

**SUBSTITUTE FOR
HOUSE BILL NO. 4298**

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 the title and sections 1, 6a, 6b, 6s, 10, 10a, 10c, and 11 (MCL 460.1, 460.6a, 460.6b, 460.6s, 460.10, 460.10a, 460.10c,

and 460.11), the title as amended by 2005 PA 190, sections 6a, 10, and 10a as amended and section 6s as added by 2008 PA 286, section 6b as amended by 1982 PA 212, section 10c as added by 2000 PA 141, and section 11 as amended by 2014 PA 169, and by adding sections 6t and 6u.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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TITLE

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 PRESCRIBE THE POWER AND DUTIES OF CERTAIN STATE AGENCIES;** 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

1 effect and purpose of this act; to prescribe remedies and
2 penalties; and to repeal acts and parts of acts.

3 Sec. 1. (1) ~~A commission to be known and designated as the~~
4 ~~"Michigan public service commission" is hereby created, which THE~~
5 MICHIGAN PUBLIC SERVICE COMMISSION IS CREATED IN THE DEPARTMENT OF
6 LICENSING AND REGULATORY AFFAIRS.

7 (2) THE COMMISSION shall consist of 3-5 members, not more than
8 2 of whom shall be members of the same political party, appointed
9 by the governor with the advice and consent of the senate. AT LEAST
10 1 MEMBER OF THE COMMISSION SHALL BE A MEMBER OF THE GENERAL PUBLIC
11 WHO MEETS ALL OF THE FOLLOWING REQUIREMENTS:

12 (A) SHALL NOT BE, OR SHALL NOT HAVE BEEN WITHIN THE 5 YEARS
13 PRECEDING APPOINTMENT, A MEMBER OF A GOVERNING BODY OF, OR EMPLOYED
14 IN A MANAGERIAL OR PROFESSIONAL OR CONSULTING CAPACITY BY A UTILITY
15 OR AN ASSOCIATION REPRESENTING UTILITIES; AN ENTERPRISE OR
16 PROFESSIONAL PRACTICE THAT RECEIVED OVER \$1,500.00 IN THE YEAR
17 PRECEDING THE APPOINTMENT AS A SUPPLIER OF GOODS OR SERVICES TO A
18 UTILITY OR ASSOCIATION REPRESENTING UTILITIES; OR AN ORGANIZATION
19 REPRESENTING EMPLOYEES OF A UTILITY, ASSOCIATION, ENTERPRISE, OR
20 PROFESSIONAL PRACTICE, OR AN ASSOCIATION THAT REPRESENTS SUCH AN
21 ORGANIZATION.

22 (B) SHALL NOT HAVE, OR SHALL NOT HAVE HAD WITHIN 1 YEAR
23 PRECEDING APPOINTMENT, A FINANCIAL INTEREST EXCEEDING \$1,500.00 IN
24 A UTILITY, AN ASSOCIATION REPRESENTING UTILITIES, OR AN ENTERPRISE
25 OR PROFESSIONAL PRACTICE THAT RECEIVED OVER \$1,500.00 IN THE YEAR
26 PRECEDING THE APPOINTMENT AS A SUPPLIER OF GOODS OR SERVICES TO A
27 UTILITY OR ASSOCIATION REPRESENTING UTILITIES.

1 (C) SHALL NOT BE A MEMBER OF THE IMMEDIATE FAMILY OF AN
2 INDIVIDUAL WHO WOULD BE INELIGIBLE UNDER SUBDIVISION (A) OR (B).

3 (3) Each member OF THE COMMISSION shall be a citizen of the
4 United States ~~and of the THIS state. of Michigan, and no member~~
5 ~~of said commission~~ A MEMBER OF THE COMMISSION shall NOT be
6 pecuniarily interested in any public utility or ~~public service~~
7 PERSON subject to the jurisdiction and control of the commission.
8 During his OR HER term, ~~no~~ A member OF THE COMMISSION shall NOT
9 serve as an officer or committee member of any political party
10 organization, ~~or~~ hold any office, or be employed by any other
11 commission, board, department, or institution in this state. ~~No~~
12 ~~commission~~

13 (4) A member OF THE COMMISSION shall NOT be retained or
14 employed by any public utility or ~~public service~~ PERSON subject to
15 the jurisdiction and control of the commission ~~during the time~~
16 WHILE he OR SHE is acting as ~~such commissioner, and~~ A MEMBER OF THE
17 COMMISSION OR for 6 months ~~thereafter, and no~~ AFTER THAT TIME.

18 (5) A member of the commission ~~who is a member of the STATE~~
19 ~~bar of the state of Michigan,~~ shall NOT practice his ~~profession~~ LAW
20 or act as counselor or attorney in any court of this state ~~during~~
21 ~~the time~~ WHILE he OR SHE is a member OF THE COMMISSION. ~~of said~~
22 ~~commission: Provided, however, This shall~~

23 (6) THIS SECTION DOES not require any ~~commissioner~~ MEMBER OF
24 THE COMMISSION to retire from ~~or~~ dissolve any partnership ~~of~~
25 which he OR SHE is a member, but ~~said~~ THE partnership ~~while he is~~
26 ~~a member of the commission,~~ shall not engage in public utility
27 practice WHILE HE OR SHE IS A MEMBER OF THE COMMISSION. Immediately

1 ~~upon the taking effect of this act, the offices of the present~~
2 ~~members of the Michigan public service commission are hereby~~
3 ~~abolished, and the members of the Michigan public service~~
4 ~~commission as herein created shall be appointed by the governor~~
5 ~~with the advice and consent of the senate, for terms of 6 years~~
6 ~~each: Provided, That of the members first appointed, 1 shall be~~
7 ~~appointed for a term of 2 years, 1 for a term of 4 years, and 1 for~~
8 ~~a term of 6 years. Upon the expiration of said terms successors~~
9 ~~shall be appointed with like qualifications and in like manner for~~
10 ~~terms of 6 years each, and until their successors are appointed and~~
11 ~~qualified. Vacancies shall be filled in the same manner as is~~
12 ~~provided for appointment in the first instance.~~

13 **(7) MEMBERS OF THE COMMISSION SHALL SERVE FOR TERMS OF 6 YEARS**
14 **OR UNTIL A SUCCESSOR IS APPOINTED, WHICHEVER IS LATER. IF A VACANCY**
15 **OCCURS ON THE COMMISSION, THE GOVERNOR SHALL MAKE AN APPOINTMENT**
16 **FOR THE UNEXPIRED TERM IN THE SAME MANNER AS THE ORIGINAL**
17 **APPOINTMENT.**

18 Sec. 6a. (1) A gas or electric utility shall not increase its
19 rates and charges or alter, change, or amend any rate or rate
20 schedules, the effect of which will be to increase the cost of
21 services to its customers, without first receiving commission
22 approval as provided in this section. The utility shall place in
23 evidence facts relied upon to support the utility's petition or
24 application to increase its rates and charges, or to alter, change,
25 or amend any rate or rate schedules. The commission shall require
26 notice to be given to all interested parties within the service
27 area to be affected, and all interested parties shall have a

1 reasonable opportunity for a full and complete hearing. A utility
2 may use projected costs and revenues for a future consecutive 12-
3 month period in developing its requested rates and charges. The
4 commission shall notify the utility within 30 days of filing,
5 whether the utility's petition or application is complete. A
6 petition or application is considered complete if it complies with
7 the rate application filing forms and instructions adopted under
8 subsection (6). A petition or application pending before the
9 commission ~~prior to~~ **BEFORE** the adoption of filing forms and
10 instructions ~~pursuant to~~ **UNDER** subsection (6) shall be evaluated
11 based upon the filing requirements in effect at the time the
12 petition or application was filed. If the application is not
13 complete, the commission shall notify the utility of all
14 information necessary to make that filing complete. If the
15 commission has not notified the utility within 30 days of whether
16 the utility's petition or application is complete, the application
17 is considered complete. **AFTER FILING A COMPLETED APPLICATION, A GAS**
18 **UTILITY SERVING FEWER THAN 1,000,000 CUSTOMERS IN THIS STATE MAY**
19 **FILE A MOTION SEEKING PARTIAL AND IMMEDIATE RATE RELIEF. AFTER**
20 **PROVIDING NOTICE TO THE INTERESTED PARTIES WITHIN THE SERVICE AREA**
21 **TO BE AFFECTED AND AFFORDING INTERESTED PARTIES A REASONABLE**
22 **OPPORTUNITY TO PRESENT WRITTEN EVIDENCE AND WRITTEN ARGUMENTS**
23 **RELEVANT TO THE MOTION SEEKING PARTIAL AND IMMEDIATE RATE RELIEF,**
24 **THE COMMISSION SHALL MAKE A FINDING AND ENTER AN ORDER GRANTING OR**
25 **DENYING A GAS UTILITY'S PARTIAL AND IMMEDIATE RELIEF WITHIN 180**
26 **DAYS AFTER RECEIVING A MOTION UNDER THIS SUBSECTION. IF THE**
27 **COMMISSION GRANTS PARTIAL AND IMMEDIATE RELIEF, THE COMMISSION HAS**

1 12 MONTHS TO ISSUE AN ORDER REGARDING THAT APPLICATION UNDER THIS
2 SECTION.

3 (2) If the commission has not issued an order within 180 days
4 of the filing of a complete application **UNDER SUBSECTION (1)**, the
5 utility may implement up to the amount of the proposed annual rate
6 request through equal percentage increases or decreases applied to
7 all base rates. ~~For a petition or application pending before the~~
8 ~~commission prior to the effective date of the amendatory act that~~
9 ~~added this sentence, the 180-day period commences on the effective~~
10 ~~date of the amendatory act that added this sentence.~~ If the utility
11 uses projected costs and revenues for a future period in developing
12 its requested rates and charges, the utility may not implement the
13 equal percentage increases or decreases prior to the calendar date
14 corresponding to the start of the projected 12-month period. For
15 good cause, the commission may issue a temporary order preventing
16 or delaying a utility from implementing its proposed rates or
17 charges. If a utility implements increased rates or charges under
18 this subsection before the commission issues a final order, that
19 utility shall refund to customers, with interest, any portion of
20 the total revenues collected through application of the equal
21 percentage increase that exceed the total that would have been
22 produced by the rates or charges subsequently ordered by the
23 commission in its final order. The commission shall allocate any
24 refund required by this ~~section~~ **SUBSECTION** among primary customers
25 based upon their pro rata share of the total revenue collected
26 through the applicable increase, and among secondary and
27 residential customers in a manner to be determined by the

1 commission. The rate of interest for refunds shall equal 5% plus
2 the London interbank offered rate (LIBOR) for the appropriate time
3 period. For any portion of the refund ~~which,~~ **THAT**, 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. **THIS SUBSECTION ONLY**
10 **APPLIES TO COMPLETED APPLICATIONS FILED WITH THE COMMISSION BEFORE**
11 **THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED SECTION 6T.**

12 (3) **EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2), THE**
13 **COMMISSION SHALL USE A REFUND PROCESS FOR ANY ELECTRIC AND GAS RATE**
14 **OVERCHARGES UNDER THIS SECTION, WHATEVER THE CAUSE OF THE**
15 **OVERCHARGE, THAT RETURNS TO THOSE CUSTOMERS A REFUND OF THE AMOUNT**
16 **THE CUSTOMER WAS OVERCHARGED, PLUS FAIR AND REASONABLE INTEREST FOR**
17 **THE PERIOD THE CUSTOMER WAS OVERCHARGED. THE REFUND REQUIREMENTS OF**
18 **THIS SUBSECTION DO NOT APPLY TO AN ENERGY UTILITY ORGANIZED AS A**
19 **COOPERATIVE CORPORATION UNDER SECTIONS 98 TO 109 OF 1931 PA 327,**
20 **MCL 450.98 TO 450.109. THE REFUND REQUIREMENTS OF THIS SUBSECTION**
21 **ONLY APPLY TO A CUSTOMER OF AN ELECTRIC UTILITY WITH AN AVERAGE**
22 **MONTHLY PEAK DEMAND OF 10 MEGAWATTS OR MORE, OR A CUSTOMER OF A**
23 **NATURAL GAS UTILITY THAT USES 700,000 DECATHERMS OR MORE OF NATURAL**
24 **GAS PER YEAR.** Nothing in this section impairs the commission's
25 ability to issue a show cause order as part of its rate-making
26 authority. An alteration or amendment in rates or rate schedules
27 applied for by a public utility that will not result in an increase

1 in the cost of service to its customers may be authorized and
2 approved without notice or hearing. There shall be no increase in
3 rates based upon changes in cost of fuel or purchased gas unless
4 notice has been given within the service area to be affected, and
5 there has been an opportunity for a full and complete hearing on
6 the cost of fuel or purchased gas. The rates charged by any utility
7 ~~pursuant to~~**UNDER** an automatic fuel or purchased gas adjustment
8 clause shall not be altered, changed, or amended unless notice has
9 been given within the service area to be affected, and there has
10 been an opportunity for a full and complete hearing on the cost of
11 the fuel or purchased gas.

12 (4) ~~(2)~~The commission shall adopt rules and procedures for
13 the filing, investigation, and hearing of petitions or applications
14 to increase or decrease utility rates and charges as the commission
15 finds necessary or appropriate to enable it to reach a final
16 decision with respect to petitions or applications within a period
17 of ~~12~~**10** months from the filing of the complete petitions or
18 applications. The commission shall not authorize or approve
19 adjustment clauses that operate without notice and an opportunity
20 for a full and complete hearing, and all such clauses ~~shall be~~**ARE**
21 abolished. The commission may hold a full and complete hearing to
22 determine the cost of fuel, purchased gas, or purchased power
23 separately from a full and complete hearing on a general rate case
24 and may ~~be held~~**HOLD THAT HEARING** concurrently with the general
25 rate case. The commission shall authorize a utility to recover the
26 cost of fuel, purchased gas, or purchased power only to the extent
27 that the purchases are reasonable and prudent. ~~As used in this~~

1 section:

2 ~~—— (a) "Full and complete hearing" means a hearing that provides~~
3 ~~interested parties a reasonable opportunity to present and cross-~~
4 ~~examine evidence and present arguments relevant to the specific~~
5 ~~element or elements of the request that are the subject of the~~
6 ~~hearing.~~

7 ~~—— (b) "General rate case" means a proceeding initiated by a~~
8 ~~utility in an application filed with the commission that alleges a~~
9 ~~revenue deficiency and requests an increase in the schedule of~~
10 ~~rates or charges based on the utility's total cost of providing~~
11 ~~service.~~

12 (5) ~~(3)~~—Except as otherwise provided in this subsection **AND**
13 **SUBSECTION (1)**, if the commission fails to reach a final decision
14 with respect to a completed petition or application to increase or
15 decrease utility rates within the ~~12-month~~ **10-MONTH** period
16 following the filing of the completed petition or application, the
17 petition or application is considered approved. If a utility makes
18 any significant amendment to its filing, the commission has an
19 additional ~~12~~ **10** months from the date of the amendment to reach a
20 final decision on the petition or application. If the utility files
21 for an extension of time, the commission shall extend the ~~12-month~~
22 **10-MONTH** period by the amount of additional time requested by the
23 utility.

24 (6) ~~(4)~~—A utility shall not file a general rate case
25 application for an increase in rates earlier than 12 months after
26 the date of the filing of a complete prior general rate case
27 application. A utility may not file a new general rate case

1 application until the commission has issued a final order on a
2 prior general rate case or until the rates are approved under
3 subsection ~~(3)~~-(5).

4 (7) ~~(5)~~—The commission shall, if requested by a gas utility,
5 establish load retention transportation rate schedules or approve
6 gas transportation contracts as required for the purpose of
7 retaining industrial or commercial customers whose individual
8 annual transportation volumes exceed 500,000 decatherms on the gas
9 utility's system. The commission shall approve these rate schedules
10 or approve transportation contracts entered into by the utility in
11 good faith if the industrial or commercial customer has the
12 installed capability to use an alternative fuel or otherwise has a
13 viable alternative to receiving natural gas transportation service
14 from the utility, the customer can obtain the alternative fuel or
15 gas transportation from an alternative source at a price ~~which~~**THAT**
16 would cause them to cease using the gas utility's system, and the
17 customer, as a result of their use of the system and receipt of
18 transportation service, makes a significant contribution to the
19 utility's fixed costs. The commission shall adopt accounting and
20 rate-making policies to ensure that the discounts associated with
21 the transportation rate schedules and contracts are recovered by
22 the gas utility through charges applicable to other customers if
23 the incremental costs related to the discounts are no greater than
24 the costs that would be passed on to those customers as the result
25 of a loss of the industrial or commercial customer's contribution
26 to a utility's fixed costs.

