

HOUSE BILL No. 5865

April 24, 2018, Introduced by Reps. Johnson, Rabhi, Barrett, Dianda and Glenn 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 powers and duties of certain state governmental officers and entities; 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 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 2016 PA 341.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 10a. (1) The commission shall issue orders establishing
2 the rates, terms, and conditions of service that allow retail
3 customers to take service from an alternative electric supplier.
4 The orders ~~shall~~**MUST** do all of the following:

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

9 (b) Set forth procedures necessary to allocate the amount of
10 load that will be allowed to be served by alternative electric
11 suppliers, through the use of annual energy allotments awarded on a
12 calendar year basis. If the sales of a utility are less in a
13 subsequent year or if the energy usage of a customer receiving
14 electric service from an alternative electric supplier exceeds its
15 annual energy allotment for that facility, that customer shall not
16 be forced to purchase electricity from a utility, but may purchase
17 electricity from an alternative electric supplier for that facility
18 during that calendar year.

19 (c) Notwithstanding any other provision of this section,
20 provide that, if the commission determines that less than 10% of an
21 electric utility's average weather-adjusted retail sales for the
22 preceding calendar year is taking service from alternative electric
23 suppliers, the commission shall set as a cap on the weather-
24 adjusted retail sales that may take service from an alternative
25 electric supplier, for the current calendar year and 5 subsequent
26 calendar years, the percentage amount of weather-adjusted retail

1 sales for the preceding calendar year rounded up to the nearest
2 whole percentage. If the cap is not adjusted for 6 consecutive
3 calendar years, the cap ~~shall return~~ **RETURNS** to 10% in the calendar
4 year following that sixth consecutive calendar year. If a utility
5 that serves less than 200,000 customers in this state has not had
6 any load served by an alternative electric supplier in the
7 preceding 4 years, the commission shall adjust the cap in
8 accordance with this provision for no more than 2 consecutive
9 calendar years.

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

18 (e) Provide that for an existing facility that is receiving
19 100% of its electric service from an alternative electric supplier
20 on or after ~~the effective date of the amendatory act that added~~
21 ~~section 6t,~~ **APRIL 20, 2017,** the owner of that facility may purchase
22 electricity from an alternative electric supplier, regardless of
23 whether the sales exceed 10% of the servicing electric utility's
24 average weather-adjusted retail sales, for both the existing
25 electric choice load at that facility and any expanded load arising
26 after ~~the effective date of the amendatory act that added section~~
27 ~~6t~~ **APRIL 20, 2017** at that facility as well as any new facility that

1 is similar in nature to the existing facility, that is constructed
2 or acquired by the customer on a site contiguous to the existing
3 site or on a site that would be contiguous to an existing site in
4 the absence of an existing public right-of-way, and the customer
5 owns more than 50% of that facility. This subdivision does not
6 authorize or permit an existing facility being served by an
7 electric utility on standard tariff service on ~~the effective date~~
8 ~~of the amendatory act that added section 6t~~ **APRIL 20, 2017** to be
9 served by an alternative electric supplier.

10 (f) Notwithstanding any other provision of this section, any
11 customer operating an iron ore mining facility, iron ore processing
12 facility, or both, located in the Upper Peninsula of this state,
13 may purchase all or any portion of its electricity from an
14 alternative electric supplier, regardless of whether the sales
15 exceed 10% of the serving electric utility's average weather-
16 adjusted retail sales, if that customer is in compliance with the
17 terms of a settlement agreement requiring it to facilitate
18 construction of a new power plant located in the Upper Peninsula of
19 this state. A customer described in this subdivision and the
20 alternative electric supplier that provides electric service to
21 that customer are not subject to the requirements contained in ~~the~~
22 ~~amendatory act that added section 6t~~ **2016 PA 341** and any
23 administrative regulations adopted under ~~that amendatory act.~~ **2016**
24 **PA 341**. The commission's orders establishing rates, terms, and
25 conditions of retail access service issued before ~~the effective~~
26 ~~date of the amendatory act that added section 6t~~ **APRIL 20, 2017**
27 remain in effect with regard to retail open access provided under

1 this subdivision.

2 (g) Provide that a customer on an enrollment queue waiting to
3 take retail open access service as of December 31, 2015 shall
4 continue on the queue and an electric utility shall add a new
5 customer to the queue if the customer's prospective alternative
6 electric supplier submits an enrollment request to the electric
7 utility. A customer shall be removed from the queue by notifying
8 the electric utility electronically or in writing.

