

HOUSE BILL No. 4023

January 22, 2009, Introduced by Rep. Valentine and referred to the Committee on Energy and Technology.

A bill to amend 2008 PA 295, entitled "Clean, renewable, and efficient energy act," by amending sections 3, 5, 9, and 13 (MCL 460.1003, 460.1005, 460.1009, and 460.1013) and by adding section 28.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. As used in this act:

2 (a) "Advanced cleaner energy" means electricity generated
3 using an advanced cleaner energy system.

4 (b) "Advanced cleaner energy credit" means a credit certified
5 under section 43 that represents generated advanced cleaner energy.

6 (c) "Advanced cleaner energy system" means any of the
7 following:

8 (i) A gasification facility.

9 (ii) An industrial cogeneration facility.

1 (iii) A coal-fired electric generating facility if 85% or more
2 of the carbon dioxide emissions are captured and permanently
3 geologically sequestered.

4 (iv) An electric generating facility or system that uses
5 technologies not in commercial operation on ~~the effective date of~~
6 ~~this act~~ **OCTOBER 6, 2008**.

7 (d) "Affiliated transmission company" means that term as
8 defined in **SECTION 2 OF** the electric transmission line
9 certification act, 1995 PA 30, MCL 460.562.

10 (e) "Applicable regional transmission organization" means a
11 nonprofit, member-based organization governed by an independent
12 board of directors that serves as the federal energy regulatory
13 ~~commission approved~~ **COMMISSION APPROVED** regional transmission
14 organization with oversight responsibility for the region that
15 includes the provider's service territory.

16 (f) "Biomass" means any organic matter that is not derived
17 from fossil fuels, that can be converted to usable fuel for the
18 production of energy, and that replenishes over a human, not a
19 geological, time frame, including, but not limited to, all of the
20 following:

21 (i) Agricultural crops and crop wastes.

22 (ii) Short-rotation energy crops.

23 (iii) Herbaceous plants.

24 (iv) Trees and wood, but only if derived from sustainably
25 managed forests or procurement systems, as defined in section 261c
26 of the management and budget act, 1984 PA 431, MCL 18.1261c.

27 (v) Paper and pulp products.

1 (vi) Precommercial wood thinning waste, brush, or yard waste.

2 (vii) Wood wastes and residues from the processing of wood
3 products or paper.

4 (viii) Animal wastes.

5 (ix) Wastewater sludge or sewage.

6 (x) Aquatic plants.

7 (xi) Food production and processing waste.

8 (xii) Organic by-products from the production of biofuels.

9 (g) "Board" means the wind energy resource zone board created
10 under section 143.

11 (h) "Carbon dioxide emissions benefits" means that the carbon
12 dioxide emissions per megawatt hour of electricity generated by the
13 advanced cleaner energy system are at least 85% less or, for an
14 integrated gasification combined cycle facility, 70% less than the
15 average carbon dioxide emissions per megawatt hour of electricity
16 generated from all coal-fired electric generating facilities
17 operating in this state on January 1, 2008.

18 (I) "C-BED TARIFF" MEANS A COMMUNITY-BASED ENERGY DEVELOPMENT
19 TARIFF APPROVED UNDER SECTION 28(2).

20 (J) ~~(i)~~ "Commission" means the Michigan public service
21 commission.

22 (K) "COMMUNITY-BASED ENERGY DEVELOPMENT PROJECT" OR "C-BED
23 PROJECT" MEANS A NEW RENEWABLE ENERGY SYSTEM THAT MEETS ALL OF THE
24 FOLLOWING REQUIREMENTS:

25 (i) IF THE RENEWABLE ENERGY SYSTEM IS A WIND ENERGY CONVERSION
26 SYSTEM, NO SINGLE QUALIFYING OWNER OWNS MORE THAN 15% OF THE WIND
27 ENERGY CONVERSION SYSTEM UNLESS 1 OR MORE OF THE FOLLOWING

1 REQUIREMENTS ARE MET:

2 (A) THE WIND ENERGY CONVERSION SYSTEM DOES NOT INCLUDE MORE
3 THAN 2 TURBINES.

