

1 power during the period.

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

9 (14) ~~(15)~~—The rights of parties to existing contracts and
10 agreements in effect as of January 1, 2000 between electric
11 utilities and qualifying facilities, including the right to have
12 the charges recovered from the customers of an electric utility, or
13 its successor, shall not be abrogated, increased, or diminished by
14 this act, nor shall the receipt of any proceeds of the
15 securitization bonds by an electric utility be a basis for any
16 regulatory disallowance. Further, any securitization or financing
17 order issued by the commission that relates to a qualifying
18 facility's power purchase contract shall fully consider that
19 qualifying facility's legal and financial interests.

20 ~~—(16) The commission shall, after a contested case proceeding,~~
21 ~~issue annually an order approving for each electric utility a true-~~
22 ~~up adjustment to reconcile any overcollections or undercollections~~
23 ~~of the preceding 12 months to ensure the recovery of all amounts of~~
24 ~~net stranded costs. The rates for customers remaining with an~~
25 ~~incumbent electric utility will not be affected by the true up~~
26 ~~process under this subsection. The commission shall review the~~
27 ~~electric utility's stranded cost recovery charges and~~

1 ~~securitization charges implemented for the preceding 12 months, and~~
2 ~~adjust the stranded cost recovery charge, by way of supplemental~~
3 ~~surcharges or credits, to allow the netting of stranded costs.~~

4 ~~—— (17) The commission shall consider the reasonableness and~~
5 ~~appropriateness of various methods to determine net stranded costs,~~
6 ~~including, but not limited to, all of the following:~~

7 ~~—— (a) Evaluating the relationship of market value to the net~~
8 ~~book value of generation assets and purchased power contracts.~~

9 ~~—— (b) Evaluating net stranded costs based on the market price of~~
10 ~~power in relation to prices assumed by the commission in prior~~
11 ~~orders.~~

12 ~~—— (c) Any other method the commission considers appropriate.~~

13 ~~—— (18) The true up adjustment adopted under subsection (16)~~
14 ~~shall not result in a modification to the securitization charge.~~

15 ~~The commission shall not adjust or change in any manner~~
16 ~~securitization charges authorized by the commission in a financing~~
17 ~~order issued under section 10i as a result of its review and any~~
18 ~~action taken under subsection (16).~~

19 ~~—— (19) After the time period described in section 10d(2), the~~
20 ~~rates for retail customers that remain with or leave and later~~
21 ~~return to the incumbent electric utility shall be determined in the~~
22 ~~same manner as the rates were determined before the effective date~~
23 ~~of this section.~~

24 **(15) A CUSTOMER WHO ELECTS TO RECEIVE SERVICE FROM AN**
25 **ALTERNATIVE ELECTRIC SUPPLIER MAY SUBSEQUENTLY PROVIDE NOTICE TO**
26 **THE ELECTRIC UTILITY OF THE CUSTOMER'S DESIRE TO RECEIVE STANDARD**
27 **TARIFF SERVICE FROM THE ELECTRIC UTILITY. THE PROCEDURES IN PLACE**

1 FOR EACH ELECTRIC UTILITY AS OF JANUARY 1, 2008 THAT SET FORTH THE
2 TERMS PURSUANT TO WHICH A CUSTOMER RECEIVING SERVICE FROM AN
3 ALTERNATIVE ELECTRIC SUPPLIER MAY RETURN TO FULL SERVICE FROM THE
4 ELECTRIC UTILITY ARE RATIFIED AND SHALL REMAIN IN EFFECT AND MAY BE
5 AMENDED BY THE COMMISSION AS NEEDED. IF AN ELECTRIC UTILITY DID NOT
6 HAVE THE PROCEDURES IN PLACE AS OF JANUARY 1, 2008, THE COMMISSION
7 SHALL ADOPT THOSE PROCEDURES.

8 (16) THE COMMISSION SHALL AUTHORIZE RATES THAT WILL ENSURE
9 THAT AN ELECTRIC UTILITY THAT OFFERED RETAIL OPEN ACCESS SERVICE
10 FROM 2002 THROUGH THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT
11 ADDED THIS SUBSECTION FULLY RECOVERS ITS RESTRUCTURING COSTS AND
12 ANY ASSOCIATED ACCRUED REGULATORY ASSETS. THIS INCLUDES, BUT IS NOT
13 LIMITED TO, IMPLEMENTATION COSTS, STRANDED COSTS, AND COSTS
14 AUTHORIZED PURSUANT TO SECTION 10D(4) AS IT EXISTED PRIOR TO THE
15 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION,
16 THAT HAVE BEEN AUTHORIZED FOR RECOVERY BY THE COMMISSION IN ORDERS
17 ISSUED PRIOR TO THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
18 THIS SUBSECTION. THE COMMISSION SHALL APPROVE SURCHARGES THAT WILL
19 ENSURE FULL RECOVERY OF ALL SUCH COSTS WITHIN 5 YEARS OF THE
20 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION.

21 (17) AS USED IN SUBSECTIONS (1) AND (15):

22 (A) "CUSTOMER" MEANS THE BUILDING OR FACILITIES SERVED THROUGH
23 A SINGLE EXISTING ELECTRIC BILLING METER AND DOES NOT MEAN THE
24 PERSON, CORPORATION, PARTNERSHIP, ASSOCIATION, GOVERNMENTAL BODY,
25 OR OTHER ENTITY OWNING OR HAVING POSSESSION OF THE BUILDING OR
26 FACILITIES.

27 (B) "STANDARD TARIFF SERVICE" MEANS, FOR EACH REGULATED

1 ELECTRIC UTILITY, THE RETAIL RATES, TERMS, AND CONDITIONS OF
2 SERVICE APPROVED BY THE COMMISSION FOR SERVICE TO CUSTOMERS WHO DO
3 NOT ELECT TO RECEIVE GENERATION SERVICE FROM ALTERNATIVE ELECTRIC
4 SUPPLIERS.

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

9 (2) No later than 1 year from ~~the effective date of the~~
10 ~~amendatory act that added this section~~ **JUNE 5, 2000**, each electric
11 utility shall file an application with the commission to unbundle
12 its existing commercial and industrial rate schedules and
13 separately identify and charge for their discrete services. No
14 earlier than 1 year from ~~the effective date of the amendatory act~~
15 ~~that added this section~~ **JUNE 5, 2000**, the commission may order the
16 electric utility to file an application to unbundle existing
17 residential rate schedules. The commission may allow the unbundled
18 rates to be expressed on residential billings in terms of
19 percentages in order to simplify residential billing. The
20 commission shall allow recovery by electric utilities of all just
21 and reasonable costs incurred by electric utilities to implement
22 and administer the provisions of this subsection.

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

26 (4) An electric utility is obligated, with commission
27 oversight, to provide standby generation service for open access

1 load on a best efforts basis until December 31, 2001 or the date
2 established under section 10d(2) **AS IT EXISTED PRIOR TO THE**
3 **EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SENTENCE,**
4 whichever is later. The pricing for the electric generation standby
5 service is equal to the retail market price of comparable standby
6 service allowed under subsection (5). An electric utility is not
7 required to interrupt firm off-system sales or firm service
8 customers to provide standby generation service. Until the date
9 established under section 10d(2) **AS IT EXISTED PRIOR TO THE**
10 **EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SENTENCE,**
11 standby generation service shall continue to be provided to nonopen
12 access customers under regulated tariffs.

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

19 Sec. 10d. ~~(1) Except as otherwise provided under subsection~~
20 ~~(3) or unless otherwise reduced by the commission under subsection~~
21 ~~(5), the commission shall establish the residential rates for each~~
22 ~~electric utility with 1,000,000 or more retail customers in this~~
23 ~~state as of May 1, 2000 that will result in a 5% rate reduction~~
24 ~~from the rates that were authorized or in effect on May 1, 2000.~~
25 ~~Notwithstanding any other provision of law or commission order,~~
26 ~~rates for each electric utility with 1,000,000 or more retail~~
27 ~~customers established under this subsection become effective on~~

1 ~~June 5, 2000 and remain in effect until December 31, 2003 and all~~
2 ~~other electric retail rates of an electric utility with 1,000,000~~
3 ~~or more retail customers authorized or in effect as of May 1, 2000~~
4 ~~shall remain in effect until December 31, 2003.~~

5 ~~—— (2) On and after December 31, 2003, rates for an electric~~
6 ~~utility with 1,000,000 or more retail customers in this state as of~~
7 ~~May 1, 2000 shall not be increased until the earlier of December~~
8 ~~31, 2013 or until the commission determines, after notice and~~
9 ~~hearing, that the utility meets the market test under section 10f~~
10 ~~and has completed the transmission expansion provided for in the~~
11 ~~plan required under section 10v. The rates for commercial or~~
12 ~~manufacturing customers of an electric utility with 1,000,000 or~~
13 ~~more retail customers with annual peak demands of less than 15~~
14 ~~kilowatts shall not be increased before January 1, 2005. There~~
15 ~~shall be no cost shifting from customers with capped rates to~~
16 ~~customers without capped rates as a result of this section. In no~~
17 ~~event shall residential rates be increased before January 1, 2006~~
18 ~~above the rates established under subsection (1).~~

19 ~~—— (3) Subsections (1) and (2) do not apply to rates or charges~~
20 ~~authorized by the commission under subsection (13).~~

21 ~~—— (4) Beginning January 1, 2004, annual return of and on capital~~
22 ~~expenditures in excess of depreciation levels incurred during and~~
23 ~~before the time period described in subsection (2), and expenses~~
24 ~~incurred as a result of changes in taxes, laws, or other state or~~
25 ~~federal governmental actions incurred by electric utilities during~~
26 ~~the period described in subsection (2), shall be accrued and~~
27 ~~deferred for recovery. After notice and hearing, the commission~~

1 ~~shall determine the amount of reasonable and prudent costs, if any,~~
2 ~~to be recovered and the recovery period, which shall not exceed 5~~
3 ~~years, and shall not commence until after the expiration of the~~
4 ~~period described in subsection (2).~~

5 ~~—— (5) If the commission authorizes an electric utility to use~~
6 ~~securitization financing under section 10i, any savings resulting~~
7 ~~from securitization shall be used to reduce retail electric rates~~
8 ~~from those authorized or in effect as of May 1, 2000 as required~~
9 ~~under subsection (1). A rate reduction under this subsection shall~~
10 ~~not be less than the 5% required under subsection (1). The~~
11 ~~financing order may provide that a utility shall only issue~~
12 ~~securitization bonds in an amount equal to or less than requested~~
13 ~~by the utility, but the commission shall not preclude the issuance~~
14 ~~of an amount of securitization bonds sufficient to fund the rate~~
15 ~~reduction required under subsection (1).~~

16 ~~—— (6) Except for savings assigned to the low income and energy~~
17 ~~efficiency fund under subsection (7), securitization savings~~
18 ~~greater than those used to achieve the 5% rate reduction under~~
19 ~~subsection (1) shall be allocated by the commission to further rate~~
20 ~~reductions or to reduce the level of any charges authorized by the~~
21 ~~commission to recover an electric utility's stranded costs. The~~
22 ~~commission shall allocate approved securitization, transition,~~
23 ~~stranded, and other related charges and credits in a manner that~~
24 ~~does not result in a reallocation of cost responsibility among the~~
25 ~~different customer classes.~~

26 ~~—— (7) If securitization savings exceed the amount needed to~~
27 ~~achieve a 5% rate reduction for all customers, then, for a period~~

1 of 6 years, 100% of the excess savings, up to 2% of the electric
2 utility's commercial and industrial revenues, shall be allocated to
3 the low income and energy efficiency fund administered by the
4 commission. The commission shall establish standards for the use of
5 the fund to provide shut off and other protection for low income
6 customers and to promote energy efficiency by all customer classes.
7 The commission shall issue a report to the legislature and the
8 governor every 2 years regarding the effectiveness of the fund.