27 (8) ~~(6) Within 90 days of the effective date of the amendatory~~

1 ~~act that added this subsection, the~~ **THE** commission shall adopt
2 standard rate application filing forms and instructions for use in
3 all general rate cases filed by utilities whose rates are regulated
4 by the commission. For cooperative electric utilities whose rates
5 are regulated by the commission, in addition to rate applications
6 filed under this section, the commission shall continue to allow
7 for rate filings based on the cooperative's times interest earned
8 ratio. The commission may, in its discretion, modify the standard
9 rate application forms and instructions adopted under this
10 subsection.

11 (9) ~~(7)~~—If, on or before January 1, 2008, a merchant plant
12 entered into a contract with an initial term of 20 years or more to
13 sell electricity to an electric utility whose rates are regulated
14 by the commission with 1,000,000 or more retail customers in this
15 state and if, ~~prior to~~ **BEFORE** January 1, 2008, the merchant plant
16 generated electricity under that contract, in whole or in part,
17 from wood or solid wood wastes, then the merchant plant shall, upon
18 petition by the merchant plant, and subject to the limitation set
19 forth in subsection ~~(8)~~, **(10)**, recover the amount, if any, by which
20 the merchant plant's reasonably and prudently incurred actual fuel
21 and variable operation and maintenance costs exceed the amount that
22 the merchant plant is paid under the contract for those costs. This
23 subsection does not apply to landfill gas plants, hydro plants,
24 municipal solid waste plants, or to merchant plants engaged in
25 litigation against an electric utility seeking higher payments for
26 power delivered pursuant to contract.

27 (10) ~~(8)~~—The total aggregate additional amounts recoverable by

1 merchant plants ~~pursuant to~~ **UNDER** subsection ~~(7)~~ **(9)** in excess of
2 the amounts paid under the contracts shall not exceed \$1,000,000.00
3 per month for each affected electric utility. The \$1,000,000.00 per
4 month limit specified in this subsection shall be reviewed by the
5 commission upon petition of the merchant plant filed no more than
6 once per year and may be adjusted if the commission finds that the
7 eligible merchant plants reasonably and prudently incurred actual
8 fuel and variable operation and maintenance costs exceed the amount
9 that those merchant plants are paid under the contract by more than
10 \$1,000,000.00 per month. The annual amount of the adjustments shall
11 not exceed a rate equal to the United States consumer price index.
12 An adjustment shall not be made by the commission unless each
13 affected merchant plant files a petition with the commission. ~~As~~
14 ~~used in this subsection, "United States consumer price index" means~~
15 ~~the United States consumer price index for all urban consumers as~~
16 ~~defined and reported by the United States department of labor,~~
17 ~~bureau of labor statistics.~~ If the total aggregate amount by which
18 the eligible merchant plants reasonably and prudently incurred
19 actual fuel and variable operation and maintenance costs determined
20 by the commission exceed the amount that the merchant plants are
21 paid under the contract by more than \$1,000,000.00 per month, the
22 commission shall allocate the additional \$1,000,000.00 per month
23 payment among the eligible merchant plants based upon the
24 relationship of excess costs among the eligible merchant plants.
25 The \$1,000,000.00 limit specified in this subsection, as adjusted,
26 ~~shall~~ **DOES** not apply ~~with respect to~~ actual fuel and variable
27 operation and maintenance costs that are incurred due to changes in

1 federal or state environmental laws or regulations that are
2 implemented after ~~the effective date of the amendatory act that~~
3 ~~added this subsection.~~ **OCTOBER 6, 2008.** The \$1,000,000.00 per month
4 payment limit under this subsection ~~shall~~ **DOES** not apply to
5 merchant plants eligible under subsection ~~(7)~~ **(9)** whose electricity
6 is purchased by a utility that is using wood or wood waste or fuels
7 derived from those materials for fuel in their power plants. **AS**
8 **USED IN THIS SUBSECTION, "UNITED STATES CONSUMER PRICE INDEX" MEANS**
9 **THE UNITED STATES CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS AS**
10 **DEFINED AND REPORTED BY THE UNITED STATES DEPARTMENT OF LABOR,**
11 **BUREAU OF LABOR STATISTICS.**

12 (11) ~~(9)~~—The commission shall issue orders to permit the
13 recovery authorized under subsections ~~(7)~~ **(9)** and ~~(8)~~ **(10)** upon
14 petition of the merchant plant. The merchant plant ~~shall~~ **IS** not ~~be~~
15 required to alter or amend the existing contract with the electric
16 utility in order to obtain the recovery under subsections ~~(7)~~ **(9)**
17 and ~~(8)~~ **(10)**. The commission shall permit or require the electric
18 utility whose rates are regulated by the commission to recover from
19 its ratepayers all fuel and variable operation and maintenance
20 costs that the electric utility is required to pay to the merchant
21 plant as reasonably and prudently incurred costs.

22 (12) **AS USED IN THIS SECTION:**

23 (A) **"FULL AND COMPLETE HEARING" MEANS A HEARING THAT PROVIDES**
24 **INTERESTED PARTIES A REASONABLE OPPORTUNITY TO PRESENT AND CROSS-**
25 **EXAMINE EVIDENCE AND PRESENT ARGUMENTS RELEVANT TO THE SPECIFIC**
26 **ELEMENT OR ELEMENTS OF THE REQUEST THAT ARE THE SUBJECT OF THE**
27 **HEARING.**

1 (B) "GENERAL RATE CASE" MEANS A PROCEEDING INITIATED BY A
2 UTILITY IN AN APPLICATION FILED WITH THE COMMISSION THAT ALLEGES A
3 REVENUE DEFICIENCY AND REQUESTS AN INCREASE IN THE SCHEDULE OF
4 RATES OR CHARGES BASED ON THE UTILITY'S TOTAL COST OF PROVIDING
5 SERVICE.

6 Sec. 6b. If the rates of any gas utility ~~shall be~~ **ARE** based,
7 among other considerations, upon the cost of natural gas purchased
8 by ~~said~~ **THE** gas utility ~~which~~ **THAT** is in turn distributed by ~~said~~
9 **THE** gas utility to the public served by it, and the cost for ~~such~~
10 **THE** gas is regulated by the ~~federal energy regulatory commission,~~
11 **FEDERAL ENERGY REGULATORY COMMISSION**, the ~~Michigan~~ public service
12 commission ~~shall have~~ **HAS** the authority set forth in this section.
13 In any proceeding to increase the rates and charges or to alter,
14 change, or amend any rate or rate schedule of a gas utility, the
15 ~~Michigan~~ public service commission ~~shall be~~ **IS** permitted to and
16 shall receive in evidence the rates, charges, classifications, and
17 schedules on file with the ~~federal energy regulatory commission~~
18 **FEDERAL ENERGY REGULATORY COMMISSION** whereby the cost of gas
19 purchased or received by ~~such~~ **THE** gas utility is fixed and
20 determined. If, while ~~such~~ **THAT** proceeding is pending before the
21 ~~Michigan~~ public service commission, a proceeding ~~shall be~~ **IS**
22 instituted or ~~be~~ pending before ~~said federal energy regulatory~~
23 ~~commission,~~ **THE FEDERAL ENERGY REGULATORY COMMISSION**, or on appeal
24 ~~therefrom~~ **FROM THE FEDERAL ENERGY REGULATORY COMMISSION** in a court
25 having jurisdiction, with respect to or affecting the cost of gas
26 payable by ~~such~~ **THE** gas utility, ~~said Michigan~~ **THE** public service
27 commission shall consider as an item of operating expense to ~~said~~

1 ~~THE~~ gas utility the cost of gas set forth in ~~said-**THE**~~ rates,
2 charges, classifications, and schedules on file with the ~~federal~~
3 ~~energy regulatory commission-**FEDERAL ENERGY REGULATORY COMMISSION.**~~
4 If the cost of gas payable by ~~said-**THE**~~ gas utility shall ~~be-**IS**~~
5 reduced by the final order of the ~~federal energy regulatory~~
6 ~~commission-**FEDERAL ENERGY REGULATORY COMMISSION**~~ or the final decree
7 of the court, if appealed thereto, ~~TO A COURT,~~ and the Michigan
8 public service commission shall ~~have-**HAS**~~ entered an order approving
9 rates to ~~said-**THE**~~ gas utility as ~~aforsaid-~~based upon the cost of
10 gas set forth in the rates, charges, classifications, and schedules
11 on file with the ~~federal energy regulatory commission-**FEDERAL**~~
12 ~~**ENERGY REGULATORY COMMISSION THAT**~~ were later reduced, as ~~above set~~
13 ~~forth,~~ the Michigan public service commission upon its own motion
14 or upon complaint and after notice and hearing may proceed to order
15 ~~A~~ refund to the gas utility's customers of any sums refunded to the
16 ~~said-~~gas utility for the period subsequent to the effective date of
17 the Michigan public service commission order approving rates for
18 the gas utility. ~~as above set forth. No-**ANY GAS REFUNDS FOR A**~~
19 ~~**CUSTOMER OF A NATURAL GAS UTILITY THAT USES 700,000 DECATHERMS OR**~~
20 ~~**MORE OF NATURAL GAS PER YEAR SHALL BE RETURNED TO THAT CUSTOMER IN**~~
21 ~~**THE MANNER AND AMOUNT THAT THE SUMS WERE CHARGED TO THE CUSTOMER SO**~~
22 ~~**AS TO ACCURATELY REFUND TO THAT CUSTOMER THE AMOUNT THAT CUSTOMER**~~
23 ~~**WAS OVERCHARGED, PLUS FAIR AND REASONABLE INTEREST FOR THE PERIOD**~~
24 ~~**THE CUSTOMER WAS OVERCHARGED. A**~~ member of ~~this-**THE**~~ 81st Legislature
25 shall ~~NOT~~ accept an employment position with any utility in this
26 state within 2 years after vacating his or her legislative office.
27 Sec. 6s. (1) ~~An-**UNTIL DECEMBER 31, 2018, AN**~~ electric utility

1 that proposes to construct an electric generation facility, make a
2 significant investment in an existing electric generation facility,
3 purchase an existing electric generation facility, or enter into a
4 power purchase agreement for the purchase of electric capacity for
5 a period of 6 years or longer may submit an application to the
6 commission seeking a certificate of necessity for that
7 construction, investment, or purchase if that construction,
8 investment, or purchase costs ~~\$500,000,000.00~~ **\$100,000,000.00** or
9 more and a portion of the costs would be allocable to retail
10 customers in this state. A significant investment in an electric
11 generation facility includes a group of investments reasonably
12 planned to be made over a multiple year period not to exceed 6
13 years for a singular purpose such as increasing the capacity of an
14 existing electric generation plant. ~~The commission shall not issue
15 a certificate of necessity under this section for any environmental
16 upgrades to existing electric generation facilities or for a
17 renewable energy system.~~

18 (2) The commission may implement separate review criteria and
19 approval standards for electric utilities with less than 1,000,000
20 retail customers ~~who~~ **THAT** seek a certificate of necessity for
21 projects costing less than ~~\$500,000,000.00~~ **\$100,000,000.00**.

22 (3) An electric utility submitting an application under this
23 section may request 1 or more of the following:

24 (a) A certificate of necessity that the power to be supplied
25 as a result of the proposed construction, investment, or purchase
26 is needed.

27 (b) A certificate of necessity that the size, fuel type, and

1 other design characteristics of the existing or proposed electric
2 generation facility or the terms of the power purchase agreement
3 represent the most reasonable and prudent means of meeting that
4 power need.

5 (c) A certificate of necessity that the price specified in the
6 power purchase agreement will be recovered in rates from the
7 electric utility's customers.

8 (d) A certificate of necessity that the estimated purchase or
9 capital costs of and the financing plan for the existing or
10 proposed electric generation facility, including, but not limited
11 to, the costs of siting and licensing a new facility and the
12 estimated cost of power from the new or proposed electric
13 generation facility, will be recoverable in rates from the electric
14 utility's customers subject to subsection (4)(c).

15 **(E) A CERTIFICATE OF NECESSITY THAT ANY LONG-TERM FIRM NATURAL**
16 **GAS TRANSPORTATION CONTRACTS HELD TO TRANSPORT NATURAL GAS SUPPLY**
17 **TO A NEW GENERATION FACILITY WILL BE RECOVERED IN RATES FROM THE**
18 **ELECTRIC UTILITY'S CUSTOMERS.**

19 (4) Within 270 days ~~of~~ **AFTER** the filing of an application
20 under this section, the commission shall issue an order granting or
21 denying the requested certificate of necessity. The commission
22 shall hold a hearing on the application. The hearing shall be
23 conducted as a contested case pursuant to chapter 4 of the
24 administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to
25 24.287. The commission shall allow intervention by interested
26 persons. ~~Reasonable~~ **THE COMMISSION SHALL PERMIT REASONABLE**
27 ~~discovery shall be permitted~~ before and during the hearing in order

1 to assist parties and interested persons in obtaining evidence
2 concerning the application, including, but not limited to, the
3 reasonableness and prudence of the construction, investment, or
4 purchase for which the certificate of necessity has been requested.

5 The commission shall grant the request **FOR A CERTIFICATE OF**
6 **NECESSITY** if it determines all of the following:

7 (a) That the electric utility has demonstrated a need for the
8 power that would be supplied by the existing or proposed electric
9 generation facility or pursuant to the proposed power purchase
10 agreement through its approved integrated resource plan that
11 complies with subsection (11).

12 (b) The information supplied indicates that the existing or
13 proposed electric generation facility will comply with all
14 applicable state and federal environmental standards, laws, and
15 rules.

16 (c) The estimated cost of power from the existing or proposed
17 electric generation facility or the price of power specified in the
18 proposed power purchase agreement is reasonable. The commission
19 shall find that the cost is reasonable if, in the construction or
20 investment in a new or existing facility, to the extent it is
21 commercially practicable, the estimated costs are the result of
22 competitively bid engineering, procurement, and construction
23 contracts, or in a power purchase agreement, the cost is the result
24 of a competitive solicitation. Up to 150 days after an electric
25 utility makes its initial filing, it may file to update its cost
26 estimates if they have materially changed. No other aspect of the
27 initial filing may be modified unless the application is withdrawn

1 and refiled. A utility's filing updating its cost estimates does
2 not extend the period for the commission to issue an order granting
3 or denying a certificate of necessity. An affiliate of an electric
4 utility that serves customers in this state and at least 1 other
5 state may participate in the competitive bidding to provide
6 engineering, procurement, and construction services to that
7 electric utility for a project covered by this section.

8 (d) The existing or proposed electric generation facility or
9 proposed power purchase agreement represents the most reasonable
10 and prudent means of meeting the power need relative to other
11 resource options for meeting power demand, including energy
12 efficiency programs and electric transmission efficiencies.

13 (e) To the extent practicable, the construction or investment
14 in a new or existing facility in this state is completed using a
15 workforce composed of residents of this state as determined by the
16 commission. This subdivision does not apply to a facility that is
17 located in a county that lies on the border with another state.

18 (5) The commission may consider any other costs or information
19 related to the costs associated with the power that would be
20 supplied by the existing or proposed electric generation facility
21 or pursuant to the proposed purchase agreement or alternatives to
22 the proposal raised by intervening parties.

23 (6) In a certificate of necessity under this section, the
24 commission shall specify the costs approved for the construction of
25 or significant investment in the electric generation facility, the
26 price approved for the purchase of the existing electric generation
27 facility, or the price approved for the purchase of power pursuant

1 to the terms of the power purchase agreement. FOR POWER PURCHASE
2 AGREEMENTS THAT A UTILITY ENTERS INTO WITH AN ENTITY THAT IS NOT
3 AFFILIATED WITH THAT UTILITY AFTER THE EFFECTIVE DATE OF THE
4 AMENDATORY ACT THAT ADDED SECTION 6T, THE COMMISSION MAY AUTHORIZE
5 A FINANCIAL INCENTIVE THAT DOES NOT EXCEED THE UTILITY'S WEIGHTED
6 AVERAGE COST OF CAPITAL.

7 (7) The utility shall annually file, or more frequent if
8 required by the commission, reports to the commission regarding the
9 status of any project for which a certificate of necessity has been
10 granted under subsection (4), including an update concerning the
11 cost and schedule of that project.

12 (8) If the commission denies any of the relief requested by an
13 electric utility, the electric utility may withdraw its application
14 or proceed with the proposed construction, purchase, investment, or
15 power purchase agreement without a certificate and the assurances
16 granted under this section.

17 (9) Once the electric generation facility or power purchase
18 agreement is considered used and useful or as otherwise provided in
19 subsection (12), the commission shall include in an electric
20 utility's retail rates all reasonable and prudent costs for an
21 electric generation facility or power purchase agreement for which
22 a certificate of necessity has been granted. The commission shall
23 not disallow recovery of costs an electric utility incurs in
24 constructing, investing in, or purchasing an electric generation
25 facility or in purchasing power pursuant to a power purchase
26 agreement for which a certificate of necessity has been granted, if
27 the costs do not exceed the costs approved by the commission in the

1 certificate. Once the electric generation facility or power
2 purchase agreement is considered used and useful or as otherwise
3 provided in subsection (12), the commission shall include in the
4 electric utility's retail rates costs actually incurred by the
5 electric utility that exceed the costs approved by the commission
6 only if the commission finds that the additional costs are
7 reasonable and prudent. If the actual costs incurred by the
8 electric utility exceed the costs approved by the commission, the
9 electric utility has the burden of proving by a preponderance of
10 the evidence that the costs are reasonable and prudent. The portion
11 of the cost of a plant, facility, or power purchase agreement ~~which~~
12 **THAT** exceeds 110% of the cost approved by the commission is
13 presumed to have been incurred due to a lack of prudence. The
14 commission may include any or all of the portion of the cost in
15 excess of 110% of the cost approved by the commission if the
16 commission finds by a preponderance of the evidence that the costs
17 were prudently incurred.

