

**SUBSTITUTE FOR**  
**SENATE BILL NO. 437**

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 6a, 6j, 6k, 6l, 6m, 6o, 6s, 10, 10a, 10c, 10f, 10p, 10r, 10t, 10dd, and 11 (MCL 460.6a, 460.6j,

460.6k, 460.6l, 460.6m, 460.6o, 460.6s, 460.10, 460.10a, 460.10c, 460.10f, 460.10p, 460.10r, 460.10t, 460.10dd, and 460.11), the title as amended by 2005 PA 190, sections 6a, 10, 10a, 10p, and 10r as amended and sections 6s and 10dd as added by 2008 PA 286, section 6j as amended by 1987 PA 81, section 6k as added by 1982 PA 304, section 6l as amended and sections 10c, 10f, and 10t as added by 2000 PA 141, section 6m as amended by 2014 PA 170, section 6o as amended by 1996 PA 75, and section 11 as amended by 2014 PA 169, and by adding sections 6t, 6u, 6v, 6w, 6x, and 10ee; and to repeal acts and parts of acts.

**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~~

1 ~~state~~; to encourage the utilization of resource recovery  
2 facilities; to prohibit certain acts and practices of providers of  
3 energy; to allow for the securitization of stranded costs; to  
4 reduce rates; to provide for appeals; to provide appropriations; to  
5 declare the effect and purpose of this act; to prescribe remedies  
6 and penalties; and to repeal acts and parts of acts.

7       Sec. 6a. (1) A gas ~~or~~ **UTILITY**, electric utility, **OR STEAM**  
8 **UTILITY** shall not increase its rates and charges or alter, change,  
9 or amend any rate or rate schedules, the effect of which will be to  
10 increase the cost of services to its customers, without first  
11 receiving commission approval as provided in this section. **A**  
12 **UTILITY SHALL COORDINATE WITH THE COMMISSION STAFF IN ADVANCE OF**  
13 **FILING ITS GENERAL RATE CASE APPLICATION UNDER THIS SECTION TO**  
14 **AVOID RESOURCE CHALLENGES WITH APPLICATIONS BEING FILED AT THE SAME**  
15 **TIME AS APPLICATIONS FILED UNDER THIS SECTION BY OTHER UTILITIES.**  
16 **IN THE CASE OF ELECTRIC UTILITIES SERVING MORE THAN 1,000,000**  
17 **CUSTOMERS IN THIS STATE, THE COMMISSION MAY, IF NECESSARY, ORDER A**  
18 **DELAY IN FILING AN APPLICATION TO ESTABLISH A 21-DAY SPACING**  
19 **BETWEEN FILINGS OF ELECTRIC UTILITIES SERVING MORE THAN 1,000,000**  
20 **CUSTOMERS IN THIS STATE.** The utility shall place in evidence facts  
21 relied upon to support the utility's petition or application to  
22 increase its rates and charges, or to alter, change, or amend any  
23 rate or rate schedules. The commission shall require notice to be  
24 given to all interested parties within the service area to be  
25 affected, and all interested parties shall have a reasonable  
26 opportunity for a full and complete hearing. A utility may use  
27 projected costs and revenues for a future consecutive 12-month

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

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

1 period. For any portion of the refund ~~which,~~ **THAT**, exclusive of  
 2 interest, exceeds 25% of the annual revenue increase awarded by the  
 3 commission in its final order, the rate of interest shall be the  
 4 authorized rate of return on the common stock of the utility during  
 5 the appropriate period. Any refund or interest awarded under this  
 6 subsection shall not be included, in whole or in part, in any  
 7 application for a rate increase by a utility. ~~Nothing in this~~ **THIS**  
 8 **SUBSECTION ONLY APPLIES TO COMPLETED APPLICATIONS FILED WITH THE**  
 9 **COMMISSION BEFORE THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT**  
 10 **ADDED SECTION 6T.**

11 (3) **THIS** section ~~impairs~~ **DOES NOT IMPAIR** the commission's  
 12 ability to issue a show cause order as part of its rate-making  
 13 authority. An alteration or amendment in rates or rate schedules  
 14 applied for by a public utility that will not result in an increase  
 15 in the cost of service to its customers may be authorized and  
 16 approved without notice or hearing. There shall be no increase in  
 17 rates based upon changes in cost of fuel, ~~or~~ purchased gas, **OR**  
 18 **PURCHASED STEAM** unless notice has been given within the service  
 19 area to be affected, and there has been an opportunity for a full  
 20 and complete hearing on the cost of fuel, ~~or~~ purchased gas, **OR**  
 21 **PURCHASED STEAM**. The rates charged by any utility ~~pursuant to~~ **UNDER**  
 22 an automatic fuel, ~~or~~ purchased gas, **OR PURCHASED STEAM** adjustment  
 23 clause shall not be altered, changed, or amended unless notice has  
 24 been given within the service area to be affected, and there has  
 25 been an opportunity for a full and complete hearing on the cost of  
 26 the fuel, ~~or~~ purchased gas, **OR PURCHASED STEAM**.

27 (4) ~~(2)~~—The commission shall adopt rules and procedures for

1 the filing, investigation, and hearing of petitions or applications  
 2 to increase or decrease utility rates and charges as the commission  
 3 finds necessary or appropriate to enable it to reach a final  
 4 decision with respect to petitions or applications within a period  
 5 of ~~12-10~~ months ~~from~~ **AFTER** the filing of the complete petitions or  
 6 applications. The commission shall not authorize or approve  
 7 adjustment clauses that operate without notice and an opportunity  
 8 for a full and complete hearing, and all such clauses ~~shall be~~ **ARE**  
 9 abolished. The commission may hold a full and complete hearing to  
 10 determine the cost of fuel, purchased gas, **PURCHASED STEAM**, or  
 11 purchased power separately from a full and complete hearing on a  
 12 general rate case and may ~~be held~~ **HOLD THAT HEARING** concurrently  
 13 with the general rate case. The commission shall authorize a  
 14 utility to recover the cost of fuel, purchased gas, **PURCHASED**  
 15 **STEAM**, or purchased power only to the extent that the purchases are  
 16 reasonable and prudent. ~~As used in this section:~~

17 ~~—— (a) "Full and complete hearing" means a hearing that provides~~  
 18 ~~interested parties a reasonable opportunity to present and cross-~~  
 19 ~~examine evidence and present arguments relevant to the specific~~  
 20 ~~element or elements of the request that are the subject of the~~  
 21 ~~hearing.~~

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

27 (5) ~~(3)~~—Except as otherwise provided in this subsection **AND**

1 **SUBSECTION (1)**, if the commission fails to reach a final decision  
2 with respect to a completed petition or application to increase or  
3 decrease utility rates within the ~~12-month~~**10-MONTH** period  
4 following the filing of the completed petition or application, the  
5 petition or application is considered approved. If a utility makes  
6 any significant amendment to its filing, the commission has an  
7 additional ~~12-10~~ months ~~from~~**AFTER** the date of the amendment to  
8 reach a final decision on the petition or application. If the  
9 utility files for an extension of time, the commission shall extend  
10 the ~~12-month~~**10-MONTH** period by the amount of additional time  
11 requested by the utility.

12 (6) ~~(4)~~A utility shall not file a general rate case  
13 application for an increase in rates earlier than 12 months after  
14 the date of the filing of a complete prior general rate case  
15 application. A utility may not file a new general rate case  
16 application until the commission has issued a final order on a  
17 prior general rate case or until the rates are approved under  
18 subsection ~~(3)~~**(5)**.

19 (7) ~~(5)~~The commission shall, if requested by a gas utility,  
20 establish load retention transportation rate schedules or approve  
21 gas transportation contracts as required for the purpose of  
22 retaining industrial or commercial customers whose individual  
23 annual transportation volumes exceed 500,000 decatherms on the gas  
24 utility's system. The commission shall approve these rate schedules  
25 or approve transportation contracts entered into by the utility in  
26 good faith if the industrial or commercial customer has the  
27 installed capability to use an alternative fuel or otherwise has a

1 viable alternative to receiving natural gas transportation service  
2 from the utility, the customer can obtain the alternative fuel or  
3 gas transportation from an alternative source at a price ~~which~~**THAT**  
4 would cause them to cease using the gas utility's system, and the  
5 customer, as a result of their use of the system and receipt of  
6 transportation service, makes a significant contribution to the  
7 utility's fixed costs. The commission shall adopt accounting and  
8 rate-making policies to ensure that the discounts associated with  
9 the transportation rate schedules and contracts are recovered by  
10 the gas utility through charges applicable to other customers if  
11 the incremental costs related to the discounts are no greater than  
12 the costs that would be passed on to those customers as the result  
13 of a loss of the industrial or commercial customer's contribution  
14 to a utility's fixed costs.

15 (8) ~~(6) Within 90 days of the effective date of the amendatory~~  
16 ~~act that added this subsection, the~~**THE** commission shall adopt  
17 standard rate application filing forms and instructions for use in  
18 all general rate cases filed by utilities whose rates are regulated  
19 by the commission. For cooperative electric utilities whose rates  
20 are regulated by the commission, in addition to rate applications  
21 filed under this section, the commission shall continue to allow  
22 for rate filings based on the cooperative's times interest earned  
23 ratio. The commission may ~~, in its discretion,~~ modify the standard  
24 rate application forms and instructions adopted under this  
25 subsection.

26 (9) ~~(7)~~ If, on or before January 1, 2008, a merchant plant  
27 entered into a contract with an initial term of 20 years or more to

1 sell electricity to an electric utility whose rates are regulated  
2 by the commission with 1,000,000 or more retail customers in this  
3 state and if, ~~prior to~~ **BEFORE** January 1, 2008, the merchant plant  
4 generated electricity under that contract, in whole or in part,  
5 from wood or solid wood wastes, then the merchant plant shall, upon  
6 petition by the merchant plant, and subject to the limitation set  
7 forth in subsection ~~(8)~~, **(10)**, recover the amount, if any, by which  
8 the merchant plant's reasonably and prudently incurred actual fuel  
9 and variable operation and maintenance costs exceed the amount that  
10 the merchant plant is paid under the contract for those costs. This  
11 subsection does not apply to landfill gas plants, hydro plants,  
12 municipal solid waste plants, or to merchant plants engaged in  
13 litigation against an electric utility seeking higher payments for  
14 power delivered pursuant to contract.

15 **(10)** ~~(8)~~—The total aggregate additional amounts recoverable by  
16 merchant plants ~~pursuant to~~ **UNDER** subsection ~~(7)~~ **(9)** in excess of  
17 the amounts paid under the contracts shall not exceed \$1,000,000.00  
18 per month for each affected electric utility. The \$1,000,000.00 per  
19 month limit specified in this subsection shall be reviewed by the  
20 commission upon petition of the merchant plant filed no more than  
21 once per year and may be adjusted if the commission finds that the  
22 eligible merchant plants reasonably and prudently incurred actual  
23 fuel and variable operation and maintenance costs exceed the amount  
24 that those merchant plants are paid under the contract by more than  
25 \$1,000,000.00 per month. The annual amount of the adjustments shall  
26 not exceed a rate equal to the United States consumer price index.  
27 An adjustment shall not be made by the commission unless each

1 affected merchant plant files a petition with the commission. ~~As~~  
2 ~~used in this subsection, "United States consumer price index" means~~  
3 ~~the United States consumer price index for all urban consumers as~~  
4 ~~defined and reported by the United States department of labor,~~  
5 ~~bureau of labor statistics.~~ If the total aggregate amount by which  
6 the eligible merchant plants reasonably and prudently incurred  
7 actual fuel and variable operation and maintenance costs determined  
8 by the commission exceed the amount that the merchant plants are  
9 paid under the contract by more than \$1,000,000.00 per month, the  
10 commission shall allocate the additional \$1,000,000.00 per month  
11 payment among the eligible merchant plants based upon the  
12 relationship of excess costs among the eligible merchant plants.  
13 The \$1,000,000.00 limit specified in this subsection, as adjusted,  
14 ~~shall~~ **DOES** not apply ~~with respect to~~ actual fuel and variable  
15 operation and maintenance costs that are incurred due to changes in  
16 federal or state environmental laws or regulations that are  
17 implemented after ~~the effective date of the amendatory act that~~  
18 ~~added this subsection.~~ **OCTOBER 6, 2008.** The \$1,000,000.00 per month  
19 payment limit under this subsection ~~shall~~ **DOES** not apply to  
20 merchant plants eligible under subsection ~~(7)~~ **(9)** whose electricity  
21 is purchased by a utility that is using wood or wood waste or fuels  
22 derived from those materials for fuel in their power plants. **AS**  
23 **USED IN THIS SUBSECTION, "UNITED STATES CONSUMER PRICE INDEX" MEANS**  
24 **THE UNITED STATES CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS AS**  
25 **DEFINED AND REPORTED BY THE UNITED STATES DEPARTMENT OF LABOR,**  
26 **BUREAU OF LABOR STATISTICS.**

27 (11) ~~(9)~~—The commission shall issue orders to permit the

1 recovery authorized under subsections ~~(7)~~—(9) and ~~(8)~~—(10) upon  
2 petition of the merchant plant. The merchant plant shall not be  
3 required to alter or amend the existing contract with the electric  
4 utility in order to obtain the recovery under subsections ~~(7)~~—(9)  
5 and ~~(8)~~—(10). The commission shall permit or require the electric  
6 utility whose rates are regulated by the commission to recover from  
7 its ratepayers all fuel and variable operation and maintenance  
8 costs that the electric utility is required to pay to the merchant  
9 plant as reasonably and prudently incurred costs.

10 (12) SUBJECT TO SUBSECTION (14), IF REQUESTED BY A NATURAL GAS  
11 OR ELECTRIC UTILITY, THE COMMISSION SHALL APPROVE AN APPROPRIATE  
12 REVENUE DECOUPLING MECHANISM THAT ADJUSTS FOR DECREASES IN ACTUAL  
13 SALES COMPARED TO THE PROJECTED LEVELS USED IN THAT UTILITY'S MOST  
14 RECENT RATE CASE THAT ARE THE RESULT OF IMPLEMENTED ENERGY WASTE  
15 REDUCTION, CONSERVATION, DEMAND-SIDE PROGRAMS, AND OTHER WASTE  
16 REDUCTION MEASURES, IF THE UTILITY FIRST DEMONSTRATES THE FOLLOWING  
17 TO THE COMMISSION:

18 (A) THAT THE PROJECTED SALES FORECAST IN THE UTILITY'S MOST  
19 RECENT RATE CASE IS REASONABLE.

20 (B) FOR AN ELECTRIC UTILITY SERVING MORE THAN 200,000  
21 CUSTOMERS IN THIS STATE, THAT IT HAS ACHIEVED ANNUAL INCREMENTAL  
22 ENERGY SAVINGS AT LEAST EQUAL TO 1% OF ITS TOTAL ANNUAL RETAIL  
23 ELECTRICITY SALES IN THE PREVIOUS YEAR.

24 (C) IN THE CASE OF AN ELECTRIC UTILITY SERVING NO MORE THAN  
25 200,000 CUSTOMERS IN THIS STATE, THAT IT HAS ACHIEVED ANNUAL  
26 INCREMENTAL ENERGY SAVINGS AT LEAST EQUAL TO THE LESSER OF THE  
27 FOLLOWING:

1 (i) ONE PERCENT OF ITS TOTAL ANNUAL RETAIL ELECTRICITY SALES  
2 IN THE PREVIOUS YEAR.

3 (ii) THE AMOUNT OF ANY INCREMENTAL SAVINGS YIELDED BY ENERGY  
4 WASTE REDUCTION, CONSERVATION, DEMAND-SIDE PROGRAMS, AND OTHER  
5 WASTE REDUCTION MEASURES APPROVED BY THE COMMISSION IN THAT  
6 UTILITY'S MOST RECENT INTEGRATED RESOURCE PLAN.

7 (D) FOR A NATURAL GAS UTILITY, THAT IT HAS ACHIEVED  
8 INCREMENTAL ENERGY SAVINGS AT LEAST EQUAL TO 0.75% OF ITS TOTAL  
9 ANNUAL NATURAL GAS SALES IN THE PREVIOUS YEAR OR ANY ALTERNATIVE  
10 MINIMUM GAS ENERGY SAVINGS TARGET ESTABLISHED BY THE COMMISSION  
11 UNDER PART 2C OF THE CLEAN AND RENEWABLE ENERGY AND ENERGY WASTE  
12 REDUCTION ACT, 2008 PA 295, MCL 460.1071 TO 460.1099.

13 (13) SUBJECT TO SUBSECTION (14), IF REQUESTED BY A NATURAL GAS  
14 OR ELECTRIC UTILITY, THE COMMISSION MAY APPROVE A REVENUE  
15 DECOUPLING MECHANISM THAT ADJUSTS FOR INCREASES OR DECREASES IN  
16 ACTUAL SALES COMPARED TO THE PROJECTED LEVELS USED IN THAT  
17 UTILITY'S MOST RECENT RATE CASE FOR REASONS OTHER THAN THOSE IN  
18 SUBSECTION (12), IF THE UTILITY FIRST DEMONSTRATES THE FOLLOWING TO  
19 THE COMMISSION:

20 (A) THAT THE PROJECTED SALES FORECAST IN THE UTILITY'S MOST  
21 RECENT RATE CASE IS REASONABLE.

22 (B) FOR AN ELECTRIC UTILITY SERVING MORE THAN 200,000  
23 CUSTOMERS IN THIS STATE, THAT IT HAS ACHIEVED ANNUAL INCREMENTAL  
24 ENERGY SAVINGS AT LEAST EQUAL TO 1% OF ITS TOTAL ANNUAL RETAIL  
25 ELECTRICITY SALES IN THE PREVIOUS YEAR.

26 (C) IN THE CASE OF AN ELECTRIC UTILITY SERVING NO MORE THAN  
27 200,000 CUSTOMERS IN THIS STATE, THAT IT HAS ACHIEVED ANNUAL

1 INCREMENTAL ENERGY SAVINGS AT LEAST EQUAL TO THE LESSER OF THE  
2 FOLLOWING:

3 (i) ONE PERCENT OF ITS TOTAL ANNUAL RETAIL ELECTRICITY SALES  
4 IN THE PREVIOUS YEAR.

5 (ii) THE AMOUNT OF ANY INCREMENTAL SAVINGS YIELDED BY ENERGY  
6 WASTE REDUCTION, CONSERVATION, DEMAND-SIDE PROGRAMS, AND OTHER  
7 WASTE REDUCTION MEASURES APPROVED BY THE COMMISSION IN THAT  
8 UTILITY'S MOST RECENT INTEGRATED RESOURCE PLAN.

9 (D) FOR A NATURAL GAS UTILITY, THAT IT HAS ACHIEVED  
10 INCREMENTAL ENERGY SAVINGS AT LEAST EQUAL TO 0.75% OF ITS TOTAL  
11 ANNUAL RETAIL NATURAL GAS SALES IN THE PREVIOUS YEAR OR ANY  
12 ALTERNATIVE MINIMUM GAS ENERGY SAVINGS TARGET ESTABLISHED BY THE  
13 COMMISSION UNDER PART 2C OF THE CLEAN AND RENEWABLE ENERGY AND  
14 ENERGY WASTE REDUCTION ACT, 2008 PA 295, MCL 460.1071 TO 460.1099.

15 (14) THE COMMISSION SHALL CONSIDER THE AGGREGATE REVENUES  
16 ATTRIBUTABLE TO REVENUE DECOUPLING MECHANISMS AND SHARED SAVINGS  
17 MECHANISMS THE COMMISSION HAS APPROVED FOR AN ELECTRIC OR NATURAL  
18 GAS UTILITY RELATIVE TO ENERGY WASTE REDUCTION, CONSERVATION,  
19 DEMAND-SIDE PROGRAMS, PEAK LOAD REDUCTION, AND OTHER WASTE  
20 REDUCTION MEASURES. THE COMMISSION MAY APPROVE AN ALTERNATIVE  
21 METHODOLOGY FOR A REVENUE DECOUPLING MECHANISM AUTHORIZED UNDER  
22 SUBSECTION (12) OR (13) OR A SHARED SAVINGS MECHANISM AUTHORIZED  
23 UNDER SECTION 6X IF THE COMMISSION DETERMINES THAT THE RESULTING  
24 AGGREGATE REVENUES FROM THOSE MECHANISMS WOULD NOT RESULT IN A  
25 REASONABLE AND COST-EFFECTIVE METHOD TO ENSURE THAT INVESTMENTS IN  
26 ENERGY WASTE REDUCTION, DEMAND-SIDE PROGRAMS, PEAK LOAD REDUCTION,  
27 AND OTHER WASTE REDUCTION MEASURES ARE NOT DISFAVORED WHEN COMPARED

1 TO UTILITY SUPPLY-SIDE INVESTMENTS. THE COMMISSION'S CONSIDERATION  
2 OF AN ALTERNATIVE METHODOLOGY UNDER THIS SUBSECTION SHALL BE  
3 CONDUCTED AS A CONTESTED CASE PURSUANT TO CHAPTER 4 OF THE  
4 ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.271 TO  
5 24.287.

6 (15) IN DETERMINING AN ELECTRIC UTILITY'S RATES UNDER THIS  
7 SECTION, THE COMMISSION SHALL ESTABLISH A FAIR AND EQUITABLE GRID  
8 CHARGE TO APPLY TO CUSTOMERS WHO PARTICIPATE IN A NET METERING OR  
9 DISTRIBUTED GENERATION PROGRAM UNDER THE CLEAN AND RENEWABLE ENERGY  
10 AND ENERGY WASTE REDUCTION ACT, 2008 PA 295, MCL 460.1001 TO  
11 460.1211, AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED  
12 SECTION 6T. THE GRID CHARGE SHALL ENSURE RECOVERY OF THE CUSTOMERS'  
13 ALLOCATED COST-BASED SHARE OF ALL COSTS ASSOCIATED WITH THE  
14 ELECTRIC UTILITY'S DISTRIBUTION SYSTEM. THE FAIR AND EQUITABLE GRID  
15 CHARGE ESTABLISHED UNDER THIS SUBSECTION SHALL NOT BE REDUCED BY  
16 CREDITS PROVIDED TO CUSTOMERS PURSUANT TO A NET METERING OR  
17 DISTRIBUTED GENERATION PROGRAM UNDER THE CLEAN AND RENEWABLE ENERGY  
18 AND ENERGY WASTE REDUCTION ACT, 2008 PA 295, MCL 460.1001 TO  
19 460.1211. THE GRID CHARGE ESTABLISHED UNDER THIS SUBSECTION DOES  
20 NOT APPLY TO CUSTOMERS PARTICIPATING IN A NET METERING PROGRAM  
21 UNDER THE CLEAN AND RENEWABLE ENERGY AND ENERGY WASTE REDUCTION  
22 ACT, 2008 PA 295, MCL 460.1001 TO 460.1211, ON THE EFFECTIVE DATE  
23 OF THE AMENDATORY ACT THAT ADDED SECTION 6T, WHO CONTINUE TO  
24 PARTICIPATE IN THE PROGRAM AT THEIR CURRENT SITE OR FACILITY.

25 (16) AS USED IN THIS SECTION:

26 (A) "FULL AND COMPLETE HEARING" MEANS A HEARING THAT PROVIDES  
27 INTERESTED PARTIES A REASONABLE OPPORTUNITY TO PRESENT AND CROSS-

1 EXAMINE EVIDENCE AND PRESENT ARGUMENTS RELEVANT TO THE SPECIFIC  
2 ELEMENT OR ELEMENTS OF THE REQUEST THAT ARE THE SUBJECT OF THE  
3 HEARING.

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

9 (C) "STEAM UTILITY" MEANS A STEAM DISTRIBUTION COMPANY  
10 REGULATED BY THE COMMISSION.

11 Sec. 6j. (1) As used in this act:

12 (A) "FIRM GAS TRANSPORTATION" MEANS A BINDING AGREEMENT  
13 ENTERED INTO BETWEEN THE ELECTRIC UTILITY AND A NATURAL GAS  
14 TRANSMISSION PROVIDER FOR A SET PERIOD OF TIME TO PROVIDE  
15 GUARANTEED DELIVERY OF NATURAL GAS TO AN ELECTRIC GENERATION  
16 FACILITY.

17 (B) ~~(a)~~—"Power supply cost recovery clause" means a clause in  
18 the electric rates or rate schedule of ~~a~~—AN ELECTRIC utility which  
19 THAT permits the monthly adjustment of rates for power supply to  
20 allow the utility to recover the booked costs, including  
21 transportation costs, reclamation costs, and disposal and  
22 reprocessing costs, of fuel burned by the utility for electric  
23 generation and the booked costs of purchased and net interchanged  
24 power transactions by the utility incurred under reasonable and  
25 prudent policies and practices.

26 (C) ~~(b)~~—"Power supply cost recovery factor" means that element  
27 of the rates to be charged for electric service to reflect power

1 supply costs incurred by an electric utility and made pursuant to a  
2 power supply cost recovery clause incorporated in the rates or rate  
3 schedule of an electric utility.

4 (2) ~~Pursuant to its authority under this act, the~~ **THE** public  
5 service commission may incorporate a power supply cost recovery  
6 clause in the electric rates or rate schedule of a ~~a~~ **AN ELECTRIC**  
7 utility. ~~, but is not required to do so.~~ Any order incorporating a  
8 power supply cost recovery clause shall be as a result of a hearing  
9 solely on the question of the inclusion of the clause in the rates  
10 or rate schedule. ~~, which~~ **A hearing UNDER THIS SUBSECTION** shall be  
11 conducted as a contested case pursuant to chapter 4 of the  
12 administrative procedures act of 1969, ~~Act No. 306 of the Public~~  
13 ~~Acts of 1969, being sections 24.271 to 24.287 of the Michigan~~  
14 ~~Compiled Laws, 1969 PA 306, MCL 24.271 TO 24.287, or, pursuant to~~  
15 subsection ~~(18),~~ **(16)**, as a result of a general rate case. Any  
16 order incorporating a power supply cost recovery clause shall  
17 replace and rescind any previous fuel cost adjustment clause or  
18 purchased and net interchanged power adjustment clause incorporated  
19 in the electric rates of the utility upon the effective date of the  
20 first power supply cost recovery factor authorized for the utility  
21 under its power supply cost recovery clause.

22 (3) In order to implement the power supply cost recovery  
23 clause established ~~pursuant to~~ **UNDER** subsection (2), a ~~a~~ **AN ELECTRIC**  
24 utility annually shall file, pursuant to procedures established by  
25 the commission, if any, a complete power supply cost recovery plan  
26 describing the expected sources of electric power supply and  
27 changes in the cost of power supply anticipated over a future 12-

1 month period specified by the commission and requesting for each of  
2 those 12 months a specific power supply cost recovery factor. The  
3 plan shall be filed not less—**LATER** than 3 months before the  
4 beginning of the 12-month period covered by the plan. The plan  
5 shall describe all major contracts and power supply arrangements  
6 entered into by the utility for providing power supply during the  
7 specified 12-month period. The description of the major contracts  
8 and arrangements shall include the price of fuel, the duration of  
9 the contract or arrangement, and an explanation or description of  
10 any other term or provision as required by the commission. **FOR GAS**  
11 **FUEL SUPPLY CONTRACTS OR ARRANGEMENTS, THE DESCRIPTION SHALL**  
12 **INCLUDE WHETHER THE SUPPLY CONTRACTS OR ARRANGEMENTS INCLUDE FIRM**  
13 **GAS TRANSPORTATION AND, IF NOT, AN EXPLANATION OF HOW THE UTILITY**  
14 **PROPOSES TO ENSURE RELIABLE AND REASONABLY PRICED GAS FUEL SUPPLY**  
15 **TO ITS GENERATION FACILITIES DURING THE SPECIFIED 12-MONTH PERIOD.**  
16 The plan shall also include the utility's evaluation of the  
17 reasonableness and prudence of its decisions to provide power  
18 supply in the manner described in the plan, in light of its  
19 existing sources of electrical generation, and an explanation of  
20 the actions taken by the utility to minimize the cost of fuel to  
21 the utility.

22 ~~—— (4) In order to implement the power supply cost recovery~~  
23 ~~clause established pursuant to subsection (2), a utility shall~~  
24 ~~file, contemporaneously with the power supply cost recovery plan~~  
25 ~~required by subsection (3), a 5 year forecast of the power supply~~  
26 ~~requirements of its customers, its anticipated sources of supply,~~  
27 ~~and projections of power supply costs, in light of its existing~~

1 ~~sources of electrical generation and sources of electrical~~  
2 ~~generation under construction. The forecast shall include a~~  
3 ~~description of all relevant major contracts and power supply~~  
4 ~~arrangements entered into or contemplated by the utility, and such~~  
5 ~~other information as the commission may require.~~

6 (4) ~~(5)~~—If a **AN ELECTRIC** utility files a power supply cost  
7 recovery plan and a 5 year forecast as provided in ~~subsections~~  
8 **SUBSECTION (3), and (4)**, the commission shall conduct a proceeding,  
9 to be known as a power supply and cost review, for the purpose of  
10 evaluating the reasonableness and prudence of the power supply cost  
11 recovery plan filed by a utility pursuant to **UNDER** subsection (3),  
12 and establishing the power supply cost recovery factors to  
13 implement a power supply cost recovery clause incorporated in the  
14 electric rates or rate schedule of the utility. The power supply  
15 and cost review shall be conducted as a contested case pursuant to  
16 chapter 4 of the administrative procedures act of 1969, ~~Act No. 306~~  
17 ~~of the Public Acts of 1969.~~ **1969 PA 306, MCL 24.271 TO 24.287.**

18 (5) ~~(6)~~—In its final order in a power supply and cost review,  
19 the commission shall evaluate the reasonableness and prudence of  
20 the decisions underlying the power supply cost recovery plan filed  
21 by the **AN ELECTRIC** utility pursuant to **UNDER** subsection (3), and  
22 shall approve, disapprove, or amend the power supply cost recovery  
23 plan accordingly. In evaluating the decisions underlying the power  
24 supply cost recovery plan, the commission shall consider the cost  
25 and availability of the electrical generation available to the  
26 utility; the cost of short-term firm purchases available to the  
27 utility; the availability of interruptible service; the ability of

1 the utility to reduce or to eliminate any firm sales to out-of-  
2 state customers if the utility is not a multi-state utility whose  
3 firm sales are subject to other regulatory authority; whether the  
4 utility has taken all appropriate actions to minimize the cost of  
5 fuel; and other relevant factors. The commission shall approve,  
6 reject, or amend the 12 monthly power supply cost recovery factors  
7 requested by the utility in its power supply cost recovery plan.  
8 The factors shall not reflect items the commission could reasonably  
9 anticipate would be disallowed under subsection ~~(13)~~—(11). The  
10 factors ordered shall be described in fixed dollar amounts per unit  
11 of electricity, but may include specific amounts contingent on  
12 future events.

13 ~~—— (7) In its final order in a power supply and cost review, the~~  
14 ~~commission shall evaluate the decisions underlying the 5-year~~  
15 ~~forecast filed by a utility pursuant to subsection (4). The~~  
16 ~~commission may also indicate any cost items in the 5-year forecast~~  
17 ~~that, on the basis of present evidence, the commission would be~~  
18 ~~unlikely to permit the utility to recover from its customers in~~  
19 ~~rates, rate schedules, or power supply cost recovery factors~~  
20 ~~established in the future.~~

21 (6) ~~(8)~~—The commission, on its own motion or the motion of any  
22 party, may make a finding and enter a temporary order granting  
23 approval or partial approval of a power supply cost recovery plan  
24 in a power supply and cost recovery review, after first ~~having~~  
25 ~~given~~**GIVING** notice to the parties to the review, and after ~~having~~  
26 ~~afforded to~~**GIVING** the parties to the review a reasonable  
27 opportunity for a full and complete hearing. A temporary order made

1 ~~pursuant to~~ **UNDER** this subsection ~~shall be~~ **IS** considered a final  
2 order for purposes of judicial review.

