

HOUSE BILL No. 5015

October 22, 2015, Introduced by Reps. Glenn, Cole, Irwin, Dianda, Barrett and McBroom
and referred to the Committee on Energy Policy.

A bill to amend 1939 PA 3, entitled

"An act to provide for the regulation and control of public and certain private utilities and other services affected with a public interest within this state; to provide for alternative energy suppliers; to provide for licensing; to include municipally owned utilities and other providers of energy under certain provisions of this act; to create a public service commission and to prescribe and define its powers and duties; to abolish the Michigan public utilities commission and to confer the powers and duties vested by law on the public service commission; to provide for the continuance, transfer, and completion of certain matters and proceedings; to abolish automatic adjustment clauses; to prohibit certain rate increases without notice and hearing; to qualify residential energy conservation programs permitted under state law for certain federal exemption; to create a fund; to provide for a restructuring of the manner in which energy is provided in this state; to encourage the utilization of resource recovery facilities; to prohibit certain acts and practices of providers of energy; to allow for the securitization of stranded costs; to reduce rates; to provide for appeals; to provide appropriations; to declare the effect and purpose of this act; to prescribe remedies and penalties; and to repeal acts and parts of acts,"

by amending section 6j (MCL 460.6j), as amended by 1987 PA 81, and

by adding section 6u.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

2 (a) "Power supply cost recovery clause" means a clause in the
3 electric rates or rate schedule of a ~~an~~ **ELECTRIC** utility ~~which~~ **THAT**
4 permits the monthly adjustment of rates for power supply to allow
5 the utility to recover the booked costs, including transportation
6 costs, reclamation costs, and disposal and reprocessing costs, of
7 fuel burned by the utility for electric generation and the booked
8 costs of purchased and net interchanged power transactions by the
9 utility incurred under reasonable and prudent policies and
10 practices.

11 (b) "Power supply cost recovery factor" means that element of
12 the rates to be charged for electric service to reflect power
13 supply costs incurred by an electric utility and made pursuant to a
14 power supply cost recovery clause incorporated in the rates or rate
15 schedule of an electric utility.

16 ~~(2) Pursuant to its authority under this act, the~~ **THE** public
17 service commission may incorporate a power supply cost recovery
18 clause in the electric rates or rate schedule of a ~~an~~ **ELECTRIC**
19 utility. ~~, but is not required to do so. Any order incorporating a~~
20 power supply cost recovery clause shall be as a result of a hearing
21 solely on the question of the inclusion of the clause in the rates
22 or rate schedule. ~~, which~~ **A** hearing **UNDER THIS SUBSECTION** shall be
23 conducted as a contested case pursuant to chapter 4 of the
24 administrative procedures act of 1969, ~~Act No. 306 of the Public~~
25 ~~Acts of 1969, being sections 24.271 to 24.287 of the Michigan~~

1 ~~Compiled Laws, 1969 PA 306, MCL 24.271 TO 24.287~~, or, pursuant to
2 subsection (18), as a result of a general rate case. Any order
3 incorporating a power supply cost recovery clause shall replace and
4 rescind any previous fuel cost adjustment clause or purchased and
5 net interchanged power adjustment clause incorporated in the
6 electric rates of the utility upon the effective date of the first
7 power supply cost recovery factor authorized for the utility under
8 its power supply cost recovery clause.

9 (3) In order to implement the power supply cost recovery
10 clause established ~~pursuant to~~ **UNDER** subsection (2), a ~~AN ELECTRIC~~
11 utility annually shall file, pursuant to procedures established by
12 the commission, if any, a complete power supply cost recovery plan
13 describing the expected sources of electric power supply and
14 changes in the cost of power supply anticipated over a future 12-
15 month period specified by the commission and requesting for each of
16 those 12 months a specific power supply cost recovery factor. The
17 plan shall be filed not ~~less~~ **LATER** than 3 months before the
18 beginning of the 12-month period covered by the plan. The plan
19 shall describe all major contracts and power supply arrangements
20 entered into by the utility for providing power supply during the
21 specified 12-month period. The description of the major contracts
22 and arrangements shall include the price of fuel, the duration of
23 the contract or arrangement, and an explanation or description of
24 any other term or provision as required by the commission. The plan
25 shall also include the utility's evaluation of the reasonableness
26 and prudence of its decisions to provide power supply in the manner
27 described in the plan, in light of its existing sources of

1 electrical generation, and an explanation of the actions taken by
2 the utility to minimize the cost of fuel to the utility.