4 (B) NO QUALIFYING OWNER THAT OWNS MORE THAN 15% OF THE WIND
5 ENERGY CONVERSION SYSTEM IS A MUNICIPALLY OWNED ELECTRIC UTILITY.

6 (ii) UNDER A POWER PURCHASE AGREEMENT OVER THE LIFE OF THE
7 RENEWABLE ENERGY SYSTEM, AT LEAST 51% OF THE GROSS REVENUES WILL
8 ACCRUE TO QUALIFYING OWNERS AND OTHER LOCAL ENTITIES.

9 (iii) THE RENEWABLE ENERGY SYSTEM IS APPROVED BY A RESOLUTION
10 ADOPTED BY THE COUNTY BOARD OF COMMISSIONERS OF EACH COUNTY IN
11 WHICH THE PROJECT IS TO BE LOCATED OR, IF THE PROJECT IS TO BE
12 LOCATED WITHIN THE BOUNDARIES OF AN INDIAN RESERVATION, BY THE
13 TRIBAL COUNCIL FOR THAT RESERVATION.

14 (l) ~~(j)~~—"Customer meter" means an electric meter of a
15 provider's retail customer. Customer meter does not include a
16 municipal water pumping meter or additional meters at a single site
17 that were installed specifically to support interruptible air
18 conditioning, interruptible water heating, net metering, or time-
19 of-day tariffs.

20 Sec. 5. As used in this act:

21 (a) "Electric provider", subject to sections 21(1), 23(1), and
22 25(1), **AND 28**, means any of the following:

23 (i) Any person or entity that is regulated by the commission
24 for the purpose of selling electricity to retail customers in this
25 state.

26 (ii) A municipally-owned electric utility in this state.

27 (iii) A cooperative electric utility in this state.

1 (iv) Except as used in subpart B of part 2, an alternative
2 electric supplier licensed under section 10a of 1939 PA 3, MCL
3 460.10a.

4 (b) "Eligible electric generator" means ~~that~~ a methane
5 digester or renewable energy system with a generation capacity
6 limited to the customer's electric need and that does not exceed
7 the following:

8 (i) For a renewable energy system, 150 kilowatts of aggregate
9 generation at a single site.

10 (ii) For a methane digester, 550 kilowatts of aggregate
11 generation at a single site.

12 (c) "Energy conservation" means the reduction of customer
13 energy use through the installation of measures or changes in
14 energy usage behavior. Energy conservation does not include the use
15 of advanced cleaner energy systems.

16 (d) "Energy efficiency" means a decrease in customer
17 consumption of electricity or natural gas achieved through measures
18 or programs that target customer behavior, equipment, devices, or
19 materials without reducing the quality of energy services.

20 (e) "Energy optimization", subject to subdivision (f), means
21 all of the following:

22 (i) Energy efficiency.

23 (ii) Load management, to the extent that the load management
24 reduces overall energy usage.

25 (iii) Energy conservation, but only to the extent that the
26 decreases in the consumption of electricity produced by energy
27 conservation are objectively measurable and attributable to an

1 energy optimization plan.

2 (f) Energy optimization does not include electric provider
3 infrastructure projects that are approved for cost recovery by the
4 commission other than as provided in this act.

5 (g) "Energy optimization credit" means a credit certified
6 pursuant to section 87 that represents achieved energy
7 optimization.

8 (h) "Energy optimization plan" or "EO plan" means a plan
9 **APPROVED** under section ~~71~~—73.

10 (i) "Energy optimization standard" means the minimum energy
11 savings required to be achieved under section 77.