9 ~~— (8) Except as provided under subsection (3), until the end of~~
10 ~~the period described in subsection (2), the commission shall not~~
11 ~~authorize any fees or charges that will cause the residential rate~~
12 ~~reduction required under subsection (1) to be less than 5%.~~

13 (1) ~~(9)~~—If an electric utility serving less than 1,000,000
14 retail customers in this state as of May 1, 2000 issues
15 securitization bonds as allowed under this act, it shall have the
16 same rights, duties, and obligations under this section as an
17 electric utility serving 1,000,000 or more retail customers in this
18 state as of May 1, 2000.

19 (2) ~~(10)~~—The commission shall take the necessary steps to
20 ensure that all electrical power generating facilities in this
21 state comply with all rules, regulations, and standards of the
22 federal environmental protection agency regarding mercury
23 emissions.

24 (3) ~~(11)~~—A covered utility may apply to the commission to
25 recover enhanced security costs for an electric generating facility
26 through a security recovery factor. If the commission action under
27 subsection ~~(13)~~ (5) is approval of a security recovery factor, the

1 covered utility may recover those enhanced security costs.

2 (4) ~~(12)~~—The commission shall require that notice of the
3 application filed under subsection ~~(11)~~—(3) be published by the
4 covered utility within 30 days from the date the application was
5 filed. The initial hearing by the commission shall be held within
6 20 days of the date the notice was published in newspapers of
7 general circulation in the service territory of the covered
8 utility.

9 (5) ~~(13)~~—The commission may issue an order approving,
10 rejecting, or modifying the security recovery factor. If the
11 commission issues an order approving a security recovery factor,
12 that order shall be issued within 120 days of the initial hearing
13 required under subsection ~~(12)~~—(4). In determining the security
14 recovery factor, the commission shall only include costs that the
15 commission determines are reasonable and prudent and that are
16 jurisdictionally assigned to retail customers of the covered
17 utility in this state. The costs included shall be net of any
18 proceeds that have been or will be received from another source,
19 including, but not limited to, any applicable insurance settlements
20 received by the covered utility or any grants or other emergency
21 relief from federal, state, or local governmental agencies for the
22 purpose of defraying enhanced security costs. In its order, the
23 commission shall designate a period for recovery of enhanced
24 security costs, including a reasonable return on the unamortized
25 balance, over a period not to exceed 5 years. The security recovery
26 factor shall not be less than zero.

27 (6) ~~(14)~~ Within 60 days of the effective date of the

1 ~~amendatory act that added this subsection~~ **NO LATER THAN FEBRUARY**
2 **18, 2003**, the commission shall by order prescribe the form for the
3 filing of an application for a security recovery factor under
4 subsection ~~(11)~~ **(3)**. If the commission or its designee determines
5 that a filing is incomplete, it shall notify the covered utility
6 within 10 days of the filing.

7 **(7)** ~~(15)~~ Records or other information supplied by the covered
8 utility in an application for recovery of security costs under
9 subsection ~~(11)~~ **(3)** that describe security measures, including, but
10 not limited to, emergency response plans, risk planning documents,
11 threat assessments, domestic preparedness strategies, and other
12 plans for responding to acts of terrorism are not subject to the
13 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and
14 shall be treated as confidential by the commission.

15 **(8)** ~~(16)~~ The commission shall issue protective orders as are
16 necessary to protect the information found by the commission to be
17 confidential under this section.

18 **(9)** ~~(17)~~ As used in this section:

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

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

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

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

1 (b) "Covered utility" means an electric utility ~~subject to the~~
2 ~~rate freeze provisions of subsection (1), the rate cap provisions~~
3 ~~of subsection (2),~~ **WITH 1,000,000 OR MORE RETAIL CUSTOMERS IN THIS**
4 **STATE AS OF MAY 1, 2000** or **AN ELECTRIC UTILITY SUBJECT TO** the rate
5 provisions of commission orders in case numbers U-11181-R and U-
6 12204.

7 (c) "Enhanced security costs" means reasonable and prudent
8 costs of new and enhanced security measures incurred before January
9 1, 2006 for an electric generating facility by a covered utility
10 that are required by federal or state regulatory security
11 requirements issued after September 11, 2001 or determined to be
12 necessary by the commission to provide reasonable security from an
13 act of terrorism. Enhanced security costs include increases in the
14 cost of insurance that are attributable to an increased terror
15 related risk and the costs of maintaining or restoring electric
16 service as the result of an act of terrorism.

17 (d) "Security recovery factor" means an unbundled charge for
18 all retail customers, except for customers of alternative electric
19 suppliers, to recover enhanced security costs that have been
20 approved by the commission.

21 Sec. 10g. (1) As used in sections 10 through 10bb:

22 (a) "Alternative electric supplier" means a person selling
23 electric generation service to retail customers in this state.
24 Alternative electric supplier does not include a person who
25 physically delivers electricity directly to retail customers in
26 this state. An alternative electric supplier is not a public
27 utility.

1 (b) "Commission" means the Michigan public service commission
2 ~~in the department of consumer and industry services~~ **CREATED IN**
3 **SECTION 1.**

4 (c) "Electric utility" means that term as defined in section 2
5 of the electric transmission line certification act, 1995 PA 30,
6 MCL 460.562.

7 (D) **"INDEPENDENT TRANSMISSION OWNER" MEANS AN INDEPENDENT**
8 **TRANSMISSION COMPANY AS THAT TERM IS DEFINED IN SECTION 2 OF THE**
9 **ELECTRIC TRANSMISSION LINE CERTIFICATION ACT, 1995 PA 30, MCL**
10 **460.562.**

11 (E) ~~(d)~~—"Merchant plant" means electric generating equipment
12 and associated facilities with a capacity of more than 100
13 kilowatts located in this state that are not owned and operated by
14 an electric utility.

15 (F) ~~(e)~~—"Relevant market" means either the Upper Peninsula or
16 the Lower Peninsula of this state.

17 (G) ~~(f)~~—"Renewable energy source" means energy generated by
18 solar, wind, geothermal, biomass, including waste-to-energy and
19 landfill gas, or hydroelectric.

20 (2) A school district aggregating electricity for school
21 properties or an exclusive aggregator for public or private school
22 properties is not an electric utility or a public utility for the
23 purpose of that aggregation.

24 Sec. 10p. (1) Each electric utility operating in this state
25 shall establish an industry worker transition program that shall,
26 in consultation with employees or applicable collective bargaining
27 representatives, provide skills upgrades, apprenticeship and

1 training programs, voluntary separation packages consistent with
2 reasonable business practices, and job banks to coordinate and
3 assist placement of employees into comparable employment at no less
4 than the wage rates and substantially equivalent fringe benefits
5 received before the transition.

6 (2) ~~Stranded~~**THE** costs **RESULTING FROM SUBSECTION (1)** shall
7 include audited and verified employee-related restructuring costs
8 that are incurred as a result of the amendatory act that added this
9 section or as a result of prior commission restructuring orders,
10 including employee severance costs, employee retraining programs,
11 early retirement programs, outplacement programs, and similar costs
12 and programs, that have been approved and found to be prudently
13 incurred by the commission.

14 (3) In the event of a sale, purchase, or any other transfer of
15 ownership of 1 or more Michigan divisions or business units, or
16 generating stations or generating units, of an electric utility, to
17 either a third party or a utility subsidiary, the electric
18 utility's contract and agreements with the acquiring entity or
19 persons shall require all of the following for a period of at least
20 30 months:

21 (a) That the acquiring entity or persons hire a sufficient
22 number of nonsupervisory employees to safely and reliably operate
23 and maintain the station, division, or unit by making offers of
24 employment to the nonsupervisory workforce of the electric
25 utility's division, business unit, generating station, or
26 generating unit.

27 (b) That the acquiring entity or persons not employ

1 nonsupervisory employees from outside the electric utility's
2 workforce unless offers of employment have been made to all
3 qualified nonsupervisory employees of the acquired business unit or
4 facility.

5 (c) That the acquiring entity or persons have a dispute
6 resolution mechanism culminating in a final and binding decision by
7 a neutral third party for resolving employee complaints or disputes
8 over wages, fringe benefits, and working conditions.

9 (d) That the acquiring entity or persons offer employment at
10 no less than the wage rates and substantially equivalent fringe
11 benefits and terms and conditions of employment that are in effect
12 at the time of transfer of ownership of the division, business
13 unit, generating station, or generating unit. The wage rates and
14 substantially equivalent fringe benefits and terms and conditions
15 of employment shall continue for at least 30 months from the time
16 of the transfer of ownership unless the employees, or where
17 applicable collective bargaining representative, and the new
18 employer mutually agree to different terms and conditions of
19 employment within that 30-month period.

