

# SENATE BILL No. 235

March 25, 2015, Introduced by Senator SHIRKEY and referred to the Committee on Energy and Technology.

A bill to amend 1939 PA 3, entitled

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

by amending the title and sections 6s, 10, 10a, and 10bb (MCL 460.6s, 460.10, 460.10a, and 460.10bb), the title as amended by

2005 PA 190, section 6s as added and sections 10 and 10a as amended by 2008 PA 286, and section 10bb as added by 2000 PA 141.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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TITLE

An act to provide for the regulation and control of public and certain private utilities and other services affected with a public interest within this state; to provide for alternative energy suppliers; to provide for licensing; to include municipally owned utilities and other providers of energy under certain provisions of this act; to create a public service commission and to prescribe and define its powers and duties; to abolish the Michigan public utilities commission and to confer the powers and duties vested by law on the public service commission; to provide for the continuance, transfer, and completion of certain matters and proceedings; to abolish automatic adjustment clauses; to prohibit certain rate increases without notice and hearing; to qualify residential energy conservation programs permitted under state law for certain federal exemption; to create a fund; to provide for a restructuring of the manner in which energy is provided in this state; **TO REQUIRE THE COMPETITIVE PROCUREMENT OF ELECTRIC CAPACITY AND ENERGY**; 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.

Sec. 6s. (1) An electric utility that proposes to construct an

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

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

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

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

1 (b) A certificate of necessity that the size, fuel type, and  
2 other design characteristics of the existing or proposed electric  
3 generation facility or the terms of the power purchase agreement  
4 represent the most reasonable and prudent means of meeting that  
5 power need.

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

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

16 (4) Within 270 days of the filing of an application under this  
17 section, the commission shall issue an order granting or denying  
18 the requested certificate of necessity. The commission shall hold a  
19 hearing on the application. The hearing shall be conducted as a  
20 contested case pursuant to chapter 4 of the administrative  
21 procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. The  
22 commission shall allow intervention by interested persons **INCLUDING**  
23 **THE REGIONAL TRANSMISSION ORGANIZATION, ANY ELECTRIC CUSTOMER OR**  
24 **ASSOCIATION OF CUSTOMERS, ALTERNATIVE ELECTRIC SUPPLIERS, OWNERS OF**  
25 **MERCHANT PLANTS, OR OTHERS WITH INFORMATION POTENTIALLY RELEVANT TO**  
26 **THE PROCEEDING, INCLUDING, BUT NOT LIMITED TO, POTENTIALLY**  
27 **COMPETITIVE ELECTRIC SUPPLIERS OF THE ELECTRIC UTILITY.** Reasonable

1 discovery shall be permitted before and during the hearing in order  
2 to assist parties and interested persons in obtaining evidence  
3 concerning the application, including, but not limited to, the  
4 reasonableness and prudence of the construction, investment, or  
5 purchase for which the certificate of necessity has been requested.  
6 The commission shall grant the request if it determines all of the  
7 following:

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

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

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

1 ~~initial filing may be modified unless the application is withdrawn~~  
2 ~~and refiled. A utility's filing updating its cost estimates does~~  
3 ~~not extend the period for the commission to issue an order granting~~  
4 ~~or denying a certificate of necessity. An affiliate of an electric~~  
5 ~~utility that serves customers in this state and at least 1 other~~  
6 ~~state may participate in the competitive bidding to provide~~  
7 ~~engineering, procurement, and construction services to that~~  
8 ~~electric utility for a project covered by this section.~~ WILL BE THE  
9 RESULT OF THE COMPETITIVE BID PROCESS ESTABLISHED IN THIS  
10 SUBSECTION. THE COMMISSION SHALL DO ALL OF THE FOLLOWING:

11 (i) ESTABLISH A FORM OF REQUEST FOR PROPOSALS TO BE EMPLOYED BY  
12 THE UTILITY FOR THE PURPOSE OF PROCURING NEEDED RESOURCES.

13 (ii) SPECIFY THE EVALUATION CRITERIA BY WHICH THE PREFERRED  
14 PROPOSAL RECEIVED UNDER SUBPARAGRAPH (i) WILL BE DETERMINED.

15 (iii) ESTABLISH A PREFERRED FORM OF CONTRACT OR STANDARDIZED  
16 CONTRACT TERMS TO BE ENTERED INTO BY THE SELECTED ELECTRIC SUPPLIER  
17 AND THE ELECTRIC UTILITY.

18 (iv) PRESCRIBE BOTH OF THE FOLLOWING:

19 (A) THE RESPONSIBILITIES AND DUTIES OF AN INDEPENDENT  
20 THIRD-PARTY EVALUATOR SELECTED BY THE COMMISSION TO ISSUE REQUESTS  
21 FOR PROPOSALS, ADMINISTER A REQUEST FOR PROPOSALS PROCESS, RECEIVE  
22 PROPOSALS SUBMITTED IN RESPONSE TO A REQUEST FOR PROPOSALS,  
23 IDENTIFY THE PROPOSAL THAT BEST MEETS THE EVALUATION CRITERIA, AND  
24 RECOMMEND TO THE COMMISSION THE SELECTION OF 1 OR MORE PROPOSALS.  
25 THE COST OF THE INDEPENDENT THIRD-PARTY EVALUATOR SHALL BE ASSESSED  
26 AS A COST OF REGULATION UNDER 1972 PA 299, MCL 460.111 TO 460.120.

27 (B) THE MEANS BY WHICH THE INDEPENDENT THIRD-PARTY EVALUATOR

1 IS SELECTED AND THE TIME FOLLOWING SUBMISSION OF PROPOSALS WITHIN  
2 WHICH THE INDEPENDENT EVALUATOR SHALL RECOMMEND A PROPOSAL FOR  
3 SELECTION.