3 (7) ~~(9)~~—If the commission has made a final or temporary order  
4 in a power supply and cost review, ~~the~~ **AN ELECTRIC** utility may each  
5 month incorporate in its rates for the period covered by the order  
6 any amounts up to the power supply cost recovery factors permitted  
7 in that order. If the commission has not made a final or temporary  
8 order within 3 months ~~of~~ **AFTER** the submission of a complete power  
9 supply cost recovery plan, or by the beginning of the period  
10 covered in the plan, whichever comes later, or if a temporary order  
11 has expired without being extended or replaced, then pending an  
12 order ~~which~~ **THAT** determines the power supply cost recovery factors,  
13 a utility may each month adjust its rates to incorporate all or a  
14 part of the power supply cost recovery factors requested in its  
15 plan. Any amounts collected under the power supply cost recovery  
16 factors before the commission makes its final order ~~shall be~~ **IS**  
17 subject to prompt refund with interest to the extent that the total  
18 amounts collected exceed the total amounts determined in the  
19 commission's final order to be reasonable and prudent for the same  
20 period of time.

21 (8) ~~(10)~~—Not ~~less~~ **LATER** than 3 months before the beginning of  
22 the third quarter of the 12-month period ~~, the~~ **DESCRIBED IN**  
23 **SUBSECTION (3), AN ELECTRIC** utility may file a revised power supply  
24 cost recovery plan ~~which shall cover~~ **THAT COVERS** the remainder of  
25 the 12-month period. Upon receipt of the revised power supply cost  
26 recovery plan, the commission shall reopen the power supply and  
27 cost review. In addition, the commission may reopen the power

1 supply and cost review on its own motion or on the showing of good  
2 cause by any party if at least 6 months have elapsed since the  
3 utility submitted its complete filing and if there are at least 60  
4 days remaining in the 12-month period under consideration. A  
5 reopened power supply and cost review shall be conducted as a  
6 contested case pursuant to chapter 4 of the administrative  
7 procedures act of 1969, ~~Act No. 306 of the Public Acts of 1969,~~  
8 **1969 PA 306, MCL 24.271 TO 24.287**, and in accordance with  
9 subsections (3), ~~(6), (8), and (9)~~. **(5), (6), AND (7)**.

10 (9) ~~(11)~~ Not ~~more~~ **LATER** than 45 days ~~following~~ **AFTER** the last  
11 day of each billing month in which a power supply cost recovery  
12 factor has been applied to customers' bills, ~~the~~ **AN ELECTRIC**  
13 utility shall file with the commission a detailed statement for  
14 that month of the revenues recorded pursuant to the power supply  
15 cost recovery factor and the allowance for cost of power supply  
16 included in the base rates established in the latest commission  
17 order for the utility, and the cost of power supply. The detailed  
18 statement shall be in the manner and form prescribed by the  
19 commission. The commission shall establish procedures for insuring  
20 that the detailed statement is promptly verified and corrected if  
21 necessary.

22 (10) ~~(12)~~ Not less than once a year, and not later than 3  
23 months after the end of the 12-month period covered by a ~~a~~ **AN**  
24 **ELECTRIC** utility's power supply cost recovery plan, the commission  
25 shall commence a proceeding, to be known as a power supply cost  
26 reconciliation, as a contested case pursuant to chapter 4 of the  
27 administrative procedures act of 1969, ~~Act No. 306 of the Public~~

1 ~~Acts of 1969. Reasonable 1969 PA 306, MCL 24.271 TO 24.287. THE~~  
2 **COMMISSION SHALL PERMIT REASONABLE** discovery ~~shall be permitted~~  
3 before and during the reconciliation proceeding in order to assist  
4 parties and interested persons in obtaining evidence concerning  
5 reconciliation issues including, but not limited to, the  
6 reasonableness and prudence of expenditures and the amounts  
7 collected pursuant to the clause. At the power supply cost  
8 reconciliation the commission shall reconcile the revenues recorded  
9 pursuant to the power supply cost recovery factors and the  
10 allowance for cost of power supply included in the base rates  
11 established in the latest commission order for the utility with the  
12 amounts actually expensed and included in the cost of power supply  
13 by the utility. The commission shall consider any issue regarding  
14 the reasonableness and prudence of expenses for which customers  
15 were charged if the issue was not considered adequately at a  
16 previously conducted power supply and cost review.

17 (11) ~~(13)~~—In its order in a power supply cost reconciliation,  
18 the commission shall **DO ALL OF THE FOLLOWING**:

19 (a) Disallow cost increases resulting from changes in  
20 accounting or rate-making expense treatment not previously approved  
21 by the commission. The commission may order the utility to pay a  
22 penalty **OF** not ~~to exceed~~ **MORE THAN** 25% of the amount improperly  
23 collected. Costs incurred by the utility for penalty payments shall  
24 not be charged to customers.

25 ~~(b) Disallow any capacity charges associated with power~~  
26 ~~purchased for periods in excess of 6 months unless the utility has~~  
27 ~~obtained the prior approval of the commission. If~~ **NOT DISALLOW THE**

1 **CAPACITY CHARGES FOR ANY FACILITIES FOR WHICH THE ELECTRIC UTILITY**  
2 **WOULD OTHERWISE HAVE A PURCHASE OBLIGATION IF** the commission has  
3 approved capacity charges in a contract with a qualifying facility,  
4 as **THAT TERM IS** defined by the ~~federal energy regulatory commission~~  
5 **FEDERAL ENERGY REGULATORY COMMISSION** pursuant to the public  
6 utilities regulatory policies act of 1978, Public Law 95-617, 92  
7 Stat. ~~STAT 3117, the commission shall not disallow the capacity~~  
8 ~~charges for the facility in the power supply cost reconciliation~~  
9 unless the commission has ordered revised capacity charges upon  
10 reconsideration ~~pursuant to~~ **UNDER** this subsection. A contract ~~shall~~  
11 ~~be~~ **IS** valid and binding in accordance with its terms, and capacity  
12 charges paid pursuant to ~~such a~~ **THAT** contract ~~shall be~~ **ARE**  
13 recoverable costs of the utility for rate-making purposes  
14 notwithstanding that the order approving ~~such a~~ **THAT** contract is  
15 later vacated, modified, or otherwise held to be invalid in whole  
16 or in part if the order approving the contract has not been stayed  
17 or suspended by a competent court within 30 days after the date of  
18 the order, or ~~within 30 days of the effective date of the 1987~~  
19 ~~amendatory act that added subsection (19)~~ **BY JULY 29, 1987** if the  
20 order was issued after September 1, 1986 ~~and before the effective~~  
21 ~~date of the 1987 amendatory act that added subsection (19)~~. **JUNE**  
22 **29, 1987.** The scope and manner of the review of capacity charges  
23 for a qualifying facility shall be determined by the commission.  
24 Except as to approvals for qualifying facilities granted by the  
25 commission ~~prior to~~ **BEFORE** June 1, 1987, proceedings before the  
26 commission seeking ~~such~~ **THOSE** approvals shall be conducted as a  
27 contested case pursuant to chapter 4 of the administrative

1 procedures act of 1969, ~~Act No. 306 of the Public Acts of 1969.~~  
2 **1969 PA 306, MCL 24.271 TO 24.287.** The commission, upon its own  
3 motion or upon application of any person, may reconsider its  
4 approval of capacity charges **FOR A QUALIFYING FACILITY** in a  
5 contested case hearing after passage of a period necessary for  
6 financing the qualifying facility, ~~provided that: IF BOTH OF THE~~  
7 **FOLLOWING APPLY:**

8 (i) The commission has first issued an order making a finding  
9 based on evidence presented in a contested case that there has been  
10 a substantial change in circumstances since the commission's  
11 initial approval. ~~and~~

12 (ii) ~~Such a~~ **THE** commission finding ~~shall be~~ **IS** set forth in a  
13 commission order subject to immediate judicial review.

14 The financing period for a qualifying facility during which  
15 previously approved capacity charges ~~shall~~ **ARE** not ~~be~~ subject to  
16 commission reconsideration shall be 17.5 years, beginning with the  
17 date of commercial operation, for all qualifying facilities, except  
18 that the minimum financing period before reconsideration of the  
19 previously approved capacity charges shall be for the duration of  
20 the financing for a qualifying facility ~~which~~ **THAT** produces  
21 electric energy by the use of biomass, waste, wood, hydroelectric,  
22 wind, and other renewable resources, or any combination of  
23 renewable resources, as the primary energy source.

24 (c) Disallow net increased costs attributable to a generating  
25 plant outage of more than 90 days in duration unless the utility  
26 demonstrates by clear and satisfactory evidence that the outage, or  
27 any part of the outage, was not caused or prolonged by the

1 utility's negligence or by unreasonable or imprudent management.

2 (d) Disallow transportation costs attributable to capital  
3 investments to develop a utility's capability to transport fuel or  
4 relocate fuel at the utility's facilities and disallow unloading  
5 and handling expenses incurred after receipt of fuel by the  
6 utility.

7 (e) Disallow the cost of fuel purchased from an affiliated  
8 company to the extent that ~~such~~**THE** fuel is more costly than fuel  
9 of requisite quality available at or about the same time from other  
10 suppliers with whom it would be comparably cost beneficial to deal.

11 (f) Disallow charges unreasonably or imprudently incurred for  
12 fuel not taken.

13 (g) Disallow additional costs resulting from unreasonably or  
14 imprudently renegotiated fuel contracts.

15 (h) Disallow penalty charges unreasonably or imprudently  
16 incurred.

17 (i) Disallow demurrage charges.

18 (j) Disallow increases in charges for nuclear fuel disposal  
19 unless the utility has received the prior approval of the  
20 commission.

21 **(12)** ~~(14)~~—In its order in a power supply cost reconciliation,  
22 the commission shall require a ~~an~~**AN ELECTRIC** utility to refund to  
23 customers or credit to customers' bills any net amount determined  
24 to have been recovered over the period covered in excess of the  
25 amounts determined to have been actually expensed by the utility  
26 for power supply, and to have been incurred through reasonable and  
27 prudent actions not precluded by the commission order in the power

1 supply and cost review. ~~Such~~ **THE COMMISSION SHALL APPORTION THE**  
2 refunds or credits ~~shall be apportioned~~ among the customers of the  
3 utility utilizing procedures that the commission determines to be  
4 reasonable. The commission may adopt different procedures with  
5 respect to customers served under the various rate schedules of the  
6 utility and may, in appropriate circumstances, order refunds or  
7 credits in proportion to the excess amounts actually collected from  
8 each such customer during the period covered.

9 (13) ~~(15)~~—In its order in a power supply cost reconciliation,  
10 the commission shall authorize a ~~a~~ **AN ELECTRIC** utility to recover  
11 from customers any net amount by which the amount determined to  
12 have been recovered over the period covered was less than the  
13 amount determined to have been actually expensed by the utility for  
14 power supply, and to have been incurred through reasonable and  
15 prudent actions not precluded by the commission order in the power  
16 supply and cost review. For excess costs incurred through  
17 management actions contrary to the commission's power supply and  
18 cost review order, the commission shall authorize a utility to  
19 recover costs incurred for power supply in the reconciliation  
20 period in excess of the amount recovered over the period only if  
21 the utility demonstrates by clear and convincing evidence that the  
22 excess expenses were beyond the ability of the utility to control  
23 through reasonable and prudent actions. For excess costs incurred  
24 through management actions consistent with the commission's power  
25 supply and cost review order, the commission shall authorize a  
26 utility to recover costs incurred for power supply in the  
27 reconciliation period in excess of the amount recovered over the

1 period only if the utility demonstrates that the level of ~~such~~  
2 **THOSE** expenses resulted from reasonable and prudent management  
3 actions. ~~Such-**THE**~~ amounts in excess of the amounts actually  
4 recovered by the utility for power supply shall be apportioned  
5 among and charged to the customers of the utility utilizing  
6 procedures that the commission determines to be reasonable. The  
7 commission may adopt different procedures with respect to customers  
8 served under the various rate schedules of the utility and may, in  
9 appropriate circumstances, order charges to be made in proportion  
10 to the amounts ~~which-**THAT**~~ would have been paid by ~~such-**THOSE**~~  
11 customers if the amounts in excess of the amounts actually  
12 recovered by the utility for cost of power supply had been included  
13 in the power supply cost recovery factors with respect to ~~such~~  
14 **THOSE** customers during the period covered. Charges for ~~such-**THE**~~  
15 excess amounts shall be spread over a period that the commission  
16 determines to be appropriate.

17 (14) ~~(16)~~—If the commission orders refunds or credits ~~pursuant~~  
18 ~~to-**UNDER**~~ subsection ~~(14)~~, ~~(12)~~, or additional charges to customers  
19 ~~pursuant to-**UNDER**~~ subsection ~~(15)~~, ~~(13)~~, in its final order in a  
20 power supply cost reconciliation, the refunds, credits, or  
21 additional charges shall include interest. In determining the  
22 interest included in a refund, credit, or additional charge  
23 ~~pursuant to-**UNDER**~~ this subsection, the commission shall consider,  
24 to the extent material and practicable, the time at which the  
25 excess recoveries or insufficient recoveries, or both occurred. The  
26 commission shall determine a rate of interest for excess  
27 recoveries, refunds, and credits equal to the greater of the

1 average short-term borrowing rate available to the utility during  
2 the appropriate period, or the authorized rate of return on the  
3 common stock of the utility during that same period. Costs incurred  
4 by the utility for refunds and interest on refunds shall not be  
5 charged to customers. The commission shall determine a rate of  
6 interest for insufficient recoveries and additional charges equal  
7 to the average short-term borrowing rate available to the utility  
8 during the appropriate period.

9 (15) ~~(17)~~ To avoid undue hardship or unduly burdensome or  
10 excessive cost, the commission may **DO BOTH OF THE FOLLOWING**:

11 (a) Exempt an electric utility with fewer than 200,000  
12 customers in the ~~THIS~~ state of ~~Michigan~~ from 1 or more of the  
13 procedural provisions of this section or may modify the filing  
14 requirements of this section.

15 (b) Exempt an energy utility organized as a cooperative  
16 corporation pursuant to ~~UNDER~~ sections 98 to 109 of ~~Act No. 327 of~~  
17 ~~the Public Acts of 1931, being sections 450.98 to 450.109 of the~~  
18 ~~Michigan Compiled Laws, 1931 PA 327, MCL 450.98 TO 450.109,~~ from 1  
19 or more of the provisions of this section.

20 (16) ~~(18)~~ Notwithstanding any other provision of this act, the  
21 commission may, upon application by an electric utility, set power  
22 supply cost recovery factors, in a manner otherwise consistent with  
23 this act, in an order resulting from a general rate case. ~~Within~~  
24 ~~120 days following the effective date of this section,~~ **BY OCTOBER**  
25 **27, 1987,** for the purpose of setting power supply cost recovery  
26 factors, the commission shall permit an electric utility to reopen  
27 a general rate case in which a final order was issued within 120

1 days before or after ~~the effective date of this section~~ **JUNE 29,**  
 2 **1987** or to amend an application or reopen the evidentiary record in  
 3 a pending general rate case. If the commission sets power supply  
 4 cost recovery factors in an order resulting from a general rate  
 5 case, **ALL OF THE FOLLOWING APPLY:**

6 (a) The power supply cost recovery factors shall cover a  
 7 future period of 48 months or the number of months ~~which~~ **THAT**  
 8 elapse until the commission orders new power supply cost recovery  
 9 factors in a general rate case, whichever is the shorter period.

10 (b) Annual reconciliation proceedings shall be conducted  
 11 ~~pursuant to~~ **UNDER** subsection ~~(12)~~ **(10)** and if an annual  
 12 reconciliation proceeding shows a recoverable amount ~~pursuant to~~  
 13 **UNDER** subsection ~~(15)~~ **(13)**, the commission shall authorize the  
 14 electric utility to defer the amount and to accumulate interest on  
 15 the amount ~~pursuant to~~ **UNDER** subsection ~~(16)~~ **(14)**, and in the next  
 16 order resulting from a general rate case authorize the utility to  
 17 recover the amount and interest from its customers in the manner  
 18 provided in subsection ~~(15)~~ **(13)**.

19 (c) The power supply cost recovery factors ~~shall~~ **ARE** not be  
 20 subject to revision ~~pursuant to~~ **UNDER** subsection ~~(10)~~ **(8)**.

21 ~~— (19) Five years after the effective date of the amendatory act~~  
 22 ~~that added this subsection, and every 5 years thereafter, the~~  
 23 ~~standing committees of the house and senate that deal with public~~  
 24 ~~utilities shall review the amendatory act that added this~~  
 25 ~~subsection.~~

26 Sec. 6k. (1) This section ~~shall govern~~ **GOVERNS** the initial  
 27 filing and implementation of a power supply cost recovery plan

1 under section 6j(3).

2 (2) The initial power supply cost recovery plan may be for a  
3 period of less than 12 months and shall be filed **AS FOLLOWS:**

4 (a) By an electric utility subject to commission rate  
5 jurisdiction with at least 200,000 residential customers in the  
6 state of Michigan, ~~within 4 months after the effective date of this~~  
7 ~~section.~~ **BY FEBRUARY 13, 1983.**

8 (b) By all other electric utilities subject to commission rate  
9 jurisdiction, ~~within 15 months after the effective date of this~~  
10 ~~section.~~ **BY JANUARY 13, 1984** in accordance with the provisions of  
11 this act which the commission determines to be appropriate for the  
12 individual utility.

13 (3) Notwithstanding section ~~6a(3),~~ **6A(5)**, until the expiration  
14 of 3 months plus the remainder of the then current billing month  
15 following the last day on which a utility is required to file its  
16 first power supply cost recovery plan ~~pursuant to~~ **UNDER** subsection  
17 (2), ~~of this section,~~ the utility may alter its rate schedule in  
18 accordance with an existing fuel cost adjustment clause or  
19 purchased and net interchanged power adjustment clause. Thereafter,  
20 the utility may make charges in excess of base rates for the cost  
21 of power supply pursuant only to subsections (2) and (4). ~~of this~~  
22 ~~section.~~ ~~After the effective date of this section,~~ **OCTOBER 13,**  
23 **1982,** any revenues resulting from an existing fuel cost adjustment  
24 clause or purchased and net interchanged power adjustment clause  
25 and recorded for an annual reconciliation period ending ~~prior to~~  
26 **BEFORE** January 1, 1983, by an electric utility ~~shall be~~ **ARE** subject  
27 to the existing reconciliation proceeding established by the

1 commission for the utility. In this proceeding, the commission  
2 shall consider the reasonableness and prudence of expenditures  
3 charged pursuant to an existing fuel cost adjustment clause or  
4 purchased and net interchanged power adjustment clause after ~~the~~  
5 ~~effective date of this section.~~ **OCTOBER 13, 1982.** On and after  
6 January 1, 1983, all fuel cost and purchased and net interchanged  
7 power revenues received by an electric utility, whether included in  
8 base rates or collected pursuant to a fuel or purchased and net  
9 interchanged power adjustment clause or a power supply cost  
10 recovery clause, ~~shall be~~ **ARE** subject to annual reconciliation with  
11 the cost of fuel and purchased and net interchanged power. ~~Such~~ **THE**  
12 annual reconciliations shall be conducted in accordance with the  
13 reconciliation procedures described in section ~~6j(12) to (18),~~  
14 **6J(10) TO (16)**, including the provisions for refunds, additional  
15 charges, deferral and recovery, and shall include consideration by  
16 the commission of the reasonableness and prudence of expenditures  
17 charged pursuant to any fuel or purchased and net interchanged  
18 power adjustment clause in existence during the period being  
19 reconciled. If the utility has a lag correction provision included  
20 in its existing adjustment clauses, the commission shall allow any  
21 adjustment to rates attributable to ~~such~~ **THAT** lag correction  
22 provision to be implemented for the 3 billing months immediately  
23 succeeding the final billing month in which the existing adjustment  
24 clauses as operative.

25 (4) Until the commission approves or disapproves a power  
26 supply cost recovery clause in a final commission order in a  
27 contested case required by section 6j(2), a utility ~~which~~ **THAT** had

1 a fuel cost adjustment clause or purchased and net interchanged  
 2 power adjustment clause on ~~the effective date of this section~~  
 3 **OCTOBER 13, 1982** and which has applied for a power supply cost  
 4 recovery clause under section 6j may adjust its rates ~~pursuant to~~  
 5 **UNDER** section 6j(3) to ~~(18),~~ **(16)**, to include power supply cost  
 6 recovery factors.

7 Sec. 6l. (1) For purposes of implementing sections **6A**, 6h, ~~6i,~~  
 8 6j, ~~and 6k,~~ **6S, AND 6T**, this section and section 6m shall provide  
 9 means of insuring equitable representation of the interests of  
 10 energy utility customers.

11 (2) As used in this section and section 6m:

12 (a) "Annual receipts" means the payments received by the fund  
 13 under section 6m(2)(a), ~~and (b),~~ **(C), AND (D)** during a calendar  
 14 year.

15 (b) "Board" means the utility consumer participation board  
 16 created under subsection (3).

17 **(C) "COMMISSION" MEANS THE MICHIGAN PUBLIC SERVICE COMMISSION.**

18 **(D) ~~(e)~~"Department" means the department of management and**  
 19 **budget. LICENSING AND REGULATORY AFFAIRS.**

20 **(E) ~~(d)~~"Energy cost recovery proceeding" means any proceeding**  
 21 **to establish or implement a gas cost recovery clause or a power**  
 22 **supply cost recovery clause as provided in sections SECTION 6h ,**  
 23 **~~6i, OR 6j, or 6k,~~ to set gas cost recovery factors pursuant to**  
 24 **UNDER** section 6h(17), or to set power supply cost recovery factors  
 25 **pursuant to UNDER** section ~~6j(18).~~ **6J(16).**

26 **(F) ~~(e)~~"Energy utility" means each electric or gas company**  
 27 **regulated by the public service commission.**

1           (G) ~~(f)~~—"Fund" means the utility consumer representation fund  
2 created in section 6m.

3           (H) ~~(g)~~—"Household" means a single-family home, duplex, mobile  
4 home, seasonal dwelling, farm home, cooperative, condominium, or  
5 apartment ~~which~~**THAT** has normal household facilities such as a  
6 bathroom, individual cooking facilities, and kitchen sink  
7 facilities. Household does not include a penal or corrective  
8 institution, or a motel, hotel, or other similar structure if used  
9 as a transient dwelling.

10           (I) ~~(h)~~—"Jurisdictional" means subject to rate regulation by  
11 the ~~Michigan public service commission~~.

12           (J) ~~(i)~~—"Net grant proceeds" means the annual receipts of the  
13 fund less the amounts reserved for the attorney general's use and  
14 the amounts expended for board expenses and operation.

15           (K) ~~(j)~~—"Residential energy utility consumer" or "consumer"  
16 means a customer of an energy utility who receives utility service  
17 for use within an individual household or an improvement reasonably  
18 appurtenant to and normally associated with an individual  
19 household.

20           (L) ~~(k)~~—"Residential tariff sales" means those sales by an  
21 energy utility ~~which~~**THAT** are subject to residential tariffs on  
22 file with the commission.

23           (M) ~~(l)~~—"Utility consuming industry" means a person, sole  
24 proprietorship, partnership, association, corporation, or other  
25 entity ~~which~~**THAT** receives utility service ordinarily and primarily  
26 for use in connection with the manufacture, sale, or distribution  
27 of goods or the provision of services, but does not include a

1 nonprofit organization representing residential utility customers.

2 (3) The utility consumer participation board is created within  
3 the department and shall exercise its powers and duties under this  
4 act independently of the department. The procurement and related  
5 management functions of the ~~commission~~**BOARD** shall be performed  
6 under the direction and supervision of the department. The board  
7 shall consist of 5 members appointed by the governor, 1 of whom  
8 shall be chosen from 1 or more lists of qualified persons submitted  
9 by the attorney general.

10 (4) For the purposes of subsection (5) only, "utility" means  
11 an electric or gas company located in or outside of this state.

12 (5) Each member of the board shall meet the following  
13 requirements:

14 (a) Shall be an advocate for the interests of residential  
15 utility consumers, as demonstrated by the member's knowledge of and  
16 support for consumer interests and concerns in general or  
17 specifically related to utility matters.

18 (b) Shall not be, or shall not have been within the 5 years  
19 preceding appointment, a member of a governing body of, or employed  
20 in a managerial or professional or consulting capacity by a utility  
21 or an association representing utilities; an enterprise or  
22 professional practice ~~which~~**THAT** received over \$1,500.00 in the  
23 year preceding the appointment as a supplier of goods or services  
24 to a utility or association representing utilities; or an  
25 organization representing employees of such a utility, association,  
26 enterprise, or professional practice, or an association ~~which~~**THAT**  
27 represents such an organization.

1 (c) Shall not have, or shall not have had within 1 year  
2 preceding appointment, a financial interest exceeding \$1,500.00 in  
3 a utility, an association representing utilities, or an enterprise  
4 or professional practice ~~which~~**THAT** received over \$1,500.00 in the  
5 year preceding the appointment as a supplier of goods or services  
6 to a utility or association representing utilities.

7 (d) Shall not be an officer or director of an applicant for a  
8 grant under section 6m.

9 (e) Shall not be a member of the immediate family of ~~a person~~  
10 **AN INDIVIDUAL** who would be ineligible under ~~subdivisions~~  
11 **SUBDIVISION** (a), (b), (c), or (d).

12 (6) The members of the board shall be appointed for 2-year  
13 terms beginning with the first day of a legislative session in an  
14 odd-numbered year and ending on the day before the first day of the  
15 legislative session in the next odd-numbered year or when the  
16 members' successors are appointed, whichever occurs later. The  
17 governor shall not appoint a member to the board for a term  
18 commencing after the governor's term of office has ended. A vacancy  
19 shall be filled in the same manner as the original appointment. If  
20 the vacancy is created other than by expiration of a term, the  
21 member shall be appointed for the balance of the unexpired term of  
22 the member to be succeeded.

23 (7) The governor shall remove a member of the board if that  
24 member is absent for any reason from either 3 consecutive board  
25 meetings or more than 50% of the meetings held by the board in a  
26 calendar year. However, ~~a person~~**AN INDIVIDUAL** who is removed due  
27 to absenteeism is eligible for reappointment to fill a vacancy

1 ~~which~~ **THAT** occurs in the board membership. The governor also shall  
2 remove a member of the board if the member is subsequently  
3 determined to be ineligible under subsection (5).

4 (8) The board shall hold bimonthly meetings and additional  
5 meetings as necessary. A quorum consists of 3 members. A majority  
6 vote of the members appointed and serving is necessary for a  
7 decision. At its first meeting following the appointment of new  
8 members, or as soon as possible after the first meeting, the board  
9 shall elect biennially from its membership a chairperson and a  
10 vice-chairperson.

11 (9) The board shall not act directly to represent the  
12 interests of residential utility consumers except through  
13 administration of the fund and grant program under this section.

14 (10) The business ~~which~~ **THAT** the board may perform shall be  
15 conducted at a public meeting of the board held in compliance with  
16 the open meetings act, ~~Act No. 267 of the Public Acts of 1976,~~  
17 ~~being sections 15.261 to 15.275 of the Michigan Compiled Laws. 1976~~  
18 **PA 267, MCL 15.261 TO 15.275.** Public notice of the time, date, and  
19 place of the meeting shall be given in the manner required by ~~Act~~  
20 ~~No. 267 of the Public Acts of 1976.~~**THE OPEN MEETINGS ACT, 1976 PA**  
21 **267, MCL 15.261 TO 15.275.**

22 (11) A writing prepared, owned, used, in the possession of, or  
23 retained by the board in the performance of an official function  
24 shall be made available to the public in compliance with the  
25 freedom of information act, ~~Act No. 442 of the Public Acts of 1976,~~  
26 ~~being sections 15.231 to 15.246 of the Michigan Compiled Laws. 1976~~  
27 **PA 442, MCL 15.231 TO 15.246.**

1           (12) A member of the board may be reimbursed for actual and  
2 necessary expenses, including travel expenses to and from each  
3 meeting held by the board, incurred in discharging the member's  
4 duties under this section and section 6m. In addition to expense  
5 reimbursement, a board member may receive remuneration from the  
6 board of \$100.00 per meeting attended, not to exceed \$1,000.00 in a  
7 calendar year. These limits shall be adjusted proportionately to an  
8 adjustment in the remittance amounts under section 6m(4) to allow  
9 for changes in the cost of living.

10 ~~—— (13) Until the board certifies that it is operating and ready~~  
11 ~~to perform all duties under this act, the director of the energy~~  
12 ~~administration created by executive directives 1976-2 and 1976-5~~  
13 ~~shall serve as temporary administrator of the fund and exercise all~~  
14 ~~duties and powers of the board.~~

15           Sec. 6m. (1) The utility consumer representation fund is  
16 created as a special fund. The state treasurer shall be the  
17 custodian of the fund and shall maintain a separate account of the  
18 money in the fund. The money in the fund shall be invested in the  
19 bonds, notes, and other evidences of indebtedness issued or insured  
20 by the United States government and its agencies, and in prime  
21 commercial paper. The state treasurer shall release money from the  
22 fund, including interest earned, in the manner and at the time  
23 directed by the board.

24           (2) Except as provided in subsection ~~(6)~~, **(5)**, each energy  
25 utility that has applied to the ~~public service~~ commission for the  
26 initiation of an energy cost recovery proceeding shall remit to the  
27 fund before or upon filing its initial application for that

1 proceeding, and on or before the first anniversary of that  
2 application, an amount of money determined by the board in the  
3 following manner:

4 (a) In the case of an energy utility company serving at least  
5 100,000 customers in this state, ~~an amount that bears to~~  
6 ~~\$300,000.00, multiplied~~ **ITS PROPORTIONAL SHARE OF \$900,000.00**  
7 **ADJUSTED ANNUALLY** by a factor as provided in subsection (4). ~~the~~  
8 ~~same proportion as~~ **THIS ADJUSTED AMOUNT SHALL BECOME THE NEW BASE**  
9 **AMOUNT TO WHICH THE FACTOR PROVIDED IN SUBSECTION (4) SHALL BE**  
10 **APPLIED IN THE SUCCEEDING YEAR. A UTILITY'S PROPORTIONAL SHARE**  
11 **SHALL BE CALCULATED BY DIVIDING** the company's jurisdictional ~~1981~~  
12 total operating revenues **FOR THE PRECEDING YEAR**, as stated in its  
13 annual report, ~~bear to the jurisdictional 1981~~ **BY THE** total  
14 operating revenues **FOR THE PRECEDING YEAR** of all energy utility  
15 companies serving at least 100,000 customers in this state. This  
16 amount shall be made available by the board for use by the attorney  
17 general for the purposes described in subsection ~~(17)~~ **(16)**.