20 (4) The electric utility shall offer a transition plan to
21 those employees who are not offered jobs by the entity because the
22 entity has a need for fewer workers. If there is litigation
23 concerning the sale, or other transfer of ownership of the electric
24 utility's divisions, business units, generating stations, or
25 generating units, the 30-month period under subsection (3) ~~will~~
26 ~~begin~~**BEGINS** on the date the acquiring entity or persons take
27 control or management of the divisions, business units, generating

1 stations, or generating units of the electric utility.

2 (5) The commission shall adopt generally applicable service
3 quality and reliability standards for the transmission, **GENERATION,**
4 and distribution systems of electric utilities and other entities
5 subject to its jurisdiction, including, but not limited to,
6 standards for service outages, distribution facility upgrades,
7 repairs and maintenance, telephone service, billing service,
8 operational reliability, and public and worker safety. In setting
9 service quality and reliability standards, the commission shall
10 consider safety, costs, local geography and weather, applicable
11 codes, national electric industry practices, sound engineering
12 judgment, and experience. The commission shall also include
13 provisions to upgrade the service quality of distribution circuits
14 that historically have experienced significantly below-average
15 performance in relationship to similar distribution circuits.

16 (6) Annually, each jurisdictional utility or entity shall file
17 its report with the commission detailing actions to be taken to
18 comply with the service quality and reliability standards during
19 the next calendar year and its performance in relation to the
20 service quality and reliability standards during the prior calendar
21 year. The annual reports shall contain that data as required by the
22 commission, **INCLUDING THE ESTIMATED COST OF ACHIEVING IMPROVEMENTS**
23 **IN THE JURISDICTIONAL UTILITY'S OR ENTITY'S PERFORMANCE WITH**
24 **RESPECT TO THE SERVICE QUALITY AND RELIABILITY STANDARDS.**

25 (7) The commission shall analyze the data to determine whether
26 the jurisdictional entities are properly operating and maintaining
27 their systems ~~, assess the impact of deregulation on reliability,~~

1 and take corrective action if needed.

2 (8) THE COMMISSION SHALL SUBMIT A REPORT TO THE GOVERNOR AND
3 THE LEGISLATURE BY SEPTEMBER 1, 2009. IN PREPARING THE REPORT, THE
4 COMMISSION SHOULD REVIEW AND CONSIDER RELEVANT EXISTING CUSTOMER
5 SURVEYS AND EXAMINE WHAT OTHER STATES HAVE DONE. THIS REPORT SHALL
6 INCLUDE ALL OF THE FOLLOWING:

7 (A) AN ASSESSMENT OF THE MAJOR TYPES OF END-USE CUSTOMER POWER
8 QUALITY DISTURBANCES, INCLUDING, BUT NOT LIMITED TO, VOLTAGE SAGS,
9 OVERVOLTAGES, OSCILLATORY TRANSIENTS, VOLTAGE SWELLS, DISTORTION,
10 POWER FREQUENCY VARIATIONS, AND INTERRUPTIONS, CAUSED BY BOTH THE
11 DISTRIBUTION AND TRANSMISSION SYSTEMS WITHIN THIS STATE.

12 (B) AN ASSESSMENT OF UTILITY POWER PLANT GENERATING COST
13 EFFICIENCY, INCLUDING, BUT NOT LIMITED TO, OPERATIONAL EFFICIENCY,
14 ECONOMIC GENERATING COST EFFICIENCY, AND SCHEDULES FOR PLANNED AND
15 UNPLANNED OUTAGES.

16 (C) CURRENT EFFORTS EMPLOYED BY THE COMMISSION TO MONITOR OR
17 ENFORCE STANDARDS PERTAINING TO END-USE CUSTOMER POWER QUALITY
18 DISTURBANCES AND UTILITY POWER PLANT GENERATING COST EFFICIENCY
19 EITHER THROUGH CURRENT PRACTICE, STATUTE, POLICY, OR RULE.

20 (D) RECOMMENDATIONS FOR USE OF COMMON CHARACTERISTICS,
21 MEASURES, AND INDICES TO MONITOR POWER QUALITY DISTURBANCES AND
22 POWER PLANT GENERATING COST EFFICIENCY, SUCH AS EXPERT CUSTOMER
23 SERVICE ASSESSMENTS, FREQUENCY OF DISTURBANCE OCCURRENCE, DURATION
24 OF DISTURBANCE, AND VOLTAGE MAGNITUDE.

25 (E) RECOMMENDATIONS FOR STATUTORY CHANGES THAT WOULD BE
26 NECESSARY TO ENABLE THE COMMISSION TO PROPERLY MONITOR AND ENFORCE
27 STANDARDS TO OPTIMIZE POWER PLANT GENERATING COST EFFICIENCY AND

1 MINIMIZE POWER QUALITY DISTURBANCES. THESE RECOMMENDATIONS SHALL
2 INCLUDE RECOMMENDATIONS TO PROVIDE METHODS TO ENSURE THAT THIS
3 STATE CAN OBTAIN OPTIMAL AND COST-EFFECTIVE END-USE CUSTOMER POWER
4 QUALITY TO ATTRACT ECONOMIC DEVELOPMENT AND INVESTMENT INTO THE
5 STATE.

6 (9) BY DECEMBER 31, 2009, THE COMMISSION SHALL, BASED ON ITS
7 FINDINGS IN SUBSECTION (8), REVIEW ITS EXISTING RULES UNDER THIS
8 SECTION AND AMEND THE RULES, IF NEEDED, UNDER THE ADMINISTRATIVE
9 PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO 24.328, TO
10 IMPLEMENT PERFORMANCE STANDARDS FOR GENERATION FACILITIES AND FOR
11 DISTRIBUTION FACILITIES TO PROTECT END-USE CUSTOMERS FROM POWER
12 QUALITY DISTURBANCES.

13 (10) ANY STANDARDS OR RULES DEVELOPED UNDER THIS SECTION SHALL
14 BE DESIGNED TO DO THE FOLLOWING, AS APPLICABLE:

15 (A) ESTABLISH DIFFERENT REQUIREMENTS FOR EACH CUSTOMER CLASS,
16 WHENEVER THOSE DIFFERENT REQUIREMENTS ARE APPROPRIATE TO CARRY OUT
17 THE PROVISIONS OF THIS SECTION, AND TO REFLECT DIFFERENT LOAD AND
18 SERVICE CHARACTERISTICS OF EACH CUSTOMER CLASS.

19 (B) CONSIDER THE AVAILABILITY AND ASSOCIATED COST OF NECESSARY
20 EQUIPMENT AND LABOR REQUIRED TO MAINTAIN OR UPGRADE DISTRIBUTION
21 AND GENERATING FACILITIES.

22 (C) ENSURE THAT THE MOST COST-EFFECTIVE MEANS OF ADDRESSING
23 POWER QUALITY DISTURBANCES ARE PROMOTED FOR EACH UTILITY, INCLUDING
24 CONSIDERATION OF THE INSTALLATION OF EQUIPMENT OR ADOPTION OF
25 OPERATING PRACTICES AT THE END-USER'S LOCATION.

26 (D) TAKE INTO ACCOUNT THE EXTENT TO WHICH THE BENEFITS
27 ASSOCIATED WITH ACHIEVING A SPECIFIED STANDARD OR IMPROVEMENT ARE

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1 OFFSET BY THE INCREMENTAL CAPITAL, FUEL, AND OPERATION AND
2 MAINTENANCE EXPENSES ASSOCIATED WITH MEETING THE SPECIFIED STANDARD
3 OR IMPROVEMENT.

4 (E) CAREFULLY CONSIDER THE TIME FRAME FOR ACHIEVING A
5 SPECIFIED STANDARD, TAKING INTO ACCOUNT THE TIME REQUIRED TO
6 IMPLEMENT NEEDED INVESTMENTS OR MODIFY OPERATING PRACTICES.

7 (11) THE COMMISSION SHALL ALSO CREATE BENCHMARKS FOR
8 INDIVIDUAL JURISDICTIONAL ENTITIES WITHIN THEIR RATE-MAKING PROCESS
9 IN ORDER TO ACCOMPLISH THE GOALS OF THIS SECTION TO ALLEVIATE END-
10 USE CUSTOMER POWER QUALITY DISTURBANCES AND PROMOTE POWER PLANT
11 GENERATING COST EFFICIENCY.

12 (12) THE COMMISSION SHALL ESTABLISH A METHOD FOR GATHERING
13 DATA FROM THE INDUSTRIAL CUSTOMER CLASS TO ASSIST IN MONITORING
14 POWER QUALITY AND RELIABILITY STANDARDS RELATED TO SERVICE
15 CHARACTERISTICS OF THE INDUSTRIAL CUSTOMER CLASS.

16 (13) ~~(8)~~The commission shall be IS authorized to levy
17 financial incentives and penalties upon any jurisdictional entity
18 which exceeds or fails to meet the service quality and reliability
19 standards.

<<(14) AS USED IN THIS SECTION, "JURISDICTIONAL UTILITY" OR
"JURISDICTIONAL ENTITY" MEANS JURISDICTIONAL REGULATED UTILITY AS THAT
TERM IS DEFINED IN SECTION 6Q.>>

20 Sec. 10r. (1) The commission shall establish minimum standards
21 for the form and content of all disclosures, explanations, or sales
22 information disseminated by a person selling electric service to
23 ensure that the person provides adequate, accurate, and
24 understandable information about the service that enables a
25 customer to make an informed decision relating to the source and
26 type of electric service purchased. The standards shall be
27 developed to do all of the following:

1 (a) Not be unduly burdensome.

2 (b) Not unnecessarily delay or inhibit the initiation and
3 development of competition for electric generation service in any
4 market.

5 (c) Establish different requirements for disclosures,
6 explanations, or sales information relating to different services
7 or similar services to different classes of customers, whenever
8 ~~such~~ **THE** different requirements are appropriate to carry out the
9 purposes of this section.