3 (4) In order to implement ~~the~~**A** power supply cost recovery
4 clause established ~~pursuant to~~**UNDER** subsection (2), a ~~an~~**AN ELECTRIC**
5 utility shall file, contemporaneously with the power supply cost
6 recovery plan required by subsection (3), a 5-year forecast of the
7 power supply requirements of its customers, its anticipated sources
8 of supply, and projections of power supply costs, in light of its
9 existing sources of electrical generation and sources of electrical
10 generation under construction. The forecast shall include a
11 description of all relevant major contracts and power supply
12 arrangements entered into or contemplated by the utility, and ~~such~~
13 **ANY** other information ~~as~~ the commission may require.

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

26 (6) In its final order in a power supply and cost review, the
27 commission shall evaluate the reasonableness and prudence of the

1 decisions underlying the power supply cost recovery plan filed by
2 ~~the~~ **AN ELECTRIC** utility pursuant to ~~UNDER~~ subsection (3) ,—and
3 shall approve, disapprove, or amend the power supply cost recovery
4 plan accordingly. In evaluating the decisions underlying the power
5 supply cost recovery plan, the commission shall consider the cost
6 and availability of the electrical generation available to the
7 utility; the cost of short-term firm purchases available to the
8 utility; the availability of interruptible service; the ability of
9 the utility to reduce or to eliminate any firm sales to out-of-
10 state customers if the utility is not a multi-state utility whose
11 firm sales are subject to other regulatory authority; whether the
12 utility has taken all appropriate actions to minimize the cost of
13 fuel; and other relevant factors. The commission shall approve,
14 reject, or amend the 12 monthly power supply cost recovery factors
15 requested by the utility in its power supply cost recovery plan.
16 The factors shall not reflect items the commission could reasonably
17 anticipate would be disallowed under subsection (13). The factors
18 ordered shall be described in fixed dollar amounts per unit of
19 electricity, but may include specific amounts contingent on future
20 events.

21 (7) In its final order in a power supply and cost review, the
22 commission shall evaluate the decisions underlying the 5-year
23 forecast filed by ~~a~~ **AN ELECTRIC** utility pursuant to ~~UNDER~~
24 subsection (4). The commission may also indicate any cost items in
25 the 5-year forecast that, on the basis of present evidence, the
26 commission would be unlikely to permit the utility to recover from
27 its customers in rates, rate schedules, or power supply cost

1 recovery factors established in the future.

2 (8) The commission, on its own motion or the motion of any
3 party, may make a finding and enter a temporary order granting
4 approval or partial approval of a power supply cost recovery plan
5 in a power supply and cost recovery review, after first having
6 given notice to the parties to the review, and after having
7 afforded to the parties to the review a reasonable opportunity for
8 a full and complete hearing. A temporary order made ~~pursuant to~~
9 **UNDER** this subsection ~~shall be~~ **IS** considered a final order for
10 purposes of judicial review.

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

1 period of time.

2 (10) Not ~~less~~ **LATER** than 3 months before the beginning of the
3 third quarter of the 12-month period, ~~the~~ **DESCRIBED IN SUBSECTION**
4 **(3), AN ELECTRIC** utility may file a revised power supply cost
5 recovery plan ~~which shall cover~~ **THAT COVERS** the remainder of the
6 12-month period. Upon receipt of the revised power supply cost
7 recovery plan, the commission shall reopen the power supply and
8 cost review. In addition, the commission may reopen the power
9 supply and cost review on its own motion or on the showing of good
10 cause by any party if at least 6 months have elapsed since the
11 utility submitted its complete filing and if there are at least 60
12 days remaining in the 12-month period under consideration. A
13 reopened power supply and cost review shall be conducted as a
14 contested case pursuant to chapter 4 of the administrative
15 procedures act of 1969, ~~Act No. 306 of the Public Acts of 1969,~~
16 **1969 PA 306, MCL 23.271 TO 24.287**, and in accordance with
17 subsections (3), (6), (8), and (9).

18 (11) Not ~~more~~ **LATER** than 45 days ~~following~~ **AFTER** the last day
19 of each billing month in which a power supply cost recovery factor
20 has been applied to customers' bills, ~~the~~ **AN ELECTRIC** utility shall
21 file with the commission a detailed statement for that month of the
22 revenues recorded pursuant to the power supply cost recovery factor
23 and the allowance for cost of power supply included in the base
24 rates established in the latest commission order for the utility,
25 and the cost of power supply. The detailed statement shall be in
26 the manner and form prescribed by the commission. The commission
27 shall establish procedures for insuring that the detailed statement

1 is promptly verified and corrected if necessary.