4 (v) PRESCRIBE THE CONDITIONS UNDER WHICH THE ELECTRIC UTILITY  
5 MAY SUBMIT A PROPOSAL IN RESPONSE TO ITS OWN REQUEST FOR PROPOSALS.  
6 THE CONDITIONS SHALL ENSURE THAT AN ELECTRIC UTILITY'S USE OF  
7 RATEPAYER-FUNDED ASSETS DOES NOT PLACE OTHER ELECTRIC SUPPLIERS  
8 SUBMITTING PROPOSALS AT A COMPETITIVE DISADVANTAGE AND ENSURE THAT  
9 THE ELECTRIC UTILITY'S PARTICIPATION IS CONSISTENT WITH THE  
10 ELECTRIC UTILITY'S CODE OF CONDUCT.

11 (vi) PRESCRIBE THE PROCESS FOR IDENTIFICATION AND APPROVAL OF  
12 PROPOSALS.

13 (vii) PRESCRIBE THE TERMS TO BE INCLUDED IN ANY CONTRACT  
14 BETWEEN AN ELECTRIC UTILITY AND AN ELECTRIC SUPPLIER THAT WILL  
15 LIMIT COMPENSATION TO BE RECEIVED BY THE ELECTRIC SUPPLIER TO NO  
16 MORE THAN THE COMPENSATION PROPOSED.

17 (viii) IDENTIFY IN THE REQUEST FOR PROPOSALS WHAT RISKS ARE TO  
18 BE ASSUMED BY UTILITY CUSTOMERS AND WHAT RISKS ARE TO BE ASSUMED BY  
19 PERSONS SUBMITTING PROPOSALS IN CONNECTION WITH EACH RESOURCE TO BE  
20 PROCURED.

21 (ix) PRESCRIBE CRITERIA THAT WILL PERMIT PERSONS PROPOSING TO  
22 PROVIDE DEMAND-SIDE MANAGEMENT, TRANSMISSION SERVICE, OR GENERATING  
23 CAPACITY, INCLUDING DISTRIBUTED GENERATING CAPACITY, TO FAIRLY  
24 COMPETE TO PROVIDE REQUIRED RESOURCES.

25 (x) PROVIDE REASONABLE MEANS TO ASSURE THAT THE REQUEST FOR  
26 PROPOSALS PROCESS WILL BE OPEN AND FAIR TO ALL PARTICIPATING  
27 PARTIES.

1           (xi) PROVIDE THAT, AFTER THE COMMISSION HAS SELECTED A  
2 PROPOSAL, ALL PROPOSALS SUBMITTED, EXCEPT THE SELECTED PROPOSAL,  
3 ARE CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER THE FREEDOM OF  
4 INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246.

5           (xii) PROVIDE THAT, IN CONSIDERING THE RELATIVE COST OF NEW  
6 GENERATING RESOURCES, ALL OF THE FOLLOWING ARE CONSIDERED A PART OF  
7 THE COST OF GENERATION:

8           (A) THE COST OF TRANSMITTING POWER TO THE ELECTRIC UTILITY.

9           (B) THE FUEL COST.

10          (C) THE EXPECTED USEFUL LIFE OF THE RESOURCE.

11          (D) THE POTENTIAL OPPORTUNITY COSTS, BASED ON THE SERVICE LIFE  
12 OF THE RESOURCE, IN RELATION TO OTHER DEVELOPING TECHNOLOGIES AND  
13 INNOVATIONS.

14          (E) THE NET PRESENT VALUE OF THE COST TO DECOMMISSION THE  
15 RESOURCE AT THE END OF ITS SERVICE LIFE.

16          (xiii) PROVIDE FOR ALL OF THE FOLLOWING:

17          (A) WITHIN THE TIME PRESCRIBED BY THE COMMISSION, THE  
18 INDEPENDENT EVALUATOR SHALL RECOMMEND TO THE COMMISSION 1 OR MORE  
19 PROPOSALS FOR SELECTION.

20          (B) THE COMMISSION SHALL POST THE RECOMMENDATION ON THE  
21 COMMISSION'S INTERNET WEBSITE AND MAIL COPIES TO EACH PARTY TO THE  
22 PROCEEDING IN WHICH THE COMMISSION DETERMINED THE UTILITY'S  
23 RESOURCE NEEDS AND TO EACH ELECTRIC SUPPLIER SUBMITTING A PROPOSAL.

24          (C) ALLOW ANY PERSON OR ELECTRIC SUPPLIER NOTIFIED UNDER SUB-  
25 SUBPARAGRAPH (B), WITHIN 15 DAYS OF THE DATE THE RECOMMENDATION IS  
26 POSTED, TO SUBMIT COMMENTS ON THE INDEPENDENT EVALUATOR'S  
27 RECOMMENDATION OR REQUEST COMMISSION REVIEW OF THE PROCESS OF



1 REQUESTING, RECEIVING, AND SELECTING PROPOSALS.

2 (D) WITHIN 30 DAYS OF THE DATE THE RECOMMENDATION IS POSTED,  
3 THE COMMISSION SHALL BY ORDER SELECT THE PROPOSAL MOST ADVANTAGEOUS  
4 TO THE UTILITY'S CUSTOMERS UNLESS THE UTILITY OR ELECTRIC SUPPLIER  
5 COMMITTED FRAUD OR THE INDEPENDENT EVALUATOR FAILED TO FOLLOW  
6 COMMISSION PROCEDURES AND THE FAILURE WAS MATERIALLY DETRIMENTAL TO  
7 THE UTILITY'S CUSTOMERS.

8 (E) THAT THE UTILITY AND THE ELECTRIC SUPPLIER SUBMITTING THE  
9 SELECTED PROPOSAL SHALL, NOT LATER THAN 5 DAYS AFTER THE  
10 COMMISSION'S ORDER SELECTING A PROPOSAL, EXECUTE A CONTRACT SETTING  
11 FORTH ALL TERMS AND CONDITIONS OF THE REQUEST FOR PROPOSALS EXCEPT  
12 TO THE EXTENT THEY HAVE BEEN MODIFIED IN THE SELECTED PROPOSAL.