10 ~~—— (2) Before January 1, 2002, the commission shall establish a~~
11 ~~funding mechanism for electric utilities and alternative electric~~
12 ~~suppliers to carry out an educational program for customers to do~~
13 ~~all of the following:~~

14 ~~—— (a) Inform customers of the changes in the provision of~~
15 ~~electric service, including, but not limited to, the availability~~
16 ~~of alternative electric suppliers.~~

17 ~~—— (b) Inform customers of the requirements relating to~~
18 ~~disclosures, explanations, or sales information for alternative~~
19 ~~electric suppliers.~~

20 ~~—— (c) Provide assistance to customers in understanding and using~~
21 ~~the information to make reasonably informed choices about which~~
22 ~~service to purchase and from whom to purchase it.~~

23 (2) ~~(3)~~ The commission shall require that, starting January 1,
24 2002, all electric suppliers disclose in standardized, uniform
25 format on the customer's bill with a bill insert, on customer
26 contracts, or, for cooperatives, **IN** periodicals issued by an
27 association of rural electric cooperatives, information about the

1 environmental characteristics of electricity products purchased by
2 the customer, including all of the following:

3 (a) The average fuel mix, including categories for oil, gas,
4 coal, solar, hydroelectric, wind, biofuel, nuclear, solid waste
5 incineration, biomass, and other fuel sources. If a source fits
6 into the other category, the specific source must be disclosed. A
7 regional average, determined by the commission, may be used only
8 for that portion of the electricity purchased by the customer for
9 which the fuel mix cannot be discerned. For the purposes of this
10 subdivision, "biomass" means dedicated crops grown for energy
11 production and organic waste.

12 (b) The average emissions, in pounds per megawatt hour, sulfur
13 dioxide, carbon dioxide, and oxides of nitrogen. An emissions
14 default, determined by the commission, may be used if the regional
15 average fuel mix is being disclosed.

16 (c) The average of the high-level nuclear waste generated in
17 pounds per megawatt hour.

18 (d) The regional average fuel mix and emissions profile as
19 referenced in ~~subsection (3)(a)~~ **SUBDIVISIONS (A)**, (b), and (c).

20 (3) ~~(4)~~—The information required by subsection ~~(3)~~ **(2)** shall
21 be provided no more than twice annually, and be based on a rolling
22 annual average. Emissions factors will be based on annual publicly
23 available data by generation source.

24 (4) ~~(5)~~—All of the information required to be provided under
25 subsection (1) shall also be provided to the commission to be
26 included on the commission's internet site.

27 (5) ~~(6)~~—The commission shall establish the Michigan renewables

1 energy program. The program shall be designed to inform customers
2 in this state of the availability and value of using renewable
3 energy generation and the potential of reduced pollution. The
4 program shall also be designed to promote the use of existing
5 renewable energy sources and encourage the development of new
6 facilities.

7 (6) WITHIN 2 YEARS OF THE EFFECTIVE DATE OF THE AMENDATORY ACT
8 THAT ADDED THIS SUBSECTION, THE COMMISSION SHALL CONDUCT A STUDY
9 AND REPORT TO THE GOVERNOR AND THE HOUSE AND SENATE STANDING
10 COMMITTEES WITH OVERSIGHT OF PUBLIC UTILITIES ISSUES ON THE
11 ADVISABILITY OF SEPARATING ELECTRIC DISTRIBUTION AND GENERATION
12 WITHIN ELECTRIC UTILITIES, TAKING INTO ACCOUNT THE COSTS, BENEFITS,
13 EFFICIENCIES TO BE GAINED OR LOST, EFFECTS ON CUSTOMERS, EFFECTS ON
14 RELIABILITY OR QUALITY OF SERVICE, AND OTHER FACTORS WHICH THE
15 COMMISSION DETERMINES ARE APPROPRIATE. THE REPORT SHALL INCLUDE,
16 BUT IS NOT LIMITED TO, THE ADVISABILITY OF LOCATING WITHIN SEPARATE
17 DEPARTMENTS OF THE UTILITY THE PERSONNEL RESPONSIBLE FOR THE DAY-
18 TO-DAY MANAGEMENT OF ELECTRIC DISTRIBUTION AND GENERATION AND
19 MAINTAINING SEPARATE BOOKS AND RECORDS FOR ELECTRIC DISTRIBUTION
20 AND GENERATION.

21 (7) TWO YEARS AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT
22 THAT ADDED THIS SUBSECTION, THE COMMISSION SHALL CONDUCT A STUDY
23 AND REPORT TO THE GOVERNOR AND THE HOUSE AND SENATE STANDING
24 COMMITTEES WITH OVERSIGHT OF PUBLIC UTILITIES ISSUES ON WHETHER THE
25 STATE WOULD BENEFIT FROM THE CREATION OF A PURCHASING POOL IN WHICH
26 ELECTRIC GENERATION IN THIS STATE IS PURCHASED AND THEN RESOLD. THE
27 REPORT SHALL INCLUDE, BUT IS NOT LIMITED TO, WHETHER THE PURCHASING

1 POOL SHALL BE A SEPARATE ENTITY FROM ELECTRIC UTILITIES, THE IMPACT
2 OF SUCH A POOL ON ELECTRIC UTILITIES' MANAGEMENT OF THEIR
3 ELECTRICAL GENERATING ASSETS, AND WHETHER RATEPAYERS WOULD BENEFIT
4 FROM SPREADING THE COST OF NEW ELECTRIC GENERATION ACROSS ALL OR A
5 PORTION OF THIS STATE.

6 (8) WITHIN 270 DAYS OF THE EFFECTIVE DATE OF THE AMENDATORY
7 ACT THAT ADDED THIS SUBSECTION, EACH ELECTRIC UTILITY REGULATED BY
8 THE COMMISSION SHALL FILE WITH THE COMMISSION A PLAN FOR UTILIZING
9 DISPATCHABLE CUSTOMER-OWNED DISTRIBUTED GENERATION WITHIN THE
10 CONTEXT OF ITS INTEGRATED RESOURCE PLANNING PROCESS. INCLUDED IN
11 THE UTILITY'S FILING SHALL BE PROPOSALS FOR ENROLLING AND
12 COMPENSATING CUSTOMERS FOR THE UTILITY'S RIGHT TO DISPATCH AT-WILL
13 THE DISTRIBUTED GENERATION ASSETS OWNED BY THOSE CUSTOMERS AND
14 PROVISIONS REQUIRING THE CUSTOMER TO MAINTAIN THESE ASSETS IN A
15 DISPATCHABLE CONDITION. IF AN ELECTRIC UTILITY ALREADY HAS PROGRAMS
16 ADDRESSING THE SUBJECT OF THE FILING REQUIRED UNDER THIS
17 SUBSECTION, THE UTILITY MAY REFER TO AND TAKE CREDIT FOR THOSE
18 EXISTING PROGRAMS IN ITS PROPOSED PLAN.

19 Sec. 10x. (1) ~~The commission shall not require a cooperative~~
20 ~~electric utility to provide its retail customers the ability to~~
21 ~~choose an alternative electric supplier before January 1, 2005, nor~~
22 ~~unbundle its rates as required under section 10b before July 1,~~
23 ~~2004.~~ Any retail customer of a cooperative with a peak load of 1
24 megawatt or greater shall be provided the opportunity to choose an
25 alternative electric supplier ~~no later than January 1, 2002~~ **SUBJECT**
26 **TO THE PROVISIONS IN SECTION 10A.**

27 (2) The commission shall not require a cooperative electric

1 utility or an independent investor-owned utility with fewer than 60
2 employees to maintain separate facilities, operations, or
3 personnel, used to deliver electricity to retail customers, provide
4 retail electric service, or to be an alternative electric supplier.

5 (3) Any debt service recovery charge, or other charge approved
6 by the commission for a cooperative electric utility serving
7 primarily at wholesale may, upon application by its member
8 cooperative or cooperatives, be assessed by and collected through
9 its member cooperative or cooperatives.

10 (4) The commission shall not prohibit a cooperative electric
11 utility from metering and billing its customers for electric
12 services provided by the cooperative electric utility.

13 ~~—— (5) A cooperative electric utility shall not be required to~~
14 ~~provide funding under section 10r(2) until July 1, 2004 or such~~
15 ~~time as it is providing choice to all of its retail customers,~~
16 ~~whichever is earlier.~~

17 Sec. 10y. (1) The governing body of a municipally owned
18 utility shall determine whether it will permit retail customers
19 receiving delivery service from the municipally owned utility the
20 opportunity of choosing an alternative electric supplier, subject
21 to the implementation of rates, charges, terms, and conditions
22 referred to in subsection ~~(7)~~ (5).

23 (2) Except with the written consent of the municipally owned
24 utility, a person shall not provide delivery service or customer
25 account service to a retail customer that was receiving that
26 service from a municipally owned utility as of ~~the effective date~~
27 ~~of the amendatory act that added this section~~ **JUNE 5, 2000**, or is

1 receiving the service from a municipally owned utility. and has the
2 opportunity to choose an alternative electric supplier under terms
3 consistent with this section. For purposes of this subsection,
4 "customer" means the building or facilities served rather than the
5 individual, association, partnership, corporation, governmental
6 body, or any other entity taking service.

7 ~~—— (3) After December 31, 2007, subsection (2) does not apply if~~
8 ~~the governing body of the municipally owned utility does not permit~~
9 ~~all of its retail customers receiving delivery service from the~~
10 ~~municipally owned utility located outside of the boundaries of the~~
11 ~~municipality that owns the utility the opportunity to choose an~~
12 ~~alternative electric supplier.~~

13 ~~—— (4) If a municipally owned utility elects to provide electric~~
14 ~~generation service to retail customers receiving delivery service~~
15 ~~from an electric utility, all of the following apply:~~

16 ~~—— (a) The municipally owned utility shall provide all of its~~
17 ~~retail customers receiving delivery service from the municipally~~
18 ~~owned utility located outside of the boundaries of the municipality~~
19 ~~that owns the utility the opportunity of choosing an alternative~~
20 ~~electric supplier. The rates, charges, terms, and conditions of~~
21 ~~delivery service for customers choosing an alternative electric~~
22 ~~supplier shall be established by the governing body of the~~
23 ~~municipally owned utility as provided under subsection (7).~~

24 ~~—— (b) If a municipally owned utility and an electric utility~~
25 ~~both provide delivery service to retail customers in the same~~
26 ~~municipality located outside of the boundaries of the municipality~~
27 ~~that owns the municipal utility, then the municipally owned utility~~

1 ~~shall do 1 of the following:~~

2 ~~—— (i) Make a filing as provided under subsection (5).~~

3 ~~—— (ii) Enter into a written agreement as provided under~~
4 ~~subsection (6).~~

5 ~~—— (c) The municipally owned utility shall comply with orders~~
6 ~~issued pursuant to sections 10a(3), 10q, 10r, and 10t with respect~~
7 ~~to customers located outside of the municipality that owns the~~
8 ~~municipally owned utility. Upon a complaint or on the commission's~~
9 ~~own motion, if the commission finds, after notice and hearing, that~~
10 ~~the municipally owned utility has not complied with a provision or~~
11 ~~order issued under sections 10a(3), 10q, 10r, and 10t the~~
12 ~~commission shall order such remedies and penalties as necessary to~~
13 ~~make whole a customer or other person who has suffered damages as a~~
14 ~~result of the violation, including, but not limited to, 1 or more~~
15 ~~of the following:~~