2 (12) Not less than once a year, and not later than 3 months
3 after the end of the 12-month period covered by a ~~an~~ **ELECTRIC**
4 utility's power supply cost recovery plan, the commission shall
5 commence a proceeding, to be known as a power supply cost
6 reconciliation, as a contested case pursuant to chapter 4 of the
7 administrative procedures act of 1969, ~~Act No. 306 of the Public~~
8 ~~Acts of 1969. Reasonable~~ **1969 PA 306, MCL 24.271 TO 24.287. THE**
9 **COMMISSION SHALL PERMIT REASONABLE** discovery ~~shall be permitted~~
10 before and during the reconciliation proceeding in order to assist
11 parties and interested persons in obtaining evidence concerning
12 reconciliation issues including, but not limited to, the
13 reasonableness and prudence of expenditures and the amounts
14 collected pursuant to the clause. At the power supply cost
15 reconciliation, the commission shall reconcile the revenues
16 recorded pursuant to the power supply cost recovery factors and the
17 allowance for cost of power supply included in the base rates
18 established in the latest commission order for the utility with the
19 amounts actually expensed and included in the cost of power supply
20 by the utility. The commission shall consider any issue regarding
21 the reasonableness and prudence of expenses for which customers
22 were charged if the issue was not considered adequately at a
23 previously conducted power supply and cost review.

24 (13) In its order in a power supply cost reconciliation, the
25 commission shall **DO ALL OF THE FOLLOWING:**

26 (a) Disallow cost increases resulting from changes in
27 accounting or rate-making expense treatment not previously approved

1 by the commission. The commission may order the utility to pay a
2 penalty **OF** not ~~to exceed~~ **MORE THAN** 25% of the amount improperly
3 collected. Costs incurred by the utility for penalty payments shall
4 not be charged to customers.

5 (b) Disallow any capacity charges associated with power
6 purchased for periods in excess of 6 months unless the utility has
7 obtained the prior approval of the commission. If the commission
8 has approved capacity charges in a contract with a qualifying
9 facility, as **THAT TERM IS** defined by the ~~federal energy regulatory~~
10 ~~commission~~ **FEDERAL ENERGY REGULATORY COMMISSION** pursuant to the
11 public utilities regulatory policies act of 1978, Public Law 95-
12 617, 92 Stat. ~~STAT~~ 3117, the commission shall not disallow the
13 capacity charges for the facility in the power supply cost
14 reconciliation unless the commission has ordered revised capacity
15 charges upon reconsideration ~~pursuant to~~ **UNDER** this subsection. A
16 contract shall be valid and binding in accordance with its terms
17 and capacity charges paid pursuant to such a contract shall be
18 recoverable costs of the utility for rate-making purposes
19 notwithstanding that the order approving such a contract is later
20 vacated, modified, or otherwise held to be invalid in whole or in
21 part if the order approving the contract has not been stayed or
22 suspended by a competent court within 30 days after the date of the
23 order, or ~~within 30 days of the effective date of the 1987~~
24 ~~amendatory act that added subsection (19)~~ **BY JULY 29, 1987** if the
25 order was issued after September 1, 1986 ~~and before the effective~~
26 ~~date of the 1987 amendatory act that added subsection (19)~~. **JUNE**
27 **29, 1987**. The scope and manner of the review of capacity charges

1 for a qualifying facility shall be determined by the commission **IN**
2 **ACCORDANCE WITH AN ORDER ISSUED UNDER SECTION 6U**. Except as to
3 approvals for qualifying facilities granted by the commission ~~prior~~
4 ~~to~~ **BEFORE** June 1, 1987, proceedings before the commission seeking
5 ~~such~~ **THOSE** approvals shall be conducted as a contested case
6 pursuant to chapter 4 of the administrative procedures act of 1969,
7 ~~Act No. 306 of the Public Acts of 1969. 1969 PA 306, MCL 24.271 TO~~
8 **24.287**. The commission, upon its own motion or upon application of
9 any person, may reconsider its approval of capacity charges in a
10 contested case hearing after passage of a period necessary for
11 financing the qualifying facility, ~~provided that~~ **IF BOTH OF THE**
12 **FOLLOWING APPLY:**

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

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

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

1 renewable resources, as the primary energy source.