18 (b) In the case of an energy utility company serving at least  
19 100,000 residential customers in this state, ~~an amount that bears~~  
20 ~~to \$300,000.00, multiplied~~ **ITS PROPORTIONAL SHARE OF \$650,000.00**  
21 **ADJUSTED ANNUALLY** by a factor as provided in subsection (4). ~~the~~  
22 ~~same proportion as~~ **THIS ADJUSTED AMOUNT SHALL BECOME THE NEW BASE**  
23 **AMOUNT TO WHICH THE FACTOR PROVIDED IN SUBSECTION (4) SHALL BE**  
24 **APPLIED IN THE SUCCEEDING YEAR. A UTILITY'S PROPORTIONAL SHARE**  
25 **SHALL BE CALCULATED BY DIVIDING** the company's jurisdictional ~~1981~~  
26 gross revenues from residential tariff sales ~~bear to the~~  
27 jurisdictional ~~1981~~ **FOR THE PRECEDING YEAR BY THE** gross revenues

1 from residential tariff sales FOR THE PRECEDING YEAR of all energy  
2 utility companies serving at least 100,000 residential customers in  
3 this state. This amount shall be used for grants under subsection  
4 ~~(11)~~(10).

5 (C) IN THE CASE OF AN ENERGY UTILITY COMPANY SERVING FEWER  
6 THAN 100,000 CUSTOMERS IN THIS STATE, ITS PROPORTIONAL SHARE OF  
7 \$100,000.00 ADJUSTED ANNUALLY BY A FACTOR AS PROVIDED IN SUBSECTION  
8 (4). THIS ADJUSTED AMOUNT SHALL BECOME THE NEW BASE AMOUNT TO WHICH  
9 THE FACTOR PROVIDED IN SUBSECTION (4) SHALL BE APPLIED IN THE  
10 SUCCEEDING YEAR. A UTILITY'S PROPORTIONAL SHARE SHALL BE CALCULATED  
11 BY DIVIDING THE COMPANY'S JURISDICTIONAL TOTAL OPERATING REVENUES  
12 FOR THE PRECEDING YEAR, AS STATED IN ITS ANNUAL REPORT, BY THE  
13 TOTAL OPERATING REVENUES FOR THE PRECEDING YEAR OF ALL ENERGY  
14 UTILITY COMPANIES SERVING FEWER THAN 100,000 CUSTOMERS IN THIS  
15 STATE. THIS AMOUNT SHALL BE MADE AVAILABLE BY THE BOARD FOR USE BY  
16 THE ATTORNEY GENERAL FOR THE PURPOSES DESCRIBED IN SUBSECTION (16).

17 (D) IN THE CASE OF AN ENERGY UTILITY COMPANY SERVING FEWER  
18 THAN 100,000 RESIDENTIAL CUSTOMERS IN THIS STATE, ITS PROPORTIONAL  
19 SHARE OF \$100,000.00 ADJUSTED ANNUALLY BY A FACTOR AS PROVIDED IN  
20 SUBSECTION (4). THIS ADJUSTED AMOUNT SHALL BECOME THE NEW BASE  
21 AMOUNT TO WHICH THE FACTOR PROVIDED IN SUBSECTION (4) SHALL BE  
22 APPLIED IN THE SUCCEEDING YEAR. A UTILITY'S PROPORTIONAL SHARE  
23 SHALL BE CALCULATED BY DIVIDING THE COMPANY'S JURISDICTIONAL GROSS  
24 REVENUES FROM RESIDENTIAL TARIFF SALES FOR THE PRECEDING YEAR BY  
25 THE GROSS REVENUES FROM RESIDENTIAL TARIFF SALES FOR THE PRECEDING  
26 YEAR OF ALL ENERGY UTILITY COMPANIES SERVING FEWER THAN 100,000  
27 RESIDENTIAL CUSTOMERS IN THIS STATE. THIS AMOUNT SHALL BE USED FOR

1 **GRANTS UNDER SUBSECTION (10).**

2 (3) Payments made by an energy utility under subsection (2) (a)  
3 **OR (C)** are operating expenses of the utility that the ~~public~~  
4 ~~service~~-commission shall permit the utility to charge to its  
5 customers. Payments made by a utility under subsection (2) (b) **OR**  
6 **(D)** are operating expenses of the utility that the ~~public service~~  
7 commission shall permit the utility to charge to its residential  
8 customers.

9 (4) For purposes of subsection (2), the factor shall be set by  
10 the board at a level not to exceed the percentage increase in the  
11 index known as the consumer price index for urban wage earners and  
12 clerical workers, select areas, all items indexed, for the Detroit  
13 standard metropolitan statistical area, compiled by the ~~bureau of~~  
14 ~~labor statistics~~ **BUREAU OF LABOR STATISTICS** of the United States  
15 ~~department of labor,~~ **DEPARTMENT OF LABOR**, or any successor agency,  
16 that has occurred between January ~~1981~~ **OF THE PRECEDING YEAR** and  
17 January of the year in which the payment is required to be made. In  
18 the event that more than 1 such index is compiled, the index  
19 yielding the largest payment shall be the maximum allowable factor.  
20 The board shall advise utilities of the factor.

21 ~~— (5) On or before the second and succeeding anniversaries of~~  
22 ~~its initial application for an energy cost recovery proceeding, an~~  
23 ~~energy utility shall remit to the board amounts equal to 5/6 of the~~  
24 ~~amounts required under subsection (2).~~

25 (5) ~~(6)~~ The remittance requirements of this section do not  
26 apply to an energy utility organized as a cooperative corporation  
27 under sections 98 to 109 of 1931 PA 327, MCL 450.98 to 450.109, and

1 grants from the fund shall not be used to participate in an energy  
2 cost recovery proceeding primarily affecting such a utility.

3 (6) ~~(7)~~—In the event of a dispute between the board and an  
4 energy utility about the amount of payment due, the utility shall  
5 pay the undisputed amount and, if the utility and the board cannot  
6 agree, the board may initiate civil action in the circuit court for  
7 Ingham ~~county~~ **COUNTY** for recovery of the disputed amount. The  
8 commission shall not accept or take action on an application for an  
9 energy cost recovery proceeding from an energy utility subject to  
10 this section that has not fully paid undisputed remittances  
11 required by this section.

12 (7) ~~(8)~~—The commission shall not accept or take action on an  
13 application for an energy cost recovery proceeding from an energy  
14 utility subject to this section until 30 days after it has been  
15 notified by the board ~~or the director of the energy administration,~~  
16 ~~if section 6/(13) is applicable,~~ that the board ~~or the director~~ is  
17 ready to process grant applications, will transfer funds payable to  
18 the attorney general immediately upon the receipt of those funds,  
19 and will within 30 days approve grants and remit funds to qualified  
20 grant applicants.

21 (8) ~~(9)~~—The board may accept a gift or grant from any source  
22 to be deposited in the fund if the conditions or purposes of the  
23 gift or grant are consistent with this section.

24 (9) ~~(10)~~—The costs of operation and expenses incurred by the  
25 board in performing its duties under this section and section 6/,  
26 including remuneration to board members, shall be paid from the  
27 fund. A maximum of 5% of the annual receipts of the fund may be

1 budgeted and used to pay expenses other than grants made under  
2 subsection ~~(11)~~-(10).

3 (10) ~~(11)~~—The net grant proceeds shall finance a grant program  
4 from which the board may award to an applicant an amount that the  
5 board determines shall be used for the purposes set forth in this  
6 section.

7 (11) ~~(12)~~—The board shall create and make available to  
8 applicants an application form. Each applicant shall indicate on  
9 the application how the applicant meets the eligibility  
10 requirements provided for in this section and how the applicant  
11 proposes to use a grant from the fund to participate in 1 or more  
12 proceedings as authorized in subsection ~~(17)~~-(16) that have been or  
13 are expected to be filed. **EACH APPLICANT SHALL ALSO IDENTIFY ON THE**  
14 **APPLICATION ANY ADDITIONAL FUNDS OR RESOURCES, OTHER THAN THE GRANT**  
15 **FUNDS BEING REQUESTED, THAT ARE TO BE USED TO PARTICIPATE IN THE**  
16 **PROCEEDING FOR WHICH THE GRANT IS BEING REQUESTED AND HOW THOSE**  
17 **FUNDS OR RESOURCES WILL BE UTILIZED.** The board shall receive an  
18 application requesting a grant from the fund only from a nonprofit  
19 organization or a unit of local government in this state. The board  
20 shall consider only applications for grants containing proposals  
21 that are consistent with subsections ~~(17)~~-(16) and ~~(18)~~-(17) and  
22 that serve the interests of residential utility consumers. For  
23 purposes of making grants, the board may consider ~~protection of the~~  
24 ~~environment, energy conservation, the creation of employment and a~~  
25 ~~healthy economy in the state, and~~ **ENERGY WASTE REDUCTION, DEMAND**  
26 **RESPONSE, AND RATE DESIGN OPTIONS TO ENCOURAGE ENERGY CONSERVATION,**  
27 **ENERGY WASTE REDUCTION, AND DEMAND RESPONSE, AS WELL AS the**

1 maintenance of adequate energy resources. The board shall not  
2 consider an application that primarily benefits the applicant or a  
3 service provided or administered by the applicant. The board shall  
4 not consider an application from a nonprofit organization if 1 of  
5 the organization's principal interests or unifying principles is  
6 the welfare of a utility or its investors or employees, or the  
7 welfare of 1 or more businesses or industries, other than farms not  
8 owned or operated by a corporation, that receive utility service  
9 ordinarily and primarily for use in connection with the profit-  
10 seeking manufacture, sale, or distribution of goods or services.  
11 Mere ownership of securities by a nonprofit organization or its  
12 members does not disqualify an application submitted by that  
13 organization.

14 (12) ~~(13)~~—The board shall encourage the representation of the  
15 interests of identifiable types of residential utility consumers  
16 whose interests may differ, including various social and economic  
17 classes and areas of the state, and if necessary, may make grants  
18 to more than 1 applicant whose applications are related to a  
19 similar issue to achieve this type of representation. In addition,  
20 the board shall consider and balance the following criteria in  
21 determining whether to make a grant to an applicant:

22 (a) Evidence of the applicant's competence, experience, and  
23 commitment to advancing the interests of residential utility  
24 consumers.

25 **(B) THE ANTICIPATED INVOLVEMENT OF THE ATTORNEY GENERAL IN A**  
26 **PROCEEDING AND WHETHER ACTIVITIES OF THE APPLICANT WILL BE**  
27 **DUPLICATIVE OR SUPPLEMENTAL TO THOSE OF THE ATTORNEY GENERAL.**

1           (C) ~~(b)~~—In the case of a nongovernmental applicant, the extent  
2 to which the applicant is representative of or has a previous  
3 history of advocating the interests of citizens, especially  
4 residential utility consumers.

5           (D) ~~(c)~~—The anticipated effect of the proposal contained in  
6 the application on residential utility consumers, including the  
7 immediate and long-term impacts of the proposal.

8           (E) ~~(d)~~—Evidence demonstrating the potential for continuity of  
9 effort and the development of expertise in relation to the proposal  
10 contained in the application.

11           (F) ~~(e)~~—The uniqueness or innovativeness of an applicant's  
12 position or point of view **AS IT RELATES TO ADVOCATING FOR**  
13 **RESIDENTIAL UTILITY CONSUMERS CONCERNING ENERGY COSTS OR RATES**, and  
14 the probability and desirability of that position or point of view  
15 prevailing.

16           (13) ~~(14)~~—As an alternative to choosing between 2 or more  
17 applications that have similar proposals, the board may invite 2 or  
18 more of the applicants to file jointly and award a grant to be  
19 managed cooperatively.

20           (14) ~~(15)~~—The board shall make disbursements pursuant to a  
21 grant in advance of an applicant's proposed actions as set forth in  
22 the application if necessary to enable the applicant to initiate,  
23 continue, or complete the proposed actions.

24           (15) ~~(16)~~—Any notice to utility customers and the general  
25 public of hearings or other state proceedings in which grants from  
26 the fund may be used shall contain a notice of the availability of  
27 the fund and the address of the board.

1           (16) ~~(17)~~ The annual receipts and interest earned, less  
 2 administrative costs, may be used only for participation in  
 3 administrative and judicial proceedings under sections **6A**, 6h, ~~6i~~,  
 4 6j, and ~~6k~~, **6S, AND 6T, AND** in federal administrative and judicial  
 5 proceedings that directly affect the energy costs **OR RATES** paid by  
 6 Michigan energy utilities, and in cost allocation and rate design  
 7 ~~proceedings initiated under section 11(3)~~. **UTILITY CUSTOMERS IN**  
 8 **THIS STATE.** Amounts that have been in the fund more than 12 months  
 9 may be retained in the fund for future ~~grants~~, **PROCEEDINGS AND ANY**  
 10 **UNEXPENDED MONEY IN THE FUND SHALL BE RESERVED TO FULFILL THE**  
 11 **PURPOSES FOR WHICH IT WAS APPROPRIATED** or may be returned to energy  
 12 utility companies or used to offset their future remittances in  
 13 proportion to their previous remittances to the fund, as the board  
 14 ~~determines~~ **AND ATTORNEY GENERAL DETERMINE** will best serve the  
 15 interests of consumers.

16           (17) ~~(18)~~ The following conditions shall apply to all grants  
 17 from the fund:

18           (a) Disbursements from the fund may be used only to advocate  
 19 the interests of **RESIDENTIAL** energy utility customers ~~or classes of~~  
 20 ~~energy utility customers~~, **CONCERNING ENERGY COSTS OR RATES** and not  
 21 for representation of merely individual interests.

22           (b) The board shall attempt to maintain a reasonable  
 23 relationship between the payments from a particular energy utility  
 24 and the benefits to consumers of that utility.

25           (c) The board shall coordinate the funded activities of grant  
 26 recipients with those of the attorney general to avoid duplication  
 27 of effort **PARTICULARLY AS IT RELATES TO THE HIRING OF EXPERT**

1 **WITNESSES**, to promote supplementation of effort, and to maximize  
2 the number of hearings and proceedings with intervenor  
3 participation.

4 (18) ~~(19)~~A recipient of a grant under subsection ~~(11)~~**(10)**  
5 may use the grant only for the advancement of the proposed action  
6 approved by the board, including, but not limited to, costs of  
7 staff, hired consultants and counsel, and research.

8 **(19) A RECIPIENT OF A GRANT UNDER SUBSECTION (10) SHALL**  
9 **PREPARE FOR AND PARTICIPATE IN ALL DISCUSSIONS AMONG THE PARTIES**  
10 **DESIGNED TO FACILITATE SETTLEMENT OR NARROWING OF THE CONTESTED**  
11 **ISSUES BEFORE A HEARING IN ORDER TO MINIMIZE LITIGATION COSTS FOR**  
12 **ALL PARTIES.**

13 (20) A recipient of a grant under subsection ~~(11)~~**(10)** shall  
14 file a report with the board within 90 days following the end of  
15 the year or a shorter period for which the grant is made. The  
16 report shall be made in a form prescribed by the board and is  
17 subject to audit by the board. **THE BOARD SHALL INCLUDE EACH REPORT**  
18 **RECEIVED UNDER THIS SUBSECTION AS PART OF THE BOARD'S ANNUAL REPORT**  
19 **REQUIRED UNDER SUBSECTION (22).** The report shall include the  
20 following information:

21 (a) An account of all grant expenditures made by the grant  
22 recipient. Expenditures shall be reported within the following  
23 categories:

24 (i) Employee and contract for services costs.

25 (ii) Costs of materials and supplies.

26 (iii) Filing fees and other costs required to effectively  
27 represent residential utility consumers as provided in this

1 section.

2 (B) A DETAILED LIST OF THE REGULATORY ISSUES RAISED BY THE  
3 GRANT RECIPIENT AND HOW EACH ISSUE WAS DETERMINED BY THE  
4 COMMISSION, COURT, OR OTHER TRIBUNAL.

5 (C) ~~(b)~~ Any additional information concerning uses of the  
6 grant required by the board.

7 (21) ~~The~~ **ON OR BEFORE JULY 1 OF EACH YEAR, THE** attorney  
8 general shall file a report with the house and senate committees on  
9 appropriations ~~within 90 days following the end of each fiscal~~  
10 ~~year.~~ **AND THE HOUSE AND SENATE COMMITTEES WITH JURISDICTION OVER**  
11 **ENERGY AND UTILITY POLICY ISSUES.** The report shall include the  
12 following information:

13 (a) An account of all expenditures made by the attorney  
14 general of ~~funds~~ **MONEY** received under this section. Expenditures  
15 shall be reported within the following categories:

16 (i) Employee and contract for services costs.

17 (ii) Costs of materials and supplies.

18 (iii) Filing fees and other costs required to effectively  
19 represent utility consumers as provided in this section.

20 (b) Any additional information concerning uses of the ~~funds~~  
21 **MONEY** received under this section required by the committees.

22 (22) On or before July 1 of each calendar year, the board  
23 shall submit a detailed report to the ~~legislature~~ **HOUSE AND SENATE**  
24 **COMMITTEES WITH JURISDICTION OVER ENERGY AND UTILITY POLICY ISSUES**  
25 regarding the discharge of duties and responsibilities under this  
26 section and section 6/ during the preceding calendar year.

27 ~~— (23) By October 13, 1985, and at 3-year intervals thereafter,~~

1 ~~a senate committee chosen by the majority leader of the senate and~~  
 2 ~~a house committee chosen by the speaker of the house of~~  
 3 ~~representatives shall review the relationship between costs and~~  
 4 ~~benefits resulting from this section and sections 6h through 6l,~~  
 5 ~~and may recommend changes to the legislature.~~

6       Sec. 60. (1) As used in this section:

7       ~~— (a) "Resource recovery facility" means a facility that meets~~  
 8 ~~all of the following requirements:~~

9       ~~— (i) Has machinery, equipment, and structures installed for the~~  
 10 ~~primary purpose of recovering energy through the incineration of~~  
 11 ~~qualified solid waste, qualified landfill gas, or scrap tires.~~

12       ~~— (ii) Utilizes at least 80% of its total annual fuel input in~~  
 13 ~~the form of qualified solid waste, at least 90% of its total annual~~  
 14 ~~fuel input in the form of qualified landfill gas, or 90% of its~~  
 15 ~~total annual fuel input in the form of scrap tires, exclusive of~~  
 16 ~~fuel used for normal start up and shutdown.~~

17       ~~— (iii) Is a qualifying facility as defined by the federal~~  
 18 ~~energy regulatory commission pursuant to the public utility~~  
 19 ~~regulatory policies act of 1978, Public Law 95 617, 92 Stat. 3117.~~

20       (A) ~~(b)~~—"Qualified landfill gas" means gas reclaimed from a  
 21 type II landfill as defined ~~DESCRIBED~~ in R 299.4105 of the Michigan  
 22 ~~administrative code.~~ **ADMINISTRATIVE CODE.**

23       (B) ~~(c)~~—"Qualified solid waste" means solid waste that may be  
 24 lawfully disposed of in a type II landfill as defined ~~DESCRIBED~~ in  
 25 R 299.4105 of the Michigan ~~administrative code,~~ **ADMINISTRATIVE**  
 26 **CODE,** and which is generated within this state.

27       (C) **"RESOURCE RECOVERY FACILITY" MEANS A FACILITY THAT MEETS**

1 ALL OF THE FOLLOWING REQUIREMENTS:

2 (i) HAS MACHINERY, EQUIPMENT, AND STRUCTURES INSTALLED FOR THE  
3 PRIMARY PURPOSE OF RECOVERING ENERGY THROUGH THE INCINERATION OF  
4 QUALIFIED SOLID WASTE, QUALIFIED LANDFILL GAS, OR SCRAP TIRES.

5 (ii) UTILIZES AT LEAST 80% OF ITS TOTAL ANNUAL FUEL INPUT IN  
6 THE FORM OF QUALIFIED SOLID WASTE, AT LEAST 90% OF ITS TOTAL ANNUAL  
7 FUEL INPUT IN THE FORM OF QUALIFIED LANDFILL GAS, OR 90% OF ITS  
8 TOTAL ANNUAL FUEL INPUT IN THE FORM OF SCRAP TIRES, EXCLUSIVE OF  
9 FUEL USED FOR NORMAL START-UP AND SHUTDOWN.

10 (iii) IS A QUALIFYING FACILITY AS DEFINED BY THE FEDERAL  
11 ENERGY REGULATORY COMMISSION PURSUANT TO THE PUBLIC UTILITY  
12 REGULATORY POLICIES ACT OF 1978, PUBLIC LAW 95-617, 92 STAT 3117.

13 (d) "Scrap tire", "scrap tire hauler", and "scrap tire  
14 processor" mean those terms as they are defined in part 169 (~~scrap~~  
15 ~~tires~~) of the natural resources and environmental protection act,  
16 ~~Act No. 451 of the Public Acts of 1994, being sections 324.16901 to~~  
17 ~~324.16909 of the Michigan Compiled Laws. 1994 PA 451, MCL 324.16901~~  
18 ~~TO 324.16911.~~

19 (2) Public utilities with more than 500,000 customers in this  
20 state shall enter into power purchase agreements for the purchase  
21 of capacity and energy from resource recovery facilities that  
22 incinerate qualified landfill gas; that incinerate qualified solid  
23 waste, at least 50.1% of which is generated within the service  
24 areas of the public utility; or, subject to the provisions of this  
25 section, that incinerate scrap tires, under rates, charges, terms,  
26 and conditions of service that, for these facilities, may differ  
27 from those negotiated, authorized, or prescribed for purchases from

1 qualifying facilities that are not resource recovery facilities. If  
2 a resource recovery facility incinerates scrap tires, or any other  
3 tires that are obtained from outside the state, or if more than  
4 50.1% of the scrap tires or other tires are obtained outside the  
5 public utility service area, the public utility may in partial  
6 satisfaction of its obligation under this subsection purchase  
7 capacity and energy from the facility but is not obligated by this  
8 act to purchase the facility's capacity and energy. A resource  
9 recovery facility that incinerates at least 90% of its total annual  
10 fuel input in the form of scrap tires shall accept all scrap tires  
11 that first became scrap tires in the state and that are delivered  
12 to the facility by a scrap tire processor or a scrap tire hauler.  
13 The first 6,000,000 of these scrap tires delivered to the resource  
14 recovery facility each year shall be charged a rate not greater  
15 than an amount equal to \$34.50 per ton, increased each calendar  
16 quarter beginning July 1, 1990, by an amount equal to the increase  
17 in the all items version of the consumer price index for urban wage  
18 earners and clerical workers during the prior calendar quarter.  
19 Including power purchase agreements executed ~~prior to~~ **BEFORE** June  
20 30, 1989, this section does not apply after 120 megawatts of  
21 electric resource recovery facility capacity in a utility's service  
22 territory have been contracted and entered in commercial operation.  
23 Additionally, this section does not apply to more than the first 30  
24 megawatts of scrap tire fueled resource recovery facility capacity  
25 in the state that has been contracted and entered in commercial  
26 operation. Excluding rate provisions, if 1 or more provisions of a  
27 purchase agreement remain in dispute, each party shall submit to

1 the commission all of the purchase agreement provisions of their  
2 last best offer and a supporting brief. On each disputed provision,  
3 the commission shall within 60 days either select or reject with  
4 recommendation the offers submitted by either party.

5 (3) A power purchase agreement entered into by a public  
6 utility for the purchase of capacity and energy from a resource  
7 recovery facility shall be filed with the commission and a  
8 contested case proceeding shall commence immediately pursuant to  
9 chapter 4 of the administrative procedures act of 1969, ~~Act No. 306~~  
10 ~~of the Public Acts of 1969, being sections 24.271 to 24.287 of the~~  
11 ~~Michigan Compiled Laws. 1969 PA 306, MCL 24.271 TO 24.287.~~

12 Notwithstanding section 6j, a power purchase agreement shall be ~~IS~~  
13 considered approved if the commission does not approve or  
14 disapprove the agreement within 6 months of the date of the filing  
15 of the agreement. Approval ~~pursuant to~~ **UNDER** this subsection  
16 constitutes prior approval under section ~~6j(13)(b)~~ **6J(11)(B)**.

17 (4) The energy rate component of all power sales contracts for  
18 resource recovery facilities shall be equal to the avoided energy  
19 cost of the purchasing utility.

20 (5) When averaged over the term of the contract, the capacity  
21 rate component of all power sales contracts for resource recovery  
22 facilities may be equal to but not less than the full avoided cost  
23 of the utility as determined by the commission. In determining the  
24 capacity rate, the commission may assume that the utility needs  
25 capacity.

26 (6) Capacity purchased by a utility ~~prior to~~ **BEFORE** January 1,  
27 2000 under a power sales contract with a resource recovery facility

1 shall not be considered directly or indirectly in determining the  
2 utility's reserve margin, reserve capacity, or other resource  
3 capability measurement. To insure compliance with this act, a  
4 resource recovery facility that incinerates scrap tires shall  
5 provide an annual accounting to the legislature and the commission.  
6 The annual accounting shall include the total amount of scrap tires  
7 incinerated at the resource recovery facility and the percentage of  
8 those scrap tires that ~~prior to~~ **BEFORE** incineration were used  
9 within this state for their original intended purpose.

10       Sec. 6s. (1) ~~An~~ **UNTIL DECEMBER 31, 2018, AN** electric utility  
11 that proposes to construct an electric generation facility, make a  
12 significant investment in an existing electric generation facility,  
13 purchase an existing electric generation facility, or enter into a  
14 power purchase agreement for the purchase of electric capacity for  
15 a period of 6 years or longer may submit an application to the  
16 commission seeking a certificate of necessity for that  
17 construction, investment, or purchase if that construction,  
18 investment, or purchase costs ~~\$500,000,000.00~~ **\$100,000,000.00** or  
19 more and a portion of the costs would be allocable to retail  
20 customers in this state. A significant investment in an electric  
21 generation facility includes a group of investments reasonably  
22 planned to be made over a multiple year period not to exceed 6  
23 years for a singular purpose such as increasing the capacity of an  
24 existing electric generation plant. The commission shall not issue  
25 a certificate of necessity under this section for any environmental  
26 upgrades to existing electric generation facilities. ~~or for a~~  
27 ~~renewable energy system.~~

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

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

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

10           (b) A certificate of necessity that the size, fuel type, and  
11 other design characteristics of the existing or proposed electric  
12 generation facility or the terms of the power purchase agreement  
13 represent the most reasonable and prudent means of meeting that  
14 power need.

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

18           (d) A certificate of necessity that the estimated purchase or  
19 capital costs of and the financing plan for the existing or  
20 proposed electric generation facility, including, but not limited  
21 to, the costs of siting and licensing a new facility and the  
22 estimated cost of power from the new or proposed electric  
23 generation facility, will be recoverable in rates from the electric  
24 utility's customers subject to subsection (4)(c).

25           (4) Within 270 days ~~of~~**AFTER** the filing of an application  
26 under this section, the commission shall issue an order granting or  
27 denying the requested certificate of necessity. The commission

1 shall hold a hearing on the application. The hearing shall be  
2 conducted as a contested case pursuant to chapter 4 of the  
3 administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to  
4 24.287. The commission shall allow intervention by interested  
5 persons. ~~Reasonable~~ **THE COMMISSION SHALL PERMIT REASONABLE**  
6 discovery ~~shall be permitted~~ before and during the hearing in order  
7 to assist parties and interested persons in obtaining evidence  
8 concerning the application, including, but not limited to, the  
9 reasonableness and prudence of the construction, investment, or  
10 purchase for which the certificate of necessity has been requested.  
11 The commission shall grant the request if it determines all of the  
12 following:

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

18 (b) The information supplied indicates that the existing or  
19 proposed electric generation facility will comply with all  
20 applicable state and federal environmental standards, laws, and  
21 rules.

22 (c) The estimated cost of power from the existing or proposed  
23 electric generation facility or the price of power specified in the  
24 proposed power purchase agreement is reasonable. The commission  
25 shall find that the cost is reasonable if, in the construction or  
26 investment in a new or existing facility, to the extent it is  
27 commercially practicable, the estimated costs are the result of

1 competitively bid engineering, procurement, and construction  
2 contracts, or in a power purchase agreement, the cost is the result  
3 of a competitive solicitation. Up to 150 days after an electric  
4 utility makes its initial filing, it may file to update its cost  
5 estimates if they have materially changed. No other aspect of the  
6 initial filing may be modified unless the application is withdrawn  
7 and refiled. A utility's filing updating its cost estimates does  
8 not extend the period for the commission to issue an order granting  
9 or denying a certificate of necessity. An affiliate of an electric  
10 utility that serves customers in this state and at least 1 other  
11 state may participate in the competitive bidding to provide  
12 engineering, procurement, and construction services to that  
13 electric utility for a project covered by this section.

14 (d) The existing or proposed electric generation facility or  
15 proposed power purchase agreement represents the most reasonable  
16 and prudent means of meeting the power need relative to other  
17 resource options for meeting power demand, including energy  
18 efficiency programs and electric transmission efficiencies.

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

24 (5) The commission may consider any other costs or information  
25 related to the costs associated with the power that would be  
26 supplied by the existing or proposed electric generation facility  
27 or pursuant to the proposed purchase agreement or alternatives to

1 the proposal raised by intervening parties.

2 (6) In a certificate of necessity under this section, the  
3 commission shall specify the costs approved for the construction of  
4 or significant investment in the electric generation facility, the  
5 price approved for the purchase of the existing electric generation  
6 facility, or the price approved for the purchase of power pursuant  
7 to the terms of the power purchase agreement. **FOR POWER PURCHASE**  
8 **AGREEMENTS THAT AN ELECTRIC UTILITY ENTERS INTO WITH AN ENTITY THAT**  
9 **IS NOT AFFILIATED WITH THAT ELECTRIC UTILITY AFTER THE EFFECTIVE**  
10 **DATE OF THE AMENDATORY ACT THAT ADDED SECTION 6T, THE COMMISSION**  
11 **MAY AUTHORIZE A RATE OF RETURN THAT DOES NOT EXCEED THE ELECTRIC**  
12 **UTILITY'S WEIGHTED AVERAGE COST OF CAPITAL.**

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

18 (8) If the commission denies any of the relief requested by an  
19 electric utility, the electric utility may withdraw its application  
20 or proceed with the proposed construction, purchase, investment, or  
21 power purchase agreement without a certificate and the assurances  
22 granted under this section.

23 (9) Once the electric generation facility or power purchase  
24 agreement is considered used and useful or as otherwise provided in  
25 subsection (12), the commission shall include in an electric  
26 utility's retail rates all reasonable and prudent costs for an  
27 electric generation facility or power purchase agreement for which

1 a certificate of necessity has been granted. The commission shall  
2 not disallow recovery of costs an electric utility incurs in  
3 constructing, investing in, or purchasing an electric generation  
4 facility or in purchasing power pursuant to a power purchase  
5 agreement for which a certificate of necessity has been granted, if  
6 the costs do not exceed the costs approved by the commission in the  
7 certificate. **THE PORTION OF THE COST OF A PLANT, FACILITY, OR POWER**  
8 **PURCHASE AGREEMENT THAT EXCEEDS THE COST APPROVED BY THE COMMISSION**  
9 **IS PRESUMED TO HAVE BEEN INCURRED DUE TO A LACK OF PRUDENCE.** Once  
10 the electric generation facility or power purchase agreement is  
11 considered used and useful or as otherwise provided in subsection  
12 (12), the commission shall include in the electric utility's retail  
13 rates costs actually incurred by the electric utility that exceed  
14 the costs approved by the commission only if the commission finds  
15 **BY A PREPONDERANCE OF THE EVIDENCE** that the additional costs are  
16 ~~reasonable and prudent. If the actual costs incurred by the~~  
17 ~~electric utility exceed the costs approved by the commission, the~~  
18 ~~electric utility has the burden of proving by a preponderance of~~  
19 ~~the evidence that the costs are reasonable and prudent. The portion~~  
20 ~~of the cost of a plant, facility, or power purchase agreement which~~  
21 ~~exceeds 110% of the cost approved by the commission is presumed to~~  
22 ~~have been incurred due to a lack of prudence. The commission may~~  
23 ~~include any or all of the portion of the cost in excess of 110% of~~  
24 ~~the cost approved by the commission if the commission finds by a~~  
25 ~~preponderance of the evidence that the costs were prudently~~  
26 incurred.