13 (F) THAT, IF THE ORDER HAS NOT BEEN STAYED OR SUSPENDED BY A  
14 COMPETENT COURT WITHIN 30 DAYS AFTER THE DATE OF THE ORDER, THE  
15 CONTRACT IS A VALID AND BINDING CONTRACT ACCORDING TO ITS TERMS,  
16 NOTWITHSTANDING THAT THE COMMISSION'S PROCEDURES OR SELECTION IS  
17 LATER VACATED, MODIFIED, OR OTHERWISE HELD TO BE INVALID IN WHOLE  
18 OR IN PART.

19 (d) The existing or proposed electric generation facility or  
20 proposed power purchase agreement represents the most reasonable  
21 and prudent means of meeting the power need relative to other  
22 resource options for meeting power demand, including energy  
23 efficiency programs and electric transmission efficiencies.

24 (e) To the extent practicable, the construction or investment  
25 in a new or existing facility in this state is completed using a  
26 workforce composed of residents of this state as determined by the  
27 commission. This subdivision does not apply to a facility that is

1 located in a county that lies on the border with another state.

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

7 (6) In a certificate of necessity under this section, the  
8 commission shall specify the costs approved for the construction of  
9 or significant investment in the electric generation facility, the  
10 price approved for the purchase of the existing electric generation  
11 facility, or the price approved for the purchase of power pursuant  
12 to the terms of the power purchase agreement.

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

24 ~~(10) Within 90 days of the effective date of the amendatory~~  
25 ~~act that added this section, the~~ **THE** commission shall adopt  
26 standard application filing forms and instructions for use in all  
27 requests for a certificate of necessity under this section. The

1 commission may, in its discretion, modify the standard application  
2 filing forms and instructions adopted under this section.

3 (11) The commission shall establish standards for an  
4 integrated resource plan that shall be filed by an electric utility  
5 ~~requesting a certificate of necessity under this section.~~ **AND**  
6 **APPROVED BY THE COMMISSION AFTER A CONTESTED CASE HEARING PURSUANT**  
7 **TO CHAPTER 4 OF THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA**  
8 **306, MCL 24.271 TO 24.287.** An integrated resource plan **AND**  
9 **PROCEEDING** 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~~ **ANY NEW**  
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 any renewable portfolio standard.

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

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

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

1 amounts contained in subdivisions (c) to (e).

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

3 (H) NOTICE TO EACH REGIONAL TRANSMISSION ORGANIZATION SERVING  
4 ANY PORTION OF THE UTILITY'S SERVICE AREA THAT IT HAS STANDING TO  
5 INTERVENE IN THE INTEGRATED RESOURCE PLAN PROCEEDING AND A REQUEST  
6 THAT THE REGIONAL TRANSMISSION ORGANIZATION PARTICIPATE.

7 (I) NOTICE TO ELECTRIC CUSTOMERS, ALTERNATIVE ELECTRIC  
8 SUPPLIERS, AND OTHER POTENTIAL ELECTRIC SUPPLIERS OF THE UTILITY'S  
9 PROPOSED INTEGRATED RESOURCE PLAN AND THEIR STANDING TO PARTICIPATE  
10 IN THE PROCEEDING.

11 (J) THE PROJECTED ANNUAL LOAD FOR ALL CUSTOMERS AND CUSTOMER  
12 CLASSES CONNECTED TO THE UTILITY'S DISTRIBUTION SYSTEM FOR AT LEAST  
13 THE NEXT 10 YEARS.

14 (K) THE ELECTRIC UTILITY'S PROJECTED WHOLESALE SALES AND  
15 PURCHASES OF ELECTRICITY.

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

19 (M) THE AVAILABLE TRANSMISSION CAPACITY AND THE COST OF  
20 ADDITIONAL TRANSMISSION CAPACITY THAT COULD BE USED TO SERVE  
21 CUSTOMERS WITHIN THE UTILITY'S DISTRIBUTION SERVICE AREA.

22 (N) THE COST AND RELIABILITY OF RESOURCES LOCATED OUTSIDE THE  
23 ELECTRIC UTILITY'S DISTRIBUTION SERVICE AREA THAT COULD BE USED TO  
24 SERVE CUSTOMERS WITHIN THE SERVICE AREA.

25 (O) THE PORTION OF THE ELECTRIC UTILITY'S LOAD PROJECTED TO BE  
26 SERVED BY ALTERNATIVE ELECTRIC SUPPLIERS.

27 (P) AN ANALYSIS OF THE PROJECTED MARKET PRICES FOR POWER

1 PURCHASED UNDER THE RULES OF THE MIDCONTINENT INDEPENDENT SYSTEM  
2 OPERATOR, OR APPLICABLE REGIONAL TRANSMISSION ORGANIZATION, AS  
3 COMPARED TO THE COSTS OF NEW ELECTRIC GENERATION FACILITIES AND NEW  
4 ELECTRIC TRANSMISSION FACILITIES.

5 (Q) THE RELATIVE COST TO THE ELECTRIC UTILITY'S FULL-SERVICE  
6 CUSTOMERS OF MAINTAINING A 1-DAY INTERRUPTION IN 10 YEARS  
7 RELIABILITY STANDARD AND MORE OR LESS STRINGENT STANDARDS OF  
8 RELIABILITY.

9 (R) THE NEED FOR ADDITIONAL GENERATING OR TRANSMISSION  
10 CAPACITY TO MAINTAIN ELECTRIC RELIABILITY OR SECURE ECONOMIC  
11 ADVANTAGES TO THE UTILITY'S FULL-SERVICE CUSTOMERS.

