

HOUSE BILL No. 5005

October 20, 2015, Introduced by Reps. Runestad, Glenn, Chatfield, Hooker, Kelly, Somerville, Dianda, Canfield and Robinson and referred to the Committee on Energy Policy.

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 section 10a (MCL 460.10a), as amended by 2008 PA 286.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

Sec. 10a. (1) The commission shall issue orders establishing

1 the rates, terms, and conditions of service that allow all retail
2 customers of an electric utility or provider to choose an
3 alternative electric supplier. The orders shall do all of the
4 following:

5 (a) Provide that no more than 10% of an electric utility's
6 average weather-adjusted retail sales for the preceding calendar
7 year may take service from an alternative electric supplier at any
8 time.

9 (b) Set forth procedures necessary to administer and allocate
10 the amount of load that will be allowed to be served by alternative
11 electric suppliers, through the use of annual energy allotments
12 awarded on a calendar year basis, and shall provide, among other
13 things, that existing customers ~~who~~ **THAT** are taking electric
14 service from an alternative electric supplier at a facility on ~~the~~
15 ~~effective date of the amendatory act that added this subdivision~~
16 **OCTOBER 6, 2008** shall be given an allocated annual energy allotment
17 for that service at that facility, that customers seeking to expand
18 usage at a facility served through an alternative electric supplier
19 will be given next priority, with the remaining available load, if
20 any, allocated on a first-come first-served basis. The procedures
21 shall also provide how customer facilities will be defined for the
22 purpose of assigning the annual energy allotments to be allocated
23 under this section. The commission shall not allocate additional
24 annual energy allotments at any time when the total annual energy
25 allotments for the utility's distribution service territory is
26 greater than 10% of the utility's weather-adjusted retail sales in
27 the calendar year preceding the date of allocation. If the sales of

1 a utility are less in a subsequent year or if the energy usage of a
2 customer receiving electric service from an alternative electric
3 supplier exceeds its annual energy allotment for that facility,
4 that customer shall not be forced to purchase electricity from a
5 utility, but may purchase electricity from an alternative electric
6 supplier for that facility during that calendar year.

7 (c) Notwithstanding any other provision of this section,
8 customers seeking to expand usage at a facility that has been
9 continuously served through an alternative electric supplier since
10 April 1, 2008 ~~shall be permitted to~~ **MAY** purchase electricity from
11 an alternative electric supplier for both the existing and any
12 expanded load at that facility as well as any new facility
13 constructed or acquired after ~~the effective date of the amendatory~~
14 ~~act that added this subdivision~~ **OCTOBER 6, 2008** that is similar in
15 nature if the customer owns more than 50% of the new facility.

16 (d) Notwithstanding any other provision of this section, any
17 customer operating an iron ore mining facility, iron ore processing
18 facility, or both, located in the Upper Peninsula of this state,
19 ~~shall be permitted to~~ **MAY** purchase all or any portion of its
20 electricity from an alternative electric supplier, regardless of
21 whether the sales exceed 10% of the serving electric utility's
22 average weather-adjusted retail sales.

23 **(E) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, A**
24 **QUALIFIED CUSTOMER MAY PURCHASE ALL OR ANY PORTION OF ITS**
25 **ELECTRICITY FROM AN ALTERNATIVE ELECTRIC SUPPLIER, REGARDLESS OF**
26 **WHETHER THE SALES EXCEED 10% OF THE SERVING ELECTRIC UTILITY'S**
27 **AVERAGE WEATHER-ADJUSTED RETAIL SALES. ANY CUSTOMER PURCHASING**

1 ELECTRICITY FROM AN ALTERNATIVE ELECTRIC SUPPLIER UNDER THIS
2 SUBDIVISION, OR ANY BEHIND THE METER GENERATION OR SUPPLY, SHALL
3 NOT COUNT TOWARD ANY LIMIT SET FORTH IN SUBDIVISION (A). AS USED IN
4 THIS SUBDIVISION, "QUALIFIED CUSTOMER" MEANS A FOR-PROFIT HOSPITAL,
5 NONPROFIT HOSPITAL, OR INPATIENT HEALTH CARE FACILITY LOCATED IN
6 THIS STATE.