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

1 ~~act that added this section, the~~ **THE** commission shall adopt  
2 standard application filing forms and instructions for use in all  
3 requests for a certificate of necessity under this section. The  
4 commission may ~~, in its discretion,~~ modify the standard application  
5 filing forms and instructions adopted under this section.

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

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

12 (b) The type of generation technology proposed for the  
13 generation facility and the proposed capacity of the generation  
14 facility, including projected fuel and regulatory costs under  
15 various reasonable scenarios.

16 (c) Projected energy and capacity purchased or produced by the  
17 electric utility ~~pursuant to~~ **UNDER** any renewable portfolio  
18 standard.

19 (d) Projected energy efficiency program savings under any  
20 energy efficiency program requirements and the projected costs for  
21 that program.

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

24 (f) An analysis of the availability and costs of other  
25 electric resources that could defer, displace, or partially  
26 displace the proposed generation facility or purchased power  
27 agreement, including additional renewable energy, energy efficiency

1 programs, load management, and demand response, beyond those  
2 amounts contained in subdivisions (c) to (e).

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

4 (12) The commission shall allow financing interest cost  
5 recovery in an electric utility's base rates on construction work  
6 in progress for capital improvements approved under this section  
7 prior to the assets being considered used and useful. Regardless of  
8 whether or not the commission authorizes base rate treatment for  
9 construction work in progress financing interest expense, an  
10 electric utility shall be allowed to recognize, accrue, and defer  
11 the allowance for funds used during construction related to equity  
12 capital.

13 ~~—— (13) As used in this section, "renewable energy system" means~~  
14 ~~that term as defined in the clean, renewable, and efficient energy~~  
15 ~~act.~~

16 **SEC. 6T. (1) THE COMMISSION SHALL, WITHIN 120 DAYS OF THE**  
17 **EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION AND**  
18 **EVERY 3 YEARS THEREAFTER, COMMENCE A PROCEEDING AND, IN**  
19 **CONSULTATION WITH THE MICHIGAN AGENCY FOR ENERGY, THE DEPARTMENT OF**  
20 **ENVIRONMENTAL QUALITY, AND OTHER INTERESTED PARTIES, DO ALL OF THE**  
21 **FOLLOWING AS PART OF THE PROCEEDING:**

22 (A) CONDUCT AN ASSESSMENT OF THE POTENTIAL FOR ENERGY WASTE  
23 REDUCTION IN THIS STATE, BASED ON WHAT IS ECONOMICALLY AND  
24 TECHNOLOGICALLY FEASIBLE, AS WELL AS WHAT IS REASONABLY ACHIEVABLE.

25 (B) CONDUCT AN ASSESSMENT FOR THE USE OF DEMAND RESPONSE  
26 PROGRAMS IN THIS STATE, BASED ON WHAT IS ECONOMICALLY AND  
27 TECHNOLOGICALLY FEASIBLE, AS WELL AS WHAT IS REASONABLY ACHIEVABLE.

1 THE ASSESSMENT SHALL EXPRESSLY ACCOUNT FOR ADVANCED METERING  
2 INFRASTRUCTURE THAT HAS ALREADY BEEN INSTALLED IN THIS STATE AND  
3 SHALL SEEK TO FULLY MAXIMIZE POTENTIAL BENEFITS TO RATEPAYERS IN  
4 LOWERING UTILITY BILLS.

5 (C) IDENTIFY SIGNIFICANT STATE OR FEDERAL ENVIRONMENTAL  
6 REGULATIONS, LAWS, OR RULES AND HOW EACH REGULATION, LAW, OR RULE  
7 WOULD AFFECT ELECTRIC UTILITIES IN THIS STATE.

8 (D) IDENTIFY ANY FORMALLY PROPOSED STATE OR FEDERAL  
9 ENVIRONMENTAL REGULATION, LAW, OR RULE THAT HAS BEEN PUBLISHED IN  
10 THE MICHIGAN REGISTER OR THE FEDERAL REGISTER AND HOW THE PROPOSED  
11 REGULATION, LAW, OR RULE WOULD AFFECT ELECTRIC UTILITIES IN THIS  
12 STATE.

13 (E) IDENTIFY ANY REQUIRED PLANNING RESERVE MARGINS AND LOCAL  
14 CLEARING REQUIREMENTS IN AREAS OF THIS STATE.

15 (F) ESTABLISH THE MODELING SCENARIOS AND ASSUMPTIONS EACH  
16 ELECTRIC UTILITY SHOULD INCLUDE IN ADDITION TO ITS OWN SCENARIOS  
17 AND ASSUMPTIONS IN DEVELOPING ITS INTEGRATED RESOURCE PLAN FILED  
18 UNDER SUBSECTION (3), INCLUDING, BUT NOT LIMITED TO, ALL OF THE  
19 FOLLOWING:

20 (i) ANY REQUIRED PLANNING RESERVE MARGINS AND LOCAL CLEARING  
21 REQUIREMENTS.

22 (ii) ALL APPLICABLE STATE AND FEDERAL ENVIRONMENTAL  
23 REGULATIONS, LAWS, AND RULES IDENTIFIED IN THIS SUBSECTION.

24 (iii) ANY SUPPLY-SIDE AND DEMAND-SIDE RESOURCES THAT  
25 REASONABLY COULD ADDRESS ANY NEED FOR ADDITIONAL GENERATION  
26 CAPACITY, INCLUDING, BUT NOT LIMITED TO, THE TYPE OF GENERATION  
27 TECHNOLOGY FOR ANY PROPOSED GENERATION FACILITY, PROJECTED ENERGY

1 WASTE REDUCTION SAVINGS, AND PROJECTED LOAD MANAGEMENT AND DEMAND  
2 RESPONSE SAVINGS.

3 (iv) ANY REGIONAL INFRASTRUCTURE LIMITATIONS IN THIS STATE.

4 (v) THE PROJECTED COSTS OF DIFFERENT TYPES OF FUEL USED FOR  
5 ELECTRIC GENERATION.

6 (G) ALLOW OTHER STATE AGENCIES TO PROVIDE INPUT REGARDING ANY  
7 OTHER REGULATORY REQUIREMENTS THAT SHOULD BE INCLUDED IN MODELING  
8 SCENARIOS OR ASSUMPTIONS.

9 (H) PUBLISH A COPY OF THE PROPOSED MODELING SCENARIOS AND  
10 ASSUMPTIONS TO BE USED IN INTEGRATED RESOURCE PLANS ON THE  
11 COMMISSION'S WEBSITE.

12 (I) BEFORE ISSUING THE FINAL MODELING SCENARIOS AND  
13 ASSUMPTIONS EACH ELECTRIC UTILITY SHOULD INCLUDE IN DEVELOPING ITS  
14 INTEGRATED RESOURCE PLAN, RECEIVE WRITTEN COMMENTS AND HOLD  
15 HEARINGS TO SOLICIT PUBLIC INPUT REGARDING THE PROPOSED MODELING  
16 SCENARIOS AND ASSUMPTIONS.

17 (2) A PROCEEDING COMMENCED UNDER SUBSECTION (1) SHALL BE  
18 COMPLETED WITHIN 120 DAYS, AND SHALL NOT BE A CONTESTED CASE UNDER  
19 CHAPTER 4 OF THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA  
20 306, MCL 24.271 TO 24.287. THE DETERMINATION OF THE MODELING  
21 ASSUMPTIONS FOR INTEGRATED RESOURCE PLANS MADE UNDER SUBSECTION (1)  
22 IS NOT CONSIDERED A FINAL ORDER FOR PURPOSES OF JUDICIAL REVIEW.  
23 THE DETERMINATIONS MADE UNDER SUBSECTION (1) ARE ONLY SUBJECT TO  
24 JUDICIAL REVIEW AS PART OF THE FINAL COMMISSION ORDER APPROVING AN  
25 INTEGRATED RESOURCE PLAN UNDER THIS SECTION.

26 (3) NOT LATER THAN 2 YEARS AFTER THE EFFECTIVE DATE OF THE  
27 AMENDATORY ACT THAT ADDED THIS SECTION, EACH ELECTRIC UTILITY WHOSE

1 RATES ARE REGULATED BY THE COMMISSION SHALL FILE WITH THE  
2 COMMISSION AN INTEGRATED RESOURCE PLAN THAT PROVIDES A 5-YEAR, 10-  
3 YEAR, AND 15-YEAR PROJECTION OF THE UTILITY'S LOAD OBLIGATIONS AND  
4 A PLAN TO MEET THOSE OBLIGATIONS, TO MEET THE UTILITY'S  
5 REQUIREMENTS TO PROVIDE GENERATION RELIABILITY, INCLUDING MEETING  
6 PLANNING RESERVE MARGIN AND LOCAL CLEARING REQUIREMENTS DETERMINED  
7 BY THE COMMISSION OR THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR,  
8 AND TO MEET ALL APPLICABLE STATE AND FEDERAL RELIABILITY AND  
9 ENVIRONMENTAL REGULATIONS OVER THE ENSUING TERM OF THE PLAN. THE  
10 COMMISSION SHALL ISSUE AN ORDER ESTABLISHING FILING REQUIREMENTS,  
11 INCLUDING APPLICATION FORMS AND INSTRUCTIONS, AND FILING DEADLINES  
12 FOR AN INTEGRATED RESOURCE PLAN FILED BY AN ELECTRIC UTILITY WHOSE  
13 RATES ARE REGULATED BY THE COMMISSION. THE ELECTRIC UTILITY'S PLAN  
14 MAY INCLUDE ALTERNATIVE MODELING SCENARIOS AND ASSUMPTIONS IN  
15 ADDITION TO THOSE IDENTIFIED UNDER SUBSECTION (1).

16 (4) FOR AN ELECTRIC UTILITY WITH FEWER THAN 1,000,000  
17 CUSTOMERS IN THIS STATE WHOSE RATES ARE REGULATED BY THE  
18 COMMISSION, THE COMMISSION MAY ISSUE AN ORDER IMPLEMENTING SEPARATE  
19 FILING REQUIREMENTS, REVIEW CRITERIA, AND APPROVAL STANDARDS THAT  
20 DIFFER FROM THOSE ESTABLISHED UNDER SUBSECTION (3). AN ELECTRIC  
21 UTILITY PROVIDING ELECTRIC TARIFF SERVICE TO CUSTOMERS BOTH IN THIS  
22 STATE AND IN AT LEAST 1 OTHER STATE MAY DESIGN ITS INTEGRATED  
23 RESOURCE PLAN TO COVER ALL ITS CUSTOMERS ON THAT MULTISTATE BASIS.  
24 IF AN ELECTRIC UTILITY HAS FILED A MULTISTATE INTEGRATED RESOURCE  
25 PLAN THAT INCLUDES ITS SERVICE AREA IN THIS STATE WITH THE RELEVANT  
26 UTILITY REGULATORY COMMISSION IN ANOTHER STATE IN WHICH IT PROVIDES  
27 TARIFF SERVICE TO RETAIL CUSTOMERS, THE COMMISSION SHALL ACCEPT

1 THAT INTEGRATED RESOURCE PLAN FILING FOR FILING PURPOSES IN THIS  
2 STATE. HOWEVER, THE COMMISSION MAY REQUIRE SUPPLEMENTAL INFORMATION  
3 IF NECESSARY AS PART OF ITS EVALUATION AND DETERMINATION OF WHETHER  
4 TO APPROVE THE PLAN. UPON REQUEST OF AN ELECTRIC UTILITY, THE  
5 COMMISSION MAY ADJUST THE FILING DATES FOR A MULTISTATE INTEGRATED  
6 RESOURCE PLAN FILING IN THIS STATE TO PLACE ITS REVIEW ON THE SAME  
7 TIMELINE AS OTHER RELEVANT STATE REVIEWS.

8 (5) AN INTEGRATED RESOURCE PLAN SHALL INCLUDE ALL OF THE  
9 FOLLOWING:

10 (A) A LONG-TERM FORECAST OF THE ELECTRIC UTILITY'S SALES AND  
11 PEAK DEMAND UNDER VARIOUS REASONABLE SCENARIOS.

12 (B) THE TYPE OF GENERATION TECHNOLOGY PROPOSED FOR A  
13 GENERATION FACILITY CONTAINED IN THE PLAN AND THE PROPOSED CAPACITY  
14 OF THE GENERATION FACILITY, INCLUDING PROJECTED FUEL COSTS UNDER  
15 VARIOUS REASONABLE SCENARIOS.

16 (C) PROJECTED ENERGY AND CAPACITY PURCHASED OR PRODUCED BY THE  
17 ELECTRIC UTILITY FROM A RENEWABLE ENERGY RESOURCE. THE PROJECTED  
18 AMOUNT UNDER THIS SUBDIVISION MUST EQUAL AT LEAST THE AMOUNT OF  
19 RENEWABLE ENERGY REQUIRED BY SECTION 27 OF THE CLEAN AND RENEWABLE  
20 ENERGY AND ENERGY WASTE REDUCTION ACT, 2008 PA 295, MCL 460.1027,  
21 AS IT EXISTED BEFORE THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT  
22 ADDED SECTION 6T.

23 (D) DETAILS REGARDING THE UTILITY'S PLAN TO ELIMINATE ENERGY  
24 WASTE, INCLUDING THE TOTAL AMOUNT OF ENERGY WASTE REDUCTION  
25 EXPECTED TO BE ACHIEVED ANNUALLY, THE COST OF THE PLAN, AND THE  
26 EXPECTED SAVINGS FOR ITS RETAIL CUSTOMERS.

27 (E) AN ANALYSIS OF HOW THE COMBINED AMOUNTS OF RENEWABLE

1 ENERGY AND ENERGY WASTE REDUCTION ACHIEVED UNDER THE PLAN COMPARE  
2 TO THE RENEWABLE ENERGY RESOURCES AND ENERGY WASTE REDUCTION GOAL  
3 PROVIDED IN SECTION 1 OF THE CLEAN AND RENEWABLE ENERGY AND ENERGY  
4 WASTE REDUCTION ACT, 2008 PA 295, MCL 460.1001.

5 (F) PROJECTED LOAD MANAGEMENT AND DEMAND RESPONSE SAVINGS FOR  
6 THE ELECTRIC UTILITY AND THE PROJECTED COSTS FOR THOSE PROGRAMS.

7 (G) PROJECTED ENERGY AND CAPACITY PURCHASED OR PRODUCED BY THE  
8 ELECTRIC UTILITY FROM A COGENERATION RESOURCE.

9 (H) AN ANALYSIS OF POTENTIAL NEW OR UPGRADED ELECTRIC  
10 TRANSMISSION OPTIONS FOR THE ELECTRIC UTILITY.

11 (I) DATA REGARDING THE UTILITY'S CURRENT GENERATION PORTFOLIO,  
12 INCLUDING THE AGE, CAPACITY FACTOR, LICENSING STATUS, AND REMAINING  
13 ESTIMATED TIME OF OPERATION FOR EACH FACILITY IN THE PORTFOLIO.

14 (J) PLANS FOR MEETING CURRENT AND FUTURE CAPACITY NEEDS WITH  
15 THE COST ESTIMATES FOR ALL PROPOSED CONSTRUCTION AND MAJOR  
16 INVESTMENTS, INCLUDING ANY TRANSMISSION OR DISTRIBUTION  
17 INFRASTRUCTURE THAT WOULD BE REQUIRED TO SUPPORT THE PROPOSED  
18 CONSTRUCTION OR INVESTMENT, AND POWER PURCHASE AGREEMENTS.

19 (K) AN ANALYSIS OF THE COST, CAPACITY FACTOR, AND VIABILITY OF  
20 ALL REASONABLE GENERATION OPTIONS AVAILABLE TO MEET PROJECTED  
21 CAPACITY NEEDS, INCLUDING, BUT NOT LIMITED TO, EXISTING ELECTRIC  
22 GENERATION FACILITIES IN THIS STATE.

23 (L) PROJECTED RATE IMPACT FOR THE PERIODS COVERED BY THE PLAN.

24 (M) HOW THE UTILITY WILL COMPLY WITH ALL APPLICABLE STATE AND  
25 FEDERAL ENVIRONMENTAL REGULATIONS, LAWS, AND RULES, AND THE  
26 PROJECTED COSTS OF COMPLYING WITH THOSE REGULATIONS, LAWS, AND  
27 RULES.

1 (N) A FORECAST OF THE UTILITY'S PEAK DEMAND AND DETAILS  
2 REGARDING THE AMOUNT OF PEAK DEMAND REDUCTION THE UTILITY EXPECTS  
3 TO ACHIEVE AND THE ACTIONS THE UTILITY PROPOSES TO TAKE IN ORDER TO  
4 ACHIEVE THAT PEAK DEMAND REDUCTION.

5 (6) BEFORE FILING AN INTEGRATED RESOURCE PLAN UNDER THIS  
6 SECTION, EACH ELECTRIC UTILITY WHOSE RATES ARE REGULATED BY THE  
7 COMMISSION SHALL ISSUE A REQUEST FOR PROPOSALS TO PROVIDE ANY NEW  
8 SUPPLY-SIDE GENERATION CAPACITY RESOURCES NEEDED TO SERVE THE  
9 UTILITY'S REASONABLY PROJECTED ELECTRIC LOAD, APPLICABLE PLANNING  
10 RESERVE MARGIN, AND LOCAL CLEARING REQUIREMENT FOR ITS CUSTOMERS IN  
11 THIS STATE AND CUSTOMERS THE UTILITY SERVES IN OTHER STATES DURING  
12 THE INITIAL 3-YEAR PLANNING PERIOD TO BE CONSIDERED IN EACH  
13 INTEGRATED RESOURCE PLAN TO BE FILED UNDER THIS SECTION. AN  
14 ELECTRIC UTILITY SHALL DEFINE QUALIFYING PERFORMANCE STANDARDS,  
15 CONTRACT TERMS, TECHNICAL COMPETENCE, CAPABILITY, RELIABILITY,  
16 CREDITWORTHINESS, PAST PERFORMANCE, AND OTHER CRITERIA THAT  
17 RESPONSES AND RESPONDENTS TO THE REQUEST FOR PROPOSALS MUST MEET IN  
18 ORDER TO BE CONSIDERED BY THE UTILITY IN ITS INTEGRATED RESOURCE  
19 PLAN TO BE FILED UNDER THIS SECTION. RESPONDENTS TO A REQUEST FOR  
20 PROPOSALS MAY REQUEST THAT CERTAIN PROPRIETARY INFORMATION BE  
21 EXEMPT FROM PUBLIC DISCLOSURE AS ALLOWED BY THE COMMISSION. A  
22 UTILITY THAT ISSUES A REQUEST FOR PROPOSALS UNDER THIS SUBSECTION  
23 SHALL USE THE RESULTING PROPOSALS TO INFORM ITS INTEGRATED RESOURCE  
24 PLAN FILED UNDER THIS SECTION AND INCLUDE ALL OF THE SUBMITTED  
25 PROPOSALS AS ATTACHMENTS TO ITS INTEGRATED RESOURCE PLAN FILING  
26 REGARDLESS OF WHETHER THE PROPOSALS MET THE QUALIFYING PERFORMANCE  
27 STANDARDS, CONTRACT TERMS, TECHNICAL COMPETENCE, CAPABILITY,

1 RELIABILITY, CREDITWORTHINESS, PAST PERFORMANCE, OR OTHER CRITERIA  
2 SPECIFIED FOR THE UTILITY'S REQUEST FOR PROPOSALS UNDER THIS  
3 SECTION. AN EXISTING SUPPLIER OF ELECTRIC GENERATION CAPACITY  
4 CURRENTLY PRODUCING AT LEAST 1,000 MEGAWATTS OF ELECTRIC GENERATION  
5 CAPACITY RESOURCES LOCATED IN THE INDEPENDENT SYSTEM OPERATOR'S  
6 REGION IN WHICH THE UTILITY'S LOAD IS SERVED THAT SEEKS TO PROVIDE  
7 ELECTRIC GENERATION CAPACITY RESOURCES TO THE UTILITY MAY SUBMIT A  
8 WRITTEN PROPOSAL DIRECTLY TO THE COMMISSION FOR CONSIDERATION AS AN  
9 ALTERNATIVE TO THE ELECTRIC UTILITY'S INTEGRATED RESOURCE PLAN  
10 SUBMITTED UNDER THIS SECTION, AND SHALL HAVE STANDING TO INTERVENE  
11 IN THE CONTESTED CASE PROCEEDING CONDUCTED UNDER THIS SECTION. THE  
12 ELECTRIC UTILITY SUBMITTING AN INTEGRATED RESOURCE PLAN UNDER THIS  
13 SECTION IS NOT REQUIRED TO ADOPT ANY PROPOSALS SUBMITTED UNDER THIS  
14 SUBSECTION.

15 (7) NOT LATER THAN 300 DAYS AFTER AN ELECTRIC UTILITY FILES AN  
16 INTEGRATED RESOURCE PLAN UNDER THIS SECTION, THE COMMISSION SHALL  
17 STATE IF THE COMMISSION HAS ANY RECOMMENDED CHANGES, AND IF SO,  
18 DESCRIBE THEM IN SUFFICIENT DETAIL TO ALLOW THEIR INCORPORATION IN  
19 THE INTEGRATED RESOURCE PLAN. IF THE COMMISSION DOES NOT RECOMMEND  
20 CHANGES, IT SHALL ISSUE A FINAL, APPEALABLE ORDER APPROVING OR  
21 DENYING THE PLAN FILED BY THE ELECTRIC UTILITY. IF THE COMMISSION  
22 RECOMMENDS CHANGES, THE COMMISSION SHALL SET A SCHEDULE ALLOWING  
23 PARTIES AT LEAST 15 DAYS AFTER THAT RECOMMENDATION TO FILE COMMENTS  
24 REGARDING THOSE RECOMMENDATIONS, AND ALLOWING THE ELECTRIC UTILITY  
25 AT LEAST 30 DAYS TO CONSIDER THE RECOMMENDED CHANGES AND SUBMIT A  
26 REVISED INTEGRATED RESOURCE PLAN THAT INCORPORATES 1 OR MORE OF THE  
27 RECOMMENDED CHANGES. IF THE ELECTRIC UTILITY SUBMITS A REVISED

1 INTEGRATED RESOURCE PLAN UNDER THIS SECTION, THE COMMISSION SHALL  
2 ISSUE A FINAL, APPEALABLE ORDER APPROVING THE PLAN AS REVISED BY  
3 THE ELECTRIC UTILITY OR DENYING THE PLAN. THE COMMISSION SHALL  
4 ISSUE A FINAL, APPEALABLE ORDER NO LATER THAN 360 DAYS AFTER AN  
5 ELECTRIC UTILITY FILES AN INTEGRATED RESOURCE PLAN UNDER THIS  
6 SECTION. UP TO 150 DAYS AFTER AN ELECTRIC UTILITY MAKES ITS INITIAL  
7 FILING, THE ELECTRIC UTILITY MAY FILE TO UPDATE ITS COST ESTIMATES  
8 IF THOSE COST ESTIMATES HAVE MATERIALLY CHANGED. A UTILITY SHALL  
9 NOT MODIFY ANY OTHER ASPECT OF THE INITIAL FILING UNLESS THE  
10 UTILITY WITHDRAWS AND REFILES THE APPLICATION. A UTILITY'S FILING  
11 UPDATING ITS COST ESTIMATES DOES NOT EXTEND THE PERIOD FOR THE  
12 COMMISSION TO ISSUE AN ORDER APPROVING OR DENYING THE INTEGRATED  
13 RESOURCE PLAN. THE COMMISSION SHALL REVIEW THE INTEGRATED RESOURCE  
14 PLAN IN A CONTESTED CASE PROCEEDING CONDUCTED PURSUANT TO CHAPTER 4  
15 OF THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL  
16 24.271 TO 24.287. THE COMMISSION SHALL ALLOW INTERVENTION BY  
17 INTERESTED PERSONS INCLUDING ELECTRIC CUSTOMERS OF THE UTILITY,  
18 RESPONDENTS TO THE UTILITY'S REQUEST FOR PROPOSALS UNDER THIS  
19 SECTION, OR OTHER PARTIES APPROVED BY THE COMMISSION. THE  
20 COMMISSION SHALL REQUEST AN ADVISORY OPINION FROM THE DEPARTMENT OF  
21 ENVIRONMENTAL QUALITY REGARDING WHETHER ANY POTENTIAL DECREASE IN  
22 EMISSIONS OF SULFUR DIOXIDE, OXIDES OF NITROGEN, MERCURY, AND  
23 PARTICULATE MATTER WOULD REASONABLY BE EXPECTED TO RESULT IF THE  
24 INTEGRATED RESOURCE PLAN PROPOSED BY THE ELECTRIC UTILITY UNDER  
25 SUBSECTION (3) WAS APPROVED AND WHETHER THE INTEGRATED RESOURCE  
26 PLAN CAN REASONABLY BE EXPECTED TO ACHIEVE COMPLIANCE WITH THE  
27 REGULATIONS, LAWS, OR RULES IDENTIFIED IN SUBSECTION (1). THE

1 COMMISSION MAY TAKE OFFICIAL NOTICE OF THE OPINION ISSUED BY THE  
2 DEPARTMENT OF ENVIRONMENTAL QUALITY UNDER THIS SUBSECTION PURSUANT  
3 TO R 792.10428 OF THE MICHIGAN ADMINISTRATIVE CODE. INFORMATION  
4 SUBMITTED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY UNDER THIS  
5 SUBSECTION IS ADVISORY AND IS NOT BINDING ON FUTURE DETERMINATIONS  
6 BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY OR THE COMMISSION IN ANY  
7 PROCEEDING OR PERMITTING PROCESS. THIS SECTION DOES NOT PREVENT AN  
8 ELECTRIC UTILITY FROM APPLYING FOR, OR RECEIVING, ANY NECESSARY  
9 PERMITS FROM THE DEPARTMENT OF ENVIRONMENTAL QUALITY. THE  
10 COMMISSION MAY INVITE OTHER STATE AGENCIES TO PROVIDE TESTIMONY  
11 REGARDING OTHER RELEVANT REGULATORY REQUIREMENTS RELATED TO THE  
12 INTEGRATED RESOURCE PLAN. THE COMMISSION SHALL PERMIT REASONABLE  
13 DISCOVERY AFTER AN INTEGRATED RESOURCE PLAN IS FILED AND DURING THE  
14 HEARING IN ORDER TO ASSIST PARTIES AND INTERESTED PERSONS IN  
15 OBTAINING EVIDENCE CONCERNING THE INTEGRATED RESOURCE PLAN,  
16 INCLUDING, BUT NOT LIMITED TO, THE REASONABLENESS AND PRUDENCE OF  
17 THE PLAN AND ALTERNATIVES TO THE PLAN RAISED BY INTERVENING  
18 PARTIES.

19 (8) THE COMMISSION SHALL APPROVE THE INTEGRATED RESOURCE PLAN  
20 UNDER SUBSECTION (7) IF IT DETERMINES ALL OF THE FOLLOWING:

21 (A) THE PROPOSED INTEGRATED RESOURCE PLAN REPRESENTS THE MOST  
22 REASONABLE AND PRUDENT MEANS OF MEETING THE ELECTRIC UTILITY'S  
23 ENERGY AND CAPACITY NEEDS. TO DETERMINE WHETHER THE INTEGRATED  
24 RESOURCE PLAN IS THE MOST REASONABLE AND PRUDENT MEANS OF MEETING  
25 ENERGY AND CAPACITY NEEDS, THE COMMISSION SHALL CONSIDER WHETHER  
26 THE PLAN APPROPRIATELY BALANCES ALL OF THE FOLLOWING FACTORS:

27 (i) RESOURCE ADEQUACY AND CAPACITY TO SERVE ANTICIPATED PEAK

1 ELECTRIC LOAD, APPLICABLE PLANNING RESERVE MARGIN, AND LOCAL  
2 CLEARING REQUIREMENT.

3 (ii) COMPLIANCE WITH APPLICABLE STATE AND FEDERAL  
4 ENVIRONMENTAL REGULATIONS.

5 (iii) COMPETITIVE PRICING.

6 (iv) RELIABILITY.

7 (v) COMMODITY PRICE RISKS.

8 (vi) DIVERSITY OF GENERATION SUPPLY.

9 (vii) WHETHER THE PROPOSED LEVELS OF PEAK LOAD REDUCTION AND  
10 ENERGY WASTE REDUCTION ARE REASONABLE AND COST EFFECTIVE.

11 EXCEEDANCE OF THE RENEWABLE ENERGY RESOURCES AND ENERGY WASTE  
12 REDUCTION GOAL IN SECTION 1 OF THE CLEAN AND RENEWABLE ENERGY AND  
13 ENERGY WASTE REDUCTION ACT, 2008 PA 295, MCL 460.1001, BY A UTILITY  
14 SHALL NOT, IN AND OF ITSELF, BE GROUNDS FOR DETERMINING THAT THE  
15 PROPOSED LEVELS OF PEAK LOAD REDUCTION, RENEWABLE ENERGY, AND  
16 ENERGY WASTE REDUCTION ARE NOT REASONABLE AND COST EFFECTIVE.

17 (B) TO THE EXTENT PRACTICABLE, THE CONSTRUCTION OR INVESTMENT  
18 IN A NEW OR EXISTING CAPACITY RESOURCE IN THIS STATE IS COMPLETED  
19 USING A WORKFORCE COMPOSED OF RESIDENTS OF THIS STATE AS DETERMINED  
20 BY THE COMMISSION. THIS SUBDIVISION DOES NOT APPLY TO A CAPACITY  
21 RESOURCE THAT IS LOCATED IN A COUNTY THAT LIES ON THE BORDER WITH  
22 ANOTHER STATE.

23 (C) THE PLAN MEETS THE REQUIREMENTS OF SUBSECTION (5).

24 (9) IF THE COMMISSION DENIES AN ELECTRIC UTILITY'S INTEGRATED  
25 RESOURCE PLAN BUT THE UTILITY ACCEPTS THE COMMISSION'S RECOMMENDED  
26 CHANGES UNDER SUBSECTION (7), THE INTEGRATED RESOURCE PLAN IS  
27 CONSIDERED APPROVED AS MODIFIED.

1           (10) IF THE COMMISSION DENIES A UTILITY'S INTEGRATED RESOURCE  
2 PLAN, AND THE UTILITY DOES NOT ACCEPT THE COMMISSION'S RECOMMENDED  
3 CHANGES UNDER SUBSECTION (7), THE UTILITY, WITHIN 60 DAYS AFTER THE  
4 DATE OF THE FINAL ORDER DENYING THE INTEGRATED RESOURCE PLAN, MAY  
5 SUBMIT REVISIONS TO THE INTEGRATED RESOURCE PLAN TO THE COMMISSION  
6 FOR APPROVAL. THE COMMISSION SHALL COMMENCE A NEW CONTESTED CASE  
7 HEARING UNDER CHAPTER 4 OF THE ADMINISTRATIVE PROCEDURES ACT OF  
8 1969, 1969 PA 306, MCL 24.271 TO 24.287. NOT LATER THAN 90 DAYS  
9 AFTER THE DATE THAT THE UTILITY SUBMITS THE REVISED INTEGRATED  
10 RESOURCE PLAN TO THE COMMISSION UNDER THIS SUBSECTION, THE  
11 COMMISSION SHALL ISSUE AN ORDER APPROVING OR DENYING, WITH  
12 RECOMMENDATIONS, THE REVISED INTEGRATED RESOURCE PLAN IF THE  
13 REVISIONS ARE NOT SUBSTANTIAL OR INCONSISTENT WITH THE ORIGINAL  
14 INTEGRATED RESOURCE PLAN FILED UNDER THIS SECTION. IF THE REVISIONS  
15 ARE SUBSTANTIAL OR INCONSISTENT WITH THE ORIGINAL INTEGRATED  
16 RESOURCE PLAN, THE COMMISSION HAS UP TO 150 DAYS TO ISSUE AN ORDER  
17 APPROVING OR DENYING, WITH RECOMMENDATIONS, THE REVISED INTEGRATED  
18 RESOURCE PLAN.