12 (S) A REGIONAL AND STATEWIDE EVALUATION OF ELECTRIC SUPPLY AND  
13 DEMAND TO IDENTIFY SOURCES OUTSIDE OF THE ELECTRIC UTILITY SERVICE  
14 AREA WHERE POWER MAY BE AVAILABLE OR WHERE THERE MAY BE A  
15 PARTICULARLY FAVORABLE SITE FOR BUILDING TRANSMISSION OR GENERATION  
16 FACILITIES.

17 (T) THE QUANTITY AND TYPE OF RESOURCES, INCLUDING RESERVES,  
18 REQUIRED BY THE OPEN ACCESS TRANSMISSION AND ENERGY MARKETS TARIFFS  
19 OF THE REGIONAL TRANSMISSION ORGANIZATION OR THE TARIFF OF ANY  
20 SUCCESSOR ORGANIZATION IN WHICH THE ELECTRIC UTILITY PARTICIPATES,  
21 AND RESOURCES REQUIRED BY RELIABILITY STANDARDS OR OTHER  
22 REQUIREMENTS IMPOSED UNDER THE AUTHORITY OF AN ELECTRIC RELIABILITY  
23 ORGANIZATION TO WHICH THE ELECTRIC UTILITY IS SUBJECT.

24 (U) A COMPLETE ANALYSIS OF THE AMOUNT OF CAPACITY OR PLANNING  
25 RESOURCE THE ELECTRIC UTILITY HAS PROCURED TO SERVE THE PORTION OF  
26 CUSTOMERS CURRENTLY SERVED UNDER RETAIL OPEN ACCESS IN THE EVENT  
27 THAT THOSE CUSTOMERS MAY IN THE FUTURE SEEK TO RETURN TO UTILITY-

1 PROVIDED DEFAULT SERVICE.

2 (12) WITHIN 30 DAYS AFTER THE EFFECTIVE DATE OF THE AMENDATORY  
3 ACT THAT ADDED THIS SENTENCE, EACH ELECTRIC UTILITY WITH MORE THAN  
4 1,000,000 RETAIL ELECTRIC CUSTOMERS SHALL FILE WITH THE COMMISSION  
5 FOR ITS REVIEW A COMPLETE ANALYSIS OF THE AMOUNT OF CAPACITY OR  
6 PLANNING RESOURCE EACH HAS PROCURED BETWEEN 2000 AND 2014 TO SERVE  
7 THE PORTION OF CUSTOMERS CURRENTLY SERVED UNDER RETAIL OPEN ACCESS  
8 IN THE EVENT THAT THOSE CUSTOMERS MAY IN THE FUTURE SEEK TO RETURN  
9 TO UTILITY-PROVIDED DEFAULT SERVICE. THIS FILING MUST BE VERIFIED  
10 BY A CORPORATE OFFICER. THE COMMISSION SHALL REVIEW WHETHER EACH  
11 UTILITY SUBJECT TO THIS SUBSECTION HAS ACTED IN A PRUDENT MANNER IN  
12 PROCURING THAT CAPACITY OR PLANNING RESOURCE.

13 (13) ~~(12)~~—The commission shall allow financing interest cost  
14 recovery in an electric utility's base rates on construction work  
15 in progress for capital improvements approved under this section  
16 prior to the assets being considered used and useful. Regardless of  
17 whether or not the commission authorizes base rate treatment for  
18 construction work in progress financing interest expense, an  
19 electric utility shall be allowed to recognize, accrue, and defer  
20 the allowance for funds used during construction related to equity  
21 capital.

22 (14) ~~(13)~~—As used in this section, "renewable energy system"  
23 means that term as defined in **SECTION 11 OF** the clean, renewable,  
24 and efficient energy act, **2008 PA 295, MCL 460.1011**.

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

27 (2) The purpose of sections 10a through 10bb is to do all of

1 the following:

2 (a) To ensure that all retail customers in this state of  
3 electric power have a choice of electric suppliers.

4 (b) To ~~allow and encourage~~ **ENSURE THAT** the Michigan public  
5 service commission ~~to foster~~ **FOSTERS** competition in this state in  
6 the provision of electric supply and ~~maintain~~ **MAINTAINS** regulation  
7 of electric supply for customers who continue to choose supply from  
8 incumbent electric utilities.

9 (c) To encourage the development and construction of  
10 **INDEPENDENTLY OWNED** merchant plants, ~~which will~~ **TO ENCOURAGE**  
11 **INNOVATION AND INVESTMENT OF GENERATION AND STORAGE ASSETS, AND TO**  
12 diversify the ownership of electric generation in this state.

13 (d) To ensure that all persons in this state are afforded  
14 safe, reliable electric power ~~at a reasonable rate.~~ **FULLY AVAILABLE**  
15 **AT MARKET COMPETITIVE RATES.**

16 (e) To improve the opportunities for economic development in  
17 this state and to promote financially healthy and competitive  
18 utilities in this state.

19 (f) To maintain, foster, and encourage robust, reliable, and  
20 economic generation, distribution, and transmission systems to  
21 provide this state's electric suppliers and generators an  
22 opportunity to access regional sources of generation and wholesale  
23 power markets and to ensure a reliable supply of electricity in  
24 this state.

25 **(G) TO ENSURE EFFECTIVE COMPETITION IN THE PROVISION OF RETAIL**  
26 **ELECTRIC SERVICE BY AVOIDING ANTICOMPETITIVE SUBSIDIES FLOWING FROM**  
27 **A NONCOMPETITIVE RETAIL ELECTRIC SERVICE TO A COMPETITIVE RETAIL**



1 ELECTRIC SERVICE OR TO A PRODUCT OR SERVICE OTHER THAN RETAIL  
2 ELECTRIC SERVICE, AND FROM A COMPETITIVE RETAIL ELECTRIC SERVICE TO  
3 A NONCOMPETITIVE RETAIL ELECTRIC SERVICE.

4 (H) TO ENSURE THAT RETAIL ELECTRIC SERVICE CONSUMERS ARE  
5 PROTECTED FROM UNREASONABLE PROVISION OF SERVICE, SALES PRACTICES,  
6 MARKET DEFICIENCIES, AND MARKET POWER.

