

HOUSE BILL No. 4519

April 23, 2015, Introduced by Reps. Plawecki, Sarah Roberts, Chirkun, Greig, Darany, Derek Miller, Cochran, Hovey-Wright, Chang, Pagan, Neeley, Hoadley, Wittenberg, Yanez, Geiss, Kosowski, Brunner, Byrd, LaVoy, Smiley, Greimel, Singh, Zemke, Brinks, Faris, Garrett, Love, Gay-Dagnogo, Driskell, Guerra, Moss, Liberati, Durhal, Dillon, Townsend, Dianda and Schor and referred to the Committee on Energy Policy.

A bill to amend 2008 PA 295, entitled
"Clean, renewable, and efficient energy act,"
by amending sections 7, 11, 37, 45, and 47 (MCL 460.1007, 460.1011,
460.1037, 460.1045, and 460.1047); and to repeal acts and parts of
acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7. As used in this act:

2 (a) "Gasification facility" means a facility located in this
3 state that, ~~uses~~ **USING** a thermochemical process that does not
4 involve direct combustion, ~~to produce~~ **PRODUCES** synthesis gas,
5 composed of carbon monoxide and hydrogen, from carbon-based
6 feedstocks (such as coal, petroleum coke, wood, biomass, hazardous
7 waste, medical waste, industrial waste, and solid waste, including,

1 but not limited to, municipal solid waste, electronic waste, and
2 waste described in section 11514 of the natural resources and
3 environmental protection act, 1994 PA 451, MCL 324.11514) and that
4 uses the synthesis gas or a mixture of the synthesis gas and
5 methane to generate electricity for commercial use. Gasification
6 facility includes the transmission lines, gas transportation lines
7 and facilities, and associated property and equipment specifically
8 attributable to such a facility. Gasification facility includes,
9 but is not limited to, an integrated gasification combined cycle
10 facility and a plasma arc gasification facility.

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

14 (B) ~~(e)~~ "Independent transmission company" means that term as
15 defined in section 2 of the electric transmission line
16 certification act, 1995 PA 30, MCL 460.562.

17 (C) ~~(d)~~ "Industrial cogeneration facility" means a facility
18 that generates electricity using industrial thermal energy or
19 industrial waste energy.

20 (D) ~~(e)~~ "Industrial thermal energy" means thermal energy that
21 is a by-product of an industrial or manufacturing process and that
22 would otherwise be wasted. For the purposes of this subdivision,
23 industrial or manufacturing process does not include the generation
24 of electricity.

25 (E) ~~(f)~~ "Industrial waste energy" means exhaust gas or flue
26 gas that is a by-product of an industrial or manufacturing process
27 and that would otherwise be wasted. For the purposes of this

1 subdivision, industrial or manufacturing process does not include
2 the generation of electricity.

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

8 (G) ~~(h)~~—"LEED" means the leadership in energy and
9 environmental design green building rating system developed by the
10 United States green building council.

11 (H) ~~(i)~~—"Load management" means measures or programs that
12 target equipment or devices to result in decreased peak electricity
13 demand such as by shifting demand from a peak to an off-peak
14 period.

15 (I) ~~(j)~~—"Modified net metering" means a utility billing method
16 that applies the power supply component of the full retail rate to
17 the net of the bidirectional flow of kilowatt hours across the
18 customer interconnection with the utility distribution system,
19 during a billing period or time-of-use pricing period. A negative
20 net metered quantity during the billing period or during each time-
21 of-use pricing period within the billing period reflects net excess
22 generation for which the customer is entitled to receive credit
23 under section ~~177(4)~~.—177. Standby charges for modified net
24 metering customers on an energy rate schedule shall be equal to the
25 retail distribution charge applied to the imputed customer usage
26 during the billing period. The imputed customer usage is calculated
27 as the sum of the metered on-site generation and the net of the

1 bidirectional flow of power across the customer interconnection
2 during the billing period. The commission shall establish standby
3 charges for modified net metering customers on demand-based rate
4 schedules that provide an equivalent contribution to utility system
5 costs.

6 Sec. 11. As used in this act:

7 (a) "Renewable energy" means electricity generated using a
8 renewable energy system.

9 (b) "Renewable energy capacity portfolio" means the number of
10 megawatts calculated under section 27(2) for a particular year.