19           (11) IF THE COMMISSION DENIES AN ELECTRIC UTILITY'S INTEGRATED  
20 RESOURCE PLAN, THE ELECTRIC UTILITY MAY PROCEED WITH A PROPOSED  
21 CONSTRUCTION, PURCHASE, INVESTMENT, OR POWER PURCHASE AGREEMENT  
22 CONTAINED IN THE INTEGRATED RESOURCE PLAN WITHOUT THE ASSURANCES  
23 GRANTED UNDER THIS SECTION.

24           (12) IN APPROVING AN INTEGRATED RESOURCE PLAN UNDER THIS  
25 SECTION, THE COMMISSION SHALL SPECIFY THE COSTS APPROVED FOR THE  
26 CONSTRUCTION OF OR SIGNIFICANT INVESTMENT IN AN ELECTRIC GENERATION  
27 FACILITY, THE PURCHASE OF AN EXISTING ELECTRIC GENERATION FACILITY,

1 THE PURCHASE OF POWER UNDER THE TERMS OF THE POWER PURCHASE  
2 AGREEMENT, OR OTHER INVESTMENTS OR RESOURCES USED TO MEET ENERGY  
3 AND CAPACITY NEEDS THAT ARE INCLUDED IN THE APPROVED INTEGRATED  
4 RESOURCE PLAN. THE COSTS FOR SPECIFICALLY IDENTIFIED INVESTMENTS,  
5 INCLUDING THE COSTS FOR FACILITIES UNDER SUBSECTION (13), INCLUDED  
6 IN AN APPROVED INTEGRATED RESOURCE PLAN THAT ARE COMMENCED WITHIN 3  
7 YEARS AFTER THE COMMISSION'S ORDER APPROVING THE INITIAL PLAN,  
8 AMENDED PLAN, OR PLAN REVIEW ARE CONSIDERED REASONABLE AND PRUDENT  
9 FOR COST RECOVERY PURPOSES.

10 (13) FOR A NEW ELECTRIC GENERATION FACILITY APPROVED IN AN  
11 INTEGRATED RESOURCE PLAN THAT IS COMMENCED WITHIN 3 YEARS AFTER THE  
12 COMMISSION'S ORDER APPROVING THE PLAN, THE COMMISSION SHALL  
13 FINALIZE THE APPROVED COSTS FOR THE FACILITY ONLY AFTER THE UTILITY  
14 HAS DONE ALL OF THE FOLLOWING AND FILED THE RESULTS, ANALYSIS, AND  
15 RECOMMENDATIONS WITH THE COMMISSION:

16 (A) IMPLEMENTED A COMPETITIVE BIDDING PROCESS FOR ALL MAJOR  
17 ENGINEERING, PROCUREMENT, AND CONSTRUCTION CONTRACTS ASSOCIATED  
18 WITH THE CONSTRUCTION OF THE FACILITY.

19 (B) IMPLEMENTED A COMPETITIVE BIDDING PROCESS THAT ALLOWS  
20 THIRD PARTIES TO SUBMIT FIRM AND BINDING BIDS FOR THE CONSTRUCTION  
21 OF AN ELECTRIC GENERATION FACILITY ON BEHALF OF THE UTILITY THAT  
22 WOULD MEET ALL OF THE TECHNICAL, COMMERCIAL, AND OTHER  
23 SPECIFICATIONS REQUIRED BY THE UTILITY FOR THE GENERATION FACILITY,  
24 SUCH THAT OWNERSHIP OF THE ELECTRIC GENERATION FACILITY VESTS WITH  
25 THE UTILITY NO LATER THAN THE DATE THE ELECTRIC GENERATION FACILITY  
26 BECOMES COMMERCIALY AVAILABLE.

27 (C) DEMONSTRATED TO THE COMMISSION THAT THE FINALIZED COSTS

1 FOR THE NEW ELECTRIC GENERATION FACILITY ARE NOT SIGNIFICANTLY  
2 HIGHER THAN THE INITIALLY APPROVED COSTS UNDER SUBSECTION (12). IF  
3 THE FINALIZED COSTS ARE FOUND TO BE SIGNIFICANTLY HIGHER THAN THE  
4 INITIALLY APPROVED COSTS, THE COMMISSION SHALL REVIEW AND APPROVE  
5 THE PROPOSED COSTS IF THE COMMISSION DETERMINES THOSE COSTS ARE  
6 REASONABLE AND PRUDENT.

7 (14) AN ELECTRIC UTILITY SHALL ANNUALLY, OR MORE FREQUENTLY IF  
8 REQUIRED BY THE COMMISSION, FILE REPORTS TO THE COMMISSION  
9 REGARDING THE STATUS OF ANY PROJECTS INCLUDED IN THE INITIAL 3-YEAR  
10 PERIOD OF AN INTEGRATED RESOURCE PLAN APPROVED UNDER SUBSECTION  
11 (7).

12 (15) FOR POWER PURCHASE AGREEMENTS THAT A UTILITY ENTERS INTO  
13 AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS  
14 SECTION WITH AN ENTITY THAT IS NOT AFFILIATED WITH THAT UTILITY,  
15 THE COMMISSION MAY AUTHORIZE A FINANCIAL INCENTIVE FOR THAT UTILITY  
16 THAT DOES NOT EXCEED THE UTILITY'S PRETAX COST OF LONG-TERM DEBT.

17 (16) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN ORDER BY  
18 THE COMMISSION APPROVING AN INTEGRATED RESOURCE PLAN MAY BE  
19 REVIEWED BY THE COURT OF APPEALS UPON A FILING BY A PARTY TO THE  
20 COMMISSION PROCEEDING WITHIN 30 DAYS AFTER THE ORDER IS ISSUED. ALL  
21 APPEALS OF THE ORDER SHALL BE HEARD AND DETERMINED AS EXPEDITIOUSLY  
22 AS POSSIBLE WITH LAWFUL PRECEDENCE OVER OTHER MATTERS. REVIEW ON  
23 APPEAL SHALL BE BASED SOLELY ON THE RECORD BEFORE THE COMMISSION  
24 AND BRIEFS TO THE COURT AND IS LIMITED TO WHETHER THE ORDER  
25 CONFORMS TO THE CONSTITUTION AND LAWS OF THIS STATE AND THE UNITED  
26 STATES AND IS WITHIN THE AUTHORITY OF THE COMMISSION UNDER THIS  
27 ACT.

1           (17) THE COMMISSION SHALL INCLUDE IN AN ELECTRIC UTILITY'S  
2 RETAIL RATES ALL REASONABLE AND PRUDENT COSTS FOR AN INTEGRATED  
3 RESOURCE PLAN APPROVED BY THE COMMISSION. THE COMMISSION SHALL NOT  
4 DISALLOW RECOVERY OF COSTS AN ELECTRIC UTILITY INCURS IN  
5 IMPLEMENTING AN APPROVED INTEGRATED RESOURCE PLAN, IF THE COSTS DO  
6 NOT EXCEED THE COSTS APPROVED BY THE COMMISSION UNDER SUBSECTIONS  
7 (12) AND (13). IF THE ACTUAL COSTS INCURRED BY THE ELECTRIC UTILITY  
8 EXCEED THE COSTS APPROVED BY THE COMMISSION, THE ELECTRIC UTILITY  
9 HAS THE BURDEN OF PROVING BY A PREPONDERANCE OF THE EVIDENCE THAT  
10 THE COSTS ARE REASONABLE AND PRUDENT. THE PORTION OF THE COST OF A  
11 PLANT, FACILITY, POWER PURCHASE AGREEMENT, OR OTHER INVESTMENT IN A  
12 RESOURCE THAT MEETS A DEMONSTRATED NEED FOR CAPACITY THAT EXCEEDS  
13 THE COST APPROVED BY THE COMMISSION IS PRESUMED TO HAVE BEEN  
14 INCURRED DUE TO A LACK OF PRUDENCE. THE COMMISSION MAY INCLUDE ANY  
15 OR ALL OF THE PORTION OF THE COST IN EXCESS OF THE COST APPROVED BY  
16 THE COMMISSION IF THE COMMISSION FINDS BY A PREPONDERANCE OF THE  
17 EVIDENCE THAT THE COSTS ARE REASONABLE AND PRUDENT. THE COMMISSION  
18 SHALL DISALLOW COSTS THE COMMISSION FINDS HAVE BEEN INCURRED AS THE  
19 RESULT OF FRAUD, CONCEALMENT, GROSS MISMANAGEMENT, OR LACK OF  
20 QUALITY CONTROLS AMOUNTING TO GROSS MISMANAGEMENT. THE COMMISSION  
21 SHALL ALSO REQUIRE REFUNDS WITH INTEREST TO RATEPAYERS OF ANY OF  
22 THESE COSTS ALREADY RECOVERED THROUGH THE ELECTRIC UTILITY'S RATES  
23 AND CHARGES. IF THE ASSUMPTIONS UNDERLYING AN APPROVED INTEGRATED  
24 RESOURCE PLAN MATERIALLY CHANGE, AN ELECTRIC UTILITY MAY REQUEST,  
25 OR THE COMMISSION ON ITS OWN MOTION MAY INITIATE, A PROCEEDING TO  
26 REVIEW WHETHER IT IS REASONABLE AND PRUDENT TO COMPLETE AN  
27 UNFINISHED PROJECT OR PROGRAM INCLUDED IN AN APPROVED INTEGRATED

1 RESOURCE PLAN. IF THE COMMISSION FINDS THAT COMPLETION OF THE  
2 PROJECT OR PROGRAM IS NO LONGER REASONABLE AND PRUDENT, THE  
3 COMMISSION MAY MODIFY OR CANCEL APPROVAL OF THE PROJECT OR PROGRAM  
4 AND UNINCURRED COSTS IN THE ELECTRIC UTILITY'S INTEGRATED RESOURCE  
5 PLAN. EXCEPT FOR COSTS THE COMMISSION FINDS AN ELECTRIC UTILITY HAS  
6 INCURRED AS THE RESULT OF FRAUD, CONCEALMENT, GROSS MISMANAGEMENT,  
7 OR LACK OF QUALITY CONTROLS AMOUNTING TO GROSS MISMANAGEMENT, IF  
8 COMMISSION APPROVAL IS MODIFIED OR CANCELED, THE COMMISSION SHALL  
9 NOT DISALLOW REASONABLE AND PRUDENT COSTS ALREADY INCURRED OR  
10 COMMITTED TO BY CONTRACT BY AN ELECTRIC UTILITY. ONCE THE  
11 COMMISSION FINDS THAT COMPLETION OF THE PROJECT OR PROGRAM IS NO  
12 LONGER REASONABLE AND PRUDENT, THE COMMISSION MAY LIMIT FUTURE COST  
13 RECOVERY TO THOSE COSTS THAT COULD NOT BE REASONABLY AVOIDED.

14 (18) THE COMMISSION MAY ALLOW FINANCING INTEREST COST RECOVERY  
15 IN AN ELECTRIC UTILITY'S BASE RATES ON CONSTRUCTION WORK IN  
16 PROGRESS FOR CAPITAL IMPROVEMENTS APPROVED UNDER THIS SECTION PRIOR  
17 TO THE ASSETS' BEING CONSIDERED USED AND USEFUL. REGARDLESS OF  
18 WHETHER OR NOT THE COMMISSION AUTHORIZES BASE RATE TREATMENT FOR  
19 CONSTRUCTION WORK IN PROGRESS FINANCING INTEREST EXPENSE, AN  
20 ELECTRIC UTILITY MAY RECOGNIZE, ACCRUE, AND DEFER THE ALLOWANCE FOR  
21 FUNDS USED DURING CONSTRUCTION RELATED TO EQUITY CAPITAL.

22 (19) AN ELECTRIC UTILITY MAY SEEK TO AMEND AN APPROVED  
23 INTEGRATED RESOURCE PLAN. EXCEPT AS OTHERWISE PROVIDED UNDER THIS  
24 SUBSECTION, THE COMMISSION SHALL CONSIDER THE AMENDMENTS UNDER THE  
25 SAME PROCESS AND STANDARDS THAT GOVERN THE REVIEW AND APPROVAL OF A  
26 REVISED INTEGRATED RESOURCE PLAN UNDER SUBSECTION (10). THE  
27 COMMISSION MAY ORDER AN ELECTRIC UTILITY THAT SEEKS TO AMEND AN

1 APPROVED INTEGRATED RESOURCE PLAN UNDER THIS SUBSECTION TO FILE A  
2 PLAN REVIEW UNDER SUBSECTION (21).

3 (20) AN ELECTRIC UTILITY SHALL FILE AN APPLICATION FOR REVIEW  
4 OF ITS INTEGRATED RESOURCE PLAN NOT LATER THAN 3 YEARS AFTER THE  
5 EFFECTIVE DATE OF THE MOST RECENT COMMISSION ORDER APPROVING A  
6 PLAN, A PLAN AMENDMENT, OR A PLAN REVIEW. THE COMMISSION SHALL  
7 CONSIDER A PLAN REVIEW UNDER THE SAME PROCESS AND STANDARDS  
8 ESTABLISHED IN THIS SECTION FOR REVIEW AND APPROVAL OF AN  
9 INTEGRATED RESOURCE PLAN. A COMMISSION ORDER APPROVING A PLAN  
10 REVIEW HAS THE SAME EFFECT AS AN ORDER APPROVING AN INTEGRATED  
11 RESOURCE PLAN.

12 (21) THE COMMISSION MAY, ON ITS OWN MOTION OR AT THE REQUEST  
13 OF THE ELECTRIC UTILITY, ORDER AN ELECTRIC UTILITY TO FILE A PLAN  
14 REVIEW. THE DEPARTMENT OF ENVIRONMENTAL QUALITY MAY REQUEST THE  
15 COMMISSION TO ORDER A PLAN REVIEW TO ADDRESS MATERIAL CHANGES IN  
16 ENVIRONMENTAL REGULATIONS AND REQUIREMENTS THAT OCCUR AFTER THE  
17 COMMISSION'S APPROVAL OF AN INTEGRATED RESOURCE PLAN. AN ELECTRIC  
18 UTILITY MUST FILE A PLAN REVIEW WITHIN 270 DAYS AFTER THE  
19 COMMISSION ORDERS THE UTILITY TO FILE A PLAN REVIEW.

20 SEC. 6U. (1) NOT LATER THAN 90 DAYS AFTER THE EFFECTIVE DATE  
21 OF THE AMENDATORY ACT THAT ADDED THIS SECTION, THE COMMISSION SHALL  
22 COMMENCE A STUDY IN COLLABORATION WITH REPRESENTATIVES OF EACH  
23 CUSTOMER CLASS, UTILITIES WHOSE RATES ARE REGULATED BY THE  
24 COMMISSION, AND OTHER INTERESTED PARTIES REGARDING PERFORMANCE-  
25 BASED REGULATION, UNDER WHICH A UTILITY'S AUTHORIZED RATE OF RETURN  
26 WOULD DEPEND ON THE UTILITY ACHIEVING TARGETED POLICY OUTCOMES.

27 (2) IN THE STUDY REQUIRED UNDER THIS SECTION, THE COMMISSION

1 SHALL REVIEW PERFORMANCE-BASED REGULATION SYSTEMS THAT HAVE BEEN  
2 IMPLEMENTED IN ANOTHER STATE OR COUNTRY, INCLUDING, BUT NOT LIMITED  
3 TO, THE RIIO (REVENUE = INCENTIVES + INNOVATION + OUTPUTS) MODEL  
4 UTILIZED IN THE UNITED KINGDOM.

5 (3) IN REVIEWING VARIOUS PERFORMANCE-BASED REGULATION SYSTEMS,  
6 THE COMMISSION SHALL EVALUATE, BUT NOT BE LIMITED TO, ALL OF THE  
7 FOLLOWING FACTORS:

8 (A) METHODS FOR ESTIMATING THE REVENUE NEEDED BY A UTILITY  
9 DURING A MULTIYEAR PRICING PERIOD, AND A FAIR RETURN, THAT USES  
10 FORECASTS OF EFFICIENT TOTAL EXPENDITURES BY THE UTILITY INSTEAD OF  
11 DISTINGUISHING BETWEEN OPERATING AND CAPITAL COSTS.

12 (B) METHODS TO INCREASE THE LENGTH OF TIME BETWEEN RATE CASES,  
13 TO PROVIDE UTILITIES WITH MORE OPPORTUNITY TO RETAIN COST SAVINGS  
14 WITHOUT THE THREAT OF IMMINENT RATE ADJUSTMENTS, AND TO ENCOURAGE  
15 UTILITIES TO MAKE INVESTMENTS THAT HAVE EXTENDED PAYBACK PERIODS.

16 (C) OPTIONS FOR ESTABLISHING INCENTIVES AND PENALTIES THAT  
17 PERTAIN TO ISSUES SUCH AS CUSTOMER SATISFACTION, SAFETY,  
18 RELIABILITY, ENVIRONMENTAL IMPACT, AND SOCIAL OBLIGATIONS.

19 (D) PROFIT-SHARING PROVISIONS THAT CAN SPREAD EFFICIENCY GAINS  
20 AMONG CONSUMERS AND UTILITY SHAREHOLDERS AND CAN REDUCE THE DEGREE  
21 OF DOWNSIDE RISK ASSOCIATED WITH ATTEMPTS AT INNOVATION.

22 (4) NOT LATER THAN 1 YEAR AFTER THE EFFECTIVE DATE OF THE  
23 AMENDATORY ACT THAT ADDED THIS SECTION, THE COMMISSION SHALL REPORT  
24 AND MAKE RECOMMENDATIONS IN WRITING TO THE LEGISLATURE AND GOVERNOR  
25 BASED ON THE RESULT OF THE STUDY CONDUCTED UNDER THIS SECTION.

26 (5) THIS SECTION DOES NOT LIMIT THE COMMISSION'S AUTHORITY TO  
27 AUTHORIZE PERFORMANCE-BASED REGULATION.

1           SEC. 6V. (1) NOTWITHSTANDING ANY EXISTING POWER PURCHASE  
2 AGREEMENT, THE COMMISSION SHALL, AT LEAST EVERY 5 YEARS, CONDUCT A  
3 PROCEEDING, AS A CONTESTED CASE PURSUANT TO CHAPTER 4 OF THE  
4 ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.271 TO  
5 24.287, TO REEVALUATE THE PROCEDURES AND RATES SCHEDULES INCLUDING  
6 AVOIDED COST RATES, AS ORIGINALLY ESTABLISHED BY THE COMMISSION IN  
7 AN ORDER DATED MARCH 17, 1981 IN CASE NO. U-6798, TO IMPLEMENT  
8 TITLE II, SECTION 210, OF THE PUBLIC UTILITY REGULATORY POLICIES  
9 ACT OF 1978, AS IT RELATES TO QUALIFYING FACILITIES FROM WHICH  
10 UTILITIES IN THIS STATE HAVE AN OBLIGATION TO PURCHASE ENERGY AND  
11 CAPACITY. NOTHING IN THIS SECTION SUPERSEDES THE PROVISIONS OF  
12 PURPA OR THE FEDERAL ENERGY REGULATORY COMMISSION'S REGULATIONS AND  
13 ORDERS IMPLEMENTING PURPA.

14           (2) IN SETTING RATES FOR AVOIDED COSTS, THE COMMISSION SHALL  
15 TAKE INTO CONSIDERATION THE FACTORS REGARDING AVOIDED COSTS SET  
16 FORTH IN PURPA AND THE FEDERAL ENERGY REGULATORY COMMISSION'S  
17 REGULATIONS AND ORDERS IMPLEMENTING PURPA.

18           (3) AFTER AN INITIAL CONTESTED CASE UNDER SUBSECTION (1), FOR  
19 A UTILITY SERVING LESS THAN 1,000,000 ELECTRIC CUSTOMERS IN THIS  
20 STATE, THE COMMISSION MAY CONDUCT ANY PERIODIC REEVALUATIONS OF THE  
21 PROCEDURES, RATE SCHEDULES, AND AVOIDED COST RATES FOR THAT UTILITY  
22 USING NOTICE AND COMMENT PROCEDURES INSTEAD OF A FULL CONTESTED  
23 CASE. THE COMMISSION SHALL CONDUCT THE PERIODIC REEVALUATION IN A  
24 CONTESTED CASE UNDER CHAPTER 4 OF THE ADMINISTRATIVE PROCEDURES ACT  
25 OF 1969, 1969 PA 306, MCL 24.271 TO 24.287, IF A QUALIFYING  
26 FACILITY FILES A COMMENT DISPUTING THE UTILITY FILING AND  
27 REQUESTING A CONTESTED CASE.

1           (4) AN ORDER ISSUED BY THE COMMISSION UNDER SUBSECTION (1)  
2 SHALL DO ALL OF THE FOLLOWING:

3           (A) ENSURE THAT THE RATES FOR PURCHASES BY AN ELECTRIC UTILITY  
4 FROM, AND RATES FOR SALES TO, A QUALIFYING FACILITY SHALL, OVER THE  
5 TERM OF A CONTRACT, BE JUST AND REASONABLE AND IN THE PUBLIC  
6 INTEREST, AS DEFINED BY PURPA.

7           (B) ENSURE THAT AN ELECTRIC UTILITY DOES NOT DISCRIMINATE  
8 AGAINST A QUALIFYING FACILITY WITH RESPECT TO THE CONDITIONS OR  
9 PRICE FOR PROVISION OF MAINTENANCE POWER, BACKUP POWER,  
10 INTERRUPTIBLE POWER, AND SUPPLEMENTARY POWER OR FOR ANY OTHER  
11 SERVICE.

12           (C) REQUIRE THAT ANY PRICES CHARGED BY AN ELECTRIC UTILITY FOR  
13 MAINTENANCE POWER, BACKUP POWER, INTERRUPTIBLE POWER, AND  
14 SUPPLEMENTARY POWER AND ALL OTHER SUCH SERVICES ARE COST-BASED AND  
15 JUST AND REASONABLE.

16           (D) ESTABLISH A SCHEDULE OF AVOIDED COST PRICE UPDATES FOR  
17 EACH ELECTRIC UTILITY.

18           (E) REQUIRE ELECTRIC UTILITIES TO PUBLISH ON THEIR WEBSITES  
19 TEMPLATE CONTRACTS FOR POWER PURCHASE AGREEMENTS FOR QUALIFYING  
20 FACILITIES OF LESS THAN 3 MEGAWATTS THAT NEED NOT INCLUDE TERMS FOR  
21 EITHER PRICE OR DURATION OF THE CONTRACT. THE TERMS OF A TEMPLATE  
22 CONTRACT PUBLISHED UNDER THIS SUBSECTION ARE NOT BINDING ON EITHER  
23 AN ELECTRIC UTILITY OR A QUALIFYING FACILITY AND MAY BE NEGOTIATED  
24 AND ALTERED UPON AGREEMENT BETWEEN AN ELECTRIC UTILITY AND A  
25 QUALIFYING FACILITY.

26           (5) WITHIN 1 YEAR AFTER THE EFFECTIVE DATE OF THE AMENDATORY  
27 ACT THAT ADDED THIS SECTION, AND EVERY 2 YEARS THEREAFTER, THE

1 COMMISSION SHALL ISSUE A REPORT TO THE MICHIGAN AGENCY FOR ENERGY  
2 AND THE STANDING COMMITTEES OF THE SENATE AND HOUSE OF  
3 REPRESENTATIVES WITH PRIMARY RESPONSIBILITY FOR ENERGY AND  
4 ENVIRONMENTAL ISSUES. THE REPORT SHALL PROVIDE A DESCRIPTION AND  
5 STATUS OF QUALIFYING FACILITIES IN THIS STATE, THE CURRENT STATUS  
6 OF POWER PURCHASE AGREEMENTS OF EACH QUALIFYING FACILITY, AND THE  
7 COMMISSION'S EFFORTS TO COMPLY WITH THE REQUIREMENTS OF PURPA.

8 (6) AS USED IN THIS SECTION:

9 (A) "AVOIDED COSTS" MEANS THAT TERM AS DEFINED IN 18 CFR  
10 292.101.

11 (B) "BACKUP POWER" MEANS ELECTRIC ENERGY OR CAPACITY SUPPLIED  
12 BY AN ELECTRIC UTILITY TO REPLACE ELECTRIC ENERGY ORDINARILY  
13 GENERATED BY A QUALIFYING FACILITY'S OWN ELECTRIC GENERATION  
14 EQUIPMENT DURING AN UNSCHEDULED OUTAGE OF THE QUALIFYING FACILITY.

15 (C) "MAINTENANCE POWER" MEANS ELECTRIC ENERGY OR CAPACITY  
16 SUPPLIED BY AN ELECTRIC UTILITY DURING SCHEDULED OUTAGES OF THE  
17 QUALIFYING FACILITY.

18 (D) "PURPA" MEANS TITLE II, SECTION 210, OF THE PUBLIC UTILITY  
19 REGULATORY POLICIES ACT OF 1978.

20 (E) "QUALIFYING FACILITY" OR "FACILITIES" MEANS QUALIFYING  
21 COGENERATION FACILITIES OR QUALIFYING SMALL POWER PRODUCTION  
22 FACILITIES FROM WHICH AN ELECTRIC UTILITY WITHIN THIS STATE HAS AN  
23 OBLIGATION TO PURCHASE ENERGY AND CAPACITY WITHIN THE MEANING OF  
24 SECTIONS 201 AND 210 OF PURPA, 16 USC 796 AND 824A-3, AND  
25 ASSOCIATED FEDERAL REGULATIONS AND ORDERS.

26 (F) "SUPPLEMENTARY POWER" MEANS ELECTRIC ENERGY OR CAPACITY  
27 SUPPLIED BY AN ELECTRIC UTILITY, REGULARLY USED BY A QUALIFYING

1 FACILITY IN ADDITION TO THE ELECTRIC ENERGY OR CAPACITY THAT THE  
2 QUALIFYING FACILITY GENERATES.

3 SEC. 6W. (1) AN ELECTRIC UTILITY SHALL BY OCTOBER 1 OF EACH  
4 YEAR DEMONSTRATE TO THE COMMISSION, IN A FORMAT DETERMINED BY THE  
5 COMMISSION, THAT FOR THE PLANNING YEAR BEGINNING THE FOLLOWING JUNE  
6 1 AND THE SUBSEQUENT PLANNING YEAR, THE ELECTRIC UTILITY OWNS OR  
7 HAS CONTRACTUAL RIGHTS TO SUFFICIENT DEDICATED AND FIRM ELECTRIC  
8 GENERATION CAPACITY TO MEET 90% OF ITS PROPORTIONAL SHARE OF THE  
9 LOCAL CLEARING REQUIREMENT AS DETERMINED BY THE COMMISSION UNDER  
10 SUBSECTION (7). THE ELECTRIC UTILITY MAY MEET THIS REQUIREMENT  
11 THROUGH ANY RESOURCE THAT THE APPROPRIATE INDEPENDENT SYSTEM  
12 OPERATOR ALLOWS TO QUALIFY FOR MEETING THE LOCAL CLEARING  
13 REQUIREMENT.

14 (2) AN ALTERNATIVE ELECTRIC SUPPLIER, A COOPERATIVE ELECTRIC  
15 UTILITY, OR A MUNICIPALLY OWNED ELECTRIC UTILITY SHALL BY OCTOBER  
16 1, 2017 DEMONSTRATE TO THE COMMISSION, IN A FORMAT DETERMINED BY  
17 THE COMMISSION, THAT FOR THE PLANNING YEAR BEGINNING JUNE 1, 2018,  
18 THE ALTERNATIVE ELECTRIC SUPPLIER, COOPERATIVE ELECTRIC UTILITY, OR  
19 MUNICIPALLY OWNED ELECTRIC UTILITY OWNS OR HAS CONTRACTUAL RIGHTS  
20 TO SUFFICIENT DEDICATED AND FIRM ELECTRIC GENERATION CAPACITY TO  
21 MEET THE EQUIVALENT OF 50% OF ITS PROPORTIONAL SHARE OF THE LOCAL  
22 CLEARING REQUIREMENT AS DETERMINED BY THE COMMISSION UNDER  
23 SUBSECTION (7). THE ALTERNATIVE ELECTRIC SUPPLIER, COOPERATIVE  
24 ELECTRIC UTILITY, OR MUNICIPALLY OWNED ELECTRIC UTILITY MAY MEET  
25 THIS REQUIREMENT THROUGH OWNERSHIP OR CONTRACTUAL RIGHTS TO ANY  
26 RESOURCE THAT THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR ALLOWS TO  
27 QUALIFY FOR MEETING THE LOCAL CLEARING REQUIREMENT.

1           (3) AN ALTERNATIVE ELECTRIC SUPPLIER, A COOPERATIVE ELECTRIC  
2 UTILITY, OR A MUNICIPALLY OWNED ELECTRIC UTILITY SHALL BY OCTOBER  
3 1, 2018, AND BY OCTOBER 1 OF EACH YEAR THEREAFTER, DEMONSTRATE TO  
4 THE COMMISSION, IN A FORMAT DETERMINED BY THE COMMISSION, THAT FOR  
5 THE PLANNING YEAR BEGINNING THE FOLLOWING JUNE 1 AND THE SUBSEQUENT  
6 PLANNING YEAR, THE ALTERNATIVE ELECTRIC SUPPLIER, COOPERATIVE  
7 ELECTRIC UTILITY, OR MUNICIPALLY OWNED ELECTRIC UTILITY OWNS OR HAS  
8 CONTRACTUAL RIGHTS TO SUFFICIENT DEDICATED AND FIRM ELECTRIC  
9 GENERATION CAPACITY TO MEET THE EQUIVALENT OF 90% OF ITS  
10 PROPORTIONAL SHARE OF THE LOCAL CLEARING REQUIREMENT AS ESTABLISHED  
11 BY THE COMMISSION UNDER SUBSECTION (7). THE ALTERNATIVE ELECTRIC  
12 SUPPLIER, COOPERATIVE ELECTRIC UTILITY, OR MUNICIPALLY OWNED  
13 ELECTRIC UTILITY MAY MEET THIS 90% REQUIREMENT THROUGH OWNERSHIP OR  
14 CONTRACTUAL RIGHTS TO ANY RESOURCE THAT THE APPROPRIATE INDEPENDENT  
15 SYSTEM OPERATOR ALLOWS TO QUALIFY FOR MEETING THE LOCAL CLEARING  
16 REQUIREMENT. THE 90% REQUIREMENT OF THIS SUBSECTION MAY BE MET BY A  
17 3-YEAR CAPACITY AUCTION ESTABLISHED AND CONDUCTED BY THE  
18 APPROPRIATE SYSTEM OPERATOR IF THE COMMISSION HAS DETERMINED  
19 THROUGH A CONTESTED CASE PROCEEDING THAT THE CAPACITY FROM THAT 3-  
20 YEAR CAPACITY AUCTION SATISFIES THE APPLICABLE ZONE'S LOCAL  
21 CLEARING REQUIREMENT.