2 (c) Disallow net increased costs attributable to a generating
3 plant outage of more than 90 days in duration unless the utility
4 demonstrates by clear and satisfactory evidence that the outage, or
5 any part of the outage, was not caused or prolonged by the
6 utility's negligence or by unreasonable or imprudent management.

7 (d) Disallow transportation costs attributable to capital
8 investments to develop a utility's capability to transport fuel or
9 relocate fuel at the utility's facilities and disallow unloading
10 and handling expenses incurred after receipt of fuel by the
11 utility.

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

16 (f) Disallow charges unreasonably or imprudently incurred for
17 fuel not taken.

18 (g) Disallow additional costs resulting from unreasonably or
19 imprudently renegotiated fuel contracts.

20 (h) Disallow penalty charges unreasonably or imprudently
21 incurred.

22 (i) Disallow demurrage charges.

23 (j) Disallow increases in charges for nuclear fuel disposal
24 unless the utility has received the prior approval of the
25 commission.

26 (14) In its order in a power supply cost reconciliation, the
27 commission shall require a ~~an~~**AN ELECTRIC** utility to refund to

1 customers or credit to customers' bills any net amount determined
2 to have been recovered over the period covered in excess of the
3 amounts determined to have been actually expensed by the utility
4 for power supply, and to have been incurred through reasonable and
5 prudent actions not precluded by the commission order in the power
6 supply and cost review. ~~Such~~ **THE COMMISSION SHALL APPORTION THE**
7 refunds or credits ~~shall be apportioned~~ among the customers of the
8 utility utilizing procedures that the commission determines to be
9 reasonable. The commission may adopt different procedures with
10 respect to customers served under the various rate schedules of the
11 utility and may, in appropriate circumstances, order refunds or
12 credits in proportion to the excess amounts actually collected from
13 each such customer during the period covered.

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

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

21 (16) If the commission orders refunds or credits ~~pursuant to~~
22 **UNDER** subsection (14), or additional charges to customers ~~pursuant~~
23 ~~to~~**UNDER** subsection (15), in its final order in a power supply cost
24 reconciliation, the refunds, credits, or additional charges shall
25 include interest. In determining the interest included in a refund,
26 credit, or additional charge ~~pursuant to~~**UNDER** this subsection, the
27 commission shall consider, to the extent material and practicable,

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

12 (17) To avoid undue hardship or unduly burdensome or excessive
13 cost, the commission may **DO BOTH OF THE FOLLOWING**:

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

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

23 (18) Notwithstanding any other provision of this act, the
24 commission may, upon application by an electric utility, set power
25 supply cost recovery factors, in a manner otherwise consistent with
26 this act, in an order resulting from a general rate case. ~~Within~~
27 ~~120 days following the effective date of this section, BY OCTOBER~~

1 27, 1987, for the purpose of setting power supply cost recovery
2 factors, the commission shall permit an electric utility to reopen
3 a general rate case in which a final order was issued within 120
4 days before or after ~~the effective date of this section~~ **JUNE 29,**
5 **1987** or to amend an application or reopen the evidentiary record in
6 a pending general rate case. If the commission sets power supply
7 cost recovery factors in an order resulting from a general rate
8 case, **ALL OF THE FOLLOWING APPLY:**

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

13 (b) Annual reconciliation proceedings shall be conducted
14 ~~pursuant to~~ **UNDER** subsection (12) and if an annual reconciliation
15 proceeding shows a recoverable amount ~~pursuant to~~ **UNDER** subsection
16 (15), the commission shall authorize the electric utility to defer
17 the amount and to accumulate interest on the amount ~~pursuant to~~
18 **UNDER** subsection (16), and in the next order resulting from a
19 general rate case authorize the utility to recover the amount and
20 interest from its customers in the manner provided in subsection
21 (15).

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

24 (19) ~~Five years after the effective date of the amendatory act~~
25 ~~that added this subsection,~~ **BY JUNE 29, 1992,** and every 5 years
26 thereafter, the standing committees of the house and senate that
27 deal with public utilities shall review the ~~amendatory act that~~

1 ~~added this subsection.~~ EFFECT OF 1987 PA 81.

2 SEC. 6U. (1) THE COMMISSION, ON ITS OWN MOTION OR THE MOTION
3 OF ANY PARTY, SHALL CONDUCT A PROCEEDING, AS A CONTESTED CASE
4 PURSUANT TO CHAPTER 4 OF THE ADMINISTRATIVE PROCEDURES ACT OF 1969,
5 1969 PA 306, MCL 24.271 TO 24.287, TO UPDATE THE PROCEDURES AND
6 RATES SCHEDULES ORIGINALLY ESTABLISHED BY THE COMMISSION IN CASE
7 NO. U-6798, TO IMPLEMENT TITLE II, SECTION 210, OF THE PUBLIC
8 UTILITY REGULATORY POLICIES ACT OF 1978, AS IT RELATES TO
9 COGENERATION FACILITIES AND SMALL POWER PRODUCTION FACILITIES IN
10 THIS STATE.

