

SENATE BILL No. 1035

March 21, 2012, Introduced by Senators MEEKHOF and SMITH and referred to the Committee on Energy and Technology.

A bill to amend 1939 PA 3, entitled

"An act to provide for the regulation and control of public 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
2 the rates, terms, and conditions of service that allow all retail
3 customers of an electric utility or provider to choose an
4 alternative electric supplier. The orders shall do all of the
5 following:

6 (a) Provide that no more than 10% of an electric utility's
7 average weather-adjusted retail sales for the preceding calendar
8 year **OR A PERCENTAGE DETERMINED BY THE COMMISSION UNDER SUBDIVISION**
9 **(E)** may take service from an alternative electric supplier at any
10 time.

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

1 allotments for the utility's distribution service territory is
2 greater than ~~10%~~ **THE PERCENTAGE SET FORTH IN SUBDIVISION (A) OR THE**
3 **PERCENTAGE DETERMINED BY THE COMMISSION UNDER SUBDIVISION (E)** of
4 the utility's weather-adjusted retail sales in the calendar year
5 preceding the date of allocation. If the sales of a utility are
6 less in a subsequent year or if the energy usage of a customer
7 receiving electric service from an alternative electric supplier
8 exceeds its annual energy allotment for that facility, that
9 customer shall not be forced to purchase electricity from a
10 utility, but may purchase electricity from an alternative electric
11 supplier for that facility during that calendar year.

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

21 (d) Notwithstanding any other provision of this section, any
22 customer operating an iron ore mining facility, iron ore processing
23 facility, or both, located in the Upper Peninsula of this state,
24 shall be permitted to purchase all or any portion of its
25 electricity from an alternative electric supplier, regardless of
26 whether the sales exceed ~~10%~~ **THE PERCENTAGE SET FORTH IN**
27 **SUBDIVISION (A) OR THE PERCENTAGE DETERMINED BY THE COMMISSION**

1 UNDER SUBDIVISION (E) of the serving electric utility's average
2 weather-adjusted retail sales.

3 (E) THE ELECTRIC CHOICE CAP FOR AN ELECTRIC UTILITY THAT HAS
4 IMPLEMENTED SECURITIZATION CHARGES AUTHORIZED BY THE COMMISSION
5 SHALL BE DETERMINED AS FOLLOWS:

6 (i) WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THE AMENDATORY ACT
7 THAT ADDED THIS SUBDIVISION, THE COMMISSION SHALL, FOR THE
8 REMAINDER OF THAT CALENDAR YEAR, SET THE ELECTRIC CHOICE CAP TO BE
9 THE GREATEST OF THE FOLLOWING:

10 (A) 10%.

11 (B) A PERCENTAGE EQUAL TO THE PERCENTAGE OF WEATHER-ADJUSTED
12 RETAIL SALES FOR THE PRECEDING CALENDAR YEAR ALLOTTED TO CUSTOMERS
13 TAKING SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER ON THE
14 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBDIVISION
15 PLUS THE PERCENTAGE OF WEATHER-ADJUSTED RETAIL SALES FOR THE
16 PRECEDING CALENDAR YEAR REPRESENTED BY ADDITIONAL CUSTOMERS
17 REQUESTING SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER ON THE
18 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBDIVISION
19 BUT WHO HAVE NOT RECEIVED AN ALLOTMENT UNDER THIS SUBSECTION. THE
20 COMMISSION SHALL ENSURE THAT ANY CUSTOMER REQUESTING SERVICE FROM
21 AN ALTERNATIVE ELECTRIC SUPPLIER ON OR BEFORE THE EFFECTIVE DATE OF
22 THE AMENDATORY ACT THAT ADDED THIS SUBDIVISION IS ALLOWED TO
23 PURCHASE ELECTRICITY FROM AN ALTERNATIVE ELECTRIC SUPPLIER.