22           (4) NOTWITHSTANDING SUBSECTIONS (1), (2), AND (3), A  
23 PROVIDER'S PAYMENT OF THE COST OF NEW ENTRY AS PART OF AN AUCTION  
24 CONDUCTED BY THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR DOES NOT  
25 BY ITSELF SATISFY THE RESOURCE ADEQUACY REQUIREMENTS OF THIS  
26 SECTION. IN ADDITION, IF THE APPROPRIATE INDEPENDENT SYSTEM  
27 OPERATOR DETERMINES, FOR ANY PLANNING YEAR, COMMENCING WITH THE

1 PLANNING YEAR BEGINNING JUNE 1, 2018, THAT THE APPLICABLE RESOURCE  
2 ZONE DOES NOT MEET THE LOCAL CLEARING REQUIREMENT, ALL ELECTRIC  
3 PROVIDERS IN THAT RESOURCE ZONE MUST MEET 100% OF THEIR  
4 PROPORTIONAL SHARE OF THE LOCAL CLEARING REQUIREMENT FOR THE NEXT 3  
5 PLANNING YEARS THROUGH OWNERSHIP OR CONTRACTUAL RIGHTS TO ANY  
6 RESOURCE THAT THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR ALLOWS TO  
7 QUALIFY FOR MEETING THE LOCAL CLEARING REQUIREMENT.

8 (5) ONE OR MORE MUNICIPALLY OWNED ELECTRIC UTILITIES MAY  
9 AGGREGATE THEIR GENERATION CAPACITY RESOURCES THAT ARE LOCATED IN  
10 THE SAME LOCAL RESOURCE ZONE TO MEET THE REQUIREMENTS OF  
11 SUBSECTIONS (2) AND (3). ONE OR MORE COOPERATIVE ELECTRIC UTILITIES  
12 MAY AGGREGATE THEIR GENERATION CAPACITY RESOURCES THAT ARE LOCATED  
13 IN THE SAME LOCAL RESOURCE ZONE TO MEET THE REQUIREMENTS OF  
14 SUBSECTIONS (2) AND (3).

15 (6) AFTER RECEIVING A SUBMISSION FROM AN ALTERNATIVE ELECTRIC  
16 SUPPLIER UNDER SUBSECTION (2) OR (3), THE COMMISSION SHALL  
17 DETERMINE AND NOTIFY IN WRITING EACH ALTERNATIVE ELECTRIC SUPPLIER  
18 WHETHER THE ALTERNATIVE ELECTRIC SUPPLIER HAS DEMONSTRATED THAT IT  
19 CAN MEET THE CAPACITY REQUIREMENTS OF SUBSECTIONS (2) AND (3). IF  
20 THE COMMISSION DETERMINES THAT AN ALTERNATIVE ELECTRIC SUPPLIER HAS  
21 FAILED TO DEMONSTRATE THAT IT CAN MEET ANY OF THE REQUIREMENTS OF  
22 SUBSECTION (2) OR (3), THE COMMISSION SHALL COMMENCE A SHOW CAUSE  
23 PROCEEDING TO LIMIT THE ALTERNATIVE ELECTRIC SUPPLIER TO PROVIDING  
24 THE AMOUNT OF CAPACITY THE ALTERNATIVE ELECTRIC SUPPLIER HAS  
25 DEMONSTRATED IT HAS OBTAINED TO MEET THE REQUIREMENTS OF  
26 SUBSECTIONS (2) AND (3). THE COMMISSION SHALL COMPLETE A SHOW CAUSE  
27 PROCEEDING UNDER THIS SUBSECTION NOT LATER THAN MARCH 15 OF THE

1 FOLLOWING YEAR. IF AN ALTERNATIVE ELECTRIC SUPPLIER FAILS TO REMEDY  
2 THE DEFICIENCY IDENTIFIED BY THE COMMISSION OR FAILS TO OTHERWISE  
3 DEMONSTRATE THAT IT HAS SUFFICIENT CAPACITY TO MEET THE  
4 REQUIREMENTS OF SUBSECTIONS (2) AND (3), THE COMMISSION SHALL LIMIT  
5 THE ELECTRICITY THE ALTERNATIVE ELECTRIC SUPPLIER MAY PROVIDE TO AN  
6 AMOUNT THAT DOES NOT EXCEED THE AMOUNT OF CAPACITY THE SUPPLIER HAS  
7 DEMONSTRATED IT HAS TO MEET THE REQUIREMENTS OF SUBSECTIONS (2) AND  
8 (3) FOR THE PLANNING YEARS UNDER REVIEW. ALL CONTRACTS FOR SERVICE  
9 BETWEEN A CUSTOMER IN THIS STATE AND AN ALTERNATIVE ELECTRIC  
10 SUPPLIER ENTERED INTO AFTER THE EFFECTIVE DATE OF THE AMENDATORY  
11 ACT THAT ADDED THIS SECTION SHALL INCLUDE A PROVISION ALLOWING THE  
12 CUSTOMER TO WITHDRAW FROM THE CONTRACT WITHOUT PENALTY IF THE  
13 COMMISSION ORDERS A LIMITATION OF CAPACITY UNDER THIS SUBDIVISION  
14 THAT RESULTS IN THE ALTERNATIVE ELECTRIC SUPPLIER BEING UNABLE TO  
15 SUPPLY THE CUSTOMER WITH THE CAPACITY REQUIRED UNDER SUBSECTIONS  
16 (2) AND (3) AT ANY TIME DURING THE PLANNING YEARS UNDER REVIEW.  
17 NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, AN ALTERNATIVE  
18 ELECTRIC SUPPLIER SHALL NOT SERVE MORE LOAD DURING THE PLANNING  
19 YEARS UNDER REVIEW THAN THE LOAD SUPPORTED BY THE CAPACITY  
20 DEMONSTRATED UNDER SUBSECTIONS (2) AND (3). THE SHOW CAUSE  
21 PROCEEDING UNDER THIS SUBSECTION SHALL BE CONDUCTED AS A CONTESTED  
22 CASE PURSUANT TO CHAPTERS 4 AND 5 OF THE ADMINISTRATIVE PROCEDURES  
23 ACT OF 1969, 1969 PA 306, MCL 24.271 TO 24.292.

24 (7) NOT LATER THAN JULY 1 OF EACH YEAR, THE COMMISSION SHALL  
25 REPORT TO THE GOVERNOR AND LEGISLATURE A FORECAST OF THE CAPACITY  
26 RESOURCE ADEQUACY FOR A PERIOD OF NOT LESS THAN 5 YEARS. THE REPORT  
27 REQUIRED UNDER THIS SUBSECTION SHALL INCLUDE, FOR THE PLANNING

1 YEARS COVERED UNDER SUBSECTIONS (1), (2), AND (3), A DETERMINATION  
2 BY THE COMMISSION OF THE PLANNING RESERVE MARGIN REQUIREMENT, THE  
3 LOCAL CLEARING REQUIREMENT FOR EACH LOCAL RESOURCE ZONE, AND THE  
4 PROPORTIONAL SHARE OF THE LOCAL CLEARING REQUIREMENTS FOR EACH  
5 ELECTRIC PROVIDER IN THE STATE. IN MAKING A DETERMINATION UNDER  
6 THIS SUBSECTION, THE COMMISSION SHALL CONSULT WITH AND CONSIDER ANY  
7 FINDINGS, PROJECTIONS, AND OTHER DATA OF THE APPROPRIATE  
8 INDEPENDENT SYSTEM OPERATOR. THE COMMISSION SHALL SPECIFICALLY  
9 DETERMINE WHETHER 100% OF THE CAPACITY RESOURCES NEEDED TO MEET THE  
10 LOCAL CLEARING REQUIREMENT FOR EACH LOCAL RESOURCE ZONE IS  
11 FORECASTED TO BE MET FOR EACH YEAR IN THE 5-YEAR FORECASTED PERIOD.  
12 A DETERMINATION BY THE COMMISSION UNDER THIS SUBSECTION SHALL BE  
13 CONDUCTED AS A CONTESTED CASE PURSUANT TO CHAPTERS 4 AND 5 OF THE  
14 ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.271 TO  
15 24.292. IN A FORMAT DETERMINED BY THE COMMISSION, ALL ELECTRIC  
16 PROVIDERS AND UNREGULATED GENERATION PROVIDERS IN THIS STATE SHALL  
17 SUBMIT PRESCRIBED DATA NECESSARY FOR THE COMMISSION TO MAKE THE  
18 FORECAST AND DETERMINATIONS REQUIRED UNDER THIS SUBSECTION.  
19 INFORMATION AND MATERIALS SUBMITTED BY AN ENTITY UNDER THIS  
20 SUBSECTION ARE EXEMPT FROM DISCLOSURE UNDER THE FREEDOM OF  
21 INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246. THE COMMISSION  
22 SHALL ISSUE PROTECTIVE ORDERS AS ARE NECESSARY TO PROTECT THE  
23 INFORMATION AND MATERIALS SUBMITTED UNDER THIS SUBSECTION. NOTHING  
24 IN THIS SECTION SHALL BE READ TO TAMPER WITH OR OTHERWISE IMPEDE  
25 THE SETTING OF A LOCAL CLEARING REQUIREMENT BY AN INDEPENDENT  
26 SYSTEM OPERATOR OR THE FEDERAL ENERGY REGULATORY COMMISSION, OR  
27 THEIR SUCCESSORS, THAT DIFFERS FROM A DETERMINATION OF THE

1 COMMISSION UNDER THIS SECTION.

2 (8) THE ATTORNEY GENERAL OR ANY CUSTOMER OF A MUNICIPALLY  
3 OWNED ELECTRIC UTILITY OR COOPERATIVE ELECTRIC UTILITY MAY COMMENCE  
4 A CIVIL ACTION FOR INJUNCTIVE RELIEF AGAINST THAT MUNICIPALLY OWNED  
5 ELECTRIC UTILITY OR COOPERATIVE ELECTRIC UTILITY IF THE MUNICIPALLY  
6 OWNED ELECTRIC UTILITY OR COOPERATIVE ELECTRIC UTILITY FAILS TO  
7 MEET THE APPLICABLE REQUIREMENTS OF SUBSECTIONS (1) TO (7). THE  
8 ATTORNEY GENERAL OR CUSTOMER SHALL COMMENCE AN ACTION UNDER THIS  
9 SUBSECTION IN THE CIRCUIT COURT FOR THE CIRCUIT IN WHICH THE  
10 PRINCIPAL OFFICE OF THE MUNICIPALLY OWNED ELECTRIC UTILITY OR  
11 COOPERATIVE ELECTRIC UTILITY IS LOCATED. THE ATTORNEY GENERAL OR  
12 CUSTOMER SHALL NOT FILE AN ACTION UNDER THIS SUBSECTION UNLESS THE  
13 ATTORNEY GENERAL OR CUSTOMER HAS GIVEN THE MUNICIPALLY OWNED  
14 ELECTRIC UTILITY OR COOPERATIVE ELECTRIC UTILITY AT LEAST 60 DAYS'  
15 WRITTEN NOTICE OF THE INTENT TO SUE, THE BASIS FOR THE SUIT, AND  
16 THE RELIEF SOUGHT. WITHIN 30 DAYS AFTER THE MUNICIPALLY OWNED  
17 ELECTRIC UTILITY OR COOPERATIVE ELECTRIC UTILITY RECEIVES WRITTEN  
18 NOTICE OF THE INTENT TO SUE, THE MUNICIPALLY OWNED ELECTRIC UTILITY  
19 OR COOPERATIVE ELECTRIC UTILITY AND THE ATTORNEY GENERAL OR  
20 CUSTOMER SHALL MEET AND MAKE A GOOD-FAITH ATTEMPT TO DETERMINE IF  
21 THERE IS A CREDIBLE BASIS FOR THE ACTION. THE MUNICIPALLY OWNED  
22 ELECTRIC UTILITY OR COOPERATIVE ELECTRIC UTILITY SHALL TAKE ALL  
23 REASONABLE AND PRUDENT STEPS NECESSARY TO COMPLY WITH THE  
24 APPLICABLE REQUIREMENTS OF SUBSECTIONS (1) TO (7) WITHIN 90 DAYS  
25 AFTER THE MEETING IF THERE IS A CREDIBLE BASIS FOR THE ACTION. IF  
26 THE PARTIES DO NOT AGREE AS TO WHETHER THERE IS A CREDIBLE BASIS  
27 FOR THE ACTION, THE ATTORNEY GENERAL OR CUSTOMER MAY PROCEED TO

1 FILE THE SUIT.

2 (9) THE COMMISSION SHALL MONITOR WHETHER ANY ENTITY HAS  
3 ENGAGED IN MARKET MANIPULATIONS RELATED TO THE LOCAL CLEARING  
4 REQUIREMENTS OF THIS SECTION. AN ALTERNATIVE ELECTRIC SUPPLIER OR A  
5 CUSTOMER OF AN ALTERNATIVE ELECTRIC SUPPLIER MAY FILE A COMPLAINT  
6 WITH THE COMMISSION IF THE ALTERNATIVE ELECTRIC SUPPLIER OR  
7 CUSTOMER BELIEVES THAT AVAILABLE CAPACITY HAS BEEN UNREASONABLY  
8 WITHHELD FROM THE LOCAL CLEARING REQUIREMENTS OF THIS SECTION BY AN  
9 ELECTRIC UTILITY OR AN UNREGULATED GENERATION PROVIDER BASED IN  
10 THIS STATE. IF THE COMMISSION FINDS EVIDENCE THAT ANY AVAILABLE  
11 CAPACITY WAS UNREASONABLY WITHHELD BY AN UNREGULATED GENERATION  
12 PROVIDER BASED IN THIS STATE, THE COMMISSION SHALL IMMEDIATELY  
13 FORWARD THAT EVIDENCE TO THE STATE ATTORNEY GENERAL AND APPROPRIATE  
14 FEDERAL AUTHORITIES FOR ENFORCEMENT. IF THE COMMISSION DETERMINES  
15 AFTER NOTICE AND HEARING THAT AN ELECTRIC UTILITY HAS UNREASONABLY  
16 WITHHELD EXCESS CAPACITY, IT MAY DISALLOW COST RECOVERY FOR THE  
17 UTILITY-OWNED CAPACITY THAT WAS IN EXCESS OF THE UTILITY'S CAPACITY  
18 REQUIREMENTS UNDER THIS SECTION.

19 (10) AS USED IN THIS SECTION:

20 (A) "DEDICATED AND FIRM ELECTRIC GENERATION CAPACITY" MEANS  
21 CAPACITY THAT IS OWNED OR UNDER CONTRACT BY THE ELECTRIC PROVIDER  
22 THAT IS ELIGIBLE TO BE USED TO SATISFY THE REQUIREMENTS OF THE  
23 APPROPRIATE INDEPENDENT SYSTEM OPERATOR FOR THE LOCAL RESOURCE ZONE  
24 IN WHICH THE ELECTRIC PROVIDER'S DEMAND IS SERVED AND THE  
25 REQUIREMENT DETERMINED BY THE COMMISSION UNDER SUBSECTION (7).

26 (B) "ELECTRIC PROVIDER" MEANS ANY OF THE FOLLOWING:

27 (i) ANY PERSON OR ENTITY THAT IS REGULATED BY THE COMMISSION

1 FOR THE PURPOSE OF SELLING ELECTRICITY TO RETAIL CUSTOMERS IN THIS  
2 STATE.

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

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

5 (iv) AN ALTERNATIVE ELECTRIC SUPPLIER LICENSED UNDER SECTION  
6 10A.

7 (C) "LOCAL CLEARING REQUIREMENT" MEANS THE AMOUNT OF CAPACITY  
8 RESOURCES THAT MUST BE PRESENT IN THE LOCAL RESOURCE ZONE IN WHICH  
9 THE ELECTRIC PROVIDER'S DEMAND IS SERVED TO ENSURE RELIABILITY IN  
10 THAT ZONE AS REQUIRED BY THE APPROPRIATE INDEPENDENT SYSTEM  
11 OPERATOR FOR THE LOCAL RESOURCE ZONE IN WHICH THE ELECTRIC  
12 PROVIDER'S DEMAND IS SERVED AND BY THE COMMISSION UNDER SUBSECTION  
13 (7).

14 (D) "PLANNING RESERVE MARGIN REQUIREMENT" MEANS THE AMOUNT OF  
15 CAPACITY EQUAL TO THE FORECASTED COINCIDENT PEAK DEMAND THAT OCCURS  
16 WHEN THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR FOOTPRINT PEAK  
17 DEMAND OCCURS PLUS A RESERVE MARGIN THAT MEETS AN ACCEPTABLE LOSS  
18 OF LOAD EXPECTATION AS SET BY THE COMMISSION OR APPROPRIATE  
19 INDEPENDENT SYSTEM OPERATOR.

20 (E) "PLANNING YEAR" MEANS JUNE 1 THROUGH THE FOLLOWING MAY 31  
21 OF EACH YEAR.

22 (F) "PROPORTIONAL SHARE OF THE LOCAL CLEARING REQUIREMENT"  
23 MEANS THE MINIMUM AMOUNT OF CAPACITY AN ELECTRIC PROVIDER MUST OWN  
24 OR HAVE CONTRACTUAL RIGHTS TO THAT EQUALS THE PROVIDER'S PERCENTAGE  
25 SHARE OF THE CAPACITY REQUIREMENT FOR THE LOCAL RESOURCE ZONE IN  
26 WHICH THE PROVIDER'S DEMAND IS SERVED. THE PERCENTAGE SHARE OF THE  
27 CAPACITY REQUIREMENT SHALL BE DETERMINED BASED ON THE AMOUNT OF

1 ELECTRIC PEAK DEMAND SERVED BY THE PROVIDER AS A PERCENTAGE OF THE  
2 TOTAL ELECTRIC PEAK DEMAND OF ALL PROVIDERS IN THE LOCAL RESOURCE  
3 ZONE AT THE TIME THE DETERMINATION IS MADE.

4 SEC. 6X. (1) SUBJECT TO SECTION 6A(14), IN ORDER TO ENSURE  
5 EQUIVALENT CONSIDERATION OF ENERGY WASTE REDUCTION RESOURCES WITHIN  
6 THE INTEGRATED RESOURCE PLANNING PROCESS, THE COMMISSION SHALL BY  
7 JANUARY 1, 2021 AUTHORIZE A SHARED SAVINGS MECHANISM FOR AN  
8 ELECTRIC UTILITY IF THE ELECTRIC UTILITY HAS NOT OTHERWISE  
9 CAPITALIZED THE COSTS OF THE ENERGY WASTE REDUCTION, CONSERVATION,  
10 DEMAND REDUCTION, AND OTHER WASTE REDUCTION MEASURES.

11 (2) FOR AN ELECTRIC UTILITY THAT ACHIEVES ANNUAL ELECTRIC  
12 ENERGY SAVINGS OF AT LEAST 1% BUT NOT GREATER THAN 1.25% OF ITS  
13 TOTAL ANNUAL WEATHER-ADJUSTED RETAIL SALES IN MEGAWATT HOURS IN THE  
14 PREVIOUS CALENDAR YEAR, THE SHARED SAVINGS INCENTIVE SHALL BE 15%  
15 OF THE NET BENEFITS VALIDATED AS A RESULT OF THE PROGRAMS  
16 IMPLEMENTED BY THE ELECTRIC UTILITY RELATED TO ENERGY WASTE  
17 REDUCTION, CONSERVATION, DEMAND REDUCTION, AND OTHER WASTE  
18 REDUCTION. A SHARED SAVINGS MECHANISM AUTHORIZED UNDER THIS  
19 SUBSECTION SHALL NOT EXCEED 20% OF THE ELECTRIC UTILITY'S  
20 EXPENDITURES ASSOCIATED WITH IMPLEMENTING ENERGY WASTE REDUCTION  
21 PROGRAMS FOR THE CALENDAR YEAR IN WHICH THE SHARED SAVINGS  
22 MECHANISM WAS AUTHORIZED. THE COMMISSION SHALL DETERMINE NET  
23 BENEFITS BY CALCULATING THE NET PRESENT VALUE OF THE LIFETIME  
24 AVOIDED UTILITY COSTS THAT ARE PROJECTED FROM THE UTILITY'S ENERGY  
25 WASTE REDUCTION PROGRAMS IMPLEMENTED IN A CALENDAR YEAR LESS THE  
26 UTILITY EXPENDITURES ASSOCIATED WITH IMPLEMENTING THE ENERGY WASTE  
27 PROGRAM IN THAT CALENDAR YEAR, INCLUDING ALL OVERHEAD AND

1 ADMINISTRATIVE COSTS. THE COMMISSION SHALL CALCULATE NET PRESENT  
2 VALUE BY USING A DISCOUNT RATE OF THE UTILITY'S WEIGHTED AVERAGE  
3 COST OF CAPITAL IN THAT CALENDAR YEAR.

4 (3) FOR AN ELECTRIC UTILITY THAT ACHIEVES ANNUAL ELECTRIC  
5 ENERGY SAVINGS OF GREATER THAN 1.25% BUT NOT GREATER THAN 1.5% OF  
6 THE TOTAL ANNUAL WEATHER-ADJUSTED RETAIL SALES IN MEGAWATT HOURS IN  
7 THE PREVIOUS CALENDAR YEAR, THE SHARED SAVINGS INCENTIVE SHALL BE  
8 17.5% OF THE NET BENEFITS VALIDATED AS A RESULT OF THE PROGRAMS  
9 IMPLEMENTED BY THE ELECTRIC UTILITY RELATED TO ENERGY WASTE  
10 REDUCTION, CONSERVATION, DEMAND REDUCTION, AND OTHER WASTE  
11 REDUCTION. A SHARED SAVINGS MECHANISM AUTHORIZED UNDER THIS  
12 SUBSECTION SHALL NOT EXCEED 22.5% OF THE ELECTRIC UTILITY'S  
13 EXPENDITURES ASSOCIATED WITH IMPLEMENTING ENERGY WASTE REDUCTION  
14 PROGRAMS FOR THE CALENDAR YEAR IN WHICH THE SHARED SAVINGS  
15 MECHANISM WAS AUTHORIZED. THE COMMISSION SHALL DETERMINE NET  
16 BENEFITS BY CALCULATING THE NET PRESENT VALUE OF THE LIFETIME  
17 AVOIDED UTILITY COSTS THAT ARE PROJECTED FROM THE UTILITY'S ENERGY  
18 WASTE REDUCTION PROGRAMS IMPLEMENTED IN A CALENDAR YEAR LESS THE  
19 UTILITY EXPENDITURES ASSOCIATED WITH IMPLEMENTING THE ENERGY WASTE  
20 PROGRAM IN THAT CALENDAR YEAR, INCLUDING ALL OVERHEAD AND  
21 ADMINISTRATIVE COSTS. THE COMMISSION SHALL CALCULATE NET PRESENT  
22 VALUE BY USING A DISCOUNT RATE OF THE UTILITY'S WEIGHTED AVERAGE  
23 COST OF CAPITAL IN THAT CALENDAR YEAR.

24 (4) FOR AN ELECTRIC UTILITY THAT ACHIEVES ANNUAL ELECTRIC  
25 ENERGY SAVINGS GREATER THAN 1.5% OF THE TOTAL ANNUAL WEATHER-  
26 ADJUSTED RETAIL SALES IN MEGAWATT HOURS IN THE PREVIOUS CALENDAR  
27 YEAR, THE SHARED SAVINGS INCENTIVE SHALL BE 20% OF THE NET BENEFITS

1 VALIDATED AS A RESULT OF THE PROGRAMS IMPLEMENTED BY THE ELECTRIC  
2 UTILITY RELATED TO ENERGY WASTE REDUCTION, CONSERVATION, DEMAND  
3 REDUCTION, AND OTHER WASTE REDUCTION. A SHARED SAVINGS MECHANISM  
4 AUTHORIZED UNDER THIS SUBSECTION SHALL NOT EXCEED 25% OF THE  
5 ELECTRIC UTILITY'S EXPENDITURES ASSOCIATED WITH IMPLEMENTING ENERGY  
6 WASTE REDUCTION PROGRAMS FOR THE CALENDAR YEAR IN WHICH THE SHARED  
7 SAVINGS MECHANISM WAS AUTHORIZED. THE COMMISSION SHALL DETERMINE  
8 NET BENEFITS BY CALCULATING THE NET PRESENT VALUE OF THE LIFETIME  
9 AVOIDED UTILITY COSTS THAT ARE PROJECTED FROM THE UTILITY'S ENERGY  
10 WASTE REDUCTION PROGRAMS IMPLEMENTED IN A CALENDAR YEAR LESS THE  
11 UTILITY EXPENDITURES ASSOCIATED WITH IMPLEMENTING THE ENERGY WASTE  
12 PROGRAM IN THAT CALENDAR YEAR, INCLUDING ALL OVERHEAD AND  
13 ADMINISTRATIVE COSTS. THE COMMISSION SHALL CALCULATE NET PRESENT  
14 VALUE BY USING A DISCOUNT RATE OF THE UTILITY'S WEIGHTED AVERAGE  
15 COST OF CAPITAL IN THAT CALENDAR YEAR.

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

18 ~~—(2)—The purpose of sections 10a through 10bb is to do all of~~  
19 ~~the following:~~

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

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

27 ~~—(c) To encourage the development and construction of merchant~~

1 ~~plants which will diversify the ownership of electric generation in~~  
2 ~~this state.~~

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

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

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

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

19 (a) ~~Provide~~ **EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION,**  
20 **PROVIDE** that no more than 10% of an electric utility's average  
21 weather-adjusted retail sales for the preceding calendar year may  
22 take service from an alternative electric supplier at any time.

23 (b) Set forth procedures necessary to ~~administer and~~ allocate  
24 the amount of load that will be allowed to be served by alternative  
25 electric suppliers, through the use of annual energy allotments  
26 awarded on a calendar year basis. ~~, and shall provide, among other~~  
27 ~~things, that existing customers who are taking electric service~~

1 ~~from an alternative electric supplier at a facility on the~~  
2 ~~effective date of the amendatory act that added this subdivision~~  
3 ~~shall be given an allocated annual energy allotment for that~~  
4 ~~service at that facility, that customers seeking to expand usage at~~  
5 ~~a facility served through an alternative electric supplier will be~~  
6 ~~given next priority, with the remaining available load, if any,~~  
7 ~~allocated on a first come first served basis. The procedures shall~~  
8 ~~also provide how customer facilities will be defined for the~~  
9 ~~purpose of assigning the annual energy allotments to be allocated~~  
10 ~~under this section. The commission shall not allocate additional~~  
11 ~~annual energy allotments at any time when the total annual energy~~  
12 ~~allotments for the utility's distribution service territory is~~  
13 ~~greater than 10% of the utility's weather adjusted retail sales in~~  
14 ~~the calendar year preceding the date of allocation. If the sales of~~  
15 ~~a utility are less in a subsequent year or if the energy usage of a~~  
16 ~~customer receiving electric service from an alternative electric~~  
17 ~~supplier exceeds its annual energy allotment for that facility,~~  
18 ~~that customer shall not be forced to purchase electricity from a~~  
19 ~~utility, but may purchase electricity from an alternative electric~~  
20 ~~supplier for that facility during that calendar year.~~

21 (c) Notwithstanding any other provision of this section,  
22 customers seeking to expand usage at a facility that has been  
23 continuously served through an alternative electric supplier since  
24 April 1, 2008 ~~shall be permitted to~~ **MAY** purchase electricity from  
25 an alternative electric supplier for both the existing and any  
26 expanded load at that facility as well as any new facility  
27 constructed or acquired after ~~the effective date of the amendatory~~

1 ~~act that added this subdivision~~ OCTOBER 6, 2008 that is similar in  
2 nature if the customer owns more than 50% of the new facility.

3 (D) PROVIDE THAT FOR AN EXISTING FACILITY THAT IS RECEIVING  
4 100% OF ITS ELECTRIC SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER  
5 ON OR AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED  
6 SECTION 6T, THE OWNER OF THAT FACILITY MAY PURCHASE ELECTRICITY  
7 FROM AN ALTERNATIVE ELECTRIC SUPPLIER, REGARDLESS OF WHETHER THE  
8 SALES EXCEED 10% OF THE SERVICING ELECTRIC UTILITY'S AVERAGE  
9 WEATHER-ADJUSTED RETAIL SALES, FOR BOTH THE EXISTING ELECTRIC  
10 CHOICE LOAD AT THAT FACILITY AND ANY EXPANDED LOAD ARISING AFTER  
11 THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED SECTION 6T AT  
12 THAT FACILITY AS WELL AS ANY NEW FACILITY THAT IS SIMILAR IN NATURE  
13 TO THE EXISTING FACILITY, THAT IS CONSTRUCTED OR ACQUIRED BY THE  
14 CUSTOMER ON A SITE CONTIGUOUS TO THE EXISTING SITE OR ON A SITE  
15 THAT WOULD BE CONTIGUOUS TO AN EXISTING SITE IN THE ABSENCE OF AN  
16 EXISTING PUBLIC RIGHT-OF-WAY, AND THE CUSTOMER OWNS MORE THAN 50%  
17 OF THAT FACILITY. THIS SUBDIVISION DOES NOT AUTHORIZE OR PERMIT AN  
18 EXISTING FACILITY BEING SERVED BY AN ELECTRIC UTILITY ON STANDARD  
19 TARIFF SERVICE ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT  
20 ADDED SECTION 6T TO BE SERVED BY AN ALTERNATIVE ELECTRIC SUPPLIER.

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

1 IS IN COMPLIANCE WITH THE TERMS OF A SETTLEMENT AGREEMENT REQUIRING  
2 IT TO FACILITATE CONSTRUCTION OF A NEW POWER PLANT LOCATED IN THE  
3 UPPER PENINSULA OF THIS STATE. A CUSTOMER DESCRIBED IN THIS  
4 SUBDIVISION AND THE ALTERNATIVE ELECTRIC SUPPLIER THAT PROVIDES  
5 ELECTRIC SERVICE TO THAT CUSTOMER ARE NOT SUBJECT TO THE  
6 REQUIREMENTS CONTAINED IN THE AMENDATORY ACT THAT ADDED SECTION 6T  
7 AND ANY ADMINISTRATIVE REGULATIONS ADOPTED UNDER THAT AMENDATORY  
8 ACT. THE COMMISSION'S ORDERS ESTABLISHING RATES, TERMS, AND  
9 CONDITIONS OF RETAIL ACCESS SERVICE ISSUED BEFORE THE EFFECTIVE  
10 DATE OF THE AMENDATORY ACT THAT ADDED SECTION 6T REMAIN IN EFFECT  
11 WITH REGARD TO RETAIL OPEN ACCESS PROVIDED UNDER THIS SUBDIVISION.

12 (F) PROVIDE THAT A CUSTOMER ON AN ENROLLMENT QUEUE WAITING TO  
13 TAKE RETAIL OPEN ACCESS SERVICE AS OF DECEMBER 31, 2015 SHALL  
14 CONTINUE ON THE QUEUE AND AN ELECTRIC UTILITY SHALL ADD A NEW  
15 CUSTOMER TO THE QUEUE IF THE CUSTOMER'S PROSPECTIVE ALTERNATIVE  
16 ELECTRIC SUPPLIER SUBMITS AN ENROLLMENT REQUEST TO THE ELECTRIC  
17 UTILITY. A CUSTOMER SHALL BE REMOVED FROM THE QUEUE BY NOTIFYING  
18 THE ELECTRIC UTILITY ELECTRONICALLY OR IN WRITING.