12 (j) "Energy star" means the voluntary partnership among the
13 United States department of energy, the United States environmental
14 protection agency, product manufacturers, local utilities, and
15 retailers to help promote energy efficient products by labeling
16 with the energy star logo, **TO** educate consumers about the benefits
17 of energy efficiency, and **TO** help promote energy efficiency in
18 buildings by benchmarking and rating energy performance.

19 (k) "Federal approval" means approval by the applicable
20 regional transmission organization or other federal energy
21 regulatory commission approved transmission planning process of a
22 transmission project that includes the transmission line. Federal
23 approval may be evidenced in any of the following manners:

24 (i) The proposed transmission line is part of a transmission
25 project included in the applicable regional transmission
26 organization's board-approved transmission expansion plan.

27 (ii) The applicable regional transmission organization has

1 informed the electric utility, affiliated transmission company, or
2 independent transmission company that a transmission project
3 submitted for an out-of-cycle project review has been approved by
4 the applicable regional transmission organization, and the approved
5 transmission project includes the proposed transmission line.

6 (iii) If, after ~~the effective date of this act~~ **OCTOBER 6, 2008**,
7 the applicable regional transmission organization utilizes another
8 approval process for transmission projects proposed by an electric
9 utility, affiliated transmission company, or independent
10 transmission company, the proposed transmission line is included in
11 a transmission project approved by the applicable regional
12 transmission organization through the approval process developed
13 after ~~the effective date of this act~~ **OCTOBER 6, 2008**.

14 (iv) Any other federal energy regulatory commission approved
15 transmission planning process for a transmission project.

16 Sec. 9. As used in this act:

17 (a) "Natural gas provider" means an investor-owned business
18 engaged in the sale and distribution of natural gas within this
19 state whose rates are regulated by the commission. However, as used
20 in subpart B of part 2, natural gas provider does not include an
21 alternative gas supplier licensed under section 9b of 1939 PA 3,
22 MCL 460.9b.

23 (B) **"NET PRESENT VALUE RATE" MEANS A RATE EQUAL TO THE NET**
24 **PRESENT VALUE OF THE NOMINAL PAYMENTS TO A C-BED PROJECT DIVIDED BY**
25 **THE TOTAL EXPECTED ENERGY PRODUCTION OF THE C-BED PROJECT OVER THE**
26 **LIFE OF ITS POWER PURCHASE AGREEMENT.**

27 (C) **"NONQUALIFYING OWNER" MEANS A PERSON WHO IS NOT A**

1 **QUALIFYING OWNER.**

2 (D) ~~(b)~~—"Plasma arc gasification facility" means a
3 gasification facility that uses a plasma torch to break substances
4 down into their molecular structures.

5 (E) ~~(e)~~—"Provider" means an electric provider or a natural gas
6 provider.

7 (F) ~~(d)~~—"PURPA" means the public utility regulatory policies
8 act of 1978, Public Law 95-617.

9 (G) "QUALIFYING OWNER" MEANS ANY OF THE FOLLOWING:

10 (i) A RESIDENT OF THIS STATE.

11 (ii) A LIMITED LIABILITY COMPANY THAT IS ORGANIZED UNDER THE
12 MICHIGAN LIMITED LIABILITY COMPANY ACT, 1993 PA 23, MCL 450.4101 TO
13 450.5200, AND WHOSE MEMBERS ARE ALL RESIDENTS OF THIS STATE.

14 (iii) A NONPROFIT CORPORATION ORGANIZED UNDER THE NONPROFIT
15 CORPORATION ACT, 1982 PA 162, MCL 450.2101 TO 450.3192.

16 (iv) A COOPERATIVE CORPORATION ORGANIZED UNDER SECTIONS 98 TO
17 109 OF 1931 PA 327, MCL 450.98 TO 450.109, OR CHAPTER 11 OF THE
18 NONPROFIT CORPORATION ACT, 1982 PA 162, MCL 450.3100 TO 450.3192,
19 INCLUDING A COOPERATIVE ELECTRIC UTILITY.

20 (v) A PUBLIC OR PRIVATE INSTITUTION OF HIGHER EDUCATION.