11 (2) THE COMMISSION SHALL ISSUE AN ORDER UNDER SUBSECTION (1)
12 THAT DOES ALL OF THE FOLLOWING:

13 (A) PROMOTES THE DEVELOPMENT OF A DIVERSE ARRAY OF PERMANENTLY
14 SUSTAINABLE ENERGY RESOURCES USING THE PUBLIC AND PRIVATE SECTORS
15 TO THE HIGHEST DEGREE POSSIBLE.

16 (B) ENSURES THAT RATES FOR PURCHASES BY AN ELECTRIC UTILITY
17 FROM, AND RATES FOR SALES TO, A COGENERATION FACILITY OR SMALL
18 POWER PRODUCTION FACILITY LOCATED IN THIS STATE OVER THE TERM OF A
19 CONTRACT ARE JUST AND REASONABLE TO THE ELECTRIC CONSUMERS OF THE
20 ELECTRIC UTILITY, THE COGENERATION FACILITY, OR SMALL POWER
21 PRODUCTION FACILITY, AND ARE IN THE PUBLIC INTEREST.

22 (C) INCREASES THE MARKETABILITY OF ELECTRIC ENERGY PRODUCED BY
23 COGENERATION FACILITIES AND SMALL POWER PRODUCTION FACILITIES
24 LOCATED THROUGHOUT THIS STATE FOR THE BENEFIT OF CITIZENS OF THIS
25 STATE.

26 (D) ENSURES THAT AN ELECTRIC UTILITY DOES NOT DISCRIMINATE IN
27 ANY WAY WITH RESPECT TO THE CONDITIONS OR PRICE FOR PROVISION OF

1 MAINTENANCE POWER, STANDBY POWER, SUPPLEMENTARY POWER, OR FOR ANY
2 OTHER SERVICE.

3 (E) REQUIRES THAT ANY PRICES CHARGED BY AN ELECTRIC UTILITY
4 FOR MAINTENANCE POWER, STANDBY POWER, SUPPLEMENTARY POWER, AND ALL
5 OTHER SUCH SERVICES ARE COST-BASED AND JUST AND REASONABLE.

6 (F) CREATES A SETTLED AND UNIFORM INSTITUTIONAL CLIMATE FOR
7 THE COGENERATION FACILITIES AND SMALL POWER PRODUCTION FACILITIES
8 IN THIS STATE, INCLUDING, BUT NOT LIMITED TO, ALL OF THE FOLLOWING:

9 (i) CREATING STANDARDIZED CONTRACTS AND AVOIDED COST RATES
10 AVAILABLE FOR QUALIFYING FACILITIES WITH A DESIGN CAPACITY.

11 (ii) ESTABLISHING POLICIES FOR ELECTRIC UTILITIES FOR
12 CONTRACTING WITH QUALIFYING FACILITIES.

13 (iii) ESTABLISHING A SCHEDULE OF AVOIDED COST PRICE UPDATES.

14 (iv) ESTABLISHING DISPUTE RESOLUTION PROCEDURES FOR QUALIFYING
15 FACILITIES.

16 (3) THE AVOIDED COST RATE SCHEDULES FOR THE PURCHASE OF ENERGY
17 AND CAPACITY FROM A COGENERATION FACILITY OR SMALL POWER PRODUCTION
18 FACILITY SHALL BE ALL OF THE FOLLOWING:

19 (A) APPROVED BY THE COMMISSION IF THE PURCHASE IS BY AN
20 ELECTRIC UTILITY.

21 (B) SPECIFIC TO THE QUALIFYING FACILITY.

22 (C) CONSISTENT WITH THE METHODOLOGY UTILIZED BY THE COMMISSION
23 IN DEVELOPING THE TRANSFER PRICE SCHEDULE UNDER SECTION 47 OF THE
24 CLEAN, RENEWABLE, AND EFFICIENT ENERGY ACT, 2008 PA 295, MCL
25 460.1047, AS IMPLEMENTED IN COMMISSION ORDERS ON THE EFFECTIVE DATE
26 OF THE AMENDATORY ACT THAT ADDED THIS SECTION.