18 (10) ~~Within 90 days of the effective date of the amendatory~~
19 ~~act that added this section, the~~ **THE** commission shall adopt
20 standard application filing forms and instructions for use in all
21 requests for a certificate of necessity under this section. The
22 commission may ~~, in its discretion,~~ modify the standard application
23 filing forms and instructions adopted under this section.

24 (11) The commission shall establish standards for an
25 integrated resource plan that shall be filed by an electric utility
26 requesting a certificate of necessity under this section. An
27 integrated resource plan shall include all of the following:

1 (a) A long-term forecast of the electric utility's load growth
2 under various reasonable scenarios.

3 (b) The type of generation technology proposed for the
4 generation facility and the proposed capacity of the generation
5 facility, including projected fuel and regulatory costs under
6 various reasonable scenarios.

7 (c) Projected energy and capacity purchased or produced by the
8 electric utility pursuant to any renewable portfolio standard.

9 (d) Projected energy efficiency program savings under any
10 energy efficiency program requirements and the projected costs for
11 that program.

12 (e) Projected load management and demand response savings for
13 the electric utility and the projected costs for those programs.

14 (f) An analysis of the availability and costs of other
15 electric resources that could defer, displace, or partially
16 displace the proposed generation facility or purchased power
17 agreement, including additional renewable energy, energy efficiency
18 programs, load management, and demand response, beyond those
19 amounts contained in subdivisions (c) to (e).

20 (g) Electric transmission options for the electric utility.

21 (12) The commission shall allow financing interest cost
22 recovery in an electric utility's base rates on construction work
23 in progress for capital improvements approved under this section
24 prior to the assets being considered used and useful. Regardless of
25 whether or not the commission authorizes base rate treatment for
26 construction work in progress financing interest expense, an
27 electric utility ~~shall be allowed to~~ **MAY** recognize, accrue, and

1 defer the allowance for funds used during construction related to
2 equity capital.

3 (13) As used in this section: ~~,"renewable~~

4 (A) "LONG-TERM FIRM NATURAL GAS TRANSPORTATION" MEANS A
5 BINDING AGREEMENT ENTERED INTO BETWEEN THE ELECTRIC UTILITY AND
6 NATURAL GAS TRANSMISSION PROVIDER FOR A SET PERIOD OF TIME TO
7 PROVIDE FIRM DELIVERY OF NATURAL GAS TO AN ELECTRIC GENERATING
8 FACILITY.

9 (B) "RENEWABLE energy system" means that term as defined in
10 SECTION 11 OF the clean, renewable, and efficient energy act, 2008
11 PA 295, MCL 460.1011.

12 SEC. 6T. (1) THE COMMISSION SHALL, WITHIN 120 DAYS AFTER THE
13 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION AND
14 EVERY 4 YEARS THEREAFTER, ESTABLISH STATEWIDE MODELING ASSUMPTIONS
15 FOR INTEGRATED RESOURCE PLANS REQUIRED UNDER SUBSECTION (2). A
16 PROCEEDING COMMENCED UNDER THIS SUBSECTION SHALL BE COMPLETED
17 WITHIN 90 DAYS AND SHALL NOT BE A CONTESTED CASE PURSUANT TO
18 CHAPTER 4 OF THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA
19 306, MCL 24.271 TO 24.287. THE DETERMINATION OF THE MODELING
20 ASSUMPTIONS FOR INTEGRATED RESOURCE PLANS MADE UNDER THIS
21 SUBSECTION IS NOT A FINAL ORDER FOR PURPOSES OF JUDICIAL REVIEW.
22 THE DETERMINATIONS MADE UNDER THIS SUBSECTION ARE ONLY SUBJECT TO
23 JUDICIAL REVIEW AS PART OF THE FINAL COMMISSION ORDER RESULTING
24 FROM CONSIDERATION OF INTEGRATED RESOURCE PLANS UNDER THIS SECTION.
25 THE COMMISSION SHALL, IN CONSULTATION WITH THE MICHIGAN AGENCY FOR
26 ENERGY AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY, DO ALL OF THE
27 FOLLOWING IN A PROCEEDING UNDER THIS SUBSECTION:

1 (A) PROVIDE NOTICE TO THE PUBLIC THAT MODELING ASSUMPTIONS FOR
2 INTEGRATED RESOURCE PLANS WILL BE ESTABLISHED.

3 (B) PROVIDE NOTICE TO THE PUBLIC ABOUT ANY HEARING THAT IS
4 HELD REGARDING THE ESTABLISHMENT OF MODELING ASSUMPTIONS FOR
5 INTEGRATED RESOURCE PLANS.

6 (C) SOLICIT WRITTEN COMMENTS REGARDING THE ESTABLISHMENT OF
7 MODELING ASSUMPTIONS FOR INTEGRATED RESOURCE PLANS.

8 (D) ASSESS THE POTENTIAL FOR AN INCREASE IN ENERGY EFFICIENCY
9 IN THIS STATE, BASED ON WHAT IS TECHNOLOGICALLY AND ECONOMICALLY
10 FEASIBLE AND WHAT IS REASONABLY ACHIEVABLE. THE COMMISSION MAY
11 INITIATE AN ASSESSMENT UNDER THIS SUBDIVISION BEFORE COMMENCING A
12 PROCEEDING TO ESTABLISH STATEWIDE MODELING ASSUMPTIONS FOR
13 CONSIDERATION IN INTEGRATED RESOURCE PLANS.

14 (E) IDENTIFY SIGNIFICANT STATE OR FEDERAL ENVIRONMENTAL
15 REGULATIONS, LAWS, OR RULES AND HOW EACH REGULATION, LAW, OR RULE
16 WOULD AFFECT ELECTRIC UTILITIES IN THIS STATE.

17 (F) TO THE EXTENT PRACTICABLE, IDENTIFY ANY FORMALLY PROPOSED
18 STATE OR FEDERAL ENVIRONMENTAL REGULATION, LAW, OR RULE PUBLISHED
19 IN THE FEDERAL REGISTER OR MICHIGAN REGISTER AND HOW THAT
20 REGULATION, LAW, OR RULE WOULD AFFECT ELECTRIC UTILITIES IN THIS
21 STATE.

22 (G) IDENTIFY ANY REQUIRED RESOURCE ADEQUACY RESERVE MARGINS IN
23 AREAS OF THIS STATE.

24 (H) ESTABLISH THE MODELING SCENARIOS AND ASSUMPTIONS EACH
25 ELECTRIC UTILITY SHOULD INCLUDE IN DEVELOPING ITS INTEGRATED
26 RESOURCE PLAN UNDER SUBSECTION (2), INCLUDING ALL OF THE FOLLOWING:

27 (i) ANY REQUIRED RELIABILITY STANDARDS, INCLUDING THE PLANNING

1 RESERVES REQUIRED BY THE OPEN ACCESS TRANSMISSION AND ENERGY
2 MARKETS TARIFFS OF THE REGIONAL TRANSMISSION ORGANIZATION OR THE
3 TARIFFS OF ANY SUCCESSOR ORGANIZATION IN WHICH THE ELECTRIC UTILITY
4 PARTICIPATES.

5 (ii) APPLICABLE STATE AND FEDERAL ENVIRONMENTAL REGULATIONS,
6 LAWS, AND RULES IDENTIFIED IN THIS SUBSECTION.

7 (iii) CONSIDERATIONS OF VARIOUS SENSITIVITIES FOR ELECTRIC
8 SALES AND CAPACITY FORECASTS, COSTS FOR DIFFERENT TYPES OF ELECTRIC
9 RESOURCE OPTIONS, AND MARKET CONDITIONS.

10 (iv) ANY REGIONAL INFRASTRUCTURE LIMITATIONS THAT AFFECT
11 ELECTRIC SUPPLY IN THIS STATE.

12 (I) ALLOW OTHER STATE AGENCIES TO PROVIDE INPUT REGARDING ANY
13 OTHER REGULATORY REQUIREMENTS THAT SHOULD BE FACTORED INTO
14 ASSUMPTIONS.

15 (J) PUBLISH A COPY OF PROPOSED MODELING SCENARIOS AND
16 ASSUMPTIONS ON THE COMMISSION'S WEBSITE AND THE MICHIGAN AGENCY FOR
17 ENERGY'S WEBSITE.

18 (K) BEFORE ISSUING THE FINAL MODELING SCENARIOS AND
19 ASSUMPTIONS EACH ELECTRIC UTILITY SHOULD INCLUDE IN DEVELOPING ITS
20 INTEGRATED RESOURCE PLAN, RECEIVE WRITTEN COMMENTS AND HOLD
21 HEARINGS TO SOLICIT PUBLIC INPUT REGARDING THE PROPOSED MODELING
22 SCENARIOS AND ASSUMPTIONS.

23 (2) THE COMMISSION SHALL, NOT LATER THAN 90 DAYS AFTER THE
24 COMPLETED PROCEEDING DESCRIBED IN SUBSECTION (1), ISSUE AN ORDER
25 ESTABLISHING PROCEDURES AND FILING REQUIREMENTS FOR AN INTEGRATED
26 RESOURCE PLAN THAT SHALL BE FILED BY EACH ELECTRIC UTILITY WHOSE
27 RATES ARE REGULATED BY THE COMMISSION. SUBJECT TO THIS SECTION, THE

1 COMMISSION MAY BY ORDER SPECIFY FILING DEADLINES FOR EACH ELECTRIC
2 UTILITY WHOSE RATES ARE REGULATED BY THE COMMISSION FOR THE
3 SUBMISSION OF ITS INITIAL INTEGRATED RESOURCE PLAN. AN INTEGRATED
4 RESOURCE PLAN SHALL INCLUDE ALL OF THE FOLLOWING:

5 (A) NOTICE TO EACH REGIONAL TRANSMISSION ORGANIZATION AND
6 TRANSMISSION COMPANY SERVING ANY PORTION OF THE UTILITY'S SERVICE
7 AREA THAT THE REGIONAL TRANSMISSION ORGANIZATION AND TRANSMISSION
8 COMPANY HAS STANDING TO INTERVENE IN THE INTEGRATED RESOURCE PLAN
9 PROCEEDING AND A REQUEST THAT THE REGIONAL TRANSMISSION
10 ORGANIZATION OR TRANSMISSION COMPANY PARTICIPATE. A TRANSMISSION
11 COMPANY NOT CURRENTLY SERVING IN THE ELECTRIC UTILITY'S SERVICE
12 AREA ALSO HAS STANDING TO INTERVENE IN THE INTEGRATED RESOURCE PLAN
13 PROCEEDING.

14 (B) NOTICE TO THE PUBLIC OF THE ELECTRIC UTILITY'S PROPOSED
15 INTEGRATED RESOURCE PLAN AND THE OPPORTUNITY TO PARTICIPATE IN THE
16 PROCEEDING TO CONSIDER THAT PLAN PURSUANT TO THE RULES OF PRACTICE
17 AND PROCEDURE BEFORE THE COMMISSION. A POTENTIAL RESOURCE SUPPLIER
18 IN THE ELECTRIC UTILITY'S PROPOSED INTEGRATED RESOURCE PLAN HAS
19 STANDING TO PARTICIPATE IN THE PROCEEDING TO CONSIDER THE ELECTRIC
20 UTILITY'S INTEGRATED RESOURCE PLAN.

21 (C) A 5-YEAR, 10-YEAR, AND 15-YEAR ELECTRIC UTILITY SALES AND
22 CAPACITY FORECAST UNDER VARIOUS REASONABLE SCENARIOS, INCLUDING
23 THOSE IDENTIFIED IN THE PROCEEDING UNDER SUBSECTION (1). THE 15-
24 YEAR FORECAST MAY INCLUDE INFORMATION PROVIDING AN OVERVIEW BEYOND
25 15 YEARS.

26 (D) THE ELECTRIC UTILITY'S PLANS AND FEASIBLE ALTERNATIVE
27 OPTIONS FOR MEETING CURRENT AND FUTURE ELECTRIC ENERGY AND CAPACITY

1 NEEDS AND APPLICABLE PLANNING RESERVE MARGINS, INCLUDING PROJECTED
2 DETAILED COSTS AND OTHER CHARACTERISTICS UNDER THE SCENARIOS AND
3 ASSUMPTIONS IDENTIFIED IN THE PROCEEDING UNDER SUBSECTION (1), FOR
4 ANY PROPOSED PERMITTING AND CONSTRUCTION OF AN ELECTRIC GENERATION
5 FACILITY, SIGNIFICANT CAPITAL INVESTMENT IN AN EXISTING ELECTRIC
6 GENERATION FACILITY, PURCHASE OF AN EXISTING ELECTRIC GENERATION
7 FACILITY, POWER PURCHASE AGREEMENT, ENERGY EFFICIENCY EFFORTS, LOAD
8 MANAGEMENT, OR DEMAND RESPONSE. THE ELECTRIC UTILITY'S PLAN MAY
9 INCLUDE ALTERNATIVE MODELING SCENARIOS AND ASSUMPTIONS OTHER THAN
10 THOSE IDENTIFIED IN THE PROCEEDING UNDER SUBSECTION (1).

11 (E) TO THE EXTENT PRACTICABLE, HOW THE ELECTRIC UTILITY'S
12 EXISTING OR PROPOSED ELECTRIC GENERATION FACILITIES COMPLY OR WILL
13 COMPLY WITH ANY EXISTING OR FORMALLY PROPOSED STATE OR FEDERAL
14 ENVIRONMENTAL REGULATIONS, LAWS, OR RULES IDENTIFIED IN THE
15 PROCEEDING UNDER SUBSECTION (1).

16 (F) THE TYPE OF GENERATION TECHNOLOGY, PROPOSED CAPACITY,
17 PROJECTED COSTS, AND OTHER CHARACTERISTICS OF ANY PROPOSED ELECTRIC
18 GENERATION FACILITY.

19 (G) ANY PROPOSED RETIREMENTS OF ANY OF THE ELECTRIC UTILITY'S
20 GENERATION FACILITIES AND THE PROPOSED OR ESTIMATED DATE OF THOSE
21 RETIREMENTS.

22 (H) INFORMATION REGARDING THE ELECTRIC UTILITY'S CURRENT
23 PURCHASED POWER CONTRACTS AND THE CONTRACT TERMINATION DATES.

24 (I) THE PROJECTED IMPACT THE INTEGRATED RESOURCE PLAN WILL
25 HAVE ON ELECTRIC CUSTOMER RATES IN THIS STATE.

26 (J) THE PROJECTED RENEWABLE ENERGY AND CAPACITY PURCHASED OR
27 PRODUCED BY THE ELECTRIC UTILITY.

1 (K) THE PROJECTED ENERGY EFFICIENCY PROGRAM SAVINGS UNDER ANY
2 ENERGY EFFICIENCY PROGRAM REQUIREMENTS AND THE PROJECTED COSTS FOR
3 THAT PROGRAM.

4 (L) THE PROJECTED LOAD MANAGEMENT AND DEMAND RESPONSE SAVINGS
5 FOR THE ELECTRIC UTILITY.

6 (M) THE PROJECTED AMOUNT OF CUSTOMER SELF-GENERATION AND
7 DISTRIBUTED GENERATION.

8 (N) AN ANALYSIS OF THE AVAILABILITY AND COSTS OF OTHER
9 ELECTRIC RESOURCES, INCLUDING TRANSMISSION INVESTMENTS, THAT COULD
10 DEFER, DISPLACE, OR PARTIALLY DISPLACE THE PROPOSED GENERATION
11 FACILITY OR PURCHASED POWER AGREEMENT, INCLUDING ADDITIONAL
12 RENEWABLE ENERGY, ENERGY EFFICIENCY PROGRAMS, LOAD MANAGEMENT,
13 CUSTOMER SELF-GENERATION AND DISTRIBUTED GENERATION, AND DEMAND
14 RESPONSE, BEYOND THOSE AMOUNTS CONTAINED IN SUBDIVISIONS (J) TO
15 (M).

16 (O) THE ELECTRIC GENERATING CAPACITY LOCATED WITHIN THE
17 ELECTRIC UTILITY'S SERVICE AREA, INCLUDING ELECTRIC GENERATING
18 FACILITIES NOT OWNED BY THAT ELECTRIC UTILITY.