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

14 (d) "Renewable energy credit" means a credit granted pursuant
15 to **THE CERTIFICATION AND TRACKING PROGRAM UNDER** section 41 that
16 represents generated renewable energy.

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

20 (f) "Renewable energy credit standard" means a minimum
21 renewable energy **CREDIT** portfolio required under section ~~27-27(3)~~.

22 (g) "Renewable energy generator" means a person that, together
23 with its affiliates, has constructed or has owned and operated 1 or
24 more renewable energy systems with combined gross generating
25 capacity of at least 10 megawatts.

26 (h) "Renewable energy plan" or "plan", means a plan approved
27 under section 21 or 23 or found to comply with this act under

1 section 25, with any amendments adopted under this act.

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

10 (i) Biomass.

11 (ii) Solar and solar thermal energy.

12 (iii) Wind energy.

13 (iv) Kinetic energy of moving water, including all of the
14 following:

15 (A) Waves, tides, or currents.

16 (B) Water released through a dam.

17 (v) Geothermal energy.

18 (vi) Municipal solid waste.

19 (vii) Landfill gas produced by municipal solid waste.

20 (j) "Renewable energy standard" means the minimum renewable
21 energy capacity portfolio, if applicable, and the renewable energy
22 credit portfolio required to be achieved under section 27.

23 (k) "Renewable energy system" means a facility, electricity
24 generation system, or set of electricity generation systems that
25 use 1 or more renewable energy resources to generate electricity.
26 Renewable energy system does not include any of the following:

27 (i) A hydroelectric pumped storage facility.

1 (ii) A hydroelectric facility that uses a dam constructed
2 after ~~the effective date of this act~~ **OCTOBER 6, 2008** unless the dam
3 is a repair or replacement of a dam in existence on ~~the effective~~
4 ~~date of this act~~ **OCTOBER 6, 2008** or an upgrade of a dam in
5 existence on ~~the effective date of this act~~ **OCTOBER 6, 2008** that
6 increases its energy efficiency.

7 (iii) An incinerator unless the incinerator is a municipal
8 solid waste incinerator as defined in section 11504 of the natural
9 resources and environmental protection act, 1994 PA 451, MCL
10 324.11504, that was brought into service before ~~the effective date~~
11 ~~of this act~~, **OCTOBER 6, 2008**, including any of the following:

12 (A) Any upgrade of such an incinerator that increases energy
13 efficiency.

14 (B) Any expansion of such an incinerator before ~~the effective~~
15 ~~date of this act~~. **OCTOBER 6, 2008.**

16 (C) Any expansion of such an incinerator on or after ~~the~~
17 ~~effective date of this act~~ **OCTOBER 6, 2008** to an approximate design
18 rated capacity of not more than 950 tons per day pursuant to the
19 terms of a final request for proposals issued on or before October
20 1, 1986.

21 ~~— (l) "Revenue recovery mechanism" means the mechanism for~~
22 ~~recovery of incremental costs of compliance established under~~
23 ~~section 21.~~

24 Sec. 37. If, after ~~the effective date of this act~~, **OCTOBER 6,**
25 **2008**, an electric provider whose rates are regulated by the
26 commission enters a renewable energy contract or a contract to
27 purchase renewable energy credits without the associated renewable

1 energy, the commission shall determine whether the contract
2 provides reasonable and prudent terms and conditions. ~~and complies~~
3 ~~with the retail rate impact limits under section 45.~~ In making this
4 determination, the commission shall consider the contract price and
5 term. If the contract is a renewable energy contract, the
6 commission shall also consider at least all of the following:

7 (a) The cost to the electric provider and its customers of the
8 impacts of accounting treatment of debt and associated equity
9 requirements imputed by credit rating agencies and lenders
10 attributable to the renewable energy contract. The commission shall
11 use standard rating agency, lender, and accounting practices for
12 electric utilities in determining these costs, unless the impacts
13 for the electric provider are known.

14 (b) ~~Subject to section 45, the~~ **THE** life-cycle cost of the
15 renewable energy contract to the electric provider and customers
16 including costs, after expiration of the renewable energy contract,
17 of maintaining the same renewable energy output in megawatt hours,
18 whether by purchases from the marketplace, by extension or renewal
19 of the renewable energy contract, or by the electric provider
20 purchasing the renewable energy system and continuing its
21 operation.