21 (vi) A COUNTY, CITY, VILLAGE, TOWNSHIP, OR SCHOOL DISTRICT OR
22 AN AUTHORITY FORMED BY 1 OR ANY COMBINATION OF THESE, OR ANY OTHER
23 LOCAL OR REGIONAL GOVERNMENTAL ORGANIZATION SUCH AS A BOARD OR
24 COMMISSION OR A MUNICIPALLY OWNED ELECTRIC UTILITY.

25 (vii) A TRIBAL COUNCIL.

26 (H) ~~(e)~~—"Qualifying small power production facility" means
27 that term as defined in 16 USC 824a-3.

1 Sec. 13. As used in this act:

2 (a) "Site" means a contiguous site, regardless of the number
3 of meters at that site. A site that would be contiguous but for the
4 presence of a street, road, or highway shall be considered to be
5 contiguous for the purposes of this subdivision.

6 **(B) "STANDARD RELIABILITY CRITERIA" MEANS BOTH OF THE**
7 **FOLLOWING REQUIREMENTS WITH RESPECT TO THE GENERATION OF**
8 **ELECTRICITY:**

9 **(i) CAN BE SAFELY INTEGRATED INTO AND OPERATED WITHIN THE**
10 **ELECTRIC PROVIDER'S GRID WITHOUT CAUSING ANY ADVERSE OR UNSAFE**
11 **CONSEQUENCES.**

12 **(ii) IS CONSISTENT WITH THE ELECTRIC PROVIDER'S RESOURCE NEEDS.**

13 (C) ~~(b)~~—"Transmission line" means all structures, equipment,
14 and real property necessary to transfer electricity at system bulk
15 supply voltage of 100 kilovolts or more.

16 (D) ~~(e)~~—"True net metering" means a utility billing method
17 that applies the full retail rate to the net of the bidirectional
18 flow of kilowatt hours across the customer interconnection with the
19 utility distribution system, during a billing period or time-of-use
20 pricing period. A negative net metered quantity during the billing
21 period or during each time-of-use pricing period within the billing
22 period reflects net excess generation for which the customer is
23 entitled to receive credit under section ~~177(4)~~—177.

24 (E) ~~(d)~~—"Utility system resource cost test" means a standard
25 that is met for an investment in energy optimization if, on a life
26 cycle basis, the total avoided supply-side costs to the provider,
27 including representative values for electricity or natural gas

1 supply, transmission, distribution, and other associated costs, are
2 greater than the total costs to the provider of administering and
3 delivering the energy optimization program, including net costs for
4 any provider incentives paid by customers and capitalized costs
5 recovered under section 89.

6 (F) ~~(e)~~—"Wind energy conversion system" means a renewable
7 energy system that uses 1 or more wind turbines to generate
8 electricity and has a nameplate capacity of 100 kilowatts or more.

9 (G) ~~(f)~~—"Wind energy resource zone" or "wind zone" means an
10 area designated by the commission under section 147.

11 SEC. 28. (1) AS USED IN THIS SECTION, "ELECTRIC PROVIDER" DOES
12 NOT INCLUDE AN ALTERNATIVE ELECTRIC SUPPLIER.

13 (2) BY DECEMBER 1, 2009, EACH ELECTRIC PROVIDER WHOSE RATES
14 ARE REGULATED BY THE COMMISSION SHALL FILE FOR COMMISSION APPROVAL
15 A PROPOSED COMMUNITY-BASED ENERGY DEVELOPMENT TARIFF CONSISTENT
16 WITH SUBSECTION (4). WITHIN 90 DAYS AFTER THE PROPOSED TARIFF IS
17 FILED, THE COMMISSION SHALL ISSUE AN ORDER APPROVING A COMMUNITY-
18 BASED ENERGY DEVELOPMENT TARIFF FOR THE ELECTRIC PROVIDER.