9 (h) Require each electric utility to file with the commission
10 not later than January 15 of each year a rank-ordered queue of all
11 customers awaiting retail open access service under subdivision
12 (g). The filing must include the estimated amount of electricity
13 used by each customer awaiting retail open access service under
14 subdivision (g). All customer-specific information contained in the
15 filing under this subdivision is exempt from release under the
16 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and
17 the commission shall treat that information as confidential
18 information. The commission may release aggregated information as
19 part of its annual report as long as individual customer
20 information or data are not released.

21 (i) Provide that if the prospective alternative electric
22 supplier of a customer next on the queue awaiting retail open
23 access service is notified after ~~the effective date of the~~
24 ~~amendatory act that added section 6t~~ **APRIL 20, 2017** that less than
25 10% of an electric utility's average weather-adjusted retail sales
26 for the preceding calendar year are taking service from an
27 alternative electric supplier and that the amount of electricity

1 needed to serve the customer's electric load is available under the
2 10% allocation, the customer may take service from an alternative
3 electric supplier. The customer's prospective alternative electric
4 supplier shall notify the electric utility within 5 business days
5 after being notified whether the customer will take service from an
6 alternative electric supplier. If the customer's prospective
7 alternative electric supplier fails to notify the utility within 5
8 business days or if the customer chooses not to take retail open
9 access service, the customer shall be removed from the queue of
10 those awaiting retail open access service. The customer may
11 subsequently be added to the queue as a new customer under the
12 provisions of subdivision (g). A customer that elects to take
13 service from an alternative electric supplier under this
14 subdivision shall become service-ready under rules established by
15 the commission and the utility's approved retail open access
16 service tariffs.

17 (j) Provide that the commission shall ensure if a customer is
18 notified that the customer's service from an alternative electric
19 supplier will be terminated or restricted as a result of the
20 alternative electric supplier limiting service in this state, the
21 customer has 60 days to acquire service from a different
22 alternative electric supplier. If the customer is a public entity,
23 the time to acquire services from a different alternative electric
24 supplier shall not be less than 180 days.

25 (k) Provide that as a condition of licensure, an alternative
26 electric supplier meets all of the requirements of this act.

27 (2) The commission shall issue orders establishing a licensing

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

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

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

26 (a) Electricity generated and consumed at an industrial site
27 or contiguous industrial site or single commercial establishment or

1 single residence without the use of an electric utility's
2 transmission and distribution system.

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

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

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

19 (5) This act does not prohibit or limit the right of a person
20 to engage in affiliate wheeling and does not impose a transition,
21 implementation, exit fee, or any other similar charge on a person
22 engaged in affiliate wheeling.

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

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

7 (7) A customer 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 under procedures approved
11 by the commission.

12 (8) The commission shall authorize rates that will ensure that
13 an electric utility that offered retail open access service from
14 2002 through October 6, 2008 fully recovers its restructuring costs
15 and any associated accrued regulatory assets. This includes, but is
16 not limited to, implementation costs, stranded costs, and costs
17 authorized under section 10d(4) as it existed before October 6,
18 2008, that have been authorized for recovery by the commission in
19 orders issued before October 6, 2008. The commission shall approve
20 surcharges that will ensure full recovery of all such costs by
21 October 6, 2013.

22 **(9) WITHIN 270 DAYS OF THE EFFECTIVE DATE OF THE 2018**
23 **AMENDATORY ACT THAT ADDED THIS SUBSECTION, THE COMMISSION SHALL**
24 **ISSUE ORDERS THAT ALLOW MUNICIPALLY OWNED ELECTRIC UTILITIES,**
25 **ELECTRIC UTILITIES, AND PRIVATE ENTITIES TO ESTABLISH MICROGRIDS**
26 **WITHIN THIS STATE. THE ORDER MUST DO ALL OF THE FOLLOWING:**

27 **(A) ALLOW THE ESTABLISHMENT OF MICROGRIDS TO SUPPORT 1 OR MORE**

1 CRITICAL FACILITIES.

2 (B) ENSURE THAT INTERCONNECTIONS ARE UNIFORM ACROSS ALL
3 ELECTRIC UTILITIES AND THAT THOSE INTERCONNECTIONS FOLLOW THE
4 STANDARDS PROMULGATED BY THE COMMISSION, WHICH MUST ALLOW FOR
5 MICROGRID OPERATIONS CONSISTENT WITH THIS ACT.