27 (D) CONSISTENT WITH APPLICABLE STANDARDS REQUIRED BY THE

1 PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978, INCLUDING, BUT NOT
2 LIMITED TO, THE ESTABLISHMENT OF AVOIDED COST RATES THAT ARE JUST
3 AND REASONABLE TO THE ELECTRIC CUSTOMERS OF THE ELECTRIC UTILITY
4 AND IN THE PUBLIC INTEREST, DO NOT EXCEED THE INCREMENTAL COST TO
5 THE ELECTRIC UTILITY OF ALTERNATIVE RENEWABLE ELECTRIC ENERGY, AND
6 DO NOT DISCRIMINATE AGAINST THE OWNER OF A SMALL POWER PRODUCTION
7 FACILITY.

8 (4) WITHIN 1 YEAR AFTER THE EFFECTIVE DATE OF THE AMENDATORY
9 ACT THAT ADDED THIS SECTION, AND BY FEBRUARY 1 OF EACH YEAR
10 THEREAFTER, THE COMMISSION SHALL ISSUE A REPORT TO THE MICHIGAN
11 AGENCY FOR ENERGY AND THE STANDING COMMITTEES OF THE SENATE AND
12 HOUSE OF REPRESENTATIVES WITH PRIMARY RESPONSIBILITY FOR ENERGY AND
13 ENVIRONMENTAL ISSUES THAT PROVIDES A DESCRIPTION AND STATUS OF THE
14 COGENERATION FACILITIES AND SMALL POWER PRODUCTION FACILITIES IN
15 THIS STATE, THE CURRENT STATUS OF POWER PURCHASE AGREEMENTS OF EACH
16 COGENERATION FACILITY AND SMALL POWER PRODUCTION FACILITY IN THIS
17 STATE, AND THE COMMISSION'S EFFORTS TO COMPLY WITH SUBSECTIONS (1)
18 TO (3).

19 (5) AS USED IN THIS SECTION:

20 (A) "AVOIDED COST" MEANS AVOIDED COSTS AS THAT TERM IS DEFINED
21 IN 18 CFR 292.101.

22 (B) "COGENERATION FACILITY" MEANS A FACILITY THAT MEETS BOTH
23 OF THE FOLLOWING:

24 (i) PRODUCES, THROUGH THE SEQUENTIAL USE OF ENERGY, ELECTRIC
25 ENERGY AND USEFUL THERMAL ENERGY, INCLUDING, BUT NOT LIMITED TO,
26 HEAT OR STEAM, USED FOR INDUSTRIAL, COMMERCIAL, HEATING, OR COOLING
27 PURPOSES.

1 (ii) FIFTY PERCENT OR MORE OF THE FACILITY IS OWNED BY A
2 PERSON THAT IS NOT AN ELECTRIC UTILITY, AN ELECTRIC HOLDING
3 COMPANY, AN ENTITY AFFILIATED WITH AN ELECTRIC UTILITY, OR ANY
4 COMBINATION OF THOSE ENTITIES.

5 (C) "QUALIFYING FACILITY" MEANS QUALIFYING COGENERATION
6 FACILITY OR QUALIFYING SMALL POWER PRODUCTION FACILITY AS THOSE
7 TERMS ARE DEFINED IN 16 USC 796.

8 (D) "SMALL POWER PRODUCTION FACILITY" MEANS A FACILITY THAT
9 MEETS ALL OF THE FOLLOWING:

10 (i) PRODUCES ENERGY IN THIS STATE PRIMARILY BY THE USE OF A
11 RENEWABLE ENERGY RESOURCE, AS DEFINED IN SECTION 11 OF THE CLEAN,
12 RENEWABLE, AND EFFICIENT ENERGY ACT, 2008 PA 295, MCL 460.1011.

13 (ii) FIFTY PERCENT OR MORE OF THE FACILITY IS OWNED BY A
14 PERSON THAT IS NOT AN ELECTRIC UTILITY, AN ELECTRIC UTILITY HOLDING
15 COMPANY, AN ENTITY AFFILIATED WITH AN ELECTRIC UTILITY, OR ANY
16 COMBINATION OF THOSE ENTITIES.

17 (iii) HAS A POWER PRODUCTION CAPACITY THAT, TOGETHER WITH ANY
18 OTHER SMALL POWER PRODUCTION FACILITY LOCATED AT THE SAME SITE AND
19 OWNED BY THE SAME PERSON, IS NOT GREATER THAN 20 MEGAWATTS.

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