7 (F) A CUSTOMER PURCHASING ITS ELECTRICITY UNDER SUBDIVISION
8 (E) SHALL SUBMIT AN AFFIDAVIT TO THE COMMISSION AFFIRMING THAT THE
9 CUSTOMER MEETS THE CRITERIA SET FORTH IN SUBDIVISION (E). ANY
10 CHALLENGES TO THE AFFIDAVIT OR THE ELIGIBILITY OF THE CUSTOMER
11 SHALL BE SUBMITTED TO THE COMMISSION WITHIN 10 DAYS OF THE
12 AFFIDAVIT BEING FILED. IF THE COMMISSION FINDS REASONABLE CAUSE FOR
13 THE CHALLENGE, IT SHALL COMMENCE AN INVESTIGATION, HOLD HEARINGS,
14 AND ISSUE ITS FINDINGS AND ORDER ON THE MATTER UNDER THE CONTESTED
15 CASE PROVISIONS OF CHAPTER 4 OF THE ADMINISTRATIVE PROCEDURES ACT
16 OF 1969, 1969 PA 306, MCL 24.271 TO 24.287.

17 (2) The commission shall issue orders establishing a licensing
18 procedure for all alternative electric suppliers. To ensure
19 adequate service to customers in this state, the commission shall
20 require that an alternative electric supplier maintain an office
21 within this state, shall assure that an alternative electric
22 supplier has the necessary financial, managerial, and technical
23 capabilities, shall require that an alternative electric supplier
24 maintain records ~~which~~**THAT** the commission considers necessary, and
25 shall ensure an alternative electric supplier's accessibility to
26 the commission, to consumers, and to electric utilities in this
27 state. The commission also shall require alternative electric

1 suppliers to agree that they will collect and remit to local units
2 of government all applicable users, sales, and use taxes. An
3 alternative electric supplier is not required to obtain any
4 certificate, license, or authorization from the commission other
5 than as required by this act.

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

9 (4) ~~No later than December 2, 2000, the~~ **THE** commission shall
10 establish a code of conduct that ~~shall apply~~ **APPLIES** to all
11 electric utilities. The code of conduct shall include, but is not
12 limited to, measures to prevent cross-subsidization, information
13 sharing, and preferential treatment, between a utility's regulated
14 and unregulated services, whether those services are provided by
15 the utility or the utility's affiliated entities. The code of
16 conduct established under this subsection ~~shall~~ **IS** also be
17 applicable to electric utilities and alternative electric suppliers
18 consistent with section 10, this section, and sections 10b through
19 10cc.

20 (5) An electric utility may offer its customers an appliance
21 service program. Except as otherwise provided by this section, the
22 utility shall comply with the code of conduct established by the
23 commission under subsection (4). ~~As used in this section,~~
24 ~~"appliance service program" or "program" means a subscription~~
25 ~~program for the repair and servicing of heating and cooling systems~~
26 ~~or other appliances.~~

27 (6) A utility offering a program under subsection (5) shall do

1 all of the following:

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

5 (b) Maintain separate books and records for the program,
6 access to which shall be made available to the commission upon
7 request.

8 (c) Not promote or market the program through the use of
9 utility billing inserts, printed messages on the utility's billing
10 materials, or other promotional materials included with customers'
11 utility bills.

12 (7) All costs directly attributable to an appliance service
13 program allowed under subsection (5) shall be allocated to the
14 program as required by this subsection. The direct and indirect
15 costs of employees, vehicles, equipment, office space, and other
16 facilities used in the appliance service program shall be allocated
17 to the program based upon the amount of use by the program as
18 compared to the total use of the employees, vehicles, equipment,
19 office space, and other facilities. The cost of the program shall
20 include administrative and general expense loading to be determined
21 in the same manner as the utility determines administrative and
22 general expense loading for all of the utility's regulated and
23 unregulated activities. A subsidy by a utility does not exist if
24 costs allocated as required by this subsection do not exceed the
25 revenue of the program.

26 (8) A utility may include charges for its appliance service
27 program on its monthly billings to its customers if the utility

1 complies with all of the following requirements:

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

5 (b) A customer's regulated utility service is not terminated
6 for nonpayment of the appliance service program portion of the
7 bill.