19 (P) TO THE EXTENT PRACTICABLE, THE COST AND RELIABILITY OF
20 RESOURCES THAT ARE NOT OWNED BY THE ELECTRIC UTILITY THAT ARE
21 LOCATED INSIDE OR OUTSIDE THE ELECTRIC UTILITY'S DISTRIBUTION
22 SERVICE AREA THAT COULD REASONABLY BE USED TO SERVE CUSTOMERS
23 WITHIN THAT SERVICE AREA.

24 (Q) AN ANALYSIS OF THE PROJECTED MARKET PRICES FOR POWER
25 PURCHASED UNDER THE RULES OF THE MIDCONTINENT INDEPENDENT SYSTEM
26 OPERATOR, OR APPLICABLE REGIONAL TRANSMISSION ORGANIZATION, AS
27 COMPARED TO THE COSTS OF NEW ELECTRIC GENERATION FACILITIES.

1 (R) THE PROJECTED LONG-TERM FIRM NATURAL GAS TRANSPORTATION
2 CONTRACTS THE ELECTRIC UTILITY WILL HOLD TO PROVIDE AN ADEQUATE
3 SUPPLY OF NATURAL GAS TO ANY NEW GENERATION FACILITY.

4 (S) ANY OTHER RELEVANT INFORMATION CONCERNING THE ELECTRIC
5 UTILITY'S PLANS OR FEASIBLE ALTERNATIVE OPTIONS FOR MEETING CURRENT
6 AND FUTURE ELECTRIC ENERGY AND CAPACITY NEEDS AND APPLICABLE
7 PLANNING RESERVE MARGINS REQUIRED BY THE COMMISSION.

8 (3) A TRANSMISSION OWNER THAT OWNS TRANSMISSION FACILITIES
9 OVER WHICH NETWORKED TRANSMISSION SERVICE IS PROVIDED PURSUANT TO
10 THE APPLICABLE REGIONAL TRANSMISSION ORGANIZATION TARIFF TO THE
11 ELECTRIC UTILITY FILING AN INTEGRATED RESOURCE PLAN UNDER THIS
12 SECTION SHALL BE A PARTY TO THE CONTESTED CASE HEARING REGARDING
13 THAT PLAN AND PROVIDE INFORMATION TO THE COMMISSION. THE COMMISSION
14 SHALL CONSIDER THE INFORMATION SUBMITTED BY THE TRANSMISSION OWNER
15 UNDER THIS SECTION TO DETERMINE THE TRANSMISSION INFRASTRUCTURE
16 REQUIREMENTS NECESSARY FOR AN ELECTRIC UTILITY WHEN APPROVING AN
17 INTEGRATED RESOURCE PLAN. THE TRANSMISSION OWNER SHALL PROVIDE
18 INFORMATION IDENTIFYING BOTH OF THE FOLLOWING:

19 (A) THE TRANSMISSION INFRASTRUCTURE REQUIREMENTS NECESSARY TO
20 SUPPORT THE LOAD AND GENERATION FORECASTED IN THE ELECTRIC
21 UTILITY'S INTEGRATED RESOURCE PLAN SUBMITTED UNDER THIS SECTION.

22 (B) THE AVAILABLE TRANSMISSION CAPACITY AND THE COST OF
23 ADDITIONAL TRANSMISSION CAPACITY THAT COULD BE USED TO SERVE RETAIL
24 CUSTOMERS WITHIN THE ELECTRIC UTILITY'S DISTRIBUTION SERVICE AREA.

25 (4) AFTER AN INTEGRATED RESOURCE PLAN IS FILED UNDER
26 SUBSECTION (2), THE COMMISSION SHALL REQUEST THE DEPARTMENT OF
27 ENVIRONMENTAL QUALITY TO PREPARE A REPORT ON ALL OF THE FOLLOWING:

1 (A) WHETHER THE INTEGRATED RESOURCE PLAN PROPOSED BY THE
2 ELECTRIC UTILITY UNDER SUBSECTION (2) WOULD REASONABLY BE EXPECTED
3 TO ACHIEVE COMPLIANCE WITH THE REGULATIONS, LAWS, OR RULES
4 IDENTIFIED IN SUBSECTION (1).

5 (B) ANY POTENTIAL DECREASE IN EMISSIONS OF SULFUR DIOXIDE,
6 MERCURY, OXIDES OF NITROGEN, AND PARTICULATE MATTER THAT WOULD
7 RESULT IF THE INTEGRATED RESOURCE PLAN PROPOSED BY THE ELECTRIC
8 UTILITY UNDER SUBSECTION (2) WAS ADOPTED.

9 (C) IF THE DEPARTMENT OF ENVIRONMENTAL QUALITY CHOOSES TO DO
10 SO, ANY COMMERCIALY AVAILABLE ALTERNATIVES THE ELECTRIC UTILITY
11 COULD DEPLOY TO ACHIEVE COMPLIANCE WITH THE REGULATIONS, LAWS, OR
12 RULES IDENTIFIED IN SUBSECTION (1) AND THE ESTIMATED COSTS OF THOSE
13 ALTERNATIVES.

14 (5) THE COMMISSION MAY TAKE OFFICIAL NOTICE OF A REPORT
15 PREPARED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY UNDER
16 SUBSECTION (4) PURSUANT TO R 792.10428 OF THE MICHIGAN
17 ADMINISTRATIVE CODE. INFORMATION SUBMITTED BY THE DEPARTMENT OF
18 ENVIRONMENTAL QUALITY UNDER SUBSECTION (4) IS ADVISORY AND IS NOT
19 BINDING ON FUTURE DETERMINATIONS BY THE DEPARTMENT OF ENVIRONMENTAL
20 QUALITY OR THE COMMISSION IN ANY PROCEEDING OR PERMITTING PROCESS.
21 THIS SECTION DOES NOT PREVENT AN ELECTRIC UTILITY FROM APPLYING
22 FOR, OR RECEIVING, ANY NECESSARY PERMITS FROM THE DEPARTMENT OF
23 ENVIRONMENTAL QUALITY.

24 (6) WITHIN 270 DAYS AFTER THE FILING OF AN INTEGRATED RESOURCE
25 PLAN UNDER SUBSECTION (2), THE COMMISSION SHALL ISSUE AN ORDER
26 APPROVING THE PLAN, MODIFYING THE PLAN, OR DENYING THE PLAN. THE
27 COMMISSION SHALL HOLD A HEARING ON THE PLAN. THE HEARING SHALL BE

1 CONDUCTED AS A CONTESTED CASE PURSUANT TO CHAPTER 4 OF THE
2 ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.271 TO
3 24.287. THE COMMISSION SHALL ALLOW INTERVENTION BY INTERESTED
4 PERSONS AS PROVIDED IN, AND CONSISTENT WITH, THE RULES OF PRACTICE
5 AND PROCEDURE BEFORE THE COMMISSION. THE COMMISSION SHALL PERMIT
6 REASONABLE DISCOVERY BEFORE AND DURING THE HEARING IN ORDER TO
7 ASSIST PARTIES IN OBTAINING EVIDENCE CONCERNING THE PLAN. THE
8 COMMISSION AND INTERVENING PARTIES SHALL HANDLE CONFIDENTIAL
9 BUSINESS INFORMATION UNDER THIS ACT IN A MANNER CONSISTENT WITH
10 STATE LAW AND THE RULES OF THE COMMISSION. THE COMMISSION SHALL
11 CONSIDER ALTERNATIVES PROPOSED BY PARTIES TO THE PROCEEDING BEFORE
12 APPROVING AN INTEGRATED RESOURCE PLAN. THE COMMISSION SHALL APPROVE
13 THE PLAN IF THE COMMISSION DETERMINES THE PLAN IS THE MOST
14 REASONABLE AND PRUDENT PLAN TO BALANCE ALL OF THE FOLLOWING:

15 (A) THE ABILITY TO MAINTAIN OR INCREASE ELECTRIC RELIABILITY
16 IN THIS STATE.

17 (B) REASONABLE COMPLIANCE WITH ALL APPLICABLE STATE AND
18 FEDERAL ENVIRONMENTAL REGULATIONS, LAWS, AND RULES.

19 (C) MEETING THE NEED FOR ADDITIONAL GENERATION CAPACITY AND
20 ELECTRIC ENERGY.

21 (D) DETERMINING THE ELECTRIC GENERATION RESOURCE MIX PROPOSED
22 IN THE PLAN REPRESENTS A BALANCED AND ADAPTABLE RESOURCE PORTFOLIO
23 THAT MINIMIZES THE IMPACT ON CUSTOMERS OF FUEL SUPPLY AND FUEL
24 PRICE VOLATILITY AND PROMOTES COMPETITIVE RATES AND AFFORDABLE
25 BILLS.

26 (E) PROVIDING REASONABLE PROGRESS TOWARD AN INCREASE IN ENERGY
27 EFFICIENCY. ENERGY EFFICIENCY PROGRAMS APPROVED UNDER THIS SECTION

1 MAY BE IMPLEMENTED BY AN ELECTRIC UTILITY.

2 (F) PROVIDING REASONABLE PROGRESS TOWARD MAINTAINING RENEWABLE
3 ENERGY RESOURCES IN THIS STATE. AS A GOAL UNDER THIS SUBDIVISION,
4 NOT LESS THAN 30% OF ELECTRIC ENERGY NEEDS WOULD BE MET THROUGH A
5 COMBINATION OF ENERGY WASTE REDUCTION AND RENEWABLE ENERGY BY 2025.
6 RENEWABLE ENERGY MEANS THAT TERM IS DEFINED IN SECTION 11 OF THE
7 CLEAN, RENEWABLE, AND EFFICIENT ENERGY ACT, 2008 PA 295, MCL
8 460.1011.

9 (7) IF THE COMMISSION MODIFIES AN INTEGRATED RESOURCE PLAN
10 UNDER SUBSECTION (6), AN ELECTRIC UTILITY MAY REJECT THE PROPOSED
11 MODIFICATION WITHIN 30 DAYS AFTER THE COMMISSION'S ORDER. IF THE
12 ELECTRIC UTILITY DOES NOT REJECT THE PROPOSED MODIFICATION WITHIN
13 30 DAYS AFTER THE COMMISSION'S ORDER, THE MODIFIED PLAN IS
14 CONSIDERED APPROVED. IF AN ELECTRIC UTILITY REJECTS THE PROPOSED
15 MODIFIED PLAN OR THE COMMISSION DENIES AN INTEGRATED RESOURCE PLAN
16 UNDER SUBSECTION (6), THE ELECTRIC UTILITY SHALL FILE A NEW
17 INTEGRATED RESOURCE PLAN WITH THE COMMISSION WITHIN 90 DAYS AFTER
18 THE UTILITY'S REJECTION OF THE PROPOSED MODIFIED PLAN OR THE
19 COMMISSION'S DENIAL OF THE INTEGRATED RESOURCE PLAN. A NEW
20 INTEGRATED RESOURCE PLAN FILED UNDER THIS SUBSECTION SHALL BE
21 CONSIDERED BY THE COMMISSION PURSUANT TO THE PROCEDURES ESTABLISHED
22 BY THIS SECTION. THE PROCEEDING TO CONSIDER A NEW INTEGRATED
23 RESOURCE PLAN SHALL BE COMPLETED WITHIN 135 DAYS AFTER THE FILING
24 OF THE NEW PLAN.

25 (8) AN ELECTRIC UTILITY MAY SEEK AMENDMENTS TO AN APPROVED
26 INTEGRATED RESOURCE PLAN. THE COMMISSION SHALL CONSIDER THE
27 AMENDMENTS UNDER THE SAME PROCESS AND STANDARDS THAT GOVERN THE

1 REVIEW AND APPROVAL OF AN INTEGRATED RESOURCE PLAN, BUT THE
2 PROCEEDING TO CONSIDER AMENDMENTS TO AN APPROVED INTEGRATED
3 RESOURCE PLAN SHALL BE COMPLETED WITHIN 120 DAYS AFTER THE
4 UTILITY'S FILING OF A REQUEST FOR AMENDMENTS OR WITHIN 180 DAYS
5 AFTER THE UTILITY'S FILING OF A REQUEST FOR AMENDMENTS IF THE
6 PROPOSED AMENDMENTS MEET THE REQUIREMENTS FOR CONSIDERATION FOR A
7 CERTIFICATE OF NECESSITY UNDER SECTION 6S.

8 (9) THE COMMISSION MAY ORDER AN ELECTRIC UTILITY TO FILE A
9 PLAN REVIEW. AN ELECTRIC UTILITY MUST FILE A PLAN REVIEW WITHIN 120
10 DAYS AFTER THE COMMISSION ORDERS THE UTILITY TO FILE A PLAN REVIEW.

11 (10) FOR AN ELECTRIC UTILITY WHOSE RATES ARE REGULATED BY THE
12 COMMISSION WITH FEWER THAN 1,000,000 RETAIL CUSTOMERS IN THIS
13 STATE, THE COMMISSION MAY ISSUE AN ORDER IMPLEMENTING SEPARATE
14 FILING REQUIREMENTS, REVIEW CRITERIA, AND APPROVAL STANDARDS THAT
15 DIFFER FROM THOSE ESTABLISHED UNDER SUBSECTIONS (2) AND (4). AN
16 ELECTRIC UTILITY THAT PROVIDES ELECTRIC TARIFF SERVICE TO CUSTOMERS
17 BOTH IN THIS STATE AND IN AT LEAST 1 OTHER STATE MAY DESIGN ITS
18 INTEGRATED RESOURCE PLAN TO COVER ALL ITS CUSTOMERS ON THAT
19 MULTISTATE BASIS. IF AN ELECTRIC UTILITY HAS FILED A MULTISTATE
20 INTEGRATED RESOURCE PLAN THAT INCLUDES ITS SERVICE AREA IN THIS
21 STATE WITH THE RELEVANT UTILITY REGULATORY COMMISSION IN ANOTHER
22 STATE IN WHICH IT PROVIDES TARIFF SERVICE TO RETAIL CUSTOMERS, THE
23 COMMISSION SHALL ACCEPT FOR FILING PURPOSES THAT INTEGRATED
24 RESOURCE PLAN FILING IN THIS STATE. THE COMMISSION MAY REQUIRE
25 SUPPLEMENTAL INFORMATION IF NECESSARY AS PART OF ITS EVALUATION AND
26 DETERMINATION OF WHETHER TO APPROVE THE PLAN. UPON REQUEST OF AN
27 ELECTRIC UTILITY, THE COMMISSION MAY ADJUST THE FILING DATES FOR A

1 MULTISTATE INTEGRATED RESOURCE PLAN FILING IN THIS STATE TO PLACE
2 ITS REVIEW ON THE SAME TIMELINE AS OTHER RELEVANT STATE REVIEWS.