16 ~~—— (i) Order the municipally owned utility to pay a fine of not~~
17 ~~less than \$1,000.00 or more than \$20,000.00 for the first offense~~
18 ~~and not less than \$40,000.00 for a second and any subsequent~~
19 ~~offense.~~

20 ~~—— (ii) Order a refund to the customer of any excess charges.~~

21 ~~—— (iii) Order any other remedies that would make whole a person~~
22 ~~harmed, including, but not limited to, payment of reasonable~~
23 ~~attorney fees.~~

24 ~~—— (iv) Revoke the license of the municipally owned utility if the~~
25 ~~commission finds a pattern of violations.~~

26 ~~—— (v) Issue cease and desist orders.~~

27 ~~—— (d) The municipally owned utility may provide electric~~

1 ~~generation service to serve electric retail customers receiving~~
2 ~~delivery service from an electric utility up to an amount equal to~~
3 ~~the municipally owned utility's retail customer load that has the~~
4 ~~opportunity of choosing from an alternative electric supplier.~~

5 ~~—— (c) The municipally owned utility shall obtain a license under~~
6 ~~section 10a(2). The commission shall issue a license unless it~~
7 ~~determines that the municipally owned utility has adopted rates,~~
8 ~~charges, terms, and conditions for delivery service that are unduly~~
9 ~~discriminatory or reflect recovery of stranded costs in an amount~~
10 ~~considered unjust and unreasonable by the commission. A municipally~~
11 ~~owned utility operating under a license issued by the commission~~
12 ~~shall notify the commission before modifying rates, charges, terms,~~
13 ~~and conditions for delivery services. This subsection does not~~
14 ~~grant the commission authority to set rates for a municipally owned~~
15 ~~utility. The commission, after notice and opportunity for hearing,~~
16 ~~may revoke a license issued to a municipally owned utility if it~~
17 ~~determines that the municipally owned utility is not in compliance~~
18 ~~with this subsection.~~

19 (3) ~~(5)~~ With respect to any electric utility regarding
20 delivery service to customers located outside of the municipal
21 boundaries of the municipality that owns the utility, a governing
22 body of a municipally owned utility may elect to operate in
23 compliance with R 460.3411 of the Michigan administrative code, as
24 in effect on the effective date of the amendatory act that added
25 this section **JUNE 5, 2000**. However, compliance with R 460.3411(13)
26 of the Michigan administrative code is not required for the
27 municipally owned utility. Concurrent with the filing of an

1 election under this subsection with the commission, the municipally
2 owned utility shall serve a copy of the election on the electric
3 utility. Beginning 30 days after service of the copy of the
4 election, the electric utility shall, as to the electing
5 municipally owned utility, be subject to the terms of R 460.3411 of
6 the Michigan administrative code as in effect on ~~the effective date~~
7 ~~of the amendatory act that added this section~~ **JUNE 5, 2000**. The
8 commission shall decide disputes arising under this subsection
9 subject to judicial review and enforcement.

10 (4) ~~(6)~~—A municipally owned utility and an electric utility
11 that provides delivery service in the same municipality as the
12 municipally owned utility may enter into a written agreement to
13 define the territorial boundaries of each utility's delivery
14 service area and any other terms and conditions as necessary to
15 provide delivery service. The agreement is not effective unless
16 approved by the governing body of the municipally owned utility and
17 the commission. The governing body of the municipally owned utility
18 and the commission shall annually review and supervise compliance
19 with the terms of the agreement. At the request of a party to the
20 agreement, disputes arising under the agreement shall be decided by
21 the commission subject to judicial review and enforcement.

22 (5) ~~(7)~~—If the governing body of a municipally owned utility
23 establishes a program to permit any of its customers the
24 opportunity to choose an alternative electric supplier, the
25 governing body of the municipally owned utility shall have
26 exclusive jurisdiction to do all of the following:

27 (a) Set delivery service rates applicable to services provided

1 by the municipally owned utility that shall not be unduly
2 discriminatory.

3 (b) Determine the amount and types of, and recovery mechanism
4 for, stranded and transition costs that will be charged.

5 (c) Establish rules, terms of access, and conditions that it
6 considers appropriate for the implementation of a program to allow
7 customers the opportunity of choosing an alternative electric
8 supplier.

9 (6) ~~(8)~~—Complaints alleging unduly discriminatory rates or
10 other noncompliance arising under subsection ~~(7)~~—(5) shall be filed
11 in the circuit court for the county in which the municipally owned
12 utility is located. ~~Complaints arising under subsection (4) shall~~
13 ~~be decided by the commission subject to judicial review and~~
14 ~~enforcement.~~

15 (7) ~~(9)~~—This section does not prevent or limit a municipally
16 owned utility from selling electricity at wholesale. A municipally
17 owned utility selling at wholesale is not considered to be an
18 alternative electric supplier and is not subject to regulation by
19 the commission.

20 ~~——(10) If a municipally owned utility complies with subsection~~
21 ~~(4)(a), (b), and (c) and is a member of a joint agency established~~
22 ~~under the Michigan energy employment act of 1976, 1976 PA 448, MCL~~
23 ~~460.801 to 460.848, it may with the consent of the joint agency~~
24 ~~assign to the joint agency an amount of load up to the amount that~~
25 ~~it is allowed to serve as an electric supplier under subsection~~
26 ~~(4)(d), for the purpose of allowing the joint agency the~~
27 ~~opportunity to sell retail electric generation as an electric~~

1 ~~supplier, if the joint agency complies with sections 10a(3), 10q,~~
2 ~~10r, and 10t and obtains a license under section 10a(2).~~

3 (8) ~~(11)~~—This section shall not be construed to impair the
4 contractual rights of a municipally owned utility or customer under
5 an existing contract.

6 (9) ~~(12)~~—Contracts or other records pertaining to the sale of
7 electricity by a municipally owned utility that are in the
8 possession of a public body and that contain specific pricing or
9 other confidential or proprietary information may be exempted from
10 public disclosure requirements by the governing body of a
11 municipally owned utility. Upon **A** showing of good cause, disclosure
12 subject to appropriate confidentiality provisions may be ordered by
13 a court or the commission.

14 (10) ~~(13)~~—This section does not affect the validity of the
15 order relating to the terms and conditions of service in the
16 Traverse City area that was issued August 25, 1994, by the
17 commission at the request of consumers power company and the light
18 and power board of the city of Traverse City.

19 (11) ~~(14) Except as otherwise provided under subsections~~
20 ~~(4)(c), (4)(e), and (10), sections~~ **SECTIONS** 6/, 10 through 10x, and
21 10z through 10bb do not apply to a municipally owned utility.

22 (12) ~~(15)~~—As used in this section:

23 (a) "Delivery service" means the providing of electric
24 transmission or distribution to a retail customer.

25 (b) "Municipality" means any city, village, or township.

26 (c) "Customer account services" means billing and collection,
27 provision of a meter, meter maintenance and testing, meter reading,

1 and other administrative activity associated with maintaining a
2 customer account.

3 (13) ~~(16)~~—In the event that an entity purchases 1 or more
4 divisions or business units, or generating stations or generating
5 units, of a municipal electric utility, the acquiring entity's
6 contract and agreements with the selling municipality shall require
7 all of the following for a period of at least 30 months:

8 (a) That the acquiring entity or persons hires a sufficient
9 number of employees to safely and reliably operate and maintain the
10 station, division, or unit by first making offers of employment to
11 the workforce of the municipal electric utility's division,
12 business unit, or generating unit.

13 (b) That the acquiring entity or persons not employ employees
14 from outside the municipal electric utility's workforce unless
15 offers of employment have been made to all qualified employees of
16 the acquired business unit or facility.

17 (c) That the acquiring entity or persons have a dispute
18 resolution mechanism culminating in a final and binding decision by
19 a neutral third party for resolving employee complaints or disputes
20 over wages, fringe benefits, and working conditions.

21 (d) That the acquiring entity or persons offer employment at
22 no less than the wage rates and substantially equivalent fringe
23 benefits and terms and conditions of employment that are in effect
24 at the time of transfer of ownership of the division, business
25 unit, generating station, or generating unit. The wage rates and
26 substantially equivalent fringe benefits and terms and conditions
27 of employment shall continue for at least 30 months from the time

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1 of the transfer of ownership unless the employees, or where
 2 applicable collective bargaining representative, and the new
 3 employer mutually agree to different terms and conditions of the
 4 employment within that 30-month period.

5 (e) An acquiring entity is exempt from the obligations in this
 6 subsection if the selling municipality transfers all displaced
 7 municipal electric utility employees to positions of employment
 8 within the municipality at no less than the wage rates and
 9 substantially equivalent fringe benefits and terms and conditions
 10 of employment that are in effect at the time of transfer. The wage
 11 rates and substantially equivalent fringe benefits and terms and
 12 conditions of employment shall continue for at least 30 months from
 13 the time of the transfer unless the employees, or where applicable
 14 collective bargaining representative, and the municipality mutually
 15 agree to different terms and conditions of the employment within
 16 that 30-month period.

17 SEC. 10DD. FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2008,
 18 THERE IS APPROPRIATED TO THE COMMISSION FROM THE ASSESSMENTS
 19 IMPOSED UNDER 1972 PA 299, MCL 460.111 TO 460.120, THE AMOUNT OF
 20 \$1,000,000.00 TO HIRE 25.0 FULL-TIME EQUATED POSITIONS TO IMPLEMENT
 21 THE PROVISIONS OF THE AMENDATORY ACT THAT ADDED THIS SECTION.