24 (C) THE HIGHEST PERCENTAGE, DETERMINED ON A CALENDAR-YEAR
25 BASIS FOR YEARS 2000 THROUGH 2012, OF WEATHER-ADJUSTED RETAIL SALES
26 FOR THE PRECEDING CALENDAR YEAR REPRESENTING CUSTOMERS WHO TOOK
27 SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER. THE COMMISSION SHALL

1 ENSURE THAT ANY CUSTOMER REQUESTING SERVICE FROM AN ALTERNATIVE
2 ELECTRIC SUPPLIER ON OR BEFORE THE EFFECTIVE DATE OF THE AMENDATORY
3 ACT THAT ADDED THIS SUBDIVISION IS ALLOWED TO PURCHASE ELECTRICITY
4 FROM AN ALTERNATIVE ELECTRIC SUPPLIER.

5 (ii) FOR EACH OF THE 3 CALENDAR YEARS FOLLOWING THE CALENDAR
6 YEAR IN WHICH THE AMENDATORY ACT THAT ADDED THIS SUBDIVISION TAKES
7 EFFECT, THE COMMISSION SHALL, AT THE BEGINNING OF EACH CALENDAR
8 YEAR, INCREASE THE ELECTRIC CHOICE CAP FOR A UTILITY SUBJECT TO
9 THIS SUBDIVISION FROM ITS THEN CURRENT PERCENTAGE BY 6%. THE
10 COMMISSION SHALL DO EACH OF THE FOLLOWING:

11 (A) ENSURE THAT ANY AND ALL SAVINGS BY THE UTILITY, INCLUDING,
12 BUT NOT LIMITED TO, FUEL, POWER PURCHASE COSTS, AND INCREASED
13 WHOLESALE REVENUES, DUE TO AN INCREASE IN THE RETAIL SALES
14 ASSOCIATED WITH CUSTOMERS TAKING SERVICE FROM AN ALTERNATIVE
15 ELECTRIC SUPPLIER ARE PASSED THROUGH TO FULL-SERVICE CUSTOMERS
16 THROUGH THE UTILITY'S POWER SUPPLY COST RECOVERY PROCEEDINGS.

17 (B) IN SETTING RATES FOR THE UTILITY, RECOGNIZE THE EFFECT OF
18 AN INCREASE OR DECREASE IN THE RETAIL SALES ASSOCIATED WITH
19 CUSTOMERS TAKING SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER,
20 EITHER THROUGH A REVENUE DECOUPLING MECHANISM OR THROUGH A TEST
21 YEAR USED FOR SETTING RATES THAT BEGINS AFTER THE EFFECTIVE DATE OF
22 THE AMENDATORY ACT THAT ADDED THIS SUBDIVISION.

23 (iii) ON AND AFTER THE BEGINNING OF THE FOURTH CALENDAR YEAR
24 FOLLOWING THE CALENDAR YEAR IN WHICH THE AMENDATORY ACT THAT ADDED
25 THIS SUBDIVISION TAKES EFFECT, IF THE ELECTRIC CHOICE CAP HAS BEEN
26 REACHED FOR AN ELECTRIC UTILITY AND THE ALLOTMENT OF RETAIL SALES
27 REPRESENTED BY CUSTOMERS REQUESTING SERVICE FROM AN ALTERNATIVE