3 (11) IN APPROVING AN INTEGRATED RESOURCE PLAN UNDER THIS
4 SECTION, THE COMMISSION SHALL CERTIFY PROJECTS AND PROGRAMS NEEDED
5 TO COMPLY WITH A PLAN APPROVED UNDER THIS SECTION AND SHALL CERTIFY
6 SPECIFIED PROJECTED COSTS FOR THE PROJECTS AND PROGRAMS NEEDED TO
7 COMPLY WITH A PLAN APPROVED UNDER THIS SECTION. EXCEPT AS OTHERWISE
8 PROVIDED IN SUBSECTIONS (12) THROUGH (16), THE CERTIFIED COSTS FOR
9 SPECIFICALLY IDENTIFIED PROJECTS AND PROGRAMS INCLUDED IN AN
10 APPROVED INTEGRATED RESOURCE PLAN THAT ARE COMMENCED WITHIN 3 YEARS
11 AFTER THE COMMISSION'S ORDER APPROVING THE INITIAL PLAN, AMENDED
12 PLAN, OR PLAN REVIEW ARE CONSIDERED REASONABLE AND PRUDENT FOR COST
13 RECOVERY PURPOSES, AND THE REASONABLENESS AND PRUDENCE OF THE COSTS
14 OF A PROJECT OR PROGRAM INCLUDED IN AN APPROVED INTEGRATED RESOURCE
15 PLAN THAT IS COMMENCED WITHIN THE 3 YEARS AFTER THE COMMISSION'S
16 ORDER APPROVING THE PLAN ARE NOT A CONTESTABLE ISSUE IN SUBSEQUENT
17 PROCEEDINGS. THE COMMISSION MAY APPROVE CAPITALIZATION OF ENERGY
18 WASTE REDUCTION OR DEMAND RESPONSE COSTS OR OTHERWISE PREAPPROVE
19 THE RECOVERY OF COSTS, INCLUDING A FINANCIAL INCENTIVE, FOR ENERGY
20 WASTE REDUCTION OR DEMAND RESPONSE MEASURES IN ORDER TO MAKE
21 COMMENSURATE THE FINANCIAL INCENTIVES FOR ENERGY WASTE REDUCTION,
22 DEMAND RESPONSE, AND THEIR ALTERNATIVES, AS WELL AS COST- OR
23 BENEFIT-SHARING MECHANISMS TO INCENTIVIZE PARTICIPATION IN ENERGY
24 WASTE REDUCTION OR DEMAND RESPONSE PROGRAMS. THE TOTAL AMOUNT OF A
25 FINANCIAL INCENTIVE FOR AN ELECTRIC UTILITY THAT ACHIEVES ANNUAL
26 INCREMENTAL ENERGY WASTE REDUCTION OF MORE THAN 1.5% BUT NOT MORE
27 THAN 3% OF ITS TOTAL ANNUAL RETAIL ELECTRICITY SALES IN MEGAWATT

1 HOURS IN THE PRECEDING YEAR SHALL NOT EXCEED THE LESSER OF 30% OF
2 THE NET PRESENT VALUE OF LIFE-CYCLE COST REDUCTIONS EXPERIENCED BY
3 THE UTILITY'S CUSTOMERS AS A RESULT OF IMPLEMENTATION OF THE ENERGY
4 WASTE REDUCTION PROGRAM OR 20% OF THE UTILITY'S ACTUAL ENERGY WASTE
5 REDUCTION PROGRAM EXPENDITURES FOR THE YEAR. THE TOTAL AMOUNT OF A
6 FINANCIAL INCENTIVE FOR AN ELECTRIC UTILITY THAT ACHIEVES ANNUAL
7 INCREMENTAL ENERGY WASTE REDUCTION OF AT LEAST 1% BUT NOT MORE THAN
8 1.5% OF ITS TOTAL ANNUAL RETAIL ELECTRICITY SALES IN MEGAWATT HOURS
9 IN THE PRECEDING YEAR SHALL NOT EXCEED THE LESSER OF 25% OF THE NET
10 PRESENT VALUE OF LIFE-CYCLE COST REDUCTIONS EXPERIENCED BY THE
11 UTILITY'S CUSTOMERS AS A RESULT OF IMPLEMENTATION OF THE ENERGY
12 WASTE REDUCTION PROGRAM OR 15% OF THE UTILITY'S ACTUAL ENERGY WASTE
13 REDUCTION PROGRAM EXPENDITURES FOR THE YEAR. A FINANCIAL INCENTIVE
14 IS NOT AUTHORIZED FOR AN ELECTRIC UTILITY THAT ACHIEVES ANNUAL
15 INCREMENTAL ENERGY WASTE REDUCTION OF LESS THAN 1% OF ITS TOTAL
16 ANNUAL RETAIL ELECTRICITY SALES IN MEGAWATT HOURS IN THE PRECEDING
17 YEAR. THE COMMISSION SHALL APPROVE HIGHER FINANCIAL INCENTIVES FOR
18 ACHIEVING HIGHER LIFE-CYCLE BENEFITS.

19 (12) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (15) OR (16),
20 THE COMMISSION SHALL, UPON APPLICATION BY THE ELECTRIC UTILITY IN A
21 GENERAL RATE PROCEEDING, INCLUDE IN AN ELECTRIC UTILITY'S RETAIL
22 RATES ALL REASONABLE AND PRUDENT INCURRED COSTS FOR A PROJECT OR
23 PROGRAM THAT HAS BEEN APPROVED IN AN INTEGRATED RESOURCE PLAN. THE
24 COMMISSION SHALL NOT DISALLOW RECOVERY OF COSTS AN ELECTRIC UTILITY
25 INCURS IN PROJECTS OR PROGRAMS THAT HAVE BEEN CERTIFIED IN AN
26 INTEGRATED RESOURCE PLAN IF THOSE COSTS DO NOT EXCEED THE COSTS
27 CERTIFIED BY THE COMMISSION IN THE INTEGRATED RESOURCE PLAN.

1 (13) THE COMMISSION SHALL, UPON APPLICATION BY THE ELECTRIC
2 UTILITY IN A GENERAL RATE PROCEEDING, INCLUDE IN THE ELECTRIC
3 UTILITY'S RETAIL RATES THE ACTUAL COSTS INCURRED BY THE ELECTRIC
4 UTILITY THAT EXCEED THE COSTS CERTIFIED BY THE COMMISSION ONLY IF
5 THE COMMISSION FINDS THAT THE ADDITIONAL COSTS ARE REASONABLE AND
6 PRUDENT. IF THE ACTUAL COSTS INCURRED BY THE ELECTRIC UTILITY
7 EXCEED THE COSTS CERTIFIED BY THE COMMISSION, THE ELECTRIC UTILITY
8 HAS THE BURDEN OF PROVING BY A PREPONDERANCE OF THE EVIDENCE THAT
9 THE COSTS ARE REASONABLE AND PRUDENT. THE PORTION OF THE COST OF AN
10 INVESTMENT THAT EXCEEDS 110% OF THE COSTS CERTIFIED BY THE
11 COMMISSION IS PRESUMED TO HAVE BEEN INCURRED DUE TO A LACK OF
12 PRUDENCE. THE COMMISSION MAY INCLUDE ALL OR ANY OF THE PORTION OF
13 THE COSTS IN EXCESS OF 110% OF THE COSTS CERTIFIED BY THE
14 COMMISSION IF THE COMMISSION FINDS BY A PREPONDERANCE OF THE
15 EVIDENCE THAT THE COSTS WERE PRUDENTLY INCURRED.

16 (14) COSTS INCURRED ARE NOT CONSIDERED REASONABLE AND PRUDENT
17 IF THOSE COSTS ARE FOUND BY THE COMMISSION TO HAVE BEEN INCURRED AS
18 THE RESULT OF FRAUD, CONCEALMENT, GROSS MISMANAGEMENT, OR LACK OF
19 QUALITY CONTROLS AMOUNTING TO GROSS MISMANAGEMENT. THE COMMISSION
20 MAY DISALLOW RECOVERY OF THESE COSTS AND REQUIRE REFUNDS WITH
21 INTEREST TO RATEPAYERS OF ANY OF THESE COSTS ALREADY RECOVERED
22 THROUGH THE ELECTRIC UTILITY'S RATES AND CHARGES.

23 (15) AN ELECTRIC UTILITY SHALL BE ALLOWED TO RECOGNIZE,
24 ACCRUE, AND DEFER THE ALLOWANCE FOR FUNDS USED DURING CONSTRUCTION.
25 THIS SECTION DOES NOT PROHIBIT AN ELECTRIC UTILITY FROM REQUESTING
26 OR THE COMMISSION FROM AUTHORIZING IN AN ELECTRIC UTILITY'S BASE
27 RATES CONSTRUCTION WORK IN PROGRESS FOR CAPITAL IMPROVEMENTS

1 APPROVED UNDER THIS SECTION PRIOR TO THE ASSETS BEING CONSIDERED
2 USED AND USEFUL.

3 (16) IF THE ASSUMPTIONS UNDERLYING AN APPROVED INTEGRATED
4 RESOURCE PLAN MATERIALLY CHANGE, AN ELECTRIC UTILITY MAY REQUEST,
5 OR THE COMMISSION ON ITS OWN MOTION MAY INITIATE, A PROCEEDING TO
6 REVIEW WHETHER IT IS REASONABLE AND PRUDENT TO COMPLETE AN
7 UNFINISHED PROJECT OR PROGRAM INCLUDED IN AN APPROVED INTEGRATED
8 RESOURCE PLAN. IF THE COMMISSION FINDS THAT COMPLETION OF THE
9 PROJECT OR PROGRAM IS NO LONGER REASONABLE AND PRUDENT, THE
10 COMMISSION MAY MODIFY OR CANCEL APPROVAL OF THE PROJECT OR PROGRAM
11 AND UNINCURRED COSTS IN THE ELECTRIC UTILITY'S INTEGRATED RESOURCE
12 PLAN. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (14), IF
13 COMMISSION APPROVAL IS MODIFIED OR CANCELED, THE COMMISSION SHALL
14 NOT DISALLOW REASONABLE AND PRUDENT COSTS ALREADY INCURRED BY AN
15 ELECTRIC UTILITY.

16 (17) AN ELECTRIC UTILITY SHALL ANNUALLY FILE, OR MORE
17 FREQUENTLY IF REQUIRED BY THE COMMISSION OR ITS STAFF, REPORTS TO
18 THE COMMISSION REGARDING THE STATUS OF ANY UNCOMPLETED PROJECTS
19 THAT HAVE BEEN APPROVED IN AN INTEGRATED RESOURCE PLAN, INCLUDING
20 AN UPDATE CONCERNING THE COST AND SCHEDULE OF THOSE PROJECTS.

21 (18) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN ORDER BY
22 THE COMMISSION APPROVING AN INTEGRATED RESOURCE PLAN, AMENDMENT, OR
23 PLAN REVIEW MAY BE REVIEWED BY THE COURT OF APPEALS UPON A FILING
24 BY A PARTY TO THE COMMISSION PROCEEDING WITHIN 30 DAYS AFTER THE
25 ORDER IS ISSUED. ALL APPEALS OF THE ORDER SHALL BE HEARD AND
26 DETERMINED AS EXPEDITIOUSLY AS POSSIBLE WITH LAWFUL PRECEDENCE OVER
27 OTHER MATTERS. REVIEW ON APPEAL SHALL BE BASED SOLELY ON THE RECORD

1 BEFORE THE COMMISSION AND BRIEFS TO THE COURT AND IS LIMITED TO
2 WHETHER THE ORDER CONFORMS TO THE CONSTITUTION AND LAWS OF THIS
3 STATE AND THE UNITED STATES AND IS WITHIN THE AUTHORITY OF THE
4 COMMISSION UNDER THIS ACT.

5 SEC. 6U. (1) A COVERED UTILITY SHALL NOT DISCONTINUE UTILITY
6 SERVICE TO A GEOGRAPHIC AREA THAT THE COVERED UTILITY SERVES
7 WITHOUT FIRST FILING AN ABANDONMENT APPLICATION WITH THE COMMISSION
8 AND OBTAINING APPROVAL FROM THE COMMISSION TO DISCONTINUE THAT
9 SERVICE AFTER NOTICE AND A CONTESTED CASE PROCEEDING. THE
10 COMMISSION SHALL NOT APPROVE ANY ABANDONMENT APPLICATION FILED
11 UNDER THIS SECTION UNLESS THE COMMISSION DETERMINES THAT THERE IS
12 CLEAR AND CONVINCING EVIDENCE THAT ALL AFFECTED CUSTOMERS WOULD
13 HAVE ACCESS TO AFFORDABLE, RELIABLE, AND SAFE UTILITY SERVICE FROM
14 AN ALTERNATIVE SOURCE. A COVERED UTILITY DOES NOT HAVE TO FILE AN
15 ABANDONMENT APPLICATION UNDER THIS SECTION IF UTILITY SERVICE IS
16 BEING DISCONTINUED TO A SPECIFIC PARCEL OR PARCELS TO ENABLE
17 ANOTHER COVERED UTILITY TO PROVIDE SERVICE THAT THE OTHER COVERED
18 UTILITY IS LEGALLY PERMITTED TO PROVIDE. AS USED IN THIS
19 SUBSECTION, "COVERED UTILITY" MEANS ANY OF THE FOLLOWING:

20 (A) A COOPERATIVE ELECTRIC UTILITY SUBJECT TO THE COMMISSION'S
21 JURISDICTION FOR ITS SERVICE AREA, DISTRIBUTION PERFORMANCE
22 STANDARDS, AND QUALITY OF SERVICE.

23 (B) A RURAL GAS COOPERATIVE.

24 (C) AN ELECTRIC UTILITY, NATURAL GAS UTILITY, OR STEAM UTILITY
25 SUBJECT TO THE COMMISSION'S RATE-MAKING JURISDICTION.

26 (2) NOT LESS THAN 30 DAYS AFTER AN ELECTRIC UTILITY FILES A
27 PROPOSAL TO RETIRE AN ELECTRIC GENERATING PLANT WITH A REGIONAL

1 TRANSMISSION ORGANIZATION, THE UTILITY SHALL PROVIDE THAT PROPOSAL
2 IN ITS ENTIRETY TO THE COMMISSION.

3 (3) NOT LESS THAN 60 DAYS BEFORE AN ELECTRIC UTILITY APPLIES
4 TO THE OPERATING RELIABILITY SUBCOMMITTEE OF THE NORTH AMERICAN
5 ELECTRIC RELIABILITY CORPORATION FOR APPROVAL OF A PROPOSAL TO
6 REVISE AN EXISTING LOAD BALANCING AUTHORITY, THE ELECTRIC UTILITY
7 SHALL DO BOTH OF THE FOLLOWING:

8 (A) FILE WITH THE COMMISSION A FULL AND COMPLETE REPORT OF THE
9 PROPOSED REVISION.

10 (B) SERVE A COPY OF THE REPORT REQUIRED TO BE FILED WITH THE
11 COMMISSION UNDER SUBDIVISION (A) ON ALL OTHER ELECTRIC UTILITIES IN
12 THIS STATE.

13 Sec. 10. (1) ~~Sections 10~~ THIS SECTION AND SECTIONS 10A through
14 10bb shall be known and may be cited as the "customer choice and
15 electricity reliability act".

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

18 ~~—— (a) To ensure that all retail customers in this state of~~
19 ~~electric power have a choice of electric suppliers.~~

20 ~~—— (b) To allow and encourage the Michigan public service~~
21 ~~commission to foster competition in this state in the provision of~~
22 ~~electric supply and maintain regulation of electric supply for~~
23 ~~customers who continue to choose supply from incumbent electric~~
24 ~~utilities.~~

25 ~~—— (c) To encourage the development and construction of merchant~~
26 ~~plants which will diversify the ownership of electric generation in~~
27 ~~this state.~~

1 (A) ~~(d)~~—To ensure that all persons in this state are afforded
2 safe, reliable electric power at a reasonable rate.

3 (B) ~~(e)~~—To improve the opportunities for economic development
4 in this state and to promote financially healthy and competitive
5 utilities in this state.

6 (C) ~~(f)~~—To maintain, foster, and encourage robust, reliable,
7 and economic generation, distribution, and transmission systems to
8 provide this state's electric suppliers and generators an
9 opportunity to access regional sources of generation and wholesale
10 power markets and to ensure a reliable supply of electricity in
11 this state.

12 Sec. 10a. (1) The commission shall issue orders establishing
13 the rates, terms, and conditions of service that allow ~~all~~ retail
14 customers of an electric utility or provider ~~to choose~~ **TO TAKE**
15 **SERVICE FROM** an alternative electric supplier. The orders shall do
16 all of the following:

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

21 (b) Set forth procedures necessary to administer and allocate
22 the amount of load that will be allowed to be served by alternative
23 electric suppliers, through the use of annual energy allotments
24 awarded on a calendar year basis, and shall provide, among other
25 things, that existing customers ~~who~~ **THAT** are taking electric
26 service from an alternative electric supplier at a facility on ~~the~~
27 ~~effective date of the amendatory act that added this subdivision~~

1 **OCTOBER 6, 2008** shall be given an allocated annual energy allotment
2 for that service at that facility, that customers seeking to expand
3 usage at a facility served through an alternative electric supplier
4 will be given next priority, with the remaining available load, if
5 any, allocated on a first-come first-served basis. The procedures
6 shall also provide how customer facilities will be defined for the
7 purpose of assigning the annual energy allotments to be allocated
8 under this section. The commission shall not allocate additional
9 annual energy allotments at any time when the total annual energy
10 allotments for the utility's distribution service territory is
11 greater than 10% of the utility's weather-adjusted retail sales in
12 the calendar year preceding the date of allocation. If the sales of
13 a utility are less in a subsequent year or if the energy usage of a
14 customer receiving electric service from an alternative electric
15 supplier exceeds its annual energy allotment for that facility,
16 that customer shall not be forced to purchase electricity from a
17 utility, but may purchase electricity from an alternative electric
18 supplier for that facility during that calendar year. **IF A CUSTOMER**
19 **ON A LIST AWAITING RETAIL OPEN ACCESS SERVICE CHOOSES NOT TO TAKE**
20 **SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER WHEN THAT CUSTOMER IS**
21 **GIVEN THE OPTION TO DO SO, THAT CUSTOMER IS NOT ELIGIBLE TO RECEIVE**
22 **ELECTRIC SUPPLIER SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER FOR**
23 **A PERIOD OF 20 YEARS AFTER CHOOSING TO NOT TAKE SERVICE FROM AN**
24 **ALTERNATIVE ELECTRIC SUPPLIER.**

25 (c) Notwithstanding any other provision of this section,
26 customers seeking to expand usage at a facility that has been
27 continuously served through an alternative electric supplier since

1 April 1, 2008 shall be permitted to purchase electricity from an
2 alternative electric supplier for both the existing and any
3 expanded load at that facility as well as any new facility
4 constructed or acquired after ~~the effective date of the amendatory~~
5 ~~act that added this subdivision~~ **OCTOBER 6, 2008** that is similar in
6 nature if the customer owns more than 50% of the new facility.