22 SEC. 11. (1) <<THIS SUBSECTION APPLIES BEGINNING JANUARY 1, 2009.>>
 THE COMMISSION SHALL PHASE IN ELECTRIC RATES
 23 EQUAL TO THE COST OF PROVIDING SERVICE TO INDUSTRIAL AND COMMERCIAL
 24 CUSTOMERS OVER A PERIOD OF 5 YEARS FROM THE EFFECTIVE DATE OF THE
 25 AMENDATORY ACT THAT ADDED THIS SECTION. <<THE COST OF PROVIDING SERVICE
 TO EACH CUSTOMER CLASS SHALL BE BASED ON THE PRODUCTION-RELATED AND
 TRANSMISSION COSTS BASED ON THE 50-25-25 METHOD OF COST ALLOCATION. THE
 COMMISSION MAY MODIFY THIS METHOD TO BETTER ENSURE RATES ARE EQUAL TO THE
 COST OF SERVICE IF THIS METHOD DOES NOT RESULT IN A GREATER AMOUNT OF
 PRODUCTION-RELATED AND TRANSMISSION COSTS ALLOCATED TO PRIMARY
 CUSTOMERS.>> THE COMMISSION SHALL PHASE
 26 IN COST-BASED RATES FOR RESIDENTIAL CUSTOMERS <<WITHIN >> 10
 27 YEARS FROM THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS

1 SECTION.

2 (2) THE COMMISSION SHALL <<ENSURE THAT THE IMPACT ON RATES DUE
3 TO THE PHASE-IN PERIOD IN SUBSECTION (1) IS NO MORE THAN 2.5% PER YEAR OR
ISSUE A FINANCING ORDER TO ALLOW A UTILITY TO RECOVER QUALIFIED COSTS. IN
DETERMINING WHETHER TO ISSUE A FINANCING ORDER, THE COMMISSION SHALL
REVIEW THE FOLLOWING:

(A) WHETHER A FINANCING ORDER IS IN THE BEST INTERESTS OF
RESIDENTIAL CUSTOMERS.

(B) THE TOTAL COST TO RESIDENTIAL CUSTOMERS OF THE ISSUANCE OF
SECURITIZATION BONDS.

(C) THE EFFECT ON RESIDENTIAL CUSTOMERS OF ANY ADDITIONAL COSTS
BECAUSE OF THE ISSUANCE OF A CERTIFICATE OF NECESSITY UNDER SECTION 6S.

(D) ANY OTHER FACTORS AFFECTING RESIDENTIAL RATES.>>

4 (3) IN A FINANCING ORDER, THE COMMISSION SHALL ENSURE ALL OF
5 THE FOLLOWING:

6 (A) THAT THE PROCEEDS OF THE SECURITIZATION BONDS ARE USED
7 SOLELY TO PAY FOR THE COSTS DUE TO THE PHASE-IN PERIOD DESCRIBED IN
8 SUBSECTION (1).

9 (B) THAT THE EXPECTED STRUCTURING AND EXPECTED PRICING OF THE
10 SECURITIZATION BONDS WILL RESULT IN THE LOWEST SECURITIZATION
11 CHARGES CONSISTENT WITH MARKET CONDITIONS AND THE TERMS OF THE
12 FINANCING ORDER.

13 (C) THAT THE AMOUNT SECURITIZED DOES NOT EXCEED THE NET
14 PRESENT VALUE OF THE REVENUE REQUIREMENT OVER THE LIFE OF THE
15 PROPOSED SECURITIZATION BONDS ASSOCIATED WITH THE QUALIFIED COSTS
16 SOUGHT TO BE SECURITIZED.

<<(D) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBDIVISION, THAT THE
PERIOD OVER WHICH THE SECURITIZATION CHARGES ARE TO BE RECOVERED SHALL
NOT EXCEED 10 YEARS AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT
ADDED THIS SECTION. IF THE COMMISSION DETERMINES THAT IT IS IN THE BEST
INTERESTS OF RESIDENTIAL RATEPAYERS, THE COMMISSION MAY ALLOW
SECURITIZATION CHARGES TO BE RECOVERED UP TO 18 YEARS AFTER THE EFFECTIVE
DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION.>>

17 (4) THE FINANCING ORDER SHALL DETAIL THE AMOUNT OF QUALIFIED
18 COSTS TO BE RECOVERED AND THE PERIOD OVER WHICH THE SECURITIZATION
19 CHARGES ARE TO BE RECOVERED.

20 (5) A FINANCING ORDER IS EFFECTIVE IN ACCORDANCE WITH ITS
21 TERMS, AND THE FINANCING ORDER, TOGETHER WITH THE SECURITIZATION

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22 CHARGES AUTHORIZED IN THE ORDER, SHALL BE IRREVOCABLE AND NOT
23 SUBJECT TO REDUCTION, IMPAIRMENT, OR ADJUSTMENT BY FURTHER ACTION
24 OF THE COMMISSION, EXCEPT AS PROVIDED UNDER SUBSECTION (16).

25 (6) STOCKS, BONDS, NOTES, OR OTHER EVIDENCE OF INDEBTEDNESS
26 ISSUED UNDER A FINANCING ORDER OF THE COMMISSION SHALL BE BINDING
27 IN ACCORDANCE WITH THEIR TERMS NOTWITHSTANDING THAT THE ORDER OF

1 THE COMMISSION IS LATER VACATED, MODIFIED, OR OTHERWISE HELD TO BE
2 INVALID IN WHOLE OR IN PART.

3 (7) THE COMMISSION SHALL AFTER AN EXPEDITED CONTESTED CASE
4 PROCEEDING ISSUE A FINANCING ORDER OR AN ORDER REJECTING THE
5 APPLICATION FOR A FINANCING ORDER NO LATER THAN 90 DAYS AFTER THE
6 ELECTRIC UTILITY FILES ITS APPLICATION.

7 (8) A FINANCING ORDER IS ONLY SUBJECT TO REHEARING BY THE
8 COMMISSION ON THE MOTION OF THE APPLICANT FOR SECURITIZATION.

9 (9) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A FINANCING
10 ORDER MAY BE REVIEWED BY THE COURT OF APPEALS UPON A FILING BY A
11 PARTY TO THE COMMISSION PROCEEDING WITHIN 30 DAYS AFTER THE
12 FINANCING ORDER IS ISSUED. ALL APPEALS OF A FINANCING ORDER SHALL
13 BE HEARD AND DETERMINED AS EXPEDITIOUSLY AS POSSIBLE WITH LAWFUL
14 PRECEDENCE OVER OTHER MATTERS. REVIEW ON APPEAL SHALL BE BASED
15 SOLELY ON THE RECORD BEFORE THE COMMISSION AND BRIEFS TO THE COURT
16 AND SHALL BE LIMITED TO WHETHER THE FINANCING ORDER CONFORMS TO THE
17 CONSTITUTION AND LAWS OF THIS STATE AND THE UNITED STATES AND IS
18 WITHIN THE AUTHORITY OF THE COMMISSION UNDER THIS ACT.

19 (10) AT THE REQUEST OF AN ELECTRIC UTILITY, THE COMMISSION MAY
20 ADOPT A FINANCING ORDER PROVIDING FOR RETIRING AND REFUNDING
21 SECURITIZATION BONDS IF THE COMMISSION FINDS THAT THE FUTURE
22 SECURITIZATION CHARGES REQUIRED TO SERVICE THE NEW SECURITIZATION
23 BONDS, INCLUDING TRANSACTION COSTS, WILL BE LESS THAN THE FUTURE
24 SECURITIZATION CHARGES REQUIRED TO SERVICE THE SECURITIZATION BONDS
25 BEING REFUNDED. ON THE RETIREMENT OF THE REFUNDED SECURITIZATION
26 BONDS, THE COMMISSION SHALL ADJUST THE RELATED SECURITIZATION
27 CHARGES ACCORDINGLY.

1 (11) THE COMMISSION SHALL HAVE THE AUTHORITY TO RETAIN
2 FINANCIAL OR LEGAL SERVICES TO ASSIST IN ISSUANCE OF A FINANCING
3 ORDER AND TO REQUIRE THE ELECTRIC UTILITY TO PAY THE COST OF THE
4 SERVICES. THE PAYMENTS SHALL BE INCLUDED AS QUALIFIED COSTS.

5 (12) SECURITIZATION PROPERTY SHALL CONSIST OF THE RIGHTS AND
6 INTERESTS OF AN ELECTRIC UTILITY, OR ITS SUCCESSOR, UNDER A
7 FINANCING ORDER, INCLUDING WITHOUT LIMITATION ALL OF THE FOLLOWING:

8 (A) THE RIGHT TO IMPOSE, COLLECT, AND RECEIVE SECURITIZATION
9 CHARGES AUTHORIZED IN THE FINANCING ORDER IN AN AMOUNT NECESSARY TO
10 PROVIDE THE FULL RECOVERY OF ALL QUALIFIED COSTS.

11 (B) THE RIGHT UNDER THE FINANCING ORDER TO OBTAIN PERIODIC
12 ADJUSTMENTS OF SECURITIZATION CHARGES UNDER SUBSECTION (16).

13 (C) ALL REVENUE, COLLECTIONS, PAYMENTS, MONEY, AND PROCEEDS
14 ARISING OUT OF THE RIGHTS AND INTERESTS DESCRIBED UNDER THIS
15 SUBSECTION.

16 (13) SECURITIZATION PROPERTY SHALL CONSTITUTE A PRESENT
17 PROPERTY RIGHT EVEN THOUGH THE IMPOSITION AND COLLECTION OF
18 SECURITIZATION CHARGES DEPENDS ON THE FURTHER ACTS OF THE ELECTRIC
19 UTILITY OR OTHERS THAT HAVE NOT YET OCCURRED. THE RIGHTS OF AN
20 ELECTRIC UTILITY TO SECURITIZATION PROPERTY BEFORE ITS SALE TO ANY
21 ASSIGNEE SHALL BE CONSIDERED A PROPERTY INTEREST IN A CONTRACT. THE
22 FINANCING ORDER SHALL REMAIN IN EFFECT AND THE SECURITIZATION
23 PROPERTY SHALL CONTINUE TO EXIST UNTIL THE COMMISSION APPROVED
24 SECURITIZATION BONDS AND EXPENSES RELATED TO THE BONDS HAVE BEEN
25 PAID IN FULL.

26 (14) THE INTEREST OF AN ASSIGNEE OR PLEDGEE IN SECURITIZATION
27 PROPERTY AND IN THE REVENUES AND COLLECTIONS ARISING FROM THAT

1 PROPERTY ARE NOT SUBJECT TO SETOFF, COUNTERCLAIM, SURCHARGE, OR
2 DEFENSE BY THE ELECTRIC UTILITY OR ANY OTHER PERSON OR IN
3 CONNECTION WITH THE BANKRUPTCY OF THE ELECTRIC UTILITY OR ANY OTHER
4 ENTITY. A FINANCING ORDER SHALL REMAIN IN EFFECT AND UNABATED
5 NOTWITHSTANDING THE BANKRUPTCY OF THE ELECTRIC UTILITY, ITS
6 SUCCESSORS, OR ASSIGNEES.