1 ELECTRIC SUPPLIER WHO CANNOT BE SERVED UNDER THE EXISTING ELECTRIC
2 CHOICE CAP EXCEEDS 2% OF THE ELECTRIC UTILITY'S WEATHER-ADJUSTED
3 RETAIL SALES FOR THE PRECEDING CALENDAR YEAR, THEN THE COMMISSION
4 SHALL, WITHIN 30 DAYS, INITIATE A CONTESTED CASE TO DETERMINE IF
5 THE ELECTRIC CHOICE CAP SHOULD BE INCREASED. WITHIN 180 DAYS OF THE
6 INITIATION OF THE CONTESTED CASE, THE COMMISSION SHALL ISSUE AN
7 ORDER INCREASING AN ELECTRIC UTILITY'S ELECTRIC CHOICE CAP BY THE
8 PERCENTAGE OF WEATHER-ADJUSTED RETAIL SALES REPRESENTED BY THOSE
9 CUSTOMERS REQUESTING SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER
10 PLUS 3% OF THE UTILITY'S WEATHER-ADJUSTED RETAIL SALES FOR THE
11 PRECEDING CALENDAR YEAR UNLESS IT FINDS, BASED ON THE EVIDENTIARY
12 RECORD IN THE CONTESTED CASE, THAT INCREASING THE ELECTRIC CHOICE
13 CAP WILL CAUSE SUBSTANTIAL HARM TO FULL-SERVICE CUSTOMERS. IN
14 DETERMINING WHETHER AN INCREASE IN THE CUSTOMER CHOICE CAP WILL
15 RESULT IN SUBSTANTIAL HARM TO FULL-SERVICE CUSTOMERS, THE
16 COMMISSION SHALL CONSIDER ALL THE COSTS AND SAVINGS EXPERIENCED OR
17 EXPECTED TO BE EXPERIENCED BY FULL-SERVICE CUSTOMERS BASED ON THE
18 DIFFERENCE BETWEEN COSTS AND SAVINGS WITH AND WITHOUT THE PROPOSED
19 PERCENTAGE INCREASE IN THE ELECTRIC CHOICE CAP, INCLUDING, BUT NOT
20 LIMITED TO, THE COSTS AND SAVINGS OF FUEL, PURCHASED POWER,
21 WHOLESALE SALES, INVESTMENT IN NEW OR EXISTING GENERATING
22 FACILITIES, AND PURCHASE, LEASE, OR ACQUISITION OF GENERATING
23 CAPACITY. THE COMMISSION SHALL NOT INITIATE MORE THAN 1 CONTESTED
24 CASE FOR AN ELECTRIC UTILITY UNDER THIS SUBDIVISION IN ANY 12-MONTH
25 PERIOD.

26 (2) The commission shall issue orders establishing a licensing
27 procedure for all alternative electric suppliers. To ensure

1 adequate service to customers in this state, the commission shall
2 require that an alternative electric supplier maintain an office
3 within this state, shall assure that an alternative electric
4 supplier has the necessary financial, managerial, and technical
5 capabilities, shall require that an alternative electric supplier
6 maintain records which the commission considers necessary, and
7 shall ensure an alternative electric supplier's accessibility to
8 the commission, to consumers, and to electric utilities in this
9 state. The commission also shall require alternative electric
10 suppliers to agree that they will collect and remit to local units
11 of government all applicable users, sales, and use taxes. An
12 alternative electric supplier is not required to obtain any
13 certificate, license, or authorization from the commission other
14 than as required by this act.

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

18 (4) No later than December 2, 2000, the commission shall
19 establish a code of conduct that shall apply to all electric
20 utilities. The code of conduct shall include, but is not limited
21 to, measures to prevent cross-subsidization, information sharing,
22 and preferential treatment, between a utility's regulated and
23 unregulated services, whether those services are provided by the
24 utility or the utility's affiliated entities. The code of conduct
25 established under this subsection shall also be applicable to
26 electric utilities and alternative electric suppliers consistent
27 with section 10, this section, and sections 10b through 10cc.

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

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

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

13 (b) Maintain separate books and records for the program,
14 access to which shall be made available to the commission upon
15 request.

16 (c) Not promote or market the program through the use of
17 utility billing inserts, printed messages on the utility's billing
18 materials, or other promotional materials included with customers'
19 utility bills.

20 (7) All costs directly attributable to an appliance service
21 program allowed under subsection (5) shall be allocated to the
22 program as required by this subsection. The direct and indirect
23 costs of employees, vehicles, equipment, office space, and other
24 facilities used in the appliance service program shall be allocated
25 to the program based upon the amount of use by the program as
26 compared to the total use of the employees, vehicles, equipment,
27 office space, and other facilities. The cost of the program shall

1 include administrative and general expense loading to be determined
2 in the same manner as the utility determines administrative and
3 general expense loading for all of the utility's regulated and
4 unregulated activities. A subsidy by a utility does not exist if
5 costs allocated as required by this subsection do not exceed the
6 revenue of the program.