22 (c) Electric provider and customer price and cost risks if the
23 renewable energy systems supporting the renewable energy contract
24 move from contracted pricing to market-based pricing after
25 expiration of the renewable energy contract.

26 Sec. 45. ~~(1) For an electric provider whose rates are~~
27 ~~regulated by the commission, the commission shall determine the~~

~~appropriate charges for the electric provider's tariffs that permit recovery of the incremental cost of compliance subject to the retail rate impact limits set forth in subsection (2).~~

~~—— (2) An electric provider shall recover the incremental cost of compliance with the renewable energy standards by an itemized charge on the customer's bill for billing periods beginning not earlier than 90 days after the commission approves the electric provider's renewable energy plan under section 21 or 23 or determines under section 25 that the plan complies with this act.~~

~~An electric provider shall not comply with the renewable energy standards to the extent that, as determined by the commission, recovery of the incremental cost of compliance will have a retail rate impact that exceeds any of the following:~~

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

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

~~—— (c) \$187.50 per month per commercial primary or industrial customer meter.~~

~~—— (3) The retail rate impact limits of subsection (2) apply only to the incremental costs of compliance and do not apply to costs approved for recovery by the commission other than as provided in this act.~~

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

~~(1) (5)~~ In its billing statements for a residential customer, each **ELECTRIC** provider shall report to the residential customer all of the following in a format consistent with other information on

1 the customer bill:

2 ~~—— (a) An itemized monthly charge, expressed in dollars and~~
 3 ~~cents, collected from the customer for implementing the renewable~~
 4 ~~energy program requirements of this act. In the first bill issued~~
 5 ~~after the close of the previous year, an electric provider shall~~
 6 ~~notify each residential customer that the customer may be entitled~~
 7 ~~to an income tax credit to offset some of the annual amounts~~
 8 ~~collected for the renewable energy program.~~

9 (A) ~~(b)~~ An itemized monthly charge, expressed in dollars and
 10 cents, collected from the customer for implementing the energy
 11 optimization program requirements of this act.

12 (B) ~~(c)~~ An estimated monthly savings, expressed in dollars and
 13 cents, for that customer to reflect the reductions in the monthly
 14 energy bill produced by the energy optimization program under this
 15 act.

16 (C) ~~(d)~~ An estimated monthly savings, expressed in dollars and
 17 cents, for that customer to reflect the long-term, life-cycle,
 18 levelized costs of building and operating new conventional coal-
 19 fired electric generating power plants avoided under ~~this act~~
 20 **SUBPART B OF THIS PART** as determined by the commission.

21 (D) ~~(e)~~ The website address at which the commission's annual
 22 report under section 51 is posted.

23 (2) ~~(6)~~ For the first year of the programs under this part,
 24 the **THE** values reported under subsection ~~(5)~~ **(1)** shall be estimates
 25 by the commission. The values in following years shall be based on
 26 the **ELECTRIC** provider's actual customer experiences. If the
 27 **ELECTRIC** provider is unable to provide customer-specific

1 information under subsection ~~(5)(b) or (c)~~, **(1) (A) OR (B)**, it shall
 2 instead specify the state average itemized charge or savings, as
 3 applicable, for residential customers. The **ELECTRIC** provider shall
 4 make this calculation based on a method approved by the commission.

5 **(3)** ~~(7)~~—In determining long-term, life-cycle, levelized costs
 6 of building and operating and acquiring nonrenewable electric
 7 generating capacity and energy for the purpose of subsection
 8 ~~(5)(d)~~, **(1) (C)**, the commission shall consider historic and
 9 predicted costs of financing, construction, operation, maintenance,
 10 fuel supplies, environmental protection, and other appropriate
 11 elements of energy production. For purposes of this comparison, the
 12 capacity of avoided new conventional coal-fired electric generating
 13 facilities shall be expressed in megawatts and avoided new
 14 conventional coal-fired electricity generation shall be expressed
 15 in megawatt hours. Avoided costs shall be measured in cents per
 16 kilowatt hour.