7 (15) A FINANCING ORDER SHALL INCLUDE TERMS ENSURING THAT THE
8 IMPOSITION AND COLLECTION OF SECURITIZATION CHARGES AUTHORIZED IN
9 THE ORDER ARE A NONBYPASSABLE CHARGE.

10 (16) A FINANCING ORDER SHALL INCLUDE A MECHANISM REQUIRING
11 THAT SECURITIZATION CHARGES BE REVIEWED AND ADJUSTED BY THE
12 COMMISSION AT LEAST ANNUALLY, WITHIN 45 DAYS OF THE ANNIVERSARY
13 DATE OF THE ISSUANCE OF THE SECURITIZATION BONDS, TO CORRECT ANY
14 OVERCOLLECTIONS OR UNDERCOLLECTIONS OF THE PRECEDING 12 MONTHS AND
15 TO ENSURE THE EXPECTED RECOVERY OF AMOUNTS SUFFICIENT TO TIMELY
16 PROVIDE ALL PAYMENTS OF DEBT SERVICE AND OTHER REQUIRED AMOUNTS AND
17 CHARGES IN CONNECTION WITH THE SECURITIZATION BONDS.

18 (17) AN AGREEMENT BY AN ELECTRIC UTILITY OR ASSIGNEE TO
19 TRANSFER SECURITIZATION PROPERTY THAT EXPRESSLY STATES THAT THE
20 TRANSFER IS A SALE OR OTHER ABSOLUTE TRANSFER SIGNIFIES THAT THE
21 TRANSACTION IS A TRUE SALE AND IS NOT A SECURED TRANSACTION AND
22 THAT TITLE, LEGAL AND EQUITABLE, HAS PASSED TO THE ENTITY TO WHICH
23 THE SECURITIZATION PROPERTY IS TRANSFERRED.

24 (18) A TRUE SALE UNDER THIS SECTION APPLIES REGARDLESS OF
25 WHETHER THE PURCHASER HAS ANY RECOURSE AGAINST THE SELLER, OR ANY
26 OTHER TERM OF THE PARTIES' AGREEMENT, INCLUDING THE SELLER'S
27 RETENTION OF AN EQUITY INTEREST IN THE SECURITIZATION PROPERTY, THE

1 FACT THAT THE ELECTRIC UTILITY ACTS AS A COLLECTOR OF
2 SECURITIZATION CHARGES RELATING TO THE SECURITIZATION PROPERTY, OR
3 THE TREATMENT OF THE TRANSFER AS A FINANCING FOR TAX, FINANCIAL
4 REPORTING, OR OTHER PURPOSES.

5 (19) A VALID AND ENFORCEABLE LIEN AND SECURITY INTEREST IN
6 SECURITIZATION PROPERTY MAY BE CREATED ONLY BY A FINANCING ORDER
7 AND THE EXECUTION AND DELIVERY OF A SECURITY AGREEMENT WITH A
8 FINANCING PARTY IN CONNECTION WITH THE ISSUANCE OF SECURITIZATION
9 BONDS.

10 (20) THE LIEN AND SECURITY INTEREST SHALL ATTACH AUTOMATICALLY
11 FROM THE TIME THAT VALUE IS RECEIVED FOR THE BONDS AND SHALL BE A
12 CONTINUOUSLY PERFECTED LIEN AND SECURITY INTEREST IN THE
13 SECURITIZATION PROPERTY AND ALL PROCEEDS OF THE PROPERTY, WHETHER
14 ACCRUED OR NOT, SHALL HAVE PRIORITY IN THE ORDER OF FILING WHEN A
15 FINANCING STATEMENT HAS BEEN FILED WITH RESPECT TO THE SECURITY
16 INTEREST IN ACCORDANCE WITH THE UNIFORM COMMERCIAL CODE, 1962 PA
17 174, MCL 440.1101 TO 440.11102, AND TAKE PRECEDENCE OVER ANY
18 SUBSEQUENT JUDICIAL AND OTHER LIEN CREDITOR. IN ADDITION TO THE
19 RIGHTS AND REMEDIES PROVIDED BY THIS ACT, ALL RIGHTS AND REMEDIES
20 WITH RESPECT TO A SECURITY INTEREST PROVIDED BY THE UNIFORM
21 COMMERCIAL CODE, 1962 PA 174, MCL 440.1101 TO 440.11102, SHALL
22 APPLY TO THE SECURITIZATION PROPERTY.

23 (21) TRANSFER OF AN INTEREST IN SECURITIZATION PROPERTY TO AN
24 ASSIGNEE SHALL BE PERFECTED AGAINST ALL THIRD PARTIES, INCLUDING
25 SUBSEQUENT JUDICIAL AND OTHER LIEN CREDITORS, WHEN A FINANCING
26 STATEMENT HAS BEEN FILED WITH RESPECT TO THE TRANSFER IN ACCORDANCE
27 WITH THE UNIFORM COMMERCIAL CODE, 1962 PA 174, MCL 440.1101 TO

1 440.11102.

2 (22) THE PRIORITY OF A LIEN AND SECURITY INTEREST UNDER THIS
3 SECTION IS NOT IMPAIRED BY ANY LATER MODIFICATION OF THE FINANCING
4 ORDER OR BY THE COMMINGLING OF FUNDS ARISING FROM SECURITIZATION
5 CHARGES WITH OTHER FUNDS, AND ANY OTHER SECURITY INTEREST THAT MAY
6 APPLY TO THOSE FUNDS SHALL BE TERMINATED WHEN THEY ARE TRANSFERRED
7 TO A SEGREGATED ACCOUNT FOR THE ASSIGNEE OR A FINANCING PARTY. IF
8 SECURITIZATION PROPERTY HAS BEEN TRANSFERRED TO AN ASSIGNEE, ANY
9 PROCEEDS OF THAT PROPERTY SHALL BE HELD IN TRUST FOR THE ASSIGNEE.

10 (23) IN THE EVENT OF DEFAULT BY THE ELECTRIC UTILITY OR ITS
11 SUCCESSORS, IN PAYMENT OF REVENUES ARISING WITH RESPECT TO
12 SECURITIZATION PROPERTY, THE COMMISSION OR A COURT OF APPROPRIATE
13 JURISDICTION, UPON THE APPLICATION OF THE FINANCING PARTY, AND
14 WITHOUT LIMITING ANY OTHER REMEDIES AVAILABLE TO THE FINANCING
15 PARTY, SHALL ORDER THE SEQUESTRATION AND PAYMENT TO THE FINANCING
16 PARTY OF REVENUES ARISING WITH RESPECT TO THE SECURITIZATION
17 PROPERTY. AN ORDER SHALL REMAIN IN FULL FORCE AND EFFECT
18 NOTWITHSTANDING ANY BANKRUPTCY, REORGANIZATION, OR OTHER INSOLVENCY
19 PROCEEDINGS WITH RESPECT TO THE DEBTOR, PLEDGOR, OR TRANSFEROR OF
20 THE PROPERTY.

21 (24) SECURITIZATION PROPERTY SHALL CONSTITUTE AN ACCOUNT AS
22 THAT TERM IS DEFINED UNDER THE UNIFORM COMMERCIAL CODE, 1962 PA
23 174, MCL 440.1101 TO 440.11102.

24 (25) FOR PURPOSES OF THIS ACT AND THE UNIFORM COMMERCIAL CODE,
25 1962 PA 174, MCL 440.1101 TO 440.11102, SECURITIZATION PROPERTY
26 SHALL BE IN EXISTENCE WHETHER OR NOT THE REVENUE OR PROCEEDS IN
27 RESPECT TO THE PROPERTY HAVE ACCRUED AND WHETHER OR NOT THE VALUE

1 OF THE PROPERTY RIGHT IS DEPENDENT ON THE CUSTOMERS OF AN ELECTRIC
2 UTILITY RECEIVING SERVICE.

3 (26) CHANGES IN THE FINANCING ORDER OR IN THE CUSTOMER'S
4 SECURITIZATION CHARGES DO NOT AFFECT THE VALIDITY, PERFECTION, OR
5 PRIORITY OF THE SECURITY INTEREST IN THE SECURITIZATION PROPERTY.

6 (27) THE DESCRIPTION OF SECURITIZATION PROPERTY IN A SECURITY
7 AGREEMENT OR OTHER AGREEMENT OR A FINANCING STATEMENT IS SUFFICIENT
8 IF IT REFERS TO THIS ACT AND THE FINANCING ORDER ESTABLISHING THE
9 SECURITIZATION PROPERTY.

10 (28) THIS ACT SHALL CONTROL IN ANY CONFLICT BETWEEN THIS ACT
11 AND ANY OTHER LAW OF THIS STATE REGARDING THE ATTACHMENT AND
12 PERFECTION AND THE EFFECT OF PERFECTION AND PRIORITY OF ANY
13 SECURITY INTEREST IN SECURITIZATION PROPERTY.

14 (29) NOTWITHSTANDING THE PROVISIONS OF THE UNIFORM COMMERCIAL
15 CODE, 1962 PA 174, MCL 440.1101 TO 440.11102, THE LAW OF THE STATE
16 OF MICHIGAN SHALL GOVERN THE PERFECTION AND THE EFFECT OF
17 PERFECTION AND PRIORITY OF ANY SECURITY INTEREST IN THE
18 SECURITIZATION PROPERTY.

19 (30) SECURITIZATION BONDS ARE NOT A DEBT OR OBLIGATION OF THE
20 STATE AND ARE NOT A CHARGE ON ITS FULL FAITH AND CREDIT OR TAXING
21 POWER.

22 (31) THE STATE PLEDGES, FOR THE BENEFIT AND PROTECTION OF THE
23 FINANCING PARTIES AND THE ELECTRIC UTILITY, THAT IT WILL NOT TAKE
24 OR PERMIT ANY ACTION THAT WOULD IMPAIR THE VALUE OF SECURITIZATION
25 PROPERTY, REDUCE OR ALTER, EXCEPT AS ALLOWED UNDER SUBSECTION (16),
26 OR IMPAIR THE SECURITIZATION CHARGES TO BE IMPOSED, COLLECTED, AND
27 REMITTED TO FINANCING PARTIES, UNTIL THE PRINCIPAL, INTEREST AND

1 PREMIUM, AND ANY OTHER CHARGES INCURRED AND CONTRACTS TO BE
2 PERFORMED IN CONNECTION WITH THE RELATED SECURITIZATION BONDS HAVE
3 BEEN PAID AND PERFORMED IN FULL. ANY PARTY ISSUING SECURITIZATION
4 BONDS IS AUTHORIZED TO INCLUDE THIS PLEDGE IN ANY DOCUMENTATION
5 RELATING TO THOSE BONDS.