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

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

13 (b) A customer's regulated utility service is not terminated
14 for nonpayment of the appliance service program portion of the
15 bill.

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

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

21 (a) The list of customers receiving regulated service from the
22 utility shall be available to a provider of appliance repair
23 service upon request within 2 business days. The customer list
24 shall be provided in the same electronic format as ~~such~~**THAT**
25 information is provided to the appliance service program. A new
26 customer shall be added to the customer list within 1 business day
27 of the date the customer requested to turn on service.

1 (b) Appropriately allocate costs as required under subsection
2 (7) when personnel employed at a utility's call center provide
3 appliance service program marketing information to a prospective
4 customer.

5 (c) ~~Prior to~~ **BEFORE** enrolling a customer into the program, the
6 utility shall inform the potential customer of all of the
7 following:

8 (i) That appliance service programs may be available from
9 another provider.

10 (ii) That the appliance service program is not regulated by the
11 commission.

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

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

19 (d) The utility name and logo may be used to market the
20 appliance service program provided that the program is not marketed
21 in conjunction with a regulated service. To the extent that a
22 program utilizes the utility's name and logo in marketing the
23 program, the program shall include language on all material
24 indicating that the program is not regulated by the commission.
25 Costs shall not be allocated to the program for the use of the
26 utility's name or logo.

27 (10) This section does not prohibit the commission from

1 requiring a utility to include revenues from an appliance service
2 program in establishing base rates. If the commission includes the
3 revenues of an appliance service program in determining a utility's
4 base rates, the commission shall also include all of the costs of
5 the program as determined under this section.

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

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

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

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

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

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

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

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

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

27 (b) "Affiliate wheeling" means a person's use of direct access

1 service where an electric utility delivers electricity generated at
2 a person's industrial site to that person or that person's
3 affiliate at a location, or general aggregated locations, within
4 this state that was either 1 of the following:

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

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

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

27 (15) A customer who elects to receive service from an

1 alternative electric supplier may subsequently provide notice to
2 the electric utility of the customer's desire to receive standard
3 tariff service from the electric utility. The procedures in place
4 for each electric utility as of January 1, 2008 that set forth the
5 terms pursuant to which a customer receiving service from an
6 alternative electric supplier may return to full service from the
7 electric utility are ratified and shall remain in effect and may be
8 amended by the commission as needed. If an electric utility did not
9 have the procedures in place as of January 1, 2008, the commission
10 shall adopt those procedures.

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

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

27 (a) "Customer" means the building or facilities served through

1 a single existing electric billing meter and does not mean the
2 person, corporation, partnership, association, governmental body,
3 or other entity owning or having possession of the building or
4 facilities.

5 (B) "ELECTRIC CHOICE CAP" MEANS THE LIMIT ON A UTILITY'S
6 WEATHER-ADJUSTED RETAIL SALES THAT MAY TAKE SERVICE FROM AN
7 ALTERNATIVE ELECTRIC SUPPLIER, AS SPECIFIED IN SUBSECTION (1) (A) OR
8 AS DETERMINED BY THE COMMISSION UNDER SUBSECTION (1) (E) .

9 (C) "FULL-SERVICE CUSTOMER" MEANS A RETAIL CUSTOMER OF AN
10 ELECTRIC UTILITY WHO DOES NOT TAKE SERVICE FROM AN ALTERNATIVE
11 ELECTRIC SUPPLIER.

12 (D) "SECURITIZATION CHARGES" MEANS THAT TERM AS DEFINED IN
13 SECTION 10H.

14 (E) ~~(b)~~-"Standard tariff service" means, for each regulated
15 electric utility, the retail rates, terms, and conditions of
16 service approved by the commission for service to customers who do
17 not elect to receive generation service from alternative electric
18 suppliers.