7 (I) TO ENSURE THAT ALL DATA AND INFORMATION NECESSARY TO SERVE  
8 THE COMPETITIVE RETAIL ELECTRIC SERVICE ARE SHARED BETWEEN A  
9 UTILITY AND AN ALTERNATIVE ELECTRIC SUPPLIER IN A TIMELY MANNER.

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

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

20 (b) Set forth procedures necessary to administer and allocate  
21 the amount of load that will be allowed to be served by alternative  
22 electric suppliers, through the use of annual energy allotments  
23 awarded on a calendar year basis, and shall provide, among other  
24 things, that existing customers who are taking electric service  
25 from an alternative electric supplier at a facility on ~~the~~  
26 ~~effective date of the amendatory act that added this subdivision~~  
27 **OCTOBER 6, 2008** shall be given an allocated annual energy allotment

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

20 (c) Notwithstanding any other provision of this section,  
21 customers seeking to expand usage at a facility that has been  
22 continuously served through an alternative electric supplier since  
23 April 1, 2008 shall be permitted to purchase electricity from an  
24 alternative electric supplier for both the existing and any  
25 expanded load at that facility as well as any new facility  
26 constructed or acquired after ~~the effective date of the amendatory~~  
27 ~~act that added this subdivision~~ **OCTOBER 6, 2008** that is similar in

1 nature if the customer owns more than 50% of the new facility.

2 (d) Notwithstanding any other provision of this section, any  
3 customer operating an iron ore mining facility, iron ore processing  
4 facility, or both, located in the Upper Peninsula of this state,  
5 shall be permitted to purchase all or any portion of its  
6 electricity from an alternative electric supplier, regardless of  
7 whether the sales exceed ~~10%~~ **THE PERCENTAGE SET FORTH IN**  
8 **SUBDIVISION (A) OR THE PERCENTAGE DETERMINED BY THE COMMISSION**  
9 **UNDER SUBDIVISION (E)** of the serving electric utility's average  
10 weather-adjusted retail sales.

11 (E) **THE ELECTRIC CHOICE CAP FOR AN ELECTRIC UTILITY THAT HAS**  
12 **IMPLEMENTED SECURITIZATION CHARGES AUTHORIZED BY THE COMMISSION**  
13 **SHALL BE DETERMINED AS FOLLOWS:**

14 (i) **WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THE AMENDATORY ACT**  
15 **THAT ADDED THIS SUBDIVISION, THE COMMISSION SHALL, FOR THE**  
16 **REMAINDER OF THAT CALENDAR YEAR, SET THE ELECTRIC CHOICE CAP TO BE**  
17 **THE GREATEST OF THE FOLLOWING:**

18 (A) 10%.

19 (B) **A PERCENTAGE EQUAL TO THE PERCENTAGE OF WEATHER-ADJUSTED**  
20 **RETAIL SALES FOR THE PRECEDING CALENDAR YEAR ALLOTTED TO CUSTOMERS**  
21 **TAKING SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER ON THE**  
22 **EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBDIVISION**  
23 **PLUS THE PERCENTAGE OF WEATHER-ADJUSTED RETAIL SALES FOR THE**  
24 **PRECEDING CALENDAR YEAR REPRESENTED BY ADDITIONAL CUSTOMERS**  
25 **REQUESTING SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER ON THE**  
26 **EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBDIVISION**  
27 **BUT WHO HAVE NOT RECEIVED AN ALLOTMENT UNDER THIS SUBSECTION. THE**

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

5 (C) THE HIGHEST PERCENTAGE, DETERMINED ON A CALENDAR-YEAR  
6 BASIS FOR YEARS 2000 THROUGH 2016, OF WEATHER-ADJUSTED RETAIL SALES  
7 FOR THE PRECEDING CALENDAR YEAR REPRESENTING CUSTOMERS WHO TOOK  
8 SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER. THE COMMISSION SHALL  
9 ENSURE THAT ANY CUSTOMER REQUESTING SERVICE FROM AN ALTERNATIVE  
10 ELECTRIC SUPPLIER ON OR BEFORE THE EFFECTIVE DATE OF THE AMENDATORY  
11 ACT THAT ADDED THIS SUBDIVISION IS ALLOWED TO PURCHASE ELECTRICITY  
12 FROM AN ALTERNATIVE ELECTRIC SUPPLIER.

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

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

25 (B) IN SETTING RATES FOR THE UTILITY, RECOGNIZE THE EFFECT OF  
26 AN INCREASE OR DECREASE IN THE RETAIL SALES ASSOCIATED WITH  
27 CUSTOMERS TAKING SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER,

1 EITHER THROUGH A REVENUE DECOUPLING MECHANISM OR THROUGH A TEST  
2 YEAR USED FOR SETTING RATES THAT BEGINS AFTER THE EFFECTIVE DATE OF  
3 THE AMENDATORY ACT THAT ADDED THIS SUBDIVISION.