19 (3) WITHIN 90 DAYS AFTER THE FIRST COMMISSION APPROVAL ORDER
20 OF A C-BED TARIFF FILED UNDER SUBSECTION (2), EACH ELECTRIC
21 PROVIDER WHOSE RATES ARE NOT REGULATED BY THE COMMISSION SHALL
22 ADOPT A COMMUNITY-BASED ENERGY DEVELOPMENT TARIFF CONSISTENT WITH
23 SUBSECTION (4).

24 (4) A C-BED TARIFF SHALL HAVE A RATE SCHEDULE THAT ALLOWS FOR
25 A NET PRESENT VALUE RATE OVER THE DURATION OF A POWER PURCHASE
26 AGREEMENT WITH A LIFE OF 20 YEARS OR MORE. THE C-BED TARIFF SHALL
27 PROVIDE FOR A RATE THAT IS HIGHER IN THE FIRST 10 YEARS OF THE

1 POWER PURCHASE AGREEMENT THAN IN THE LAST 10 YEARS. THE DISCOUNT
2 RATE REQUIRED TO CALCULATE THE NET PRESENT VALUE SHALL BE THE
3 ELECTRIC PROVIDER'S NORMAL DISCOUNT RATE USED FOR ITS OTHER
4 BUSINESS PURPOSES.

5 (5) THE COMMISSION SHALL CONSIDER AND MAY IMPLEMENT MECHANISMS
6 TO ENCOURAGE THE AGGREGATION OF COMMUNITY-BASED ENERGY DEVELOPMENT
7 PROJECTS. THE COMMISSION SHALL DO ALL OF THE FOLLOWING:

8 (A) REQUIRE QUALIFYING OWNERS OF C-BED PROJECTS TO PROVIDE
9 SUFFICIENT SECURITY TO SECURE PERFORMANCE UNDER A POWER PURCHASE
10 AGREEMENT.

11 (B) PROHIBIT THE TRANSFER OF A C-BED PROJECT TO A
12 NONQUALIFYING OWNER DURING THE INITIAL 20 YEARS OF A POWER PURCHASE
13 AGREEMENT.

14 (6) AN ELECTRIC PROVIDER THAT PLANS TO CONSTRUCT OR PURCHASE
15 ELECTRICITY FROM A NEW RENEWABLE ENERGY SYSTEM UNDER ITS RENEWABLE
16 ENERGY PLAN SHALL TAKE REASONABLE STEPS TO DETERMINE WHETHER A
17 POWER PURCHASE AGREEMENT WITH 1 OR MORE C-BED PROJECTS WOULD MEET
18 THE ELECTRIC PROVIDER'S COST AND RELIABILITY REQUIREMENTS, APPLYING
19 STANDARD RELIABILITY CRITERIA, TO FULFILL SOME OR ALL OF THE
20 IDENTIFIED NEED AT MINIMAL IMPACT TO CUSTOMER RATES. THIS SECTION
21 DOES NOT OBLIGATE AN ELECTRIC PROVIDER TO ENTER INTO A POWER
22 PURCHASE AGREEMENT UNDER A C-BED TARIFF.

23 (7) EACH ELECTRIC PROVIDER SHALL PERIODICALLY FILE WITH THE
24 COMMISSION UNDER RULES ADOPTED BY THE COMMISSION A DESCRIPTION OF
25 ITS EFFORTS TO PURCHASE ENERGY FROM C-BED PROJECTS, INCLUDING A
26 LIST OF C-BED PROJECTS UNDER CONTRACT AND THE AMOUNT OF ENERGY
27 PURCHASED FROM EACH C-BED PROJECT. THE COMMISSION SHALL CONSIDER

1 THE EXPENDITURES OF AN ELECTRIC PROVIDER TO PURCHASE ENERGY FROM C-
2 BED PROJECTS WHEN EVALUATING UNDER SECTION 31 THE PROVIDER'S GOOD-
3 FAITH EFFORT TO SPEND THE FULL AMOUNT OF ITS INCREMENTAL COSTS OF
4 COMPLIANCE.