19 (G) REQUIRE EACH ELECTRIC UTILITY TO FILE WITH THE COMMISSION  
20 NOT LATER THAN JANUARY 15 OF EACH YEAR A RANK-ORDERED QUEUE OF ALL  
21 CUSTOMERS AWAITING RETAIL OPEN ACCESS SERVICE UNDER SUBDIVISION  
22 (F). THE FILING MUST INCLUDE THE ESTIMATED AMOUNT OF ELECTRICITY  
23 USED BY EACH CUSTOMER AWAITING RETAIL OPEN ACCESS SERVICE UNDER  
24 SUBDIVISION (F). ALL INFORMATION CONTAINED IN THE FILING UNDER THIS  
25 SUBDIVISION IS EXEMPT FROM RELEASE UNDER THE FREEDOM OF INFORMATION  
26 ACT, 1976 PA 442, MCL 15.231 TO 15.246, AND SHALL BE TREATED AS  
27 CONFIDENTIAL INFORMATION BY THE COMMISSION. THE COMMISSION MAY

1 RELEASE AGGREGATED INFORMATION AS PART OF ITS ANNUAL REPORT AS LONG  
2 AS INDIVIDUAL CUSTOMER INFORMATION OR DATA ARE NOT RELEASED.

3 (H) PROVIDE THAT IF THE PROSPECTIVE ALTERNATIVE ELECTRIC  
4 SUPPLIER OF A CUSTOMER NEXT ON THE QUEUE AWAITING RETAIL OPEN  
5 ACCESS SERVICE IS NOTIFIED AFTER THE EFFECTIVE DATE OF THE  
6 AMENDATORY ACT THAT ADDED SECTION 6T THAT LESS THAN 10% OF AN  
7 ELECTRIC UTILITY'S AVERAGE WEATHER-ADJUSTED RETAIL SALES FOR THE  
8 PRECEDING CALENDAR YEAR ARE TAKING SERVICE FROM AN ALTERNATIVE  
9 ELECTRIC SUPPLIER AND THAT THE AMOUNT OF ELECTRICITY NEEDED TO  
10 SERVE THE CUSTOMER'S ELECTRIC LOAD IS AVAILABLE UNDER THE 10%  
11 ALLOCATION, THE CUSTOMER MAY TAKE SERVICE FROM AN ALTERNATIVE  
12 ELECTRIC SUPPLIER. THE CUSTOMER IS SUBJECT TO ANY GENERATION  
13 CAPACITY SERVICE COSTS ASSESSED UNDER SUBDIVISION (I). THE  
14 CUSTOMER'S PROSPECTIVE ALTERNATIVE ELECTRIC SUPPLIER SHALL NOTIFY  
15 THE ELECTRIC UTILITY WITHIN 5 BUSINESS DAYS AFTER BEING NOTIFIED  
16 WHETHER THE CUSTOMER WILL TAKE SERVICE FROM AN ALTERNATIVE ELECTRIC  
17 SUPPLIER. IF THE CUSTOMER'S PROSPECTIVE ALTERNATIVE ELECTRIC  
18 SUPPLIER FAILS TO NOTIFY THE UTILITY WITHIN 5 BUSINESS DAYS OR IF  
19 THE CUSTOMER CHOOSES NOT TO TAKE RETAIL OPEN ACCESS SERVICE, THE  
20 CUSTOMER SHALL BE REMOVED FROM THE QUEUE OF THOSE AWAITING RETAIL  
21 OPEN ACCESS SERVICE. THE CUSTOMER MAY SUBSEQUENTLY BE ADDED TO THE  
22 QUEUE AS A NEW CUSTOMER UNDER THE PROVISIONS OF SUBDIVISION (F). A  
23 CUSTOMER THAT ELECTS TO TAKE SERVICE FROM AN ALTERNATIVE ELECTRIC  
24 SUPPLIER UNDER THIS SUBDIVISION SHALL BECOME SERVICE-READY UNDER  
25 RULES ESTABLISHED BY THE COMMISSION AND THE UTILITY'S APPROVED  
26 RETAIL OPEN ACCESS SERVICE TARIFFS.

27 (I) EXCEPT AS OTHERWISE PROVIDED UNDER SUBDIVISION (J),

1 PROVIDE THAT BY 1 YEAR AFTER THE EFFECTIVE DATE OF THE AMENDATORY  
2 ACT THAT ADDED SECTION 6T, THE COMMISSION SHALL DETERMINE THE  
3 APPROPRIATE GENERATION CAPACITY SERVICE COSTS FOR EACH ELECTRIC  
4 UTILITY THAT SHALL BE ASSESSED AS A NONBYPASSABLE CHARGE TO ANY  
5 FULL SERVICE ELECTRIC UTILITY CUSTOMER FOR THE SUBSEQUENT 10  
6 PLANNING YEARS AFTER THAT CUSTOMER EITHER ELECTS TO RECEIVE SERVICE  
7 FROM AN ALTERNATIVE ELECTRIC SUPPLIER UNDER SUBDIVISION (H) OR, FOR  
8 AN ELECTRIC UTILITY THAT DOES NOT MAINTAIN A QUEUE, ELECTS TO  
9 RECEIVE SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER AFTER  
10 DECEMBER 1, 2016, FOR ANY OF ITS CURRENT FULL SERVICE ELECTRIC  
11 LOAD. THE COMMISSION MAY MAKE AN INITIAL DETERMINATION UNDER THIS  
12 SUBSECTION IN AN ELECTRIC UTILITY'S PENDING RATE CASE OR POWER  
13 SUPPLY COST RECOVERY PROCEEDING. THE GENERATION CAPACITY COSTS  
14 SHALL BE THE CUSTOMER'S PRO RATA SHARE OF THE COST OF GENERATION  
15 CAPACITY SERVICES THAT THE CUSTOMER CONTINUES TO RECEIVE FROM THE  
16 ELECTRIC UTILITY FOR THE SUBSEQUENT 10 PLANNING YEARS AS DETERMINED  
17 BY THE COMMISSION UNDER THIS SUBDIVISION. THE ELECTRIC UTILITY, AND  
18 NOT THE CUSTOMER'S ALTERNATIVE ELECTRIC SUPPLIER, WILL BE  
19 RESPONSIBLE FOR THAT CUSTOMER'S SHARE OF THE GENERATION CAPACITY  
20 REQUIREMENTS UNDER SECTION 6W(1), (2), AND (3) FOR THE 10-YEAR  
21 PERIOD THAT THE GENERATION CAPACITY CHARGE IS ASSESSED. THE  
22 ALLOCATION OF A UTILITY'S GENERATION CAPACITY SERVICE COSTS SHALL  
23 NOT DIFFERENTIATE BETWEEN CUSTOMERS ON STANDARD TARIFF SERVICE AND  
24 CUSTOMERS ELECTING TO TAKE SERVICE FROM AN ALTERNATIVE ELECTRIC  
25 SUPPLIER UNDER SUBDIVISION (H). THE INITIAL DETERMINATION BY THE  
26 COMMISSION UNDER THIS SUBDIVISION SHALL BE CONDUCTED AS A CONTESTED  
27 CASE PURSUANT TO CHAPTERS 4 AND 5 OF THE ADMINISTRATIVE PROCEDURES

1 ACT OF 1969, 1969 PA 306, MCL 24.271 TO 24.292. THIS SECTION DOES  
2 NOT AUTHORIZE THE COMMISSION TO DISALLOW COST RECOVERY FOR  
3 GENERATION COSTS THAT HAVE BEEN APPROVED IN A PREVIOUS COMMISSION  
4 ORDER. AFTER THE INITIAL DETERMINATION OF GENERATION CAPACITY  
5 SERVICE COSTS TO BE ASSESSED UNDER THIS SUBDIVISION, THE COMMISSION  
6 SHALL REVIEW AND AMEND THE GENERATION CAPACITY SERVICE COSTS IN ALL  
7 SUBSEQUENT GENERATION RATE CASES AND POWER SUPPLY COST RECOVERY  
8 PROCEEDINGS. IN DETERMINING THE CUSTOMER'S PRO RATA SHARE OF THE  
9 UTILITY'S GENERATION CAPACITY SERVICE COSTS, THE COMMISSION SHALL  
10 CONSIDER, BUT IS NOT LIMITED TO, BOTH OF THE FOLLOWING:

11 (i) THE UTILITY'S FIXED GENERATION COSTS INCLUDED IN THE  
12 UTILITY'S BASE RATES, SURCHARGES, AND POWER SUPPLY COST RECOVERY  
13 FACTORS, REGARDLESS OF WHETHER THOSE COSTS RESULT FROM UTILITY  
14 OWNERSHIP OF GENERATION CAPACITY RESOURCES OR THE PURCHASE OR LEASE  
15 OF GENERATION CAPACITY RESOURCES FROM A THIRD PARTY OR MARKETS.

16 (ii) ANY NET PROCEEDS ACCRUED TO THE UTILITY FROM OFF-SYSTEM  
17 ENERGY SALES ON AN ANNUAL BASIS OVER THE APPLICABLE PLANNING YEAR.

18 (J) A GENERATION CAPACITY CHARGE IMPLEMENTED BY AN ELECTRIC  
19 UTILITY AS AUTHORIZED BY COMMISSION ORDER OF SEPTEMBER 25, 2012,  
20 CASE NO. U-17032, REMAINS IN EFFECT UNTIL THE COMMISSION AUTHORIZES  
21 THAT ELECTRIC UTILITY TO COLLECT A GENERATION CAPACITY SERVICE  
22 COSTS CHARGE UNDER THIS SECTION AND THAT CHARGE GOES INTO EFFECT.  
23 THE COMMISSION SHALL ESTABLISH THAT ELECTRIC UTILITY'S GENERATION  
24 CAPACITY SERVICE COSTS CHARGE IN THAT UTILITY'S NEXT GENERAL RATE  
25 CASE. WHEN THE ELECTRIC UTILITY FINALLY IMPOSES A GENERATION  
26 CAPACITY SERVICE COSTS CHARGE, THE AUTHORITY TO IMPOSE THE  
27 GENERATION CAPACITY CHARGE UNDER CASE NO. U-17032 IS TERMINATED.

1           **(K) PROVIDE THAT AS A CONDITION OF LICENSURE, AN ALTERNATIVE**  
2 **ELECTRIC SUPPLIER MEETS ALL OF THE REQUIREMENTS OF SECTION 6W.**

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

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

22 ~~—— (4) No later than December 2, 2000, the commission shall~~  
23 ~~establish a code of conduct that shall apply to all electric~~  
24 ~~utilities. The code of conduct shall include, but is not limited~~  
25 ~~to, measures to prevent cross subsidization, information sharing,~~  
26 ~~and preferential treatment, between a utility's regulated and~~  
27 ~~unregulated services, whether those services are provided by the~~

~~1 utility or the utility's affiliated entities. The code of conduct  
2 established under this subsection shall also be applicable to  
3 electric utilities and alternative electric suppliers consistent  
4 with section 10, this section, and sections 10b through 10cc.~~

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

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

~~14 (a) Locate within a separate department of the utility or  
15 affiliate within the utility's corporate structure the personnel  
16 responsible for the day to day management of the program.~~

~~17 (b) Maintain separate books and records for the program,  
18 access to which shall be made available to the commission upon  
19 request.~~

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

~~24 (7) All costs directly attributable to an appliance service  
25 program allowed under subsection (5) shall be allocated to the  
26 program as required by this subsection. The direct and indirect  
27 costs of employees, vehicles, equipment, office space, and other~~

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

~~11 — (8) A utility may include charges for its appliance service  
12 program on its monthly billings to its customers if the utility  
13 complies with all of the following requirements:~~

~~14 — (a) All costs associated with the billing process, including  
15 the postage, envelopes, paper, and printing expenses, are allocated  
16 as required under subsection (7).~~

~~17 — (b) A customer's regulated utility service is not terminated  
18 for nonpayment of the appliance service program portion of the  
19 bill.~~

~~20 — (c) Unless the customer directs otherwise in writing, a  
21 partial payment by a customer is applied first to the bill for  
22 regulated service.~~

~~23 — (9) In marketing its appliance service program to the public,  
24 a utility shall do all of the following:~~

~~25 — (a) The list of customers receiving regulated service from the  
26 utility shall be available to a provider of appliance repair  
27 service upon request within 2 business days. The customer list~~

1 ~~shall be provided in the same electronic format as such information~~  
2 ~~is provided to the appliance service program. A new customer shall~~  
3 ~~be added to the customer list within 1 business day of the date the~~  
4 ~~customer requested to turn on service.~~

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

9 ~~—— (c) Prior to enrolling a customer into the program, the~~  
10 ~~utility shall inform the potential customer of all of the~~  
11 ~~following:~~

12 ~~—— (i) That appliance service programs may be available from~~  
13 ~~another provider.~~

14 ~~—— (ii) That the appliance service program is not regulated by~~  
15 ~~the commission.~~

16 ~~—— (iii) That a new customer shall have 10 days after enrollment~~  
17 ~~to cancel his or her appliance service program contract without~~  
18 ~~penalty.~~

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

23 ~~—— (d) The utility name and logo may be used to market the~~  
24 ~~appliance service program provided that the program is not marketed~~  
25 ~~in conjunction with a regulated service. To the extent that a~~  
26 ~~program utilizes the utility's name and logo in marketing the~~  
27 ~~program, the program shall include language on all material~~

1 ~~indicating that the program is not regulated by the commission.~~  
2 ~~Costs shall not be allocated to the program for the use of the~~  
3 ~~utility's name or logo.~~

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

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

18 (4) ~~(12)~~ This act does not prohibit or limit the right of a  
19 person to obtain self-service power and does not impose a  
20 transition, implementation, exit fee, or any other similar charge  
21 on self-service power. A person using self-service power is not an  
22 electric supplier, electric utility, or a person conducting an  
23 electric utility business. As used in this subsection, "self-  
24 service power" means any of the following:

25 (a) Electricity generated and consumed at an industrial site  
26 or contiguous industrial site or single commercial establishment or  
27 single residence without the use of an electric utility's

1 transmission and distribution system.

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

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

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

18 (5) ~~(13)~~—This act does not prohibit or limit the right of a  
19 person to engage in affiliate wheeling and does not impose a  
20 transition, implementation, exit fee, or any other similar charge  
21 on a person engaged in affiliate wheeling. ~~As used in this section:~~

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

1 ~~cause the direction of the management or policies of a person or~~  
2 ~~entity or the ownership of at least 7% of an entity either directly~~  
3 ~~or indirectly.~~

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

9 ~~—— (i) For at least 90 days during the period from January 1,~~  
10 ~~1996 to October 1, 1999, supplied by self service power, but only~~  
11 ~~to the extent of the capacity reserved or load served by self-~~  
12 ~~service power during the period.~~

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

20 (6) ~~(14)~~The rights of parties to existing contracts and  
21 agreements in effect as of January 1, 2000 between electric  
22 utilities and qualifying facilities, including the right to have  
23 the charges recovered from the customers of an electric utility, or  
24 its successor, shall ~~be~~ **ARE** not ~~be~~ abrogated, increased, or diminished  
25 by this act, nor shall the receipt of any proceeds of the  
26 securitization bonds by an electric utility be a basis for any  
27 regulatory disallowance. Further, any securitization or financing

1 order issued by the commission that relates to a qualifying  
2 facility's power purchase contract shall fully consider that  
3 qualifying facility's legal and financial interests.

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

16 (8) ~~(16)~~ The commission shall authorize rates that will ensure  
17 that an electric utility that offered retail open access service  
18 from 2002 through ~~the effective date of the amendatory act that~~  
19 ~~added this subsection~~ **OCTOBER 6, 2008** fully recovers its  
20 restructuring costs and any associated accrued regulatory assets.  
21 This includes, but is not limited to, implementation costs,  
22 stranded costs, and costs authorized ~~pursuant to~~ **UNDER** section  
23 10d(4) as it existed ~~prior to the effective date of the amendatory~~  
24 ~~act that added this subsection,~~ **BEFORE OCTOBER 6, 2008**, that have  
25 been authorized for recovery by the commission in orders issued  
26 ~~prior to the effective date of the amendatory act that added this~~  
27 ~~subsection.~~ **BEFORE OCTOBER 6, 2008**. The commission shall approve

1 surcharges that will ensure full recovery of all such costs ~~within~~  
2 ~~5 years of the effective date of the amendatory act that added this~~  
3 ~~subsection.~~ **BY OCTOBER 6, 2013.**

4 (9) ~~(17)~~ As used in subsections (1) and ~~(15)~~ **(7)** :

5 (a) "Customer" means the building or facilities served through  
6 a single existing electric billing meter and does not mean the  
7 person, corporation, partnership, association, governmental body,  
8 or other entity owning or having possession of the building or  
9 facilities.

10 (b) "Standard tariff service" means, for each regulated  
11 electric utility, the retail rates, terms, and conditions of  
12 service approved by the commission for service to customers who do  
13 not elect to receive generation service from alternative electric  
14 suppliers.

15 (10) **AS USED IN THIS SECTION:**

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

25 (B) **"AFFILIATE WHEELING" MEANS A PERSON'S USE OF DIRECT ACCESS**  
26 **SERVICE WHERE AN ELECTRIC UTILITY DELIVERS ELECTRICITY GENERATED AT**  
27 **A PERSON'S INDUSTRIAL SITE TO THAT PERSON OR THAT PERSON'S**

1 AFFILIATE AT A LOCATION, OR GENERAL AGGREGATED LOCATIONS, WITHIN  
2 THIS STATE THAT WAS EITHER 1 OF THE FOLLOWING:

3 (i) FOR AT LEAST 90 DAYS DURING THE PERIOD FROM JANUARY 1,  
4 1996 TO OCTOBER 1, 1999, SUPPLIED BY SELF-SERVICE POWER, BUT ONLY  
5 TO THE EXTENT OF THE CAPACITY RESERVED OR LOAD SERVED BY SELF-  
6 SERVICE POWER DURING THE PERIOD.

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

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

24 (a) Order the electric utility or alternative electric  
25 supplier to pay a fine for the first offense of not less than  
26 \$1,000.00 or more than \$20,000.00. For a second offense, the  
27 commission shall order the person to pay a fine of not less than

1 \$2,000.00 or more than \$40,000.00. For a third and any subsequent  
2 offense, the commission shall order the person to pay a fine of not  
3 less than \$5,000.00 or more than \$50,000.00.

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

5 (c) Order any other remedies that would make whole a person  
6 harmed, including, but not limited to, payment of reasonable  
7 attorney fees.

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

10 (e) Issue cease and desist orders.

11 (2) Upon a complaint or the commission's own motion, the  
12 commission may conduct a contested case to review allegations of a  
13 violation under section 10a(3).

14 (3) If the commission finds that a person has violated section  
15 10a(3), the commission shall order remedies and penalties to  
16 protect customers and other persons ~~who~~**THAT** have suffered damages  
17 as a result of the violation, including, but not limited to, 1 or  
18 more of the following:

19 (a) Order the person to pay a fine for the first offense of  
20 not less than \$20,000.00 or more than \$30,000.00. For a second and  
21 any subsequent offense, the commission shall order the person to  
22 pay a fine of not less than \$30,000.00 or more than \$50,000.00. If  
23 the commission finds that the second or any of the subsequent  
24 offenses were knowingly made in violation of section 10a(3), the  
25 commission shall order the person to pay a fine of not more than  
26 \$70,000.00. Each unauthorized action made in violation of section  
27 10a(3) shall be a separate offense under this subdivision.

1 (b) Order an unauthorized supplier to refund to the customer  
2 any amount greater than the customer would have paid to an  
3 authorized supplier.

4 (c) Order an unauthorized supplier to reimburse an authorized  
5 supplier an amount equal to the amount paid by the customer that  
6 should have been paid to the authorized supplier.

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

9 (e) Order a portion between 10% to 50% of the fine ordered  
10 under subdivision (a) be paid directly to the customer ~~who~~**THAT**  
11 suffered the violation under section 10a(3).

12 (f) If the person is licensed under this act, revoke the  
13 license if the commission finds a pattern of violations of section  
14 10a(3).

15 (g) Issue cease and desist orders.

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

27 (5) If the commission finds that a party's position in a

1 complaint filed under subsection (2) is frivolous, the commission  
2 shall award to the prevailing party their costs, including  
3 reasonable attorney fees, against the nonprevailing party and their  
4 attorney.

5       Sec. 10f. (1) If, ~~After~~**AFTER** subtracting the average demand  
6 for each retail customer under contract that exceeds 15% of the  
7 utility's retail load in the relevant market, an electric utility  
8 has commercial control over more than 30% of the generating  
9 capacity available to serve a relevant market, the utility shall do  
10 1 or more of the following with respect to any generation in excess  
11 of that required to serve its firm retail sales load, including a  
12 reasonable reserve margin:

13       (a) Divest a portion of its generating capacity.

14       (b) Sell generating capacity under a contract with a nonretail  
15 purchaser for a term of at least 5 years.

16       (c) Transfer generating capacity to an independent brokering  
17 trustee for a term of at least 5 years in blocks of at least 500  
18 megawatts, 24 hours per day.

19       (2) The total generating capacity available to serve the  
20 relevant market shall be determined by the commission and shall  
21 equal the sum of the firm available transmission capability into  
22 the relevant market and the aggregate generating capacity located  
23 within the relevant market, less 1 or more of the following:

24       (a) If a municipal utility does not permit its retail  
25 customers to select alternative electric suppliers, the generating  
26 capacity owned by a municipal utility necessary to serve the retail  
27 native load.

1 (b) Generating capacity dedicated to serving on-site load.

2 (c) The generating capacity of any multistate electric  
3 supplier jurisdictionally assigned to customers of other states.

4 (3) Within 30 days after a commission determination of the  
5 total generating capacity under subsection (2) in a relevant  
6 market, an electric utility that exceeds the 30% limit shall file  
7 an application with the commission for approval of a market power  
8 mitigation plan. The commission shall approve the plan if it is  
9 consistent with this act or require modifications to the plan to  
10 make it consistent with this act. The utility ~~shall retain~~ **RETAINS**  
11 the right to determine what specific actions to take to achieve  
12 compliance with this section.

13 (4) An independent brokering trustee shall be completely  
14 independent from and have no affiliation with the utility. The  
15 terms of any transfer of generating capacity shall ensure that the  
16 trustee has complete control over the marketing, pricing, and terms  
17 of the transferred capacity for at least 5 years and shall provide  
18 appropriate performance incentives to the trustee for marketing the  
19 transferred capacity.

20 (5) Upon application to the commission by the utility, the  
21 commission may issue an order approving a change in trustees during  
22 the 5-year term upon a showing that a trustee has failed to market  
23 the transferred generating capacity in a prudent and experienced  
24 manner.

25 ~~Within 1 year of the effective date of the amendatory act~~  
26 ~~that added this section, the commission shall issue a report to the~~  
27 ~~governor and the legislature that analyzes all aspects relating to~~

1 ~~market power in the Upper Peninsula of this state. The report shall~~  
2 ~~include, but not be limited to, concentration of generating~~  
3 ~~capacity, control of the transmission system, restrictions on the~~  
4 ~~delivery of power, ability of new suppliers to enter the market,~~  
5 ~~and identification of any market power problems under the existing~~  
6 ~~market power test. Prior to issuing its report, the commission~~  
7 ~~shall receive written comments and hold hearings to solicit public~~  
8 ~~input.~~

9       Sec. 10p. (1) Each electric utility operating in this state  
10 shall establish an industry worker transition program that shall,  
11 in consultation with employees or applicable collective bargaining  
12 representatives, provide skills upgrades, apprenticeship and  
13 training programs, voluntary separation packages consistent with  
14 reasonable business practices, and job banks to coordinate and  
15 assist placement of employees into comparable employment at no less  
16 than the wage rates and substantially equivalent fringe benefits  
17 received before the transition.

18       (2) The costs resulting from subsection (1) ~~shall include~~  
19 audited and verified employee-related restructuring costs that are  
20 incurred as a result of ~~the amendatory act that added this section~~  
21 **2000 PA 141** or as a result of prior commission restructuring  
22 orders, including employee severance costs, employee retraining  
23 programs, early retirement programs, outplacement programs, and  
24 similar costs and programs, that have been approved and found to be  
25 prudently incurred by the commission.

26       (3) In the event of a sale, purchase, or any other transfer of  
27 ownership of 1 or more Michigan divisions or business units, or

1 generating stations or generating units, of an electric utility, to  
2 either a third party or a utility subsidiary, the electric  
3 utility's contract and agreements with the acquiring entity or  
4 persons shall require all of the following for a period of at least  
5 30 months:

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

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

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

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

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

5 (4) The electric utility shall offer a transition plan to  
6 those employees who are not offered jobs by the entity because the  
7 entity has a need for fewer workers. If there is litigation  
8 concerning the sale, or other transfer of ownership of the electric  
9 utility's divisions, business units, generating stations, or  
10 generating units, the 30-month period under subsection (3) begins  
11 on the date the acquiring entity or persons take control or  
12 management of the divisions, business units, generating stations,  
13 or generating units of the electric utility.

14 (5) The commission shall adopt generally applicable service  
15 quality and reliability standards for the transmission, generation,  
16 and distribution systems of electric utilities and other entities  
17 subject to its jurisdiction, including, but not limited to,  
18 standards for service outages, distribution facility upgrades,  
19 repairs and maintenance, telephone service, billing service,  
20 operational reliability, and public and worker safety. In setting  
21 service quality and reliability standards, the commission shall  
22 consider safety, costs, local geography and weather, applicable  
23 codes, national electric industry practices, sound engineering  
24 judgment, and experience. The commission shall also include  
25 provisions to upgrade the service quality of distribution circuits  
26 that historically have experienced significantly below-average  
27 performance in relationship to similar distribution circuits.

1           (6) Annually, each jurisdictional utility or entity shall file  
2 its report with the commission detailing actions to be taken to  
3 comply with the service quality and reliability standards during  
4 the next calendar year and its performance in relation to the  
5 service quality and reliability standards during the prior calendar  
6 year. The annual reports shall contain that data as required by the  
7 commission, including the estimated cost of achieving improvements  
8 in the jurisdictional utility's or entity's performance with  
9 respect to the service quality and reliability standards.

10           (7) The commission shall analyze the data to determine whether  
11 the jurisdictional entities are properly operating and maintaining  
12 their systems and take corrective action if needed.

13 ~~(8) The commission shall submit a report to the governor and~~  
14 ~~the legislature by September 1, 2009. In preparing the report, the~~  
15 ~~commission should review and consider relevant existing customer~~  
16 ~~surveys and examine what other states have done. This report shall~~  
17 ~~include all of the following:~~

18 ~~(a) An assessment of the major types of end use customer power~~  
19 ~~quality disturbances, including, but not limited to, voltage sags,~~  
20 ~~overvoltages, oscillatory transients, voltage swells, distortion,~~  
21 ~~power frequency variations, and interruptions, caused by both the~~  
22 ~~distribution and transmission systems within this state.~~

23 ~~(b) An assessment of utility power plant generating cost~~  
24 ~~efficiency, including, but not limited to, operational efficiency,~~  
25 ~~economic generating cost efficiency, and schedules for planned and~~  
26 ~~unplanned outages.~~

27 ~~(c) Current efforts employed by the commission to monitor or~~

1 ~~enforce standards pertaining to end use customer power quality~~  
2 ~~disturbances and utility power plant generating cost efficiency~~  
3 ~~either through current practice, statute, policy, or rule.~~

4 ~~—— (d) Recommendations for use of common characteristics,~~  
5 ~~measures, and indices to monitor power quality disturbances and~~  
6 ~~power plant generating cost efficiency, such as expert customer~~  
7 ~~service assessments, frequency of disturbance occurrence, duration~~  
8 ~~of disturbance, and voltage magnitude.~~

9 ~~—— (e) Recommendations for statutory changes that would be~~  
10 ~~necessary to enable the commission to properly monitor and enforce~~  
11 ~~standards to optimize power plant generating cost efficiency and~~  
12 ~~minimize power quality disturbances. These recommendations shall~~  
13 ~~include recommendations to provide methods to ensure that this~~  
14 ~~state can obtain optimal and cost effective end use customer power~~  
15 ~~quality to attract economic development and investment into the~~  
16 ~~state.~~

17 (8) ~~(9)~~ By December 31, 2009, the commission shall ~~, based on~~  
18 ~~its findings in subsection (8),~~ review its existing rules under  
19 this section and amend the rules, if needed, under the  
20 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to  
21 24.328, to implement performance standards for generation  
22 facilities and for distribution facilities to protect end-use  
23 customers from power quality disturbances.

24 (9) ~~(10)~~ Any standards or rules developed under this section  
25 shall be designed to do the following, as applicable:

26 (a) Establish different requirements for each customer class,  
27 whenever those different requirements are appropriate to carry out

1 the provisions of this section, and to reflect different load and  
2 service characteristics of each customer class.

3 (b) Consider the availability and associated cost of necessary  
4 equipment and labor required to maintain or upgrade distribution  
5 and generating facilities.

6 (c) Ensure that the most cost-effective means of addressing  
7 power quality disturbances are promoted for each utility, including  
8 consideration of the installation of equipment or adoption of  
9 operating practices at the end-user's location.

10 (d) Take into account the extent to which the benefits  
11 associated with achieving a specified standard or improvement are  
12 offset by the incremental capital, fuel, and operation and  
13 maintenance expenses associated with meeting the specified standard  
14 or improvement.

15 (e) Carefully consider the time frame for achieving a  
16 specified standard, taking into account the time required to  
17 implement needed investments or modify operating practices.

18 (10) ~~(11)~~—The commission shall also create benchmarks for  
19 individual jurisdictional entities within their rate-making process  
20 in order to accomplish the goals of this section to alleviate end-  
21 use customer power quality disturbances and promote power plant  
22 generating cost efficiency.

23 (11) ~~(12)~~—The commission shall establish a method for  
24 gathering data from the industrial customer class to assist in  
25 monitoring power quality and reliability standards related to  
26 service characteristics of the industrial customer class.

27 (12) ~~(13)~~—The commission is ~~authorized to~~ **MAY** levy financial

1 incentives and penalties upon any jurisdictional entity which  
2 exceeds or fails to meet the service quality and reliability  
3 standards.

4 (13) ~~(14)~~ As used in this section, "jurisdictional utility" or  
5 "jurisdictional entity" means **A** jurisdictional regulated utility as  
6 that term is defined in section 6q.

7 Sec. 10r. (1) The commission shall establish minimum standards  
8 for the form and content of all disclosures, explanations, or sales  
9 information disseminated by a person selling electric service to  
10 ensure that the person provides adequate, accurate, and  
11 understandable information about the service that enables a  
12 customer to make an informed decision relating to the source and  
13 type of electric service purchased. The standards shall be  
14 developed to do all of the following:

15 (a) Not be unduly burdensome.

16 (b) Not unnecessarily delay or inhibit the initiation and  
17 development of competition for electric generation service in any  
18 market.

19 (c) Establish different requirements for disclosures,  
20 explanations, or sales information relating to different services  
21 or similar services to different classes of customers, whenever the  
22 different requirements are appropriate to carry out the purposes of  
23 this section.

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

1 association of rural electric cooperatives, information about the  
2 environmental characteristics of electricity products purchased by  
3 the customer, including all of the following:

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

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

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

19 (d) The regional average fuel mix and emissions profile as  
20 referenced in subdivisions (a), (b), and (c).

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

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

1           (5) The ~~commission~~ **MICHIGAN AGENCY FOR ENERGY** shall establish  
2 the Michigan renewables energy program. The program shall be  
3 designed to inform customers in this state of the availability and  
4 value of using renewable energy generation and the potential of  
5 reduced pollution. The program shall also be designed to promote  
6 the use of existing renewable energy sources and encourage the  
7 development of new facilities.