7 (d) Notwithstanding any other provision of this section, any
8 customer operating an iron ore mining facility, iron ore processing
9 facility, or both, located in the Upper Peninsula of this state,
10 shall be permitted to purchase all or any portion of its
11 electricity from an alternative electric supplier, regardless of
12 whether the sales exceed 10% of the serving electric utility's
13 average weather-adjusted retail sales, **IF THAT CUSTOMER IS IN**
14 **COMPLIANCE WITH THE TERMS OF A SETTLEMENT AGREEMENT REQUIRING IT TO**
15 **FACILITATE CONSTRUCTION OF A NEW POWER PLANT LOCATED IN THE UPPER**
16 **PENINSULA OF THIS STATE. THE CUSTOMER DESCRIBED IN THIS SUBDIVISION**
17 **AND THE ALTERNATIVE ELECTRIC SUPPLIER THAT PROVIDES ELECTRIC**
18 **SERVICE TO THAT CUSTOMER ARE NOT SUBJECT TO THE REQUIREMENTS ADDED**
19 **BY THE AMENDATORY ACT THAT ADDED SECTION 6T AND ANY ADMINISTRATIVE**
20 **REGULATIONS ADOPTED UNDER THAT AMENDATORY ACT. THE COMMISSION'S**
21 **ORDERS ESTABLISHING RATES, TERMS, AND CONDITIONS OF RETAIL OPEN**
22 **ACCESS SERVICE ISSUED BEFORE THE EFFECTIVE DATE OF THE AMENDATORY**
23 **ACT THAT ADDED SECTION 6T REMAIN IN EFFECT WITH REGARD TO RETAIL**
24 **OPEN ACCESS PROVIDED UNDER THIS SUBDIVISION.**

25 (E) PROVIDE THAT A CUSTOMER RECEIVING SERVICE FROM AN
26 ALTERNATIVE ELECTRIC SUPPLIER MAY SUBSEQUENTLY PROVIDE NOTICE TO
27 THE ELECTRIC UTILITY OF THE CUSTOMER'S DESIRE TO RECEIVE STANDARD

1 TARIFF SERVICE FROM THE ELECTRIC UTILITY. A CUSTOMER THAT ELECTS TO
2 CONTINUE TO RECEIVE ELECTRIC SUPPLY SERVICE FROM AN ALTERNATIVE
3 ELECTRIC SUPPLIER MAY RETURN TO STANDARD TARIFF SERVICE FROM AN
4 ELECTRIC UTILITY SUBJECT TO THE FOLLOWING:

5 (i) IF THERE IS AN EQUIVALENT AMOUNT OF LOAD ON THE LIST
6 AWAITING RETAIL OPEN ACCESS SERVICE, THE CUSTOMER IS SUBJECT TO THE
7 PROCEDURES IN PLACE FOR EACH ELECTRIC UTILITY ON THE EFFECTIVE DATE
8 OF THE AMENDATORY ACT THAT ADDED SECTION 6T THAT SET FORTH THE
9 TERMS PURSUANT TO WHICH A CUSTOMER RECEIVING SERVICE FROM AN
10 ALTERNATIVE ELECTRIC SUPPLIER MAY RETURN TO FULL SERVICE FROM THE
11 ELECTRIC UTILITY. A CUSTOMER THAT ELECTS TO RETURN TO SERVICE UNDER
12 THIS SUBPARAGRAPH IS NOT ELIGIBLE TO RECEIVE ELECTRIC SUPPLY
13 SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER FOR A PERIOD OF 15
14 YEARS AFTER RETURNING TO SERVICE.

15 (ii) IF THERE IS NOT AN EQUIVALENT AMOUNT OF LOAD ON THE LIST
16 AWAITING RETAIL OPEN ACCESS SERVICE BUT THE COMMISSION DETERMINES
17 THERE IS ADEQUATE CAPACITY AVAILABLE TO SERVE THAT CUSTOMER, THE
18 CUSTOMER MUST PROVIDE THE UTILITY 180 DAYS' ADVANCE WRITTEN NOTICE
19 OF THE INTENT TO RETURN TO STANDARD TARIFF SERVICE. IF THE
20 COMMISSION DETERMINES THAT THE PURCHASE OF ADDITIONAL CAPACITY TO
21 SERVE THE RETURNING CUSTOMER WOULD RESULT IN ADDITIONAL COSTS TO
22 EXISTING CUSTOMERS, THOSE ADDITIONAL COSTS SHALL BE ASSIGNED TO THE
23 RETURNING CUSTOMER. A CUSTOMER THAT ELECTS TO RETURN TO SERVICE
24 UNDER THIS SUBPARAGRAPH IS NOT ELIGIBLE TO RECEIVE ELECTRIC SUPPLY
25 SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER FOR A PERIOD OF 15
26 YEARS AFTER RETURNING TO SERVICE.

27 (iii) IF THERE IS NOT AN EQUIVALENT AMOUNT OF LOAD ON THE LIST

1 Awaiting retail open access service and the commission determines
2 there is not adequate capacity available to serve that customer,
3 the customer must provide the electric utility 3 years' advance
4 written notice of the intent to return to standard tariff service,
5 participate in interruptible tariff service for 3 years, or
6 participate in another tariff that provides that any incremental
7 costs, including, but not limited to, capacity, energy, ancillary
8 services, distribution service, and transmission service including
9 costs recovered in FERC-approved regional transmission organization
10 tariffs, associated with the return of the customer are assigned to
11 the returning customer. A notice of intent to return to standard
12 tariff service under this subparagraph is irrevocable. A customer
13 that elects to return to service under this subparagraph is not
14 eligible to receive electric supply service from an alternative
15 electric supplier for a period of 20 years after returning to
16 service.

17 (F) Provide that a customer that elects to leave utility
18 bundled service after the effective date of the amendatory act that
19 added this subdivision will continue to be charged for the
20 utility's full generation costs included in the utility's base
21 rates and generation capacity costs and other fixed energy
22 generation costs included in surcharges and power supply cost
23 recovery factors, regardless of whether those costs result from
24 utility ownership of capacity resources or the purchase of capacity
25 resources from a third party or markets, for a period of 15 years.
26 The commission shall implement a cost-based rate design in the
27 utility's rate proceedings under this act to allocate generation

1 CAPACITY COSTS OR OTHER FIXED ENERGY GENERATION COSTS TO THOSE
2 CUSTOMERS AS THE CUSTOMER WOULD OTHERWISE BE CHARGED IF IT WERE A
3 BUNDLED CUSTOMER OF THE UTILITY. NOTWITHSTANDING THE CUSTOMER'S
4 ELECTION, THE UTILITY WILL BE RESPONSIBLE FOR THE CUSTOMER'S
5 CAPACITY REQUIREMENTS AND WILL ALLEVIATE THE ALTERNATIVE ELECTRIC
6 SUPPLIER'S RESPONSIBILITY FOR THIS CUSTOMER'S CAPACITY REQUIREMENTS
7 UNDER SUBSECTION (3) FOR THAT 15-YEAR PERIOD.

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

26 (3) **THE COMMISSION SHALL COMMENCE A RESOURCE ADEQUACY**
27 **PROCEEDING BY MAY 1 OF EVERY YEAR. IN ITS ORDER COMMENCING THIS**

1 PROCEEDING, THE COMMISSION SHALL ESTABLISH A PLANNING RESERVE
2 MARGIN PERCENTAGE AND A LOCAL RELIABILITY NEED FACTOR FOR ELECTRIC
3 PROVIDERS FOR THE PLANNING YEAR COMMENCING IN THE NEXT CALENDAR
4 YEAR AND FOR THE SUBSEQUENT 4 PLANNING YEARS. A PROCEEDING UNDER
5 THIS SUBSECTION IS NOT A CONTESTED CASE. INFORMATION AND MATERIALS
6 SUBMITTED BY AN ENTITY UNDER THIS SUBSECTION ARE EXEMPT FROM
7 DISCLOSURE UNDER THE FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL
8 15.231 TO 15.246. THE COMMISSION SHALL ISSUE PROTECTIVE ORDERS AS
9 ARE NECESSARY TO PROTECT THE INFORMATION AND MATERIALS SUBMITTED
10 UNDER THIS SUBSECTION BUT MAY MAKE PUBLIC AGGREGATE DATA THAT DO
11 NOT IDENTIFY INDIVIDUAL ENTITIES. THE COMMISSION SHALL DO ALL OF
12 THE FOLLOWING BY NOVEMBER 1 OF EACH YEAR IN A RESOURCE ADEQUACY
13 FORECAST PROCEEDING:

14 (A) REQUIRE ALL ELECTRIC PROVIDERS TO FILE A RESOURCE ADEQUACY
15 ASSESSMENT FOR THE PLANNING YEAR COMMENCING IN THE NEXT CALENDAR
16 YEAR AND FOR THE SUBSEQUENT 4 PLANNING YEARS. THE ASSESSMENT SHALL
17 INCLUDE ALL OF THE FOLLOWING:

18 (i) THE ELECTRIC PROVIDER'S EXPECTED PEAK DEMAND, RESERVE
19 MARGIN REQUIREMENTS, AND LOCAL RELIABILITY NEED. THE EXPECTED PEAK
20 DEMAND, RESERVE MARGIN REQUIREMENTS, AND LOCAL RELIABILITY NEED FOR
21 AN ALTERNATIVE ELECTRIC SUPPLIER SHALL BE BASED ON THE PEAK DEMAND
22 OF ALL OF THE ALTERNATIVE ELECTRIC SUPPLIER'S CUSTOMERS AT THE TIME
23 OF FILING, REGARDLESS OF WHETHER THOSE CUSTOMERS HAVE CONTRACTUAL
24 ARRANGEMENTS WITH THE ALTERNATIVE ELECTRIC SUPPLIER FOR EACH
25 PLANNING YEAR UNDER REVIEW.

26 (ii) THE DEDICATED AND FIRM ELECTRIC CAPACITY SERVING THE
27 ELECTRIC PROVIDER'S CURRENT RETAIL ELECTRIC CUSTOMERS' FORECASTED

1 PEAK DEMAND PLUS RESERVE MARGIN FOR EACH OF THE 5 PLANNING YEARS
2 UNDER REVIEW. EACH ELECTRIC PROVIDER MUST DESIGNATE THE VOLUME OF
3 LOCAL RELIABILITY NEED RESOURCES FOR EACH OF THE 5 YEARS UNDER
4 REVIEW.

5 (iii) ANY OTHER INFORMATION THE COMMISSION DETERMINES IS
6 NECESSARY.

7 (B) DETERMINE WHETHER THERE WILL BE A PROJECTED CAPACITY
8 SHORTFALL IN THIS STATE OR ANY AREA WITHIN THIS STATE IN ANY OF THE
9 3 SUBSEQUENT RESOURCE ADEQUACY PLANNING YEARS. A PROJECTED CAPACITY
10 SHORTFALL EXISTS IF EITHER OF THE FOLLOWING CONDITIONS IS MET:

11 (i) THE COMMISSION PREDICTS THAT, OR THE APPLICABLE REGIONAL
12 TRANSMISSION ORGANIZATION DETERMINES THAT, AS A RESULT OF THIS
13 STATE'S OR ANY AREA WITHIN THIS STATE'S RELIANCE ON CAPACITY FROM
14 SOURCES OUTSIDE OF THE STATE OR THE APPLICABLE AREA WITHIN THIS
15 STATE AND THE FORECASTED AVAILABILITY OF THOSE SUPPLIES FOR
16 PURPOSES OF SERVING LOAD IN THIS STATE OR ANY AREA WITHIN THE
17 STATE, CAPACITY PRICES FOR ELECTRIC CUSTOMERS IN THIS STATE OR ANY
18 AREA WITHIN THIS STATE MAY INCREASE BY 1,000% OR MORE FROM THE
19 CAPACITY PRICE DETERMINED FOR THE STATE OR ANY AREA WITHIN THE
20 STATE BY THE RESULTS OF THE LAST CAPACITY AUCTION FOR A REGIONAL
21 TRANSMISSION ORGANIZATION OPERATING WITHIN THIS STATE ON THE
22 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED SECTION 6T.

23 (ii) THE SUM OF EACH PROVIDER'S LOCAL RELIABILITY NEED
24 RESOURCES IN ANY PLANNING YEAR IS LESS THAN THE STATE'S OR ANY AREA
25 WITHIN THE STATE'S TOTAL LOCAL CLEARING REQUIREMENT. IF ANY
26 ELECTRIC PROVIDER'S LOCAL RELIABILITY NEED RESOURCES EXCEED ITS
27 LOCAL RELIABILITY NEED, THOSE EXCESS RESOURCES SHALL NOT BE

1 INCLUDED IN THE SUM.

2 (C) DETERMINE BASED ON THE INFORMATION OBTAINED UNDER THIS
3 SUBSECTION THE AMOUNT OF CAPACITY NEEDED BY EACH ELECTRIC PROVIDER
4 TO ADDRESS THAT PROVIDER'S RESERVE MARGIN REQUIREMENT AND LOCAL
5 RELIABILITY NEED IN ANY OF THE SUBSEQUENT 3 PLANNING YEARS,
6 INCLUDING ANY SUBSET OF CAPACITY THAT MUST BE LOCAL RELIABILITY
7 NEED RESOURCES. THE COMMISSION SHALL ONLY REQUIRE AN ELECTRIC
8 PROVIDER TO ADDRESS THAT PROVIDER'S LOCAL RELIABILITY NEED IF A
9 PROJECTED CAPACITY SHORTFALL IS DETERMINED UNDER SUBDIVISION
10 (B) (ii). THE PERCENTAGE OF THE RESOURCES NEEDED TO MEET AN ELECTRIC
11 PROVIDER'S RESERVE MARGIN REQUIREMENT IN A PLANNING YEAR THAT MAY
12 BE MET THROUGH RESOURCES FROM OUTSIDE OF THE APPLICABLE AREA WITHIN
13 THE STATE SHALL BE DETERMINED ACCORDING TO THE FOLLOWING
14 METHODOLOGY: IF THE APPLICABLE AREA WITHIN THE STATE HAS ANY
15 AVAILABLE CAPACITY IMPORT CAPABILITY FOR THAT PLANNING YEAR, THE
16 COMMISSION SHALL ASSUME THAT THE ELECTRIC PROVIDER WILL NOT USE
17 MORE THAN ITS PRO RATA SHARE OF 50% OF THE AVAILABLE IMPORT
18 CAPABILITY. TO THE EXTENT THAT AN ELECTRIC PROVIDER HAS NOT
19 UTILIZED ITS PRO RATA SHARE OF THE 50% OF AVAILABLE IMPORT
20 CAPABILITY, THE COMMISSION SHALL REDISTRIBUTE THAT ELECTRIC
21 PROVIDER'S SHARE OF THE AVAILABLE IMPORT CAPABILITY TO ALL OTHER
22 ELECTRIC PROVIDERS THAT CANNOT MEET THEIR RESERVE MARGIN
23 REQUIREMENT WITH RESOURCES IN THE APPLICABLE AREA PLUS THEIR PRO
24 RATA SHARE OF AVAILABLE IMPORT CAPABILITY ON A PRO RATA BASIS.
25 NOTWITHSTANDING AN ELECTRIC PROVIDER'S ABILITY TO IMPORT RESOURCES
26 TO MEET THAT PROVIDER'S RESERVE MARGIN REQUIREMENT, ALL OF A
27 PROVIDER'S LOCAL RELIABILITY NEED SHALL ONLY BE MET WITH LOCAL

1 RELIABILITY NEED RESOURCES. NOTHING IN THIS ACT SHALL BE
2 INTERPRETED TO RESTRICT ACTUAL IMPORTATION OF POWER OR REGULATE THE
3 TRANSMISSION OF POWER OVER THE TRANSMISSION SYSTEM. THE IMPORT
4 CAPABILITY DETERMINATION SHALL BE USED SOLELY TO DETERMINE WHETHER
5 PROPOSED CAPACITY CAN BE COUNTED TOWARD THIS STATE'S REQUIREMENT
6 FOR CAPACITY IN ORDER TO ASSURE RELIABILITY AND SUFFICIENT
7 GENERATION RESOURCES. AS USED IN THIS SUBDIVISION, "PRO RATA SHARE"
8 MEANS THE PERCENTAGE OF THE APPLICABLE AREA'S PLANNING RESERVE
9 MARGIN REQUIREMENT THAT THE ELECTRIC PROVIDER IS REQUIRED TO MEET.

10 (D) NOTIFY AN ELECTRIC PROVIDER, OTHER THAN A MUNICIPALLY
11 OWNED UTILITY, OF A DETERMINATION MADE UNDER SUBDIVISION (C) AS TO
12 THE AMOUNT OF CAPACITY THAT PROVIDER MUST OBTAIN WITHIN 210 DAYS
13 AFTER RECEIVING THE NOTICE TO ADDRESS ANY PROJECTED CAPACITY
14 SHORTFALL IN ANY OF THE SUBSEQUENT 3 PLANNING YEARS, INCLUDING ANY
15 SUBSET OF CAPACITY THAT MUST BE LOCAL RELIABILITY NEED RESOURCES.

