

HOUSE BILL No. 5035

October 29, 2015, Introduced by Reps. Glenn, Runestad, Price, Cox, Chatfield, Lucido, Tedder, McCready, Hooker, Kelly, Canfield, Somerville and Dianda and referred to the Committee on Energy Policy.

A bill to amend 1939 PA 3, entitled

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

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

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

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

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

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

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

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

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

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

1 AN ALTERNATIVE ELECTRIC SUPPLIER UNDER THIS SUBDIVISION SHALL NOT
2 COUNT TOWARD THE 10% LIMIT SET FORTH IN SUBDIVISION (A). AS USED IN
3 THIS SUBDIVISION, "PUBLIC SCHOOL" MEANS THAT TERM AS DEFINED IN
4 SECTION 5 OF THE REVISED SCHOOL CODE, 1976 PA 451, MCL 380.5.

5 (F) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, A
6 PUBLIC SCHOOL ACADEMY OR NONPUBLIC SCHOOL MAY PURCHASE ALL OR ANY
7 PORTION OF ITS ELECTRICITY FROM AN ALTERNATIVE ELECTRIC SUPPLIER,
8 REGARDLESS OF WHETHER THE SALES EXCEED 10% OF THE SERVING ELECTRIC
9 UTILITY'S AVERAGE WEATHER-ADJUSTED RETAIL SALES. A PUBLIC SCHOOL
10 ACADEMY OR NONPUBLIC SCHOOL PURCHASING ELECTRICITY FROM AN
11 ALTERNATIVE ELECTRIC SUPPLIER UNDER THIS SUBDIVISION SHALL NOT
12 COUNT TOWARD THE 10% LIMIT SET FORTH IN SUBDIVISION (A). AS USED IN
13 THIS SUBDIVISION, "PUBLIC SCHOOL ACADEMY" AND "NONPUBLIC SCHOOL"
14 MEAN THOSE TERMS AS DEFINED IN SECTION 5 OF THE REVISED SCHOOL
15 CODE, 1976 PA 451, MCL 380.5.

16 (G) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, A
17 STATE PUBLIC UNIVERSITY, COMMUNITY COLLEGE, OR INDEPENDENT
18 NONPROFIT DEGREE-GRANTING COLLEGE OR UNIVERSITY LOCATED IN THIS
19 STATE MAY PURCHASE ALL OR ANY PORTION OF ITS ELECTRICITY FROM AN
20 ALTERNATIVE ELECTRIC SUPPLIER, REGARDLESS OF WHETHER THE SALES
21 EXCEED 10% OF THE SERVING ELECTRIC UTILITY'S AVERAGE WEATHER-
22 ADJUSTED RETAIL SALES. A STATE PUBLIC UNIVERSITY, COMMUNITY
23 COLLEGE, OR INDEPENDENT NONPROFIT DEGREE-GRANTING COLLEGE OR
24 UNIVERSITY PURCHASING ELECTRICITY FROM AN ALTERNATIVE ELECTRIC
25 SUPPLIER UNDER THIS SUBDIVISION SHALL NOT COUNT TOWARD THE 10%
26 LIMIT SET FORTH IN SUBDIVISION (A). AS USED IN THIS SUBDIVISION:

27 (i) "COMMUNITY COLLEGE" MEANS THAT TERM AS DEFINED IN SECTION

1 1311B OF THE REVISED SCHOOL CODE, 1976 PA 451, MCL 380.1311B.

2 (ii) "STATE PUBLIC UNIVERSITY" MEANS THAT TERM AS DEFINED IN
3 SECTION 1311B OF THE REVISED SCHOOL CODE, 1976 PA 451, MCL
4 380.1311B.

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

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

24 (4) ~~No later than December 2, 2000, the~~**THE** commission shall
25 establish a code of conduct that ~~shall apply~~**APPLIES** to all
26 electric utilities. The code of conduct shall include, but is not
27 limited to, measures to prevent cross-subsidization, information

1 sharing, and preferential treatment, between a utility's regulated
2 and unregulated services, whether those services are provided by
3 the utility or the utility's affiliated entities. The code of
4 conduct established under this subsection ~~shall~~ **IS** also be
5 applicable to electric utilities and alternative electric suppliers
6 consistent with section 10, this section, and sections 10b through
7 10cc.

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

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

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

20 (b) Maintain separate books and records for the program,
21 access to which shall be made available to the commission upon
22 request.

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

27 (7) All costs directly attributable to an appliance service

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

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

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

20 (b) A customer's regulated utility service is not terminated
21 for nonpayment of the appliance service program portion of the
22 bill.

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

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

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

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

12 (c) ~~Prior to~~**BEFORE** enrolling a customer into the program, the
13 utility shall inform the potential customer of all of the
14 following:

15 (i) That appliance service programs may be available from
16 another provider.

17 (ii) That the appliance service program is not regulated by
18 the commission.

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

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

26 (d) The utility name and logo may be used to market the
27 appliance service program provided that the program is not marketed

1 in conjunction with a regulated service. ~~To the extent that~~ **IF** a
2 program utilizes the utility's name and logo in marketing the
3 program, the program shall include language on all material
4 indicating that the program is not regulated by the commission.
5 Costs shall not be allocated to the program for the use of the
6 utility's name or logo.

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

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

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

1 (a) Electricity generated and consumed at an industrial site
2 or contiguous industrial site or single commercial establishment or
3 single residence without the use of an electric utility's
4 transmission and distribution system.

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

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

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

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

25 (a) "Affiliate" means a person or entity that directly, or
26 indirectly through 1 or more intermediates, controls, is controlled
27 by, or is under common control with another specified entity. As

1 used in this subdivision, "control" means, whether through an
2 ownership, beneficial, contractual, or equitable interest, the
3 possession, directly or indirectly, of the power to direct or to
4 cause the direction of the management or policies of a person or
5 entity or the ownership of at least 7% of an entity either directly
6 or indirectly.

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

12 (i) For at least 90 days during the period from January 1,
13 1996 to October 1, 1999, supplied by self-service power, but only
14 to the extent of the capacity reserved or load served by self-
15 service power during the period.

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

23 (14) The rights of parties to existing contracts and
24 agreements in effect as of January 1, 2000 between electric
25 utilities and qualifying facilities, including the right to have
26 the charges recovered from the customers of an electric utility, or
27 its successor, ~~shall~~**ARE** not ~~be~~abrogated, increased, or diminished

1 by this act, nor shall the receipt of any proceeds of the
2 securitization bonds by an electric utility be a basis for any
3 regulatory disallowance. Further, any securitization or financing
4 order issued by the commission that relates to a qualifying
5 facility's power purchase contract shall fully consider that
6 qualifying facility's legal and financial interests.

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

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

1 ~~the effective date of the amendatory act that added this~~
2 ~~subsection. BEFORE OCTOBER 6, 2008.~~ The commission shall approve
3 surcharges that will ensure full recovery of all ~~such~~ **THOSE** costs
4 ~~within 5 years of the effective date of the amendatory act that~~
5 ~~added this subsection. BY OCTOBER 6, 2013.~~

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

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

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

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

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