6 (C) ALLOW FOR THE OPERATION OF MICROGRIDS DURING AN EMERGENCY.

7 (D) ALLOW MICROGRIDS TO SERVE 1 OR MORE FACILITIES THAT ARE
8 NOT CRITICAL FACILITIES IF THOSE FACILITIES ARE ELECTRICALLY
9 CONTIGUOUS TO THE CRITICAL FACILITIES WHEN THE MICROGRID IS IN
10 ISLAND MODE.

11 (E) PROHIBIT ELECTRIC UTILITIES FROM CHARGING STANDBY RATES TO
12 MICROGRIDS OWNED BY A PERSON OTHER THAN THAT ELECTRIC UTILITY.

13 (F) ESTABLISH A PROCESS THAT ALLOWS AN ELECTRIC UTILITY
14 CUSTOMER TO REQUEST THAT A FACILITY IS DESIGNATED A CRITICAL
15 FACILITY IF THE COMMISSION DETERMINES THAT SUPPLYING ELECTRICITY TO
16 THAT FACILITY DURING AN EMERGENCY IS NECESSARY FOR THE PUBLIC
17 HEALTH, SAFETY, AND WELFARE.

18 (G) REQUIRE ELECTRIC UTILITIES TO ESTABLISH A MICROGRID FOR
19 ANY FACILITIES DESIGNATED AS CRITICAL UNDER SUBDIVISION (F) UNLESS
20 A PERSON OTHER THAN THAT ELECTRIC UTILITY WILL ESTABLISH THE
21 MICROGRID.

22 (H) ESTABLISH RATES FOR MICROGRIDS ESTABLISHED BY ELECTRIC
23 UTILITIES AND PRIVATE ENTITIES. THE RATES ESTABLISHED UNDER THIS
24 SUBDIVISION MUST REFLECT AN EQUITABLE COST OF SERVICE FOR UTILITY
25 REVENUE REQUIREMENT AND MUST NOT INCLUDE STANDBY CHARGES.

26 (I) ADOPT STANDARDS FOR MICROGRIDS ESTABLISHED BY MUNICIPALLY
27 OWNED ELECTRIC UTILITIES, ELECTRIC UTILITIES, AND PRIVATE ENTITIES.

1 (J) REQUIRE MUNICIPALLY OWNED ELECTRIC UTILITIES AND ELECTRIC
2 UTILITIES TO ALLOW ANY ELECTRIC UTILITY CUSTOMER TO USE A MICROGRID
3 THAT MEETS THE STANDARDS ADOPTED IN SUBDIVISION (I) .

4 (10) NOT LATER THAN JULY 1, 2019, THE COMMISSION SHALL ISSUE A
5 REPORT TO THE LEGISLATURE EVALUATING THE COSTS AND BENEFITS OF
6 USING MICROGRIDS TO PROVIDE ELECTRIC SERVICE TO CRITICAL
7 FACILITIES.

8 (11) BY DECEMBER 31, 2018, THE COMMISSION SHALL ISSUE A REPORT
9 TO THE GOVERNOR AND THE LEGISLATURE THAT ANALYZES THE RELIABILITY
10 OF THE ELECTRIC DISTRIBUTION SYSTEMS IN THIS STATE. THE REPORT MUST
11 INCLUDE ALL OF THE FOLLOWING:

12 (A) THE BEST TECHNICAL, ECONOMIC, AND REGULATORY APPROACH TO
13 ENSURE RELIABLE ELECTRIC SERVICE WHEN THE ELECTRIC DISTRIBUTION
14 SYSTEMS IN THIS STATE ARE CONFRONTED WITH NATURAL DISASTERS AND
15 OTHER THREATS.

16 (B) THE STRUCTURAL, REGULATORY, LEGAL, OR OTHER BARRIERS IN
17 THIS STATE TO ADOPTING THOSE BEST PRACTICES IDENTIFIED IN
18 SUBDIVISION (A) .

19 (C) THE BENEFITS AND COSTS OF THOSE BEST PRACTICES IDENTIFIED
20 IN SUBDIVISION (A) .