16 (4) IF THE ELECTRIC PROVIDER AFTER BEING NOTIFIED OF THE NEED
17 TO OBTAIN ADDITIONAL CAPACITY UNDER SUBSECTION (3) (D) BELIEVES THAT
18 THE COMMISSION'S DETERMINATION IS IN ERROR, THE ELECTRIC PROVIDER
19 MAY FILE AN OBJECTION WITH THE COMMISSION WITHIN 15 DAYS AFTER
20 RECEIVING THE NOTICE. IF AN ELECTRIC PROVIDER FILES AN OBJECTION
21 UNDER THIS SUBSECTION, THE COMMISSION SHALL COMMENCE A CONTESTED
22 CASE HEARING UNDER CHAPTER 4 OF THE ADMINISTRATIVE PROCEDURES ACT
23 OF 1969, 1969 PA 306, MCL 24.271 TO 24.287. THE COMMISSION SHALL
24 NOT ALLOW ANY PERSON, OTHER THAN COMMISSION STAFF, TO INTERVENE IN
25 THIS PROCEEDING. THE COMMISSION SHALL RULE ON THE OBJECTION WITHIN
26 75 DAYS AFTER THE OBJECTION IS FILED WITH THE COMMISSION.
27 INFORMATION AND MATERIALS SUBMITTED BY AN ENTITY UNDER THIS

1 SUBSECTION ARE EXEMPT FROM DISCLOSURE UNDER THE FREEDOM OF
2 INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246. THE COMMISSION
3 SHALL ISSUE PROTECTIVE ORDERS AS ARE NECESSARY TO PROTECT THE
4 INFORMATION AND MATERIALS SUBMITTED UNDER THIS SUBSECTION.

5 (5) WITHIN 30 DAYS AFTER A DETERMINATION UNDER SUBSECTION
6 (3) (C), THE COMMISSION SHALL ISSUE A REQUEST FOR QUOTES TO RECEIVE
7 PROPOSALS FROM POTENTIAL CAPACITY RESOURCE SUPPLIERS. THE
8 COMMISSION SHALL INCLUDE IN THE REQUEST FOR QUOTES THE AMOUNT OF
9 CAPACITY THAT IS NEEDED TO ADDRESS ANY CAPACITY SHORTFALL BY
10 ALTERNATIVE ELECTRIC SUPPLIERS, INCLUDING ANY LOCAL RELIABILITY
11 REQUIREMENT RESOURCES, IN ALL YEARS THAT THE CAPACITY IS NEEDED,
12 AND ANY OTHER INFORMATION THE COMMISSION DETERMINES IS NECESSARY.
13 THE COMMISSION SHALL ACCEPT PROPOSALS FROM POTENTIAL RESOURCE
14 SUPPLIERS FOR 90 DAYS AFTER ISSUING THE REQUEST FOR QUOTES. THE
15 COMMISSION SHALL FORWARD ALL PROPOSALS RECEIVED UNDER THIS
16 SUBSECTION TO ALTERNATIVE ELECTRIC SUPPLIERS IDENTIFIED UNDER
17 SUBSECTION (3) WITHIN 120 DAYS AFTER ISSUING THE REQUEST FOR
18 QUOTES. ALL PROPOSALS SUBMITTED UNDER THIS SUBSECTION ARE
19 CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER THE FREEDOM OF
20 INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246. THE COMMISSION
21 SHALL ISSUE PROTECTIVE ORDERS AS ARE NECESSARY TO PROTECT THE
22 INFORMATION AND MATERIALS SUBMITTED UNDER THIS SUBSECTION.

23 (6) IF THE COMMISSION DETERMINES THAT AN ALTERNATIVE ELECTRIC
24 SUPPLIER HAS PROCURED THE CAPACITY NEEDED UNDER SUBSECTION (3) TO
25 SUPPORT ITS EXPECTED RESERVE MARGIN REQUIREMENT AND MEET ITS LOCAL
26 RELIABILITY REQUIREMENT, THE COMMISSION SHALL AUTHORIZE THE
27 ALTERNATIVE ELECTRIC SUPPLIER TO SERVE THE EXPECTED PEAK DEMAND. IF

1 AN ALTERNATIVE ELECTRIC SUPPLIER DOES NOT PROCURE THE CAPACITY
2 NEEDED TO MEET THE REQUIREMENTS OF SUBSECTION (3) WITHIN 210 DAYS
3 AFTER RECEIVING A NOTICE UNDER SUBSECTION (3) (D), THE COMMISSION
4 SHALL INITIATE A CONTESTED CASE PROCEEDING TO LIMIT THE AMOUNT OF
5 LOAD THAT THE ALTERNATIVE ELECTRIC SUPPLIER MAY SERVE IN THIS STATE
6 TO, AT MOST, THE AMOUNT OF DEDICATED AND FIRM CAPACITY THE
7 ALTERNATIVE ENERGY SUPPLIER HAS PROCURED TO MEET THE REQUIREMENTS
8 OF SUBSECTION (3) (C). THE ALTERNATIVE ELECTRIC SUPPLIER SHALL
9 IMMEDIATELY NOTIFY CUSTOMERS THAT ARE NO LONGER ELIGIBLE TO BE
10 SERVED BY THE ALTERNATIVE ELECTRIC SUPPLIER OR THAT WOULD BE UNABLE
11 TO BE SERVED BY THE ALTERNATIVE ELECTRIC SUPPLIER IN THE SUBSEQUENT
12 3-YEAR PERIOD. UPON RECEIVING NOTIFICATION THAT THEY ARE NO LONGER
13 ELIGIBLE TO BE SERVED BY THE ALTERNATIVE ELECTRIC SUPPLIER,
14 AFFECTED CUSTOMERS HAVE 60 DAYS TO EITHER CONTRACT WITH ANOTHER
15 ALTERNATIVE ELECTRIC SUPPLIER THAT HAS ALREADY DEMONSTRATED
16 SUFFICIENT EXCESS CAPACITY RESOURCES IN THE APPROPRIATE PLANNING
17 YEAR TO ALLOW THAT ALTERNATIVE ELECTRIC SUPPLIER TO MEET NEW
18 RESERVE MARGIN REQUIREMENTS WITH THAT NEW CUSTOMER'S PEAK DEMAND
19 INCLUDED OR ELECT TO RETURN TO UTILITY SERVICE AT THE COMMENCEMENT
20 OF THE CAPACITY SHORTFALL, PURSUANT TO ANY RETURN TO SERVICE
21 PROVISIONS PROVIDED BY LAW OR COMMISSION ORDER. IF THE COMMISSION
22 DETERMINES IN A SUBSEQUENT RESOURCE ADEQUACY PROCEEDING THAT AN
23 ALTERNATIVE ELECTRIC SUPPLIER HAS OBTAINED ADDITIONAL CAPACITY, THE
24 COMMISSION SHALL MODIFY THE AMOUNT OF LOAD THAT THE ALTERNATIVE
25 ELECTRIC SUPPLIER MAY SERVE IN THIS STATE. ALL ACTIONS TAKEN BY THE
26 COMMISSION UNDER THIS SUBSECTION REGARDING LIMITING THE AMOUNT OF
27 LOAD AN ALTERNATIVE ELECTRIC SUPPLIER IS AUTHORIZED TO SERVE SHALL

1 BE CONDUCTED PURSUANT TO CHAPTERS 4 AND 5 OF THE ADMINISTRATIVE
2 PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.271 TO 24.287 AND
3 24.291 TO 24.292, AND SHALL BE COMPLETED WITHIN 90 DAYS OF
4 INITIATION.

5 (7) NOTHING IN SUBSECTIONS (3) TO (6) SHALL BE INTERPRETED AS
6 A REQUIREMENT FOR OR A PROHIBITION OF A 3-YEAR CONTRACT.

7 (8) IF THE COMMISSION DETERMINES THAT A COOPERATIVE ELECTRIC
8 UTILITY SUBJECT TO THE COMMISSION'S JURISDICTION FOR ITS SERVICE
9 AREA, DISTRIBUTION PERFORMANCE STANDARDS, AND QUALITY OF SERVICE,
10 OR AN ELECTRIC UTILITY HAS NOT DEMONSTRATED THAT IT HAS PROCURED
11 THE CAPACITY NEEDED TO MEET THE REQUIREMENTS OF SUBSECTION (3) (C),
12 THE COMMISSION SHALL CONDUCT AN INVESTIGATION TO DETERMINE HOW TO
13 RESOLVE THE CAPACITY SHORTFALL WITH THAT COOPERATIVE ELECTRIC
14 UTILITY OR ELECTRIC UTILITY.

15 (9) ~~(3)~~—The commission shall issue orders to ensure that
16 customers in this state are not switched to another supplier or
17 billed for any services without the customer's consent.

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

1 sections 10b through 10cc.

2 (11) ~~(5)~~—An electric utility may offer its customers an
3 appliance service program. Except as otherwise provided by this
4 section, the utility shall comply with the code of conduct
5 established by the commission under subsection ~~(4)~~. ~~As used in this~~
6 ~~section, "appliance service program" or "program" means a~~
7 ~~subscription program for the repair and servicing of heating and~~
8 ~~cooling systems or other appliances.~~ (10) .

9 (12) ~~(6)~~—A utility offering a program under subsection ~~(5)~~
10 (11) shall do all of the following:

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

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

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

21 (13) ~~(7)~~—All costs directly attributable to an appliance
22 service program allowed under subsection ~~(5)~~—(11) shall be
23 allocated to the program as required by this subsection. The direct
24 and indirect costs of employees, vehicles, equipment, office space,
25 and other facilities used in the appliance service program shall be
26 allocated to the program based upon the amount of use by the
27 program as compared to the total use of the employees, vehicles,

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

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

11 (a) All costs associated with the billing process, including
12 the postage, envelopes, paper, and printing expenses, are allocated
13 as required under subsection ~~(7)~~-(13).

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

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

20 (15) ~~(9)~~—In marketing its appliance service program to the
21 public, a utility shall do all of the following:

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

1 of the date the customer requested to turn on service.

2 (b) Appropriately allocate costs as required under subsection
3 ~~(7)~~ **(13)** when personnel employed at a utility's call center provide
4 appliance service program marketing information to a prospective
5 customer.

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

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

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

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

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

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

1 (16) ~~(10)~~—This section does not prohibit the commission from
2 requiring a utility to include revenues from an appliance service
3 program in establishing base rates. If the commission includes the
4 revenues of an appliance service program in determining a utility's
5 base rates, the commission shall also include all of the costs of
6 the program as determined under this section.

7 (17) ~~(11)~~—Except as otherwise provided in this section, the
8 code of conduct with respect to an appliance service program shall
9 not require a utility to form a separate affiliate or division to
10 operate an appliance service program, impose further restrictions
11 on the sharing of employees, vehicles, equipment, office space, and
12 other facilities, or require the utility to provide other providers
13 of appliance repair service with access to utility employees,
14 vehicles, equipment, office space, or other facilities.

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

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

26 (b) Electricity generated primarily by the use of by-product
27 fuels, including waste water solids, which electricity is consumed

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

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

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

15 (19) ~~(13)~~—This act does not prohibit or limit the right of a
16 person to engage in affiliate wheeling and does not impose a
17 transition, implementation, exit fee, or any other similar charge
18 on a person engaged in affiliate wheeling. ~~As used in this section:~~

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

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

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

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

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

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

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

27 ~~—— (17) As used in subsections (1) and (15):~~

1 ~~—— (a) "Customer" means the building or facilities served through~~
2 ~~a single existing electric billing meter and does not mean the~~
3 ~~person, corporation, partnership, association, governmental body,~~
4 ~~or other entity owning or having possession of the building or~~
5 ~~facilities.~~

6 ~~—— (b) "Standard tariff service" means, for each regulated~~
7 ~~electric utility, the retail rates, terms, and conditions of~~
8 ~~service approved by the commission for service to customers who do~~
9 ~~not elect to receive generation service from alternative electric~~
10 ~~suppliers.~~

11 (22) AS USED IN THIS SECTION:

12 (A) "AFFILIATE" MEANS A PERSON OR ENTITY THAT DIRECTLY, OR
13 INDIRECTLY THROUGH 1 OR MORE INTERMEDIATES, CONTROLS, IS CONTROLLED
14 BY, OR IS UNDER COMMON CONTROL WITH ANOTHER SPECIFIED ENTITY. AS
15 USED IN THIS SUBDIVISION, "CONTROL" MEANS, WHETHER THROUGH AN
16 OWNERSHIP, BENEFICIAL, CONTRACTUAL, OR EQUITABLE INTEREST, THE
17 POSSESSION, DIRECTLY OR INDIRECTLY, OF THE POWER TO DIRECT OR TO
18 CAUSE THE DIRECTION OF THE MANAGEMENT OR POLICIES OF A PERSON OR
19 ENTITY OR THE OWNERSHIP OF AT LEAST 7% OF AN ENTITY EITHER DIRECTLY
20 OR INDIRECTLY.

21 (B) "AFFILIATE WHEELING" MEANS A PERSON'S USE OF DIRECT ACCESS
22 SERVICE WHERE AN ELECTRIC UTILITY DELIVERS ELECTRICITY GENERATED AT
23 A PERSON'S INDUSTRIAL SITE TO THAT PERSON OR THAT PERSON'S
24 AFFILIATE AT A LOCATION, OR GENERAL AGGREGATED LOCATIONS, WITHIN
25 THIS STATE THAT WAS EITHER 1 OF THE FOLLOWING:

26 (i) FOR AT LEAST 90 DAYS DURING THE PERIOD FROM JANUARY 1,
27 1996 TO OCTOBER 1, 1999, SUPPLIED BY SELF-SERVICE POWER, BUT ONLY

1 TO THE EXTENT OF THE CAPACITY RESERVED OR LOAD SERVED BY SELF-
2 SERVICE POWER DURING THE PERIOD.

3 (ii) CAPABLE OF BEING SUPPLIED BY A PERSON'S COGENERATION
4 CAPACITY WITHIN THIS STATE THAT HAS HAD SINCE JANUARY 1, 1996 A
5 RATED CAPACITY OF 15 MEGAWATTS OR LESS, WAS PLACED IN SERVICE
6 BEFORE DECEMBER 31, 1975, AND HAS BEEN IN CONTINUOUS SERVICE SINCE
7 THAT DATE. A PERSON ENGAGING IN AFFILIATE WHEELING IS NOT AN
8 ELECTRIC SUPPLIER, AN ELECTRIC UTILITY, OR CONDUCTING AN ELECTRIC
9 UTILITY BUSINESS WHEN A PERSON ENGAGES IN AFFILIATE WHEELING.

10 (C) "APPLIANCE SERVICE PROGRAM" MEANS A SUBSCRIPTION PROGRAM
11 FOR THE REPAIR AND SERVICING OF HEATING AND COOLING SYSTEMS OR
12 OTHER APPLIANCES.

13 (D) "CUSTOMER" MEANS THE BUILDING OR FACILITIES SERVED THROUGH
14 A SINGLE EXISTING ELECTRIC BILLING METER AND DOES NOT MEAN THE
15 PERSON, CORPORATION, PARTNERSHIP, ASSOCIATION, GOVERNMENTAL BODY,
16 OR OTHER ENTITY OWNING OR HAVING POSSESSION OF THE BUILDING OR
17 FACILITIES.

18 (E) "DEDICATED AND FIRM ELECTRIC CAPACITY" MEANS CAPACITY THAT
19 IS OWNED OR UNDER CONTRACT BY THAT ELECTRIC PROVIDER THAT IS
20 ELIGIBLE TO BE USED TO SATISFY THE PLANNING RESERVE MARGIN
21 REQUIREMENT OF THE REGIONAL TRANSMISSION ORGANIZATION OPERATING
22 WHERE THE ELECTRIC PROVIDER'S LOAD IS SERVED OR THE PLANNING
23 RESERVE MARGIN DETERMINED BY THE COMMISSION.

24 (F) "ELECTRIC PROVIDER" MEANS ANY OF THE FOLLOWING:

25 (i) ANY PERSON OR ENTITY THAT IS REGULATED BY THE COMMISSION
26 FOR THE PURPOSE OF SELLING ELECTRICITY TO RETAIL CUSTOMERS IN THIS
27 STATE.

1 (ii) A MUNICIPALLY OWNED ELECTRIC UTILITY IN THIS STATE.

2 (iii) A COOPERATIVE ELECTRIC UTILITY IN THIS STATE.

3 (iv) AN ALTERNATIVE ELECTRIC SUPPLIER LICENSED UNDER SECTION
4 10A.