17 Sec. 47. (1) ~~Subject to the retail rate impact limits under~~
 18 ~~section 45, the~~ **THE** commission shall consider all actual costs
 19 reasonably and prudently incurred in good faith to implement a
 20 commission-approved renewable energy plan by an electric provider
 21 whose rates are regulated by the commission to be a cost of service
 22 to be recovered by the electric provider **FROM THE ELECTRIC**
 23 **PROVIDER'S CUSTOMER RATES ESTABLISHED UNDER 1939 PA 3, MCL 460.1 TO**
 24 **460.11, BUT ONLY TO THE EXTENT THE COSTS DO NOT EXCEED**
 25 **REPRESENTATIVE APPLICABLE COSTS FOR ELECTRICITY SUPPLY,**
 26 **TRANSMISSION, DISTRIBUTION, AND OTHER ASSOCIATED SERVICES.** ~~Subject~~
 27 ~~to the retail rate impact limits under section 45, an electric~~

~~provider whose rates are regulated by the commission shall recover through its retail electric rates all of the electric provider's incremental costs of compliance during the 20 year period beginning when the electric provider's plan is approved by the commission and all reasonable and prudent ongoing costs of compliance during and after that period. The recovery shall include, but is not limited to, the electric provider's authorized rate of return on equity for costs approved under this section, which shall remain fixed at the rate of return and debt to equity ratio that was in effect in the electric provider's base rates when the electric provider's renewable energy plan was approved.~~

~~—— (2) Incremental costs of compliance shall be calculated as follows:~~

~~—— (a) Determine the sum of the following costs to the extent those costs are reasonable and prudent and not already approved for recovery in electric rates as of the effective date of this act:~~

~~—— (i) Capital, operating, and maintenance costs of renewable energy systems or advanced cleaner energy systems, including property taxes, insurance, and return on equity associated with an electric provider's renewable energy systems or advanced cleaner energy systems, including the electric provider's renewable energy portfolio established to achieve compliance with the renewable energy standards and any additional renewable energy systems or advanced cleaner energy systems, that are built or acquired by the electric provider to maintain compliance with the renewable energy standards during the 20 year period beginning when the electric provider's plan is approved by the commission.~~

~~1 (ii) Financing costs attributable to capital, operating, and
2 maintenance costs of capital facilities associated with renewable
3 energy systems or advanced cleaner energy systems used to meet the
4 renewable energy standard.~~

~~5 (iii) Costs that are not otherwise recoverable in rates
6 approved by the federal energy regulatory commission and that are
7 related to the infrastructure required to bring renewable energy
8 systems or advanced cleaner energy systems used to achieve
9 compliance with the renewable energy standards on to the
10 transmission system, including interconnection and substation costs
11 for renewable energy systems or advanced cleaner energy systems
12 used to meet the renewable energy standard.~~

~~13 (iv) Ancillary service costs determined by the commission to
14 be necessarily incurred to ensure the quality and reliability of
15 renewable energy or advanced cleaner energy used to meet the
16 renewable energy standards, regardless of the ownership of a
17 renewable energy system or advanced cleaner energy technology.~~

~~18 (v) Except to the extent the costs are allocated under a
19 different subparagraph, all of the following:~~

~~20 (A) The costs of renewable energy credits purchased under this
21 act.~~

~~22 (B) The costs of contracts described in section 33(1).~~

~~23 (vi) Expenses incurred as a result of state or federal
24 governmental actions related to renewable energy systems or
25 advanced cleaner energy systems attributable to the renewable
26 energy standards, including changes in tax or other law.~~

~~27 (vii) Any additional electric provider costs determined by the~~

~~commission to be necessarily incurred to ensure the quality and reliability of renewable energy or advanced cleaner energy used to meet the renewable energy standards.~~

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

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

~~—— (ii) Interest on regulatory liabilities.~~

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

~~—— (iv) Revenue derived from the provision of renewable energy or advanced cleaner energy to retail electric customers subject to a power supply cost recovery clause under section 6j of 1939 PA 3, MCL 460.6j, of an electric provider whose rates are regulated by the commission. After providing an opportunity for a contested case hearing for an electric provider whose rates are regulated by the commission, the commission shall annually establish a price per megawatt hour. In addition, an electric provider whose rates are regulated by the commission may at any time petition the commission to revise the price. In setting the price per megawatt hour under this subparagraph, the commission shall consider factors including, but not limited to, projected capacity, energy, maintenance, and~~