4 (iii) ON AND AFTER THE BEGINNING OF THE FOURTH CALENDAR YEAR  
5 FOLLOWING THE CALENDAR YEAR IN WHICH THE AMENDATORY ACT THAT ADDED  
6 THIS SUBDIVISION TAKES EFFECT, IF THE ELECTRIC CHOICE CAP HAS BEEN  
7 REACHED FOR AN ELECTRIC UTILITY AND THE ALLOTMENT OF RETAIL SALES  
8 REPRESENTED BY CUSTOMERS REQUESTING SERVICE FROM AN ALTERNATIVE  
9 ELECTRIC SUPPLIER WHO CANNOT BE SERVED UNDER THE EXISTING ELECTRIC  
10 CHOICE CAP EXCEEDS 2% OF THE ELECTRIC UTILITY'S WEATHER-ADJUSTED  
11 RETAIL SALES FOR THE PRECEDING CALENDAR YEAR, THEN THE COMMISSION  
12 SHALL, WITHIN 30 DAYS, INITIATE A CONTESTED CASE TO DETERMINE IF  
13 THE ELECTRIC CHOICE CAP SHOULD BE INCREASED. WITHIN 180 DAYS OF THE  
14 INITIATION OF THE CONTESTED CASE, THE COMMISSION SHALL ISSUE AN  
15 ORDER INCREASING AN ELECTRIC UTILITY'S ELECTRIC CHOICE CAP BY THE  
16 PERCENTAGE OF WEATHER-ADJUSTED RETAIL SALES REPRESENTED BY THOSE  
17 CUSTOMERS REQUESTING SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER  
18 PLUS 3% OF THE UTILITY'S WEATHER-ADJUSTED RETAIL SALES FOR THE  
19 PRECEDING CALENDAR YEAR UNLESS IT FINDS, BASED ON THE EVIDENTIARY  
20 RECORD IN THE CONTESTED CASE, THAT INCREASING THE ELECTRIC CHOICE  
21 CAP WILL CAUSE SUBSTANTIAL HARM TO FULL-SERVICE CUSTOMERS. IN  
22 DETERMINING WHETHER AN INCREASE IN THE CUSTOMER CHOICE CAP WILL  
23 RESULT IN SUBSTANTIAL HARM TO FULL-SERVICE CUSTOMERS, THE  
24 COMMISSION SHALL CONSIDER ALL THE COSTS AND SAVINGS EXPERIENCED OR  
25 EXPECTED TO BE EXPERIENCED BY FULL-SERVICE CUSTOMERS BASED ON THE  
26 DIFFERENCE BETWEEN COSTS AND SAVINGS WITH AND WITHOUT THE PROPOSED  
27 PERCENTAGE INCREASE IN THE ELECTRIC CHOICE CAP, INCLUDING, BUT NOT

1 LIMITED TO, THE COSTS AND SAVINGS OF FUEL, PURCHASED POWER,  
2 WHOLESALE SALES, INVESTMENT IN NEW OR EXISTING GENERATING  
3 FACILITIES, AND PURCHASE, LEASE, OR ACQUISITION OF GENERATING  
4 CAPACITY. THE COMMISSION SHALL ALLOW INTERVENTION BY INTERESTED  
5 PERSONS INCLUDING ANY ELECTRIC CUSTOMER OR ASSOCIATION OF  
6 CUSTOMERS, ALTERNATIVE ELECTRIC SUPPLIERS, OR OTHERS WITH  
7 INFORMATION POTENTIALLY RELEVANT TO THE PROCEEDING. THE COMMISSION  
8 SHALL NOT INITIATE MORE THAN 1 CONTESTED CASE FOR AN ELECTRIC  
9 UTILITY UNDER THIS SUBDIVISION IN ANY 12-MONTH PERIOD.

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

26 (3) The commission shall issue orders to ensure that customers  
27 in this state are not switched to another supplier or billed for

1 any services without the customer's consent.

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

12 (5) **NO LATER THAN 180 DAYS AFTER THE EFFECTIVE DATE OF THE**  
13 **2015 AMENDATORY ACT THAT ADDED THIS SENTENCE, THE COMMISSION SHALL**  
14 **ISSUE ORDERS THAT ESTABLISH A COMPETITIVE BIDDING PROCESS TO**  
15 **DETERMINE WHICH ELECTRIC PROVIDERS WILL SERVE AS A PROVIDER OF LAST**  
16 **RESORT IN EACH ELECTRIC UTILITY'S SERVICE AREA. THE PROCEDURES**  
17 **SHALL INCLUDE THE FOLLOWING PROVISIONS:**

18 (A) **A COMPETITIVE BIDDING PROCESS TO ACQUIRE A WHOLESALE**  
19 **PRODUCT CONSISTING OF ALL COMPETITIVE RETAIL ELECTRIC SERVICES**  
20 **NECESSARY TO MAINTAIN ESSENTIAL ELECTRIC SERVICE TO THAT SERVICE**  
21 **AREA, INCLUDING A FIRM SUPPLY OF LOAD FOLLOWING ELECTRIC GENERATION**  
22 **SERVICE.**

23 (B) **REASONABLE FINANCIAL AND TECHNICAL REQUIREMENTS TO**  
24 **EVALUATE PROSPECTIVE BIDDERS IN ADVANCE OF A COMPETITIVE BIDDING**  
25 **PROCESS TO ENSURE THAT ONLY BIDDERS THAT HAVE THE FINANCIAL AND**  
26 **TECHNICAL INTEGRITY TO RELIABLY PROVIDE RETAIL ELECTRIC SERVICE TO**  
27 **THAT SERVICE AREA ARE ALLOWED TO PARTICIPATE.**

1 (C) THAT AN ELECTRIC UTILITY IS NOT REQUIRED TO SUBMIT A BID  
2 TO SERVE AS THE PROVIDER OF LAST RESORT IN A SERVICE AREA.

3 (D) THAT THE COMMISSION OR INDEPENDENT THIRD-PARTY REVIEW TO  
4 APPROVE AND CERTIFY THE RESULTS AND AWARDS UNDER THE COMPETITIVE  
5 BIDDING PROCESS.

6 (E) THAT IF A RETAIL ELECTRIC PROVIDER FAILS TO SERVE ANY OR  
7 ALL OF ITS CUSTOMERS, THE PROVIDER OF LAST RESORT FOR THAT SERVICE  
8 AREA SHALL OFFER THOSE CUSTOMERS RETAIL ELECTRIC SERVICE WITH NO  
9 INTERRUPTION OF SERVICE TO ANY CUSTOMER.