5 (G) "LOCAL CLEARING REQUIREMENT" MEANS THE AMOUNT OF CAPACITY
6 RESOURCES IN A PARTICULAR GEOGRAPHIC AREA THAT MUST BE PRESENT TO
7 ENSURE RELIABILITY AS DEFINED BY THE REGIONAL TRANSMISSION
8 ORGANIZATION OPERATING IN THE TERRITORY WHERE THE ELECTRIC
9 PROVIDER'S LOAD IS SERVED OR BY THE COMMISSION. IF THE REGIONAL
10 TRANSMISSION ORGANIZATION HAS NOT PROVIDED THE COMMISSION WITH A
11 LOCAL CLEARING REQUIREMENT FOR A FUTURE PLANNING YEAR, THE
12 COMMISSION SHALL APPLY THE LATEST LOCAL CLEARING REQUIREMENT
13 DETERMINED BY A REGIONAL TRANSMISSION ORGANIZATION TO THAT FUTURE
14 PLANNING YEAR.

15 (H) "LOCAL RELIABILITY NEED" MEANS AN ELECTRIC PROVIDER'S LOAD
16 BASED PRO RATA SHARE OF THE STATE'S, OR AREA WITHIN THE STATE'S,
17 LOCAL CLEARING REQUIREMENT.

18 (I) "LOCAL RELIABILITY NEED FACTOR" MEANS THE PERCENTAGE
19 DERIVED BY DIVIDING THE LOCAL CLEARING REQUIREMENT BY THE PLANNING
20 RESERVE MARGIN REQUIREMENT DETERMINED BY A REGIONAL TRANSMISSION
21 ORGANIZATION OR THE COMMISSION FOR THIS STATE OR AN AREA OF THIS
22 STATE.

23 (J) "LOCAL RELIABILITY NEED RESOURCES" MEANS THE VOLUME OF
24 DEDICATED AND FIRM ELECTRIC CAPACITY ELIGIBLE TO MEET AN ELECTRIC
25 PROVIDER'S PRO RATA SHARE OF THIS STATE'S, OR AREA WITHIN THIS
26 STATE'S, LOCAL CLEARING REQUIREMENT.

27 (K) "PLANNING YEARS" MEANS JUNE 1 THROUGH THE FOLLOWING MAY 31

1 OF EACH YEAR.

2 (I) "PROGRAM" MEANS AN APPLIANCE SERVICE PROGRAM OR OTHER
3 VALUE-ADDED PROGRAMS AND SERVICES, OR BOTH.

4 (M) "STANDARD TARIFF SERVICE" MEANS, FOR EACH REGULATED
5 ELECTRIC UTILITY, THE RETAIL RATES, TERMS, AND CONDITIONS OF
6 SERVICE APPROVED BY THE COMMISSION FOR SERVICE TO CUSTOMERS THAT DO
7 NOT ELECT TO RECEIVE GENERATION SERVICE FROM ALTERNATIVE ELECTRIC
8 SUPPLIERS.

9 Sec. 10c. (1) Except for a violation under section ~~10a(3)~~
10 10A(9) and as otherwise provided under this section, upon a
11 complaint or on the commission's own motion, if the commission
12 finds, after notice and hearing, that an electric utility or an
13 alternative electric supplier has not complied with a provision or
14 order issued under sections 10 through 10bb, the commission shall
15 order ~~such~~ **ANY** remedies and penalties as necessary to make whole a
16 customer or other person who has suffered damages as a result of
17 the violation, including, but not limited to, 1 or more of the
18 following:

19 (a) Order the electric utility or alternative electric
20 supplier to pay a fine for the first offense of not less than
21 \$1,000.00 or more than \$20,000.00. For a second offense, the
22 commission shall order the person to pay a fine of not less than
23 \$2,000.00 or more than \$40,000.00. For a third and any subsequent
24 offense, the commission shall order the person to pay a fine of not
25 less than \$5,000.00 or more than \$50,000.00.

26 (b) Order a refund to the customer of any excess charges.

27 (c) Order any other remedies that would make whole a person

1 harmed, including, but not limited to, payment of reasonable
2 attorney fees.

3 (d) Revoke the license of the alternative electric supplier if
4 the commission finds a pattern of violations.

5 (e) Issue cease and desist orders.

6 (2) Upon a complaint or the commission's own motion, the
7 commission may conduct a contested case to review allegations of a
8 violation under section ~~10a(3)~~-**10A(9)**.

9 (3) If the commission finds that a person has violated section
10 ~~10a(3)~~,**10A(9)**, the commission shall order remedies and penalties
11 to protect customers and other persons who have suffered damages as
12 a result of the violation, including, but not limited to, 1 or more
13 of the following:

14 (a) Order the person to pay a fine for the first offense of
15 not less than \$20,000.00 or more than \$30,000.00. For a second and
16 any subsequent offense, the commission shall order the person to
17 pay a fine of not less than \$30,000.00 or more than \$50,000.00. If
18 the commission finds that the second or any of the subsequent
19 offenses were knowingly made in violation of section ~~10a(3)~~,
20 **10A(9)**, the commission shall order the person to pay a fine of not
21 more than \$70,000.00. Each unauthorized action made in violation of
22 section ~~10a(3)~~ shall be **10A(9)** IS a separate offense under this
23 subdivision.

24 (b) Order an unauthorized supplier to refund to the customer
25 any amount greater than the customer would have paid to an
26 authorized supplier.

27 (c) Order an unauthorized supplier to reimburse an authorized

1 supplier an amount equal to the amount paid by the customer that
2 should have been paid to the authorized supplier.

3 (d) Order the refund of any amounts paid by the customer for
4 unauthorized services.

5 (e) Order a portion between 10% to 50% of the fine ordered
6 under subdivision (a) be paid directly to the customer who suffered
7 the violation under section ~~10a(3)~~-10A(9).

8 (f) If the person is licensed under this act, revoke the
9 license if the commission finds a pattern of violations of section
10 ~~10a(3)~~-10A(9).

11 (g) Issue cease and desist orders.

12 (4) Notwithstanding subsection (3), a fine shall not be
13 imposed for a violation of section ~~10a(3)~~-10A(9) if the supplier
14 has otherwise fully complied with section ~~10a(3)~~-10A(9) and shows
15 that the violation was an unintentional and bona fide error ~~which~~
16 **THAT** occurred notwithstanding the maintenance of procedures
17 reasonably adopted to avoid the error. Examples of a bona fide
18 error include clerical, calculation, computer malfunction,
19 programming, or printing errors. An error in legal judgment with
20 respect to a supplier's obligations under section ~~10a(3)~~-10A(9) is
21 not a bona fide error. The burden of proving that a violation was
22 an unintentional and bona fide error is on the supplier.

23 (5) If the commission finds that a party's position in a
24 complaint filed under subsection (2) is frivolous, the commission
25 shall award to the prevailing party their costs, including
26 reasonable attorney fees, against the nonprevailing party and their
27 attorney.

1 Sec. 11. (1) Except as otherwise provided in this subsection,
2 the commission shall phase in electric rates equal to the cost of
3 providing service to each customer class over a period of 5 years
4 from October 6, 2008. If the commission determines that the rate
5 impact on industrial metal melting customers will exceed the 2.5%
6 limit in subsection (2), the commission may phase in cost-based
7 rates for that class over a longer period. The cost of providing
8 service to each customer class shall be based on the allocation of
9 production-related and transmission costs ~~based on using the 50-25-~~
10 ~~25 method of cost allocation. A 100% DEMAND-RELATED BASIS USING THE~~
11 **"FOUR-COINCIDENT-PEAK" ALLOCATION METHODOLOGY.** The commission may
12 modify this method to better ensure rates are equal to the cost of
13 service.

14 (2) The commission shall ensure that the impact on residential
15 and industrial metal melting rates due to the cost of service
16 requirement in subsection (1) is no more than 2.5% per year.

17 ~~—— (3) Within 60 days of the effective date of the amendatory act~~
18 ~~that added this subsection, the commission shall commence a~~
19 ~~proceeding for each affected electric utility to examine cost~~
20 ~~allocation methods and rate design methods used to set rates. In~~
21 ~~each proceeding, each affected utility shall file within 60 days of~~
22 ~~the commencement of that proceeding a proposal to modify the~~
23 ~~existing cost allocation methods and rate design methods that have~~
24 ~~been used to set existing rates and shall provide notice to all of~~
25 ~~that utility's customers outlining the proposed cost allocation~~
26 ~~methods and rate design methods. A proposal filed by an affected~~
27 ~~electric utility must meet both of the following conditions:~~

1 ~~—— (a) Be consistent with subsection (1), which authorizes the~~
2 ~~commission to modify the 50-25-25 method of allocating production-~~
3 ~~related and transmission costs to better ensure rates are equal to~~
4 ~~the cost of service.~~

5 ~~—— (b) Explore different methods for allocation of production,~~
6 ~~transmission, distribution, and customer-related costs and overall~~
7 ~~rate design, based on cost of service, that support affordable and~~
8 ~~competitive electric rates for all customer classes.~~

9 ~~—— (4) The scope of a proceeding under subsection (3) is limited~~
10 ~~to examining cost allocation and rate design methods proposed to~~
11 ~~set rates for each affected electric utility that filed a proposal~~
12 ~~under subsection (3). The commission shall allow any interested~~
13 ~~person to intervene in a proceeding under subsection (3), including~~
14 ~~on behalf of residential utility customers. The commission shall~~
15 ~~not schedule a prehearing conference for the purposes of~~
16 ~~considering interventions until an electric utility files a~~
17 ~~proposal under subsection (3). Within 270 days after a proposal is~~
18 ~~filed under subsection (3), the commission shall issue a final~~
19 ~~order adopting the cost allocation methods and rate design methods~~
20 ~~considered appropriate by the commission and doing either of the~~
21 ~~following:~~

22 ~~—— (a) Implementing rates consistent with those cost allocation~~
23 ~~methods and rate design methods.~~

24 ~~—— (b) Fixing a date for the establishment of rates consistent~~
25 ~~with those cost allocation methods and rate design methods, which~~
26 ~~date shall not be later than December 1, 2015.~~

27 ~~—— (5) A utility may file other rate applications during the~~

~~1 pendency of a proceeding initiated under subsection (3). If an
2 affected electric utility files a rate application before December
3 1, 2014, the commission may close and consolidate the proceedings
4 initiated under subsection (3) with the case so long as a final
5 order addressing the proceedings initiated under subsection (3) can
6 be implemented by December 1, 2015.~~

~~7 — (6) The commission shall order the administrative law judge
8 presiding over a proceeding under subsection (3) or (5) to prepare
9 an interim report that the commission shall submit to the
10 legislature within 150 days after proposals are filed under
11 subsection (3) or in a consolidated case under subsection (5)
12 describing the actions that have been taken to comply with
13 subsection (3), including a summary of the record evidence and
14 positions of the parties submitted to date regarding all of the
15 following:~~

~~16 — (a) A summary of proceedings that have been initiated.~~

~~17 — (b) The schedules adopted for those proceedings.~~

~~18 — (c) The cost allocation and rate design proposals made by
19 parties to each of those proceedings.~~

~~20 — (d) The estimated impacts on the various customer classes of
21 each of the proposals, in aggregate and for an average customer in
22 each customer class.~~

~~23 — (e) A description of qualifications for any proposed new rate
24 and estimation of the number of customers impacted by that new
25 rate.~~

~~26 — (f) A description of proposed definitions or methods that
27 support affordable and competitive electric rates for all customer~~

1 ~~classes.~~

2 ~~—— (7) Not later than 60 days before a final order is required to~~
3 ~~be issued under subsection (4) or in a consolidated case under~~
4 ~~subsection (5), the commission shall forward to the legislature the~~
5 ~~proposal for decision in each of the proceedings initiated under~~
6 ~~subsection (3) issued by the administrative law judge presiding~~
7 ~~over those proceedings including a summary of the evidence~~
8 ~~presented by the parties in the proceeding on which the~~
9 ~~commission's final decision must be made.~~

10 (3) ~~(8)~~ Notwithstanding any other provision of this act, the
11 commission may establish eligible low-income customer or eligible
12 senior citizen customer rates. Upon filing of a rate increase
13 request, a utility shall include proposed eligible low-income
14 customer and eligible senior citizen customer rates and a method to
15 allocate the revenue shortfall attributed to the implementation of
16 those rates upon all customer classes. As used in this subsection,
17 "eligible low-income customer" and "eligible senior citizen
18 customer" mean those terms as defined in section 10t.

19 (4) ~~(9)~~ Notwithstanding any other provision of this section,
20 the commission shall establish rate schedules which ensure that
21 public and private schools, universities, and community colleges
22 are charged retail electric rates that reflect the actual cost of
23 providing service to those customers. Electric utilities regulated
24 under this section shall file with the commission tariffs to ensure
25 that public and private schools, universities, and community
26 colleges are charged electric rates as provided in this subsection.
27 **NOTWITHSTANDING ANY LAW, REGULATION, OR COMMISSION ORDER TO THE**

1 CONTRARY, THE COMMISSION MAY, UPON THE REQUEST OF AN ELECTRIC
2 UTILITY, DEVELOP AND IMPLEMENT REASONABLE ENERGY OPTIMIZATION
3 PROGRAMS OR COST-BASED RATES FOR PUBLIC AND PRIVATE SCHOOLS,
4 UNIVERSITIES, AND COMMUNITY COLLEGES THAT ARE DESIGNED TO ACHIEVE
5 REASONABLE ELECTRICITY COST SAVINGS FOR THOSE SCHOOLS,
6 UNIVERSITIES, AND COMMUNITY COLLEGES. THE COMMISSION SHALL APPROVE
7 ALL ELECTRIC UTILITY ENERGY OPTIMIZATION PROGRAM EXPENSES FOR THOSE
8 SCHOOLS, UNIVERSITIES, AND COMMUNITY COLLEGES FOR FULL RECOVERY
9 THROUGH, AT AN ELECTRIC UTILITY'S SOLE DISCRETION, THE ELECTRIC
10 UTILITY'S GENERAL RATES, TARIFFS, OR SURCHARGES. AS USED IN THIS
11 SUBSECTION, "ENERGY OPTIMIZATION PROGRAMS" INCLUDES, BUT IS NOT
12 LIMITED TO, DEMAND SIDE MANAGEMENT PROGRAMS.

13 (5) ~~(10)~~ Subsections (1) to ~~(9)~~ (4) apply only to electric
14 utilities with 1,000,000 or more retail customers in this state.

15 (6) ~~(11) Within 2 years of the effective date of the~~
16 ~~amendatory act that added this subsection,~~ **BY JUNE 17, 2016**, an
17 electric utility serving fewer than 120,000 retail customers in
18 this state may file an application with the commission to modify
19 the cost allocation methods and rate design methods used to set
20 that utility's existing rates. ~~Within 180 days of the effective~~
21 ~~date of the amendatory act that added this subsection,~~ **BY DECEMBER**
22 **14, 2014**, an electric utility serving 120,000 or more but fewer
23 than 1,000,000 retail customers in this state shall file an
24 application with the commission to modify the cost allocation
25 methods and rate design methods used to set that utility's existing
26 rates. This subsection does not apply to a cooperative electric
27 utility that has elected to become member-regulated under the

1 electric cooperative member-regulation act, 2008 PA 167, MCL 460.31
2 to 460.39. Upon receipt of an application under this subsection,
3 the commission shall commence a proceeding for that electric
4 utility, limited to examining and implementing any modifications to
5 the cost allocation methods and rate design methods used by that
6 utility. An electric utility's application must meet both of the
7 following conditions:

8 (a) Be consistent with the cost of providing service
9 provisions of subsection ~~(12)~~-(7).

10 (b) Explore different methods for allocation of production,
11 transmission, distribution, and customer-related costs and overall
12 rate design, based on cost of service, that support affordable and
13 competitive electric rates for all customer classes.

14 (7) ~~(12)~~—The commission shall approve rates equal to the cost
15 of providing service to customers of electric utilities serving
16 less than 1,000,000 retail customers in this state. The rates shall
17 be approved by the commission in each utility's first general rate
18 case filed after passage of 2008 PA 286. If, in the judgment of the
19 commission, the impact of imposing cost of service rates on
20 customers of a utility would have a material impact, the commission
21 may approve an order that implements those rates over a suitable
22 number of years. The commission shall ensure that any impact on
23 rates due to the cost of service requirement in this subsection is
24 not more than 2.5% per year.

25 (8) ~~(13)~~—The commission shall annually retain an independent
26 consultant to verify that the requirements of this section are
27 being satisfied for each electric utility. The costs of this

1 service shall be recoverable in the utility's electric rates. This
2 subsection does not apply after December 31, 2015.

3 ~~—— (14) An analysis of affordable rates under this section shall~~
4 ~~include both of the following:~~

5 ~~—— (a) An analysis of rate impacts directly attributable to~~
6 ~~proposed cost allocation methods, not including expiring costs~~
7 ~~associated with non base energy and non base energy delivery that~~
8 ~~have, except for an expiring contract described in section 5 of the~~
9 ~~energy for economic development act of 2010, 2010 PA 297, MCL~~
10 ~~460.995, specific statutory time durations.~~

11 ~~—— (b) An analysis of the expected impact overall on customer~~
12 ~~bills.~~

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