~~operating costs, information filed under section 6j of 1939 PA 3, MCL 460.6j, and information from wholesale markets, including, but not limited to, locational marginal pricing. This price shall be multiplied by the sum of the number of megawatt hours of renewable energy and the number of megawatt hours of advanced cleaner energy used to maintain compliance with the renewable energy standard. The product shall be considered a booked cost of purchased and net interchanged power transactions under section 6j of 1939 PA 3, MCL 460.6j. For energy purchased by such an electric provider under a renewable energy contract or advanced cleaner energy contract, the price shall be the lower of the amount established by the commission or the actual price paid and shall be multiplied by the number of megawatt hours of renewable energy or advanced cleaner energy purchased. The resulting value shall be considered a booked cost of purchased and net interchanged power under section 6j of 1939 PA 3, MCL 460.6j.~~

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

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

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

~~(2) (3) The commission shall authorize an electric provider whose rates are regulated by the commission to spend in any given~~

~~month more to comply with this act and implement an approved renewable energy plan than the revenue actually generated by the revenue recovery mechanism.~~ **THIS SUBSECTION APPLIES TO REGULATORY ASSETS AND REGULATORY LIABILITIES ACCRUED BEFORE THE EFFECTIVE DATE OF THE 2015 ACT THAT AMENDED THIS SECTION.** An electric provider whose rates are regulated by the commission shall recover its commission approved pre-tax rate of return on regulatory assets during the appropriate period. An electric provider whose rates are regulated by the commission shall record interest on regulatory liabilities at the average short-term borrowing rate available to the electric provider during the appropriate period. Any regulatory assets or liabilities resulting from the recovery costs of renewable energy or advanced cleaner energy attributable to renewable energy standards through the power supply cost recovery clause under section 6j of 1939 PA 3, MCL 460.6j, shall continue to be reconciled under that section.

~~—— (4) If an electric provider's incremental costs of compliance in any given month during the 20-year period beginning when the electric provider's plan is approved by the commission are in excess of the revenue recovery mechanism as adjusted under section 49 and in excess of the balance of any accumulated reserve funds, subject to the minimum balance established under section 21, the electric provider shall immediately notify the commission. The commission shall promptly commence a contested case hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, and modify the revenue recovery mechanism so that the minimum balance is restored. However, if the commission~~

~~determines that recovery of the incremental costs of compliance would otherwise exceed the maximum retail rate impacts specified under section 45, it shall set the revenue recovery mechanism for that electric provider to correspond to the maximum retail rate impacts. Excess costs shall be accrued and deferred for recovery. Not later than the expiration of the 20 year period beginning when the electric provider's plan is approved by the commission, for an electric provider whose rates are regulated by the commission, the commission shall determine the amount of deferred costs to be recovered under the revenue recovery mechanism and the recovery period, which shall not extend more than 5 years beyond the expiration of the 20 year period beginning when the electric provider's plan is approved by the commission. The recovery of excess costs shall be proportional to the retail rate impact limits in section 45 for each customer class. The recovery of excess costs alone, or, if begun before the expiration of the 20 year period, in combination with the recovery of incremental costs of compliance under the revenue recovery mechanism, shall not exceed the retail rate impact limits of section 45 for each customer class.~~

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

~~—— (6) After achieving compliance with the renewable energy standard for 2015, the actual costs reasonably and prudently~~

~~incurred to continue to comply with this subpart both during and after the conclusion of the 20 year period beginning when the electric provider's plan is approved by the commission shall be considered costs of service. The commission shall determine a mechanism for an electric provider whose rates are regulated by the commission to recover these costs in its retail electric rates, subject to the retail rate impact limits in section 45. Remaining and future regulatory assets shall be recovered consistent with subsections (2) and (3) and section 49.~~

Enacting section 1. Section 49 of the clean, renewable, and efficient energy act, 2008 PA 295, MCL 460.1049, is repealed.

Enacting section 2. This amendatory act takes effect 90 days after the date it is enacted into law.

Enacting section 3. This amendatory act does not take effect unless Senate Bill No. ____ or House Bill No. 4518 (request no. 02232'15) of the 98th Legislature is enacted into law.