6 (32) THE ACQUISITION, OWNERSHIP, AND DISPOSITION OF ANY DIRECT
7 INTEREST IN ANY SECURITIZATION BOND SHALL NOT BE TAKEN INTO ACCOUNT
8 IN DETERMINING WHETHER A PERSON IS SUBJECT TO ANY INCOME TAX,
9 FRANCHISE TAX, BUSINESS ACTIVITIES TAX, INTANGIBLE PROPERTY TAX,
10 EXCISE TAX, STAMP TAX, OR ANY OTHER TAX IMPOSED BY THIS STATE OR
11 ANY AGENCY OR POLITICAL SUBDIVISION OF THIS STATE.

12 (33) ANY SUCCESSOR TO AN ELECTRIC UTILITY, WHETHER PURSUANT TO
13 ANY BANKRUPTCY, REORGANIZATION, OR OTHER INSOLVENCY PROCEEDING OR
14 PURSUANT TO ANY MERGER OR ACQUISITION, SALE OR TRANSFER, BY
15 OPERATION OF LAW, AS A RESULT OF ELECTRIC UTILITY RESTRUCTURING OR
16 OTHERWISE, SHALL PERFORM AND SATISFY ALL OBLIGATIONS OF THE
17 ELECTRIC UTILITY UNDER THE AMENDATORY ACT THAT ADDED THIS SECTION
18 IN THE SAME MANNER AND TO THE SAME EXTENT AS THE ELECTRIC UTILITY,
19 INCLUDING, BUT NOT LIMITED TO, COLLECTING AND PAYING TO THE PERSON
20 ENTITLED TO REVENUES WITH RESPECT TO THE SECURITIZATION PROPERTY.

21 (34) AN ASSIGNEE OR FINANCING PARTY SHALL NOT BE CONSIDERED TO
22 BE A PUBLIC UTILITY OR PERSON PROVIDING ELECTRIC SERVICE SOLELY BY
23 VIRTUE OF THE TRANSACTIONS DESCRIBED IN THIS SECTION.

24 (35) EFFECTIVE ON THE DATE THE FIRST SECURITIZATION BONDS ARE
25 ISSUED UNDER THIS SECTION, IF ANY PROVISION OF THIS SECTION OR
26 PORTION OF THIS SECTION IS HELD TO BE INVALID OR IS INVALIDATED,
27 SUPERSEDED, REPLACED, REPEALED, OR EXPIRES FOR ANY REASON, THAT

1 OCCURRENCE DOES NOT AFFECT THE VALIDITY OR CONTINUATION OF THE
2 AMENDATORY ACT THAT ADDED THIS SECTION, OR ANY PART OF THOSE
3 PROVISIONS, OR ANY OTHER PROVISION OF THIS SECTION THAT IS RELEVANT
4 TO THE ISSUANCE, ADMINISTRATION, PAYMENT, RETIREMENT, OR REFUNDING
5 OF SECURITIZATION BONDS OR TO ANY ACTIONS OF THE ELECTRIC UTILITY,
6 ITS SUCCESSORS, AN ASSIGNEE, A COLLECTION AGENT, OR A FINANCING
7 PARTY, WHICH SHALL REMAIN IN FULL FORCE AND EFFECT.

8 (36) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT, THE
9 COMMISSION SHALL ESTABLISH AN ELIGIBLE LOW-INCOME CUSTOMER AND
10 ELIGIBLE SENIOR CITIZEN CUSTOMER RATE. UPON FILING OF A RATE
11 INCREASE REQUEST, A UTILITY SHALL INCLUDE A PROPOSED ELIGIBLE LOW-
12 INCOME CUSTOMER AND ELIGIBLE SENIOR CITIZEN CUSTOMER RATE AND A
13 METHOD TO ALLOCATE THE REVENUE SHORTFALL ATTRIBUTED TO THE
14 IMPLEMENTATION OF THAT RATE UPON ALL CUSTOMER CLASSES. AS USED IN
15 THIS SUBSECTION, "ELIGIBLE LOW-INCOME CUSTOMER" AND "ELIGIBLE
16 SENIOR CITIZEN CUSTOMER" MEAN THOSE TERMS AS DEFINED IN SECTION
17 10T.

18 (37) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, THE
19 COMMISSION SHALL ESTABLISH RATE SCHEDULES WHICH ENSURE THAT PUBLIC
20 AND PRIVATE SCHOOLS, UNIVERSITIES, AND COMMUNITY COLLEGES ARE
21 CHARGED RETAIL ELECTRIC RATES THAT REFLECT THE ACTUAL COST OF
22 PROVIDING SERVICE TO THOSE CUSTOMERS. NOT LATER THAN 90 DAYS AFTER
23 THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION,
24 ELECTRIC UTILITIES REGULATED UNDER THIS SECTION SHALL FILE WITH THE
25 COMMISSION TARIFFS TO ENSURE THAT PUBLIC AND PRIVATE SCHOOLS,
26 UNIVERSITIES, AND COMMUNITY COLLEGES ARE CHARGED ELECTRIC RATES
27 THAT FULLY REFLECT THEIR UNIQUE LOAD CHARACTERISTICS.

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1 (38) SUBSECTIONS (1) TO (37) APPLY ONLY TO ELECTRIC UTILITIES
2 WITH 1,000,000 OR MORE RETAIL CUSTOMERS IN THIS STATE.

3 (39) <<THIS SUBSECTION APPLIES BEGINNING JANUARY 1, 2009.>> THE
4 COMMISSION SHALL APPROVE RATES EQUAL TO THE COST OF
5 PROVIDING SERVICE TO CUSTOMERS OF ELECTRIC UTILITIES SERVING LESS
6 THAN 1,000,000 RETAIL CUSTOMERS IN THIS STATE. THE RATES SHALL BE
7 APPROVED BY THE COMMISSION IN EACH UTILITY'S FIRST GENERAL RATE
8 CASE FILED AFTER PASSAGE OF THE AMENDATORY ACT THAT ADDED THIS
9 SECTION. IF, IN THE JUDGMENT OF THE COMMISSION, THE IMPACT OF
10 IMPOSING COST OF SERVICE RATES ON CUSTOMERS OF A UTILITY WOULD HAVE
11 A MATERIAL IMPACT, THE COMMISSION MAY APPROVE AN ORDER THAT
12 IMPLEMENTS THOSE RATES OVER A SUITABLE NUMBER OF YEARS. <<THE COMMISSION
13 SHALL ENSURE THAT ANY IMPACT ON RATES IS NOT MORE THAN 2.5% PER YEAR.>>

14 (40) AS USED IN THIS SECTION:

15 (A) "ASSIGNEE" MEANS AN INDIVIDUAL, CORPORATION, OR OTHER
16 LEGALLY RECOGNIZED ENTITY TO WHICH AN INTEREST IN SECURITIZATION
17 PROPERTY IS TRANSFERRED.

18 (B) "FINANCING ORDER" MEANS AN ORDER OF THE COMMISSION
19 APPROVING THE ISSUANCE OF SECURITIZATION BONDS AND THE CREATION OF
20 SECURITIZATION CHARGES.

21 (C) "FINANCING PARTY" MEANS A HOLDER OF SECURITIZATION BONDS,
22 INCLUDING TRUSTEES, COLLATERAL AGENTS, AND OTHER PERSONS ACTING FOR
23 THE BENEFIT OF THE HOLDER.

24 (D) "NONBYPASSABLE CHARGE" MEANS A CHARGE IN A FINANCING ORDER
25 PAYABLE BY A <<RESIDENTIAL>> CUSTOMER TO AN ELECTRIC UTILITY OR ITS
26 ASSIGNEES OR
27 SUCCESSORS<<.

>>

28 (E) "QUALIFIED COSTS" MEANS THE COSTS DUE TO THE PHASE-IN
29 PERIOD DESCRIBED IN SUBSECTION (1) TOGETHER WITH THE COSTS OF

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1 ISSUING, SUPPORTING, AND SERVICING SECURITIZATION BONDS.

2 (F) "SECURITIZATION BONDS" MEANS BONDS, DEBENTURES, NOTES,
3 CERTIFICATES OF PARTICIPATION, CERTIFICATES OF A BENEFICIAL
4 INTEREST, CERTIFICATES OF OWNERSHIP, OR OTHER EVIDENCES OF
5 INDEBTEDNESS THAT ARE ISSUED BY AN ELECTRIC UTILITY, ITS
6 SUCCESSORS, OR AN ASSIGNEE UNDER A FINANCING ORDER, <<WITH A MATURITY
7 THAT DOES NOT EXCEED 10 YEARS FROM THE DATE OF ISSUANCE>>, AND THAT ARE
8 SECURED BY OR PAYABLE FROM
9 SECURITIZATION PROPERTY. IF CERTIFICATES OF PARTICIPATION,
10 CERTIFICATES OF BENEFICIAL INTEREST, OR CERTIFICATES OF OWNERSHIP
11 ARE ISSUED, REFERENCES IN THIS ACT TO PRINCIPAL, INTEREST, OR
12 PREMIUM SHALL REFER TO COMPARABLE AMOUNTS UNDER THOSE CERTIFICATES.

13 (G) "SECURITIZATION CHARGES" MEANS NONBYPASSABLE AMOUNTS TO BE
14 CHARGED FOR THE USE OR AVAILABILITY OF ELECTRIC SERVICES, APPROVED
15 BY THE COMMISSION UNDER A FINANCING ORDER TO FULLY RECOVER
16 QUALIFIED COSTS, THAT SHALL BE COLLECTED BY AN ELECTRIC UTILITY,
17 ITS SUCCESSORS, AN ASSIGNEE, OR OTHER COLLECTION AGENTS AS PROVIDED
18 FOR IN THE FINANCING ORDER.

19 (H) "SECURITIZATION PROPERTY" MEANS THE PROPERTY DESCRIBED IN
SUBSECTION (12).