5 (8) TO THE EXTENT FEASIBLE, A DEVELOPER OF A C-BED PROJECT
6 SHALL PROVIDE, IN WRITING, AN OPPORTUNITY TO INVEST IN THE C-BED
7 PROJECT TO EACH PROPERTY OWNER ON WHOSE PROPERTY IS CONSTRUCTED A
8 HIGH-VOLTAGE TRANSMISSION LINE THAT WILL TRANSMIT TO MARKET THE
9 ENERGY GENERATED BY THE C-BED PROJECT. THIS SUBSECTION DOES NOT
10 APPLY UNLESS THE PROPERTY IS LOCATED AND THE OWNER RESIDES IN THE
11 COUNTY WHERE THE C-BED PROJECT IS LOCATED.

12 (9) A DEVELOPER OF A C-BED PROJECT AND AN ELECTRIC PROVIDER
13 SHALL NEGOTIATE THE RATE AND OTHER TERMS FOR ANY POWER PURCHASE
14 AGREEMENT ENTERED INTO UNDER SUBSECTION (6) CONSISTENT WITH THE C-
15 BED TARIFF. AT THE DISCRETION OF THE DEVELOPER OF A C-BED PROJECT,
16 THE DEVELOPER AND AN ELECTRIC PROVIDER MAY NEGOTIATE A POWER
17 PURCHASE AGREEMENT WITH TERMS DIFFERENT FROM THE C-BED TARIFF.

18 (10) A QUALIFYING OWNER, OR ANY COMBINATION OF QUALIFYING
19 OWNERS, MAY DEVELOP A JOINT VENTURE RENEWABLE ENERGY SYSTEM WITH A
20 NONQUALIFYING OWNER. HOWEVER, THE TERMS OF THE C-BED TARIFF OF THE
21 ELECTRIC PROVIDER THAT PURCHASES ENERGY FROM THE C-BED PROJECT ONLY
22 APPLY TO THE PORTION OF THE TOTAL ENERGY PRODUCTION OF THE C-BED
23 PROJECT THAT IS PROPORTIONAL TO THE EQUITY SHARE OF THE C-BED
24 PROJECT OWNED BY THE QUALIFYING OWNERS.

25 (11) A PROJECT THAT IS OPERATING UNDER A POWER PURCHASE
26 AGREEMENT UNDER A C-BED TARIFF IS NOT ELIGIBLE FOR NET METERING
27 UNDER PART 5.

1 (12) A POWER PURCHASE AGREEMENT FOR A C-BED PROJECT ENTERED
2 INTO UNDER SUBSECTION (6) BY AN ELECTRIC PROVIDER WHOSE RATES ARE
3 REGULATED BY THE COMMISSION DOES NOT TAKE EFFECT UNTIL APPROVED BY
4 THE COMMISSION. THE COMMISSION SHALL PROVIDE THE ELECTRIC
5 PROVIDER'S RATEPAYERS AN OPPORTUNITY TO ADDRESS THE REASONABLENESS
6 OF THE PROPOSED POWER PURCHASE AGREEMENT. UNLESS A PARTY OBJECTS TO
7 A POWER PURCHASE AGREEMENT WITHIN 30 DAYS OF SUBMISSION OF THE
8 AGREEMENT TO THE COMMISSION, THE AGREEMENT SHALL BE CONSIDERED
9 APPROVED.

10 (13) AN ELECTRIC PROVIDER OR A PERSON PROVIDING ELECTRIC
11 SERVICE TO WHOLESALE CUSTOMERS IN THIS STATE MAY, SUBJECT TO THE
12 LIMITS SPECIFIED IN THIS ACT, PARTICIPATE IN A C-BED PROJECT,
13 INCLUDING AS AN OWNER OR EQUITY PARTNER OR BY PROVIDING TECHNICAL
14 OR FINANCIAL ASSISTANCE.