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

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

13 (a) The list of customers receiving regulated service from the
14 utility shall be available to a provider of appliance repair
15 service upon request within 2 business days. The customer list
16 shall be provided in the same electronic format as such information
17 is provided to the appliance service program. A new customer shall
18 be added to the customer list within 1 business day of the date the
19 customer requested to turn on service.

20 (b) Appropriately allocate costs as required under subsection
21 (7) when personnel employed at a utility's call center provide
22 appliance service program marketing information to a prospective
23 customer.

24 (c) ~~Prior to~~ **BEFORE** enrolling a customer into the program, the
25 utility shall inform the potential customer of all of the
26 following:

27 (i) That appliance service programs may be available from

1 another provider.

2 (ii) That the appliance service program is not regulated by
3 the commission.

4 (iii) That a new customer ~~shall have~~ **HAS** 10 days after
5 enrollment to cancel his or her appliance service program contract
6 without penalty.

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

11 (d) The utility name and logo may be used to market the
12 appliance service program provided that the program is not marketed
13 in conjunction with a regulated service. ~~To the extent that~~ **IF** a
14 program utilizes the utility's name and logo in marketing the
15 program, the program shall include language on all material
16 indicating that the program is not regulated by the commission.
17 Costs shall not be allocated to the program for the use of the
18 utility's name or logo.

19 (10) This section does not prohibit the commission from
20 requiring a utility to include revenues from an appliance service
21 program in establishing base rates. If the commission includes the
22 revenues of an appliance service program in determining a utility's
23 base rates, the commission shall also include all of the costs of
24 the program as determined under this section.

25 (11) Except as otherwise provided in this section, the code of
26 conduct with respect to an appliance service program shall not
27 require a utility to form a separate affiliate or division to

1 operate an appliance service program, impose further restrictions
2 on the sharing of employees, vehicles, equipment, office space, and
3 other facilities, or require the utility to provide other providers
4 of appliance repair service with access to utility employees,
5 vehicles, equipment, office space, or other facilities.

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

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

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

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

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

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

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

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

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

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

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

19 (15) A customer ~~who~~**THAT** elects to receive service from an
20 alternative electric supplier may subsequently provide notice to
21 the electric utility of the customer's desire to receive standard
22 tariff service from the electric utility. The procedures in place
23 for each electric utility as of January 1, 2008 that set forth the
24 terms ~~pursuant to~~**UNDER** which a customer receiving service from an
25 alternative electric supplier may return to full service from the
26 electric utility are ratified, ~~and shall~~remain in effect, and may
27 be amended by the commission as needed. If an electric utility did

1 not have the procedures in place as of January 1, 2008, the
2 commission shall adopt those procedures.

3 (16) The commission shall authorize rates that will ensure
4 that an electric utility that offered retail open access service
5 from 2002 through ~~the effective date of the amendatory act that~~
6 ~~added this subsection~~ **OCTOBER 6, 2008** fully recovers its
7 restructuring costs and any associated accrued regulatory assets.
8 This includes, but is not limited to, implementation costs,
9 stranded costs, and costs authorized pursuant to section 10d(4) as
10 it existed ~~prior to the effective date of the amendatory act that~~
11 ~~added this subsection~~, **BEFORE OCTOBER 6, 2008**, that have been
12 authorized for recovery by the commission in orders issued ~~prior to~~
13 ~~the effective date of the amendatory act that added this~~
14 ~~subsection~~. **BEFORE OCTOBER 6, 2008**. The commission shall approve
15 surcharges that will ensure full recovery of all such costs ~~within~~
16 ~~5 years of the effective date of the amendatory act that added this~~
17 ~~subsection~~. **BY OCTOBER 6, 2013**.

18 (17) As used in subsections (1) and (15):

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

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

1 suppliers.

2 (18) AS USED IN THIS SECTION, "APPLIANCE SERVICE PROGRAM" OR
3 "PROGRAM" MEANS A SUBSCRIPTION PROGRAM FOR THE REPAIR AND SERVICING
4 OF HEATING AND COOLING SYSTEMS OR OTHER APPLIANCES.

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