21 (D) THE OPPORTUNITIES AND BARRIERS IN THIS STATE TO
22 IMPLEMENTING INNOVATIVE MULTITECHNOLOGY APPROACHES TO IMPROVE THE
23 RESILIENCE, EFFICIENCY, FUNCTIONALITY, AND PERFORMANCE OF THE
24 ELECTRIC DISTRIBUTION SYSTEMS IN THIS STATE.

25 (E) PERFORMANCE STANDARDS THAT COULD BE ADOPTED TO IMPROVE THE
26 RESILIENCE, EFFICIENCY, FUNCTIONALITY, AND PERFORMANCE OF THE
27 ELECTRIC DISTRIBUTION SYSTEMS IN THIS STATE.

1 (12) THE COMMISSION SHALL CONVENE AN ADVISORY PANEL TO ASSIST
2 IN PREPARING THE REPORT UNDER SUBSECTION (11) THAT CONSISTS OF ALL
3 OF THE FOLLOWING:

4 (A) ONE INDIVIDUAL REPRESENTING INVESTOR-OWNED ELECTRIC
5 UTILITIES.

6 (B) ONE INDIVIDUAL REPRESENTING LOCAL UNITS OF GOVERNMENT.

7 (C) ONE INDIVIDUAL REPRESENTING MUNICIPALLY OWNED ELECTRIC
8 UTILITIES.

9 (D) ONE INDIVIDUAL REPRESENTING COOPERATIVE ELECTRIC
10 UTILITIES.

11 (E) ONE INDIVIDUAL REPRESENTING A STATEWIDE ENVIRONMENTAL
12 ORGANIZATION.

13 (F) ONE INDIVIDUAL REPRESENTING ELECTRIC CONSUMERS.

14 (G) ONE INDIVIDUAL REPRESENTING THE ENERGY INDUSTRY.

15 (H) ONE INDIVIDUAL REPRESENTING A STATEWIDE LABOR
16 ORGANIZATION.

17 (13) ~~(9)~~—As used in subsections (1) and (7):

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) "Standard tariff service" means, for each regulated
24 electric utility, the retail rates, terms, and conditions of
25 service approved by the commission for service to customers who do
26 not elect to receive generation service from alternative electric
27 suppliers.

1 **(14)** ~~(10)~~—As used in this section:

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

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

16 (i) For at least 90 days during the period from January 1,
17 1996 to October 1, 1999, supplied by self-service power, but only
18 to the extent of the capacity reserved or load served by self-
19 service power during the period.

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

27 **(C) "CRITICAL FACILITY" INCLUDES, BUT IT NOT LIMITED TO, ANY**

1 HOSPITAL OR MEDICAL FACILITY THAT PROVIDES LIFE SUPPORT, POLICE
2 STATION, FIRE STATION, WATER TREATMENT PLANT, SEWAGE TREATMENT
3 PLANT, PUBLIC SHELTER, CORRECTIONAL FACILITY, EMERGENCY
4 COORDINATION CENTER, MILITARY SITE, RESIDENTIAL FACILITY FOR THE
5 ELDERLY, OR ANY OTHER FACILITY THE COMMISSION DESIGNATES AS
6 CRITICAL.

7 (D) "EMERGENCY" MEANS WHENEVER THE MACROGRID IS INOPERABLE OR
8 WHENEVER THE POWER QUALITY IN THE MACROGRID IS OUT OF
9 SPECIFICATIONS.

10 (E) "ISLAND MODE" MEANS THAT A MICROGRID IS IN A STATUS IN
11 WHICH LOADS AND ENERGY RESOURCES WITHIN THE MICROGRID ARE ABLE TO
12 OPERATE BUT POWER IS NOT EXCHANGED WITH THE UTILITY-OWNED
13 TRANSMISSION OR DISTRIBUTION NETWORK.

14 (F) "MICROGRID" MEANS A GROUP OF INTERCONNECTED LOADS AND
15 DISTRIBUTED ENERGY RESOURCES WITH CLEARLY DEFINED ELECTRICAL
16 BOUNDARIES THAT ACTS AS A SINGLE CONTROLLABLE ENTITY WITH RESPECT
17 TO THE MACROGRID AND THAT CONNECTS AND DISCONNECTS FROM THE
18 MACROGRID TO ENABLE IT TO OPERATE IN GRID-CONNECTED OR ISLAND MODE.