10 (F) A CONTINGENCY PLAN, FILED WITH AND APPROVED BY THE  
11 COMMISSION, TO ENSURE THE CONTINUAL AVAILABILITY OF RETAIL ELECTRIC  
12 SERVICE TO ALL CUSTOMERS IF AN ELECTRIC PROVIDER DEFAULTS ON ITS  
13 OBLIGATIONS OR A COMPETITIVE BID PROCESS FAILS TO ATTRACT ANY  
14 BIDDERS. THE CONTINGENCY PLAN SHALL BE LIMITED TO THE SHORTER OF  
15 EITHER 1 YEAR IN DURATION OR UNTIL A NEW COMPETITIVE BID PROCESS  
16 CAN BE HELD. A NEW CONTINGENCY PLAN SHALL BE FILED WITH AND  
17 APPROVED BY THE COMMISSION FOR EACH 1-YEAR PERIOD UNTIL A  
18 COMPETITIVE BID PROCESS ATTRACTS AT LEAST 1 ACCEPTABLE BID.

19 (6) ~~(5)~~—An electric utility may offer its customers an  
20 appliance service program. Except as otherwise provided by this  
21 section, the utility shall comply with the code of conduct  
22 established by the commission under subsection (4). As used in this  
23 section, "appliance service program" or "program" means a  
24 subscription program for the repair and servicing of heating and  
25 cooling systems or other appliances.

26 (7) ~~(6)~~—A utility offering a program under subsection ~~(5)~~—(6)  
27 shall do all of the following:



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

4 (b) Maintain separate books and records for the program,  
5 access to which shall be made available to the commission upon  
6 request.

7 (c) Not promote or market the program through the use of  
8 utility billing inserts, printed messages on the utility's billing  
9 materials, or other promotional materials included with customers'  
10 utility bills.

11 (8) ~~(7)~~—All costs directly attributable to an appliance  
12 service program allowed under subsection ~~(5)~~—(6) shall be allocated  
13 to the program as required by this subsection. The direct and  
14 indirect costs of employees, vehicles, equipment, office space, and  
15 other facilities used in the appliance service program shall be  
16 allocated to the program based upon the amount of use by the  
17 program as compared to the total use of the employees, vehicles,  
18 equipment, office space, and other facilities. The cost of the  
19 program shall include administrative and general expense loading to  
20 be determined in the same manner as the utility determines  
21 administrative and general expense loading for all of the utility's  
22 regulated and unregulated activities. A subsidy by a utility does  
23 not exist if costs allocated as required by this subsection do not  
24 exceed the revenue of the program.

25 (9) ~~(8)~~—A utility may include charges for its appliance  
26 service program on its monthly billings to its customers if the  
27 utility complies with all of the following requirements:

1 (a) All costs associated with the billing process, including  
2 the postage, envelopes, paper, and printing expenses, are allocated  
3 as required under subsection ~~(7)~~-(8).

4 (b) A customer's regulated utility service is not terminated  
5 for nonpayment of the appliance service program portion of the  
6 bill.

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

10 (10) ~~(9)~~—In marketing its appliance service program to the  
11 public, a utility shall do all of the following:

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

19 (b) Appropriately allocate costs as required under subsection  
20 ~~(7)~~-(8) when personnel employed at a utility's call center provide  
21 appliance service program marketing information to a prospective  
22 customer.

23 (c) ~~Prior to~~ **BEFORE** enrolling a customer into the program, the  
24 utility shall inform the potential customer of all of the  
25 following:

26 (i) That appliance service programs may be available from  
27 another provider.

1           (ii) That the appliance service program is not regulated by the  
2 commission.

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

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

10           (d) The utility name and logo may be used to market the  
11 appliance service program provided that the program is not marketed  
12 in conjunction with a regulated service. To the extent that a  
13 program utilizes the utility's name and logo in marketing the  
14 program, the program shall include language on all material  
15 indicating that the program is not regulated by the commission.  
16 Costs shall not be allocated to the program for the use of the  
17 utility's name or logo.

18           (11) ~~(10)~~—This section does not prohibit the commission from  
19 requiring a utility to include revenues from an appliance service  
20 program in establishing base rates. If the commission includes the  
21 revenues of an appliance service program in determining a utility's  
22 base rates, the commission shall also include all of the costs of  
23 the program as determined under this section.

24           (12) ~~(11)~~—Except as otherwise provided in this section, the  
25 code of conduct with respect to an appliance service program shall  
26 not require a utility to form a separate affiliate or division to  
27 operate an appliance service program, impose further restrictions

1 on the sharing of employees, vehicles, equipment, office space, and  
2 other facilities, or require the utility to provide other providers  
3 of appliance repair service with access to utility employees,  
4 vehicles, equipment, office space, or other facilities.

5 (13) ~~(12)~~—This act does not prohibit or limit the right of a  
6 person to obtain self-service power and does not impose a  
7 transition, implementation, exit fee, or any other similar charge  
8 on self-service power. A person using self-service power is not an  
9 electric supplier, electric utility, or a person conducting an  
10 electric utility business. As used in this subsection, "self-  
11 service power" means any of the following:

12 (a) Electricity generated and consumed at an industrial site  
13 or contiguous industrial site or single commercial establishment or  
14 single residence without the use of an electric utility's  
15 transmission and distribution system.

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

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

27 (d) A commercial or industrial facility or single residence

1 that meets the requirements of subdivision (a) or (b) meets this  
2 definition whether or not the generation facility is owned by an  
3 entity different from the owner of the commercial or industrial  
4 site or single residence.

5 (14) ~~(13)~~—This act does not prohibit or limit the right of a  
6 person to engage in affiliate wheeling and does not impose a  
7 transition, implementation, exit fee, or any other similar charge  
8 on a person engaged in affiliate wheeling. As used in this section:

9 (a) "Affiliate" means a person or entity that directly, or  
10 indirectly through 1 or more intermediates, controls, is controlled  
11 by, or is under common control with another specified entity. As  
12 used in this subdivision, "control" means, whether through an  
13 ownership, beneficial, contractual, or equitable interest, the  
14 possession, directly or indirectly, of the power to direct or to  
15 cause the direction of the management or policies of a person or  
16 entity or the ownership of at least 7% of an entity either directly  
17 or indirectly.