8 ~~—— (6) Within 2 years of the effective date of the amendatory act~~  
9 ~~that added this subsection, the commission shall conduct a study~~  
10 ~~and report to the governor and the house and senate standing~~  
11 ~~committees with oversight of public utilities issues on the~~  
12 ~~advisability of separating electric distribution and generation~~  
13 ~~within electric utilities, taking into account the costs, benefits,~~  
14 ~~efficiencies to be gained or lost, effects on customers, effects on~~  
15 ~~reliability or quality of service, and other factors which the~~  
16 ~~commission determines are appropriate. The report shall include,~~  
17 ~~but is not limited to, the advisability of locating within separate~~  
18 ~~departments of the utility the personnel responsible for the day-~~  
19 ~~to day management of electric distribution and generation and~~  
20 ~~maintaining separate books and records for electric distribution~~  
21 ~~and generation.~~

22 ~~—— (7) Two years after the effective date of the amendatory act~~  
23 ~~that added this subsection, the commission shall conduct a study~~  
24 ~~and report to the governor and the house and senate standing~~  
25 ~~committees with oversight of public utilities issues on whether the~~  
26 ~~state would benefit from the creation of a purchasing pool in which~~  
27 ~~electric generation in this state is purchased and then resold. The~~

1 ~~report shall include, but is not limited to, whether the purchasing~~  
2 ~~pool shall be a separate entity from electric utilities, the impact~~  
3 ~~of such a pool on electric utilities' management of their~~  
4 ~~electrical generating assets, and whether ratepayers would benefit~~  
5 ~~from spreading the cost of new electric generation across all or a~~  
6 ~~portion of this state.~~

7       (6) ~~(8) Within 270 days of the effective date of the~~  
8 ~~amendatory act that added this subsection, **BY JULY 3, 2009,** each~~  
9 electric utility regulated by the commission shall file with the  
10 commission a plan for utilizing dispatchable customer-owned  
11 distributed generation within the context of its integrated  
12 resource planning process. Included in the utility's filing shall  
13 be proposals for enrolling and compensating customers for the  
14 utility's right to dispatch at-will the distributed generation  
15 assets owned by those customers and provisions requiring the  
16 customer to maintain these assets in a dispatchable condition. If  
17 an electric utility already has programs addressing the subject of  
18 the filing required under this subsection, the utility may refer to  
19 and take credit for those existing programs in its proposed plan.

20       Sec. 10t. (1) An electric utility or alternative electric  
21 supplier shall not shut off service to an eligible customer during  
22 the heating season for nonpayment of a delinquent account if the  
23 customer is an eligible senior citizen customer or if the customer  
24 pays to the utility or supplier a monthly amount equal to 7% of the  
25 estimated annual bill for the eligible customer and the eligible  
26 customer demonstrates, within 14 days of requesting shutoff  
27 protection, that he or she has applied for state or federal heating

1 assistance. If an arrearage exists at the time an eligible customer  
2 applies for protection from shutoff of service during the heating  
3 season, the utility or supplier shall permit the customer to pay  
4 the arrearage in equal monthly installments between the date of  
5 application and the start of the subsequent heating season.

6 (2) An electric utility or alternative electric supplier may  
7 shut off service to **A CUSTOMER AS PROVIDED IN PART 7 OF THE CLEAN**  
8 **AND RENEWABLE ENERGY AND ENERGY WASTE REDUCTION ACT, 2008 PA 295,**  
9 **MCL 460.1201 TO 460.1211, OR TO** an eligible low-income customer who  
10 does not pay the monthly amounts required under subsection (1)  
11 after giving notice in the manner required by rules. The utility or  
12 supplier is not required to offer a settlement agreement to an  
13 eligible low-income customer who fails to make the monthly payments  
14 required under subsection (1).

15 (3) If a customer fails to comply with the terms and  
16 conditions of this section, an electric utility may shut off  
17 service on its own behalf or on behalf of an alternative electric  
18 supplier after giving the customer a notice, by personal service or  
19 first-class mail, that contains all of the following information:

20 (a) That the customer has **NOT PAID THE PER-METER CHARGE**  
21 **DESCRIBED IN SECTION 205 OF THE CLEAN AND RENEWABLE ENERGY AND**  
22 **ENERGY WASTE REDUCTION ACT, 2008 PA 295, MCL 460.1205, OR THE**  
23 **CUSTOMER HAS** defaulted on the winter protection plan.

24 (b) The nature of the default.

25 (c) That unless the customer makes the payments that are past  
26 due within 10 days of the date of mailing, the utility or supplier  
27 may shut off service.

1 (d) The date on or after which the utility or supplier may  
2 shut off service, unless the customer takes appropriate action.

3 (e) That the customer has the right to file a complaint  
4 disputing the claim of the utility or supplier before the date of  
5 the proposed shutoff of service.

6 (f) That the customer has the right to request a hearing  
7 before a hearing officer if the complaint cannot be otherwise  
8 resolved and that the customer shall pay to the utility or supplier  
9 that portion of the bill that is not in dispute within 3 days of  
10 the date that the customer requests a hearing.

11 (g) That the customer has the right to represent himself or  
12 herself, to be represented by an attorney, or to be assisted by any  
13 other person of his or her choice in the complaint process.

14 (h) That the utility or supplier will not shut off service  
15 pending the resolution of a complaint that is filed with the  
16 utility in accordance with this section.

17 (i) The telephone number and address of the utility or  
18 supplier where the customer may make inquiry, enter into a  
19 settlement agreement, or file a complaint.

20 (j) That the customer should contact a social services agency  
21 immediately if the customer believes he or she might be eligible  
22 for emergency economic assistance.

23 (k) That the utility or supplier will postpone shutoff of  
24 service if a medical emergency exists at the customer's residence.

25 (l) That the utility or supplier may require a deposit and  
26 restoration charge if the supplier shuts off service for nonpayment  
27 of a delinquent account.

1 (4) An electric utility is not required to shut off service  
2 under this section to an eligible customer for nonpayment to an  
3 alternative electric supplier.

4 (5) The commission shall establish an educational program to  
5 ensure that eligible customers are informed of the requirements and  
6 benefits of this section.

7 (6) As used in this section:

8 (a) "Eligible customer" means either an eligible low-income  
9 customer or an eligible senior citizen customer.

10 (b) "Eligible low-income customer" means a customer whose  
11 household income does not exceed 150% of the poverty level, as  
12 published by the United States ~~department of health and human~~  
13 ~~services,~~ **DEPARTMENT OF HEALTH AND HUMAN SERVICES**, or who receives  
14 any of the following:

15 (i) Assistance from a state emergency relief program.

16 (ii) Food stamps.

17 (iii) Medicaid.

18 (c) "Eligible senior citizen customer" means a utility or  
19 supplier customer who is 65 years of age or older and who advises  
20 the utility of his or her eligibility.

21 Sec. 10dd. **(1)** For the fiscal year ending September 30, ~~2009,~~  
22 **2017**, there is appropriated to the commission from the assessments  
23 imposed under 1972 PA 299, MCL 460.111 to 460.120, the amount of  
24 ~~\$2,500,000.00~~ **\$1,950,000.00** to hire ~~25.0~~ **13** full-time equated  
25 positions to implement the provisions of the amendatory act that  
26 added ~~this~~ section **6T**.

27 **(2) FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2017, THERE IS**

1 APPROPRIATED TO THE ATTORNEY GENERAL FROM THE ASSESSMENTS IMPOSED  
2 UNDER 1972 PA 299, MCL 460.111 TO 460.120, THE AMOUNT OF  
3 \$150,000.00 TO HIRE 1.0 FULL-TIME EQUATED POSITION TO IMPLEMENT THE  
4 PROVISIONS OF THE AMENDATORY ACT THAT ADDED SECTION 6T.

5 (3) FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2017, THERE IS  
6 APPROPRIATED TO THE MICHIGAN ADMINISTRATIVE HEARING SYSTEM FROM THE  
7 ASSESSMENTS IMPOSED UNDER 1972 PA 299, MCL 460.111 TO 460.120, THE  
8 AMOUNT OF \$600,000.00 TO HIRE 4.0 FULL-TIME EQUATED POSITIONS TO  
9 IMPLEMENT THE PROVISIONS OF THE AMENDATORY ACT THAT ADDED SECTION  
10 6T.

11 (4) FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2017, THERE IS  
12 APPROPRIATED TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY FROM THE  
13 ASSESSMENTS IMPOSED UNDER 1972 PA 299, MCL 460.111 TO 460.120, THE  
14 AMOUNT OF \$150,000.00 TO HIRE 1.0 FULL-TIME EQUATED POSITION TO  
15 IMPLEMENT THE PROVISIONS OF THE AMENDATORY ACT THAT ADDED SECTION  
16 6T.

17 (5) FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2017, THERE IS  
18 APPROPRIATED TO THE MICHIGAN AGENCY FOR ENERGY FROM THE ASSESSMENTS  
19 IMPOSED UNDER 1972 PA 299, MCL 460.111 TO 460.120, THE AMOUNT OF  
20 \$260,000.00 TO HIRE 2.0 FULL-TIME EQUATED POSITIONS TO IMPLEMENT  
21 THE PROVISIONS OF THE AMENDATORY ACT THAT ADDED SECTION 6T.

22 SEC. 10EE. (1) THE COMMISSION SHALL ESTABLISH A CODE OF  
23 CONDUCT THAT APPLIES TO ALL ELECTRIC UTILITIES. THE CODE OF CONDUCT  
24 SHALL INCLUDE, BUT IS NOT LIMITED TO, MEASURES TO PREVENT CROSS-  
25 SUBSIDIZATION, PREFERENTIAL TREATMENT, AND, EXCEPT AS OTHERWISE  
26 PROVIDED UNDER THIS SECTION, INFORMATION SHARING, BETWEEN AN  
27 ELECTRIC UTILITY'S REGULATED ELECTRIC SERVICES AND UNREGULATED

1 PROGRAMS AND SERVICES, WHETHER THOSE SERVICES ARE PROVIDED BY THE  
2 UTILITY OR THE UTILITY'S AFFILIATED ENTITIES. THE CODE OF CONDUCT  
3 ESTABLISHED UNDER THIS SECTION SHALL ALSO BE APPLICABLE TO ELECTRIC  
4 UTILITIES AND ALTERNATIVE ELECTRIC SUPPLIERS CONSISTENT WITH  
5 SECTIONS 10 THROUGH 10CC.

6 (2) AN ELECTRIC UTILITY MAY OFFER ITS CUSTOMERS VALUE-ADDED  
7 PROGRAMS AND SERVICES IF THOSE PROGRAMS OR SERVICES DO NOT HARM THE  
8 PUBLIC INTEREST BY UNDULY RESTRAINING TRADE OR COMPETITION IN AN  
9 UNREGULATED MARKET.

10 (3) ASSETS OF AN ELECTRIC UTILITY MAY BE USED IN THE OPERATION  
11 OF AN UNREGULATED VALUE-ADDED PROGRAM OR SERVICE IF THE UNREGULATED  
12 VALUE-ADDED PROGRAM OR SERVICE COMPENSATES THE ELECTRIC UTILITY AS  
13 PROVIDED UNDER THIS SECTION FOR THE PROPORTIONAL USE OF THE ASSETS  
14 OF THE ELECTRIC UTILITY. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION  
15 (11), ASSETS INCLUDE THE USE OF THE ELECTRIC UTILITY'S NAME AND  
16 LOGO.

17 (4) AN ELECTRIC UTILITY SHALL NOTIFY THE COMMISSION OF ITS  
18 INTENT TO OFFER ITS CUSTOMERS VALUE-ADDED PROGRAMS AND SERVICES  
19 BEFORE OFFERING THOSE PROGRAMS TO ITS CUSTOMERS.

20 (5) THE COMMISSION MAY INITIATE INFORMAL PROCEEDINGS TO  
21 DETERMINE IF ANY PROGRAM OR SERVICE OFFERED UNDER THIS SECTION  
22 POTENTIALLY VIOLATES SUBSECTION (2) OR (3). IF THE COMMISSION  
23 DETERMINES THAT A POTENTIAL VIOLATION EXISTS, THE COMMISSION SHALL  
24 CONDUCT FORMAL PROCEEDINGS TO DETERMINE WHETHER A VIOLATION HAS  
25 OCCURRED AND ORDER CORRECTIVE ACTIONS UNDER THIS ACT. AN INFORMAL  
26 PROCEEDING ALLOWED UNDER THIS SUBSECTION IS NOT REQUIRED AS A  
27 PREREQUISITE TO A FORMAL COMPLAINT.

1 (6) AN ELECTRIC UTILITY OFFERING A VALUE-ADDED PROGRAM OR  
2 SERVICE UNDER THIS SECTION SHALL DO ALL OF THE FOLLOWING:

3 (A) PROVIDE THE COMMISSION WITH WRITTEN NOTICE AND A  
4 DESCRIPTION OF ANY NEWLY OFFERED VALUE-ADDED PROGRAM OR SERVICE.

5 (B) LOCATE WITHIN A SEPARATE DEPARTMENT OF THE UTILITY OR  
6 AFFILIATE WITHIN THE UTILITY'S CORPORATE STRUCTURE THE PERSONNEL  
7 RESPONSIBLE FOR THE DAY-TO-DAY MANAGEMENT OF THE PROGRAM OR  
8 SERVICE.

9 (C) MAINTAIN SEPARATE BOOKS AND RECORDS FOR THE PROGRAM OR  
10 SERVICE AND PROVIDE AN ANNUAL REPORT TO THE COMMISSION SHOWING HOW  
11 ALL OF THE ELECTRIC UTILITY'S COSTS ASSOCIATED WITH THE UNREGULATED  
12 VALUE-ADDED PROGRAM OR SERVICE WERE ALLOCATED TO THE UNREGULATED  
13 PROGRAM OR SERVICE. THE ANNUAL REPORT SHALL SHOW TO WHAT EXTENT THE  
14 ELECTRIC UTILITY'S RATES WERE AFFECTED BY THE ALLOCATIONS. THE  
15 UTILITY MAY INCLUDE THIS REPORT AS PART OF A REQUEST FOR RATE  
16 RELIEF.

17 (7) AN ELECTRIC UTILITY OFFERING AN UNREGULATED VALUE-ADDED  
18 PROGRAM OR SERVICE UNDER THIS SECTION SHALL NOT PROMOTE OR MARKET  
19 THE PROGRAM OR SERVICE THROUGH THE USE OF UTILITY BILLING INSERTS,  
20 PRINTED MESSAGES ON THE UTILITY'S BILLING MATERIALS, OR OTHER  
21 PROMOTIONAL MATERIALS INCLUDED WITH CUSTOMERS' UTILITY BILLS.

22 (8) ALL ELECTRIC UTILITY COSTS DIRECTLY ATTRIBUTABLE TO A  
23 VALUE-ADDED PROGRAM OR SERVICE ALLOWED UNDER THIS SECTION SHALL BE  
24 ALLOCATED TO THE PROGRAM OR SERVICE AS REQUIRED BY THIS SECTION.  
25 THE DIRECT AND INDIRECT COSTS OF ALL UTILITY ASSETS USED IN THE  
26 OPERATION OF THE PROGRAM OR SERVICE SHALL BE ALLOCATED TO THE  
27 PROGRAM OR SERVICE BASED ON THE PROPORTIONAL USE BY THE PROGRAM OR

1 SERVICE AS COMPARED TO THE TOTAL USE OF THOSE ASSETS BY THE  
2 UTILITY. THE COST OF THE PROGRAM OR SERVICE INCLUDES ADMINISTRATIVE  
3 AND GENERAL EXPENSE LOADING TO BE DETERMINED IN THE SAME MANNER AS  
4 THE ELECTRIC UTILITY DETERMINES ADMINISTRATIVE AND GENERAL EXPENSE  
5 LOADING FOR ALL OF THE ELECTRIC UTILITY'S REGULATED AND UNREGULATED  
6 ACTIVITIES.

7 (9) AN ELECTRIC UTILITY MAY INCLUDE CHARGES FOR ITS VALUE-  
8 ADDED PROGRAMS AND SERVICES OFFERED UNDER THIS SECTION ON ITS  
9 MONTHLY BILLINGS TO ITS CUSTOMERS IF THE ELECTRIC UTILITY COMPLIES  
10 WITH ALL OF THE FOLLOWING:

11 (A) THE PROPORTIONAL SHARE OF ALL COSTS ASSOCIATED WITH THE  
12 BILLING PROCESS, INCLUDING THE POSTAGE, ENVELOPES, PAPER, AND  
13 PRINTING EXPENSES, ARE ALLOCATED AS REQUIRED UNDER SUBSECTION (8).

14 (B) A CUSTOMER'S REGULATED UTILITY SERVICE IS NOT TERMINATED  
15 FOR NONPAYMENT OF THE VALUE-ADDED PROGRAM OR SERVICE PORTIONS OF  
16 THE 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 (10) IN MARKETING A VALUE-ADDED PROGRAM OR SERVICE OFFERED  
21 UNDER THIS SECTION TO THE PUBLIC, AN ELECTRIC UTILITY SHALL DO ALL  
22 OF THE FOLLOWING:

23 (A) IN THE MANNER AND TO THE EXTENT ALLOWED BY COMMISSION RULE  
24 OR ORDER, PROVIDE UPON REQUEST TO A PROVIDER OF A SIMILAR PROGRAM  
25 OR SERVICE ANY LISTS OF CUSTOMERS RECEIVING REGULATED SERVICE THAT  
26 THE UTILITY PROVIDES TO ITS VALUE-ADDED PROGRAMS OR SERVICES. THE  
27 CUSTOMER LIST SHALL BE PROVIDED WITHIN 5 BUSINESS DAYS OF THE

1 REQUEST ON A NONDISCRIMINATORY BASIS. A NEW CUSTOMER SHALL BE ADDED  
2 TO THE CUSTOMER LIST WITHIN 1 BUSINESS DAY OF THE DATE THE CUSTOMER  
3 REQUESTS TO ENROLL IN THE PROGRAM OR SERVICE.

4 (B) APPROPRIATELY ALLOCATE ELECTRIC UTILITY COSTS AS REQUIRED  
5 UNDER SUBSECTION (8) WHEN PERSONNEL EMPLOYED AT A UTILITY'S CALL  
6 CENTER PROVIDE PROGRAM MARKETING INFORMATION TO A PROSPECTIVE  
7 CUSTOMER OR CUSTOMER SERVICE SUPPORT FOR PROGRAM PAYMENT ISSUES TO  
8 CUSTOMERS PARTICIPATING IN A PROGRAM OR SERVICE OFFERED UNDER THIS  
9 SECTION.

10 (C) BEFORE ENROLLING A CUSTOMER INTO THE PROGRAM OR SERVICE  
11 OFFERED UNDER THIS SECTION, THE UTILITY SHALL INFORM THE POTENTIAL  
12 CUSTOMER OF ALL OF THE FOLLOWING:

13 (i) THAT THE PROGRAM OR SERVICE MAY BE AVAILABLE FROM ANOTHER  
14 PROVIDER.

15 (ii) THAT THE PROGRAM OR SERVICE IS NOT REGULATED BY THE  
16 COMMISSION.

17 (iii) THAT A NEW RESIDENTIAL CUSTOMER HAS 10 DAYS AFTER  
18 ENROLLMENT TO CANCEL HIS OR HER PROGRAM OR SERVICE CONTRACT WITHOUT  
19 PENALTY.

20 (iv) THAT THE CUSTOMER'S REGULATED RATES AND CONDITIONS OF  
21 SERVICE PROVIDED BY THE UTILITY ARE NOT AFFECTED BY ENROLLMENT IN  
22 THE PROGRAM OR SERVICE OR BY THE DECISION OF THE CUSTOMER TO OBTAIN  
23 THE PROGRAM OR SERVICE FROM ANOTHER PROVIDER.

24 (D) THE ELECTRIC UTILITY NAME AND LOGO MAY BE USED TO MARKET  
25 PROGRAMS AND SERVICES OFFERED UNDER THIS SECTION IF THE ELECTRIC  
26 UTILITY COMPLIES WITH BOTH OF THE FOLLOWING:

27 (i) DOES NOT MARKET THE PROGRAM OR SERVICE IN CONJUNCTION WITH

1 A REGULATED SERVICE.

2 (ii) CLEARLY INDICATES ON ALL MARKETING MATERIALS THAT THE  
3 PROGRAM OR SERVICE IS NOT REGULATED BY THE COMMISSION.

4 (11) FOR PROGRAMS OR SERVICES DIRECTLY OPERATED BY AN ELECTRIC  
5 UTILITY, COSTS SHALL NOT BE ALLOCATED TO THE PROGRAM OR SERVICE FOR  
6 THE USE OF THE UTILITY'S NAME OR LOGO.

7 (12) THE COMMISSION SHALL INCLUDE ONLY THE REVENUES RECEIVED  
8 BY AN ELECTRIC UTILITY UNDER SUBSECTION (8) IN DETERMINING A  
9 UTILITY'S BASE RATES. THE UTILITY SHALL FILE WITH THE COMMISSION  
10 THE PERCENTAGE OF ADDITIONAL REVENUES OVER THOSE THAT ARE ALLOCATED  
11 TO RECOVER COSTS DIRECTLY ATTRIBUTABLE TO A VALUE-ADDED PROGRAM OR  
12 SERVICE UNDER SUBSECTION (8) THAT THE UTILITY WISHES TO INCLUDE AS  
13 AN OFFSET TO THE UTILITY'S BASE RATES. FOLLOWING A NOTICE AND  
14 HEARING, THE COMMISSION SHALL APPROVE OR MODIFY THE AMOUNT TO BE  
15 INCLUDED AS AN OFFSET TO THE ELECTRIC UTILITY'S BASE RATES.

16 (13) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE CODE OF  
17 CONDUCT SHALL NOT REQUIRE AN ELECTRIC UTILITY OPERATING OR OFFERING  
18 A VALUE-ADDED PROGRAM OR SERVICE UNDER THIS SECTION AS PART OF ITS  
19 REGULATED SERVICE TO FORM A SEPARATE AFFILIATE OR DIVISION, IMPOSE  
20 FURTHER RESTRICTIONS ON THE SHARING OF EMPLOYEES, VEHICLES,  
21 EQUIPMENT, OFFICE SPACE, AND OTHER FACILITIES, OR REQUIRE THE  
22 UTILITY TO PROVIDE OTHER PROVIDERS OF APPLIANCE REPAIR SERVICE OR  
23 VALUE-ADDED PROGRAMS OR SERVICES WITH ACCESS TO UTILITY EMPLOYEES,  
24 VEHICLES, EQUIPMENT, OFFICE SPACE, OR OTHER FACILITIES.

25 (14) IN ADDITION TO ANY PENALTIES ALLOWED UNDER SECTION 10C,  
26 FOR VIOLATIONS OF THIS SECTION AN ELECTRIC UTILITY SHALL PAY ALL  
27 REASONABLE COSTS INCURRED BY THE PREVAILING PARTY.

1           (15) AN ELECTRIC UTILITY THAT OFFERS VALUE-ADDED PROGRAMS OR  
2 SERVICES UNDER THIS SECTION SHALL FILE AN ANNUAL REPORT WITH THE  
3 COMMISSION THAT PROVIDES A LIST OF ITS OFFERED VALUE-ADDED PROGRAMS  
4 AND SERVICES, THE ESTIMATED MARKET SHARE OCCUPIED BY EACH VALUE-  
5 ADDED PROGRAM AND SERVICE OFFERED BY THE ELECTRIC UTILITY, AND A  
6 DETAILED ACCOUNTING OF HOW THE COSTS FOR THE VALUE-ADDED PROGRAMS  
7 AND SERVICES WERE APPORTIONED BETWEEN THE ELECTRIC UTILITY AND THE  
8 VALUE-ADDED PROGRAMS AND SERVICES. THE ELECTRIC UTILITY SHALL  
9 CERTIFY TO THE COMMISSION THAT IT IS COMPLYING WITH THE  
10 REQUIREMENTS OF THIS SECTION. THE COMMISSION MAY CONDUCT AN AUDIT  
11 OF THE BOOKS AND RECORDS OF THE UTILITY AND THE VALUE-ADDED  
12 PROGRAMS AND SERVICES TO ENSURE COMPLIANCE WITH THIS SECTION.

13           (16) AS USED IN THIS SECTION, "VALUE-ADDED PROGRAMS AND  
14 SERVICES" MEANS PROGRAMS AND SERVICES THAT ARE UTILITY OR ENERGY  
15 RELATED, INCLUDING, BUT NOT LIMITED TO, HOME COMFORT AND  
16 PROTECTION, APPLIANCE SERVICE, BUILDING ENERGY PERFORMANCE,  
17 ALTERNATIVE ENERGY OPTIONS, OR ENGINEERING AND CONSTRUCTION  
18 SERVICES. VALUE-ADDED PROGRAMS AND SERVICES DO NOT INCLUDE ENERGY  
19 OPTIMIZATION OR ENERGY WASTE REDUCTION PROGRAMS PAID FOR BY UTILITY  
20 CUSTOMERS AS PART OF THEIR REGULATED RATES.

21           Sec. 11. (1) Except as otherwise provided in this subsection,  
22 the commission shall ~~phase in~~ ENSURE THE ESTABLISHMENT OF electric  
23 rates equal to the cost of providing service to each customer  
24 class. ~~over a period of 5 years from October 6, 2008. If the~~  
25 ~~commission determines that the rate impact on industrial metal~~  
26 ~~melting customers will exceed the 2.5% limit in subsection (2), the~~  
27 ~~commission may phase in cost based rates for that class over a~~

1 ~~longer period.~~ **IN ESTABLISHING COST OF SERVICE RATES, THE**  
2 **COMMISSION SHALL ENSURE THAT EACH CLASS, OR SUB-CLASS, IS ASSESSED**  
3 **FOR ITS FAIR AND EQUITABLE USE OF THE ELECTRIC GRID. IF THE**  
4 **COMMISSION DETERMINES THAT THE IMPACT OF IMPOSING COST OF SERVICE**  
5 **RATES ON CUSTOMERS OF AN ELECTRIC UTILITY WOULD HAVE A MATERIAL**  
6 **IMPACT ON CUSTOMER RATES, THE COMMISSION MAY APPROVE AN ORDER THAT**  
7 **IMPLEMENTS THOSE RATES OVER A SUITABLE NUMBER OF YEARS. The**  
8 **COMMISSION SHALL ENSURE THAT THE** cost of providing service to each  
9 customer class ~~shall be~~ **IS** based on the allocation of production-  
10 related **COSTS BASED ON USING THE 75-0-25 METHOD OF COST ALLOCATION**  
11 and transmission costs based on using the ~~50-25-25-100%~~ **DEMAND**  
12 method of cost allocation. The commission may modify this method ~~to~~  
13 ~~better~~ **IF IT DETERMINES THAT THIS METHOD OF COST ALLOCATION DOES**  
14 **NOT** ensure **THAT** rates are equal to the cost of service.

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

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

1 ~~electric utility must meet both of the following conditions:~~

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

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

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

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

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

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

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

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

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

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

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

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

27 ~~—— (f) A description of proposed definitions or methods that~~

1 ~~support affordable and competitive electric rates for all customer~~  
2 ~~classes.~~

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

11 (2) ~~(8)~~ Notwithstanding any other provision of this act, the  
12 commission may establish eligible low-income customer or eligible  
13 senior citizen customer rates. Upon filing of a rate increase  
14 request, a utility shall include proposed eligible low-income  
15 customer and eligible senior citizen customer rates and a method to  
16 allocate the revenue shortfall attributed to the implementation of  
17 those rates upon all customer classes. As used in this subsection,  
18 "eligible low-income customer" and "eligible senior citizen  
19 customer" mean those terms as defined in section 10t.

20 (3) ~~(9)~~ Notwithstanding any other provision of this section,  
21 the commission shall establish rate schedules ~~which~~ **THAT** ensure  
22 that public and private schools, universities, and community  
23 colleges are charged retail electric rates that reflect the actual  
24 cost of providing service to those customers. Electric utilities  
25 regulated under this section shall file with the commission tariffs  
26 to ensure that public and private schools, universities, and  
27 community colleges are charged electric rates as provided in this

1 subsection.

2 ~~—— (10) Subsections (1) to (9) apply only to electric utilities~~  
3 ~~with 1,000,000 or more retail customers in this state.~~

4 ~~—— (11) Within 2 years of the effective date of the amendatory~~  
5 ~~act that added this subsection, an electric utility serving fewer~~  
6 ~~than 120,000 retail customers in this state may file an application~~  
7 ~~with the commission to modify the cost allocation methods and rate~~  
8 ~~design methods used to set that utility's existing rates. Within~~  
9 ~~180 days of the effective date of the amendatory act that added~~  
10 ~~this subsection, an electric utility serving 120,000 or more but~~  
11 ~~fewer than 1,000,000 retail customers in this state shall file an~~  
12 ~~application with the commission to modify the cost allocation~~  
13 ~~methods and rate design methods used to set that utility's existing~~  
14 ~~rates. This subsection does not apply to a cooperative electric~~  
15 ~~utility that has elected to become member regulated under the~~  
16 ~~electric cooperative member regulation act, 2008 PA 167, MCL 460.31~~  
17 ~~to 460.39. Upon receipt of an application under this subsection,~~  
18 ~~the commission shall commence a proceeding for that electric~~  
19 ~~utility, limited to examining and implementing any modifications to~~  
20 ~~the cost allocation methods and rate design methods used by that~~  
21 ~~utility. An electric utility's application must meet both of the~~  
22 ~~following conditions:~~

23 ~~—— (a) Be consistent with the cost of providing service~~  
24 ~~provisions of subsection (12).~~

25 ~~—— (b) Explore different methods for allocation of production,~~  
26 ~~transmission, distribution, and customer related costs and overall~~  
27 ~~rate design, based on cost of service, that support affordable and~~

1 ~~competitive electric rates for all customer classes.~~

2 ~~—— (12) The commission shall approve rates equal to the cost of~~  
3 ~~providing service to customers of electric utilities serving less~~  
4 ~~than 1,000,000 retail customers in this state. The rates shall be~~  
5 ~~approved by the commission in each utility's first general rate~~  
6 ~~ease filed after passage of 2008 PA 286. If, in the judgment of the~~  
7 ~~commission, the impact of imposing cost of service rates on~~  
8 ~~customers of a utility would have a material impact, the commission~~  
9 ~~may approve an order that implements those rates over a suitable~~  
10 ~~number of years. The commission shall ensure that any impact on~~  
11 ~~rates due to the cost of service requirement in this subsection is~~  
12 ~~not more than 2.5% per year.~~

13 ~~—— (13) The commission shall annually retain an independent~~  
14 ~~consultant to verify that the requirements of this section are~~  
15 ~~being satisfied for each electric utility. The costs of this~~  
16 ~~service shall be recoverable in the utility's electric rates. This~~  
17 ~~subsection does not apply after December 31, 2015.~~

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

20 ~~—— (a) An analysis of rate impacts directly attributable to~~  
21 ~~proposed cost allocation methods, not including expiring costs~~  
22 ~~associated with non base energy and non base energy delivery that~~  
23 ~~have, except for an expiring contract described in section 5 of the~~  
24 ~~energy for economic development act of 2010, 2010 PA 297, MCL~~  
25 ~~460.995, specific statutory time durations.~~

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

1           Enacting section 1. Sections 6c and 6e of 1939 PA 3, MCL  
2 460.6c and 460.6e, are repealed.

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

5           Enacting section 3. This amendatory act does not take effect  
6 unless Senate Bill No. 438 of the 98th Legislature is enacted into  
7 law.