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

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

27 (ii) Capable of being supplied by a person's cogeneration

1 capacity within this state that has had since January 1, 1996 a  
2 rated capacity of 15 megawatts or less, was placed in service  
3 before December 31, 1975, and has been in continuous service since  
4 that date. A person engaging in affiliate wheeling is not an  
5 electric supplier, an electric utility, or conducting an electric  
6 utility business when a person engages in affiliate wheeling.

7 (15) ~~(14)~~—The rights of parties to existing contracts and  
8 agreements in effect as of January 1, 2000 between electric  
9 utilities and qualifying facilities, including the right to have  
10 the charges recovered from the customers of an electric utility, or  
11 its successor, shall not be abrogated, increased, or diminished by  
12 this act, nor shall the receipt of any proceeds of the  
13 securitization bonds by an electric utility be a basis for any  
14 regulatory disallowance. Further, any securitization or financing  
15 order issued by the commission that relates to a qualifying  
16 facility's power purchase contract shall fully consider that  
17 qualifying facility's legal and financial interests.

18 (16) ~~(15)~~—A customer who elects to receive service from an  
19 alternative electric supplier may subsequently provide notice to  
20 the electric utility of the customer's desire to receive standard  
21 tariff service from the electric utility. The procedures in place  
22 for each electric utility as of January 1, 2008 that set forth the  
23 terms pursuant to which a customer receiving service from an  
24 alternative electric supplier may return to full service from the  
25 electric utility are ratified and shall remain in effect and may be  
26 amended by the commission as needed. If an electric utility did not  
27 have the procedures in place as of January 1, 2008, the commission

1 shall adopt those procedures.

2       (17) ~~(16)~~—The commission shall authorize rates that will  
3 ensure that an electric utility that offered retail open access  
4 service from 2002 through ~~the effective date of the amendatory act~~  
5 ~~that added this subsection~~ **OCTOBER 6, 2008** fully recovers its  
6 restructuring costs and any associated accrued regulatory assets.  
7 This includes, but is not limited to, implementation costs,  
8 stranded costs, and costs authorized pursuant to section 10d(4) as  
9 it existed ~~prior to the effective date of the amendatory act that~~  
10 ~~added this subsection~~ **BEFORE OCTOBER 6, 2008**, that have been  
11 authorized for recovery by the commission in orders issued ~~prior to~~  
12 ~~the effective date of the amendatory act that added this subsection~~  
13 **BEFORE OCTOBER 6, 2008**. The commission shall approve surcharges  
14 that will ensure full recovery of all such costs within 5 years of  
15 ~~the effective date of the amendatory act that added this subsection~~  
16 **BY OCTOBER 6, 2013**.

17       (18) ~~(17)~~—As used in subsections (1) and ~~(15)~~ **(16)**:

18       (a) "Customer" means the building or facilities served through  
19 a single existing electric billing meter and does not mean the  
20 person, corporation, partnership, association, governmental body,  
21 or other entity owning or having possession of the building or  
22 facilities.

23       (b) **"ELECTRIC CHOICE CAP" MEANS THE LIMIT ON A UTILITY'S**  
24 **WEATHER-ADJUSTED RETAIL SALES THAT MAY TAKE SERVICE FROM AN**  
25 **ALTERNATIVE ELECTRIC SUPPLIER, AS SPECIFIED IN SUBSECTION (1) (A) OR**  
26 **AS DETERMINED BY THE COMMISSION UNDER SUBSECTION (1) (E).**

27       (c) **"FULL-SERVICE CUSTOMER" MEANS A RETAIL CUSTOMER OF AN**

1 ELECTRIC UTILITY WHO DOES NOT TAKE SERVICE FROM AN ALTERNATIVE  
2 ELECTRIC SUPPLIER.

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

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

10 Sec. 10bb. (1) Aggregation may be used for the purchasing of  
11 electricity and related services from an alternative electric  
12 supplier.

13 (2) Local units of government, public and private schools,  
14 universities, and community colleges may aggregate for the purpose  
15 of purchasing electricity for themselves or for **RESIDENTIAL**  
16 customers **AND SMALL COMMERCIAL CUSTOMERS** within their boundaries.  
17 ~~with the written consent of each customer aggregated. Customers~~  
18 **RESIDENTIAL CUSTOMERS AND SMALL COMMERCIAL CUSTOMERS** within a local  
19 unit of government ~~shall continue to have the right to choose their~~  
20 ~~electricity supplier and are not required to~~ **MAY CHOOSE NOT TO**  
21 purchase electricity through the aggregator. **LOCAL UNITS OF**  
22 **GOVERNMENT MAY AGGREGATE FOR THE PURPOSE OF PURCHASING ELECTRICITY**  
23 **FOR LARGE COMMERCIAL CUSTOMERS AND INDUSTRIAL CUSTOMERS WITHIN**  
24 **THEIR BOUNDARIES WITH THE WRITTEN OR ELECTRONIC CONSENT OF EACH OF**  
25 **THOSE CUSTOMERS AGGREGATED.**

26 (3) As used in this section: ~~,"aggregation"~~

27 (A) "AGGREGATION" means the combining of electric loads of



1 multiple retail customers or a single customer with multiple sites  
2 to facilitate the provision of electric service to ~~such~~ **THOSE**  
3 customers.

4 (B) "LARGE COMMERCIAL CUSTOMER" MEANS A COMMERCIAL CUSTOMER  
5 WITH AN ELECTRIC DEMAND OF GREATER THAN 25 KILOWATTS.

6 (C) "SMALL COMMERCIAL CUSTOMER" MEANS A COMMERCIAL CUSTOMER  
7 WITH AN ELECTRIC DEMAND OF 25 KILOWATTS OR LESS.

8 Enacting section 1. This amendatory act takes effect January  
9 1, 2016.