

HOUSE BILL No. 5447

February 29, 2012, Introduced by Reps. Franz, Bumstead, Shirkey, Agema, Genetski, McMillin, Yonker, Huuki, Goike and Muxlow 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 47 and 89 (MCL 460.1047 and 460.1089); and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 47. (1) Subject to the retail rate impact limits under
2 section 45, the commission shall consider all actual costs
3 reasonably and prudently incurred in good faith **BEFORE THE**
4 **EFFECTIVE DATE OF THE AMENDATORY ACT THAT REPEALED SECTION 27** to
5 implement a commission-approved renewable energy plan by an
6 electric provider whose rates are regulated by the commission to be
7 a cost of service to be recovered by the electric provider. Subject
8 to the retail rate impact limits under section 45, an electric

1 provider whose rates are regulated by the commission shall recover
2 through its retail electric rates all of the electric provider's
3 incremental costs of compliance during the 20-year period beginning
4 when the electric provider's plan is approved by the commission and
5 all reasonable and prudent ongoing costs of compliance during and
6 after that period. The recovery shall include, but is not limited
7 to, the electric provider's authorized rate of return on equity for
8 costs approved under this section, which shall remain fixed at the
9 rate of return and debt to equity ratio that was in effect in the
10 electric provider's base rates when the electric provider's
11 renewable energy plan was approved.

12 (2) Incremental costs of compliance shall be calculated as
13 follows:

14 (a) Determine the sum of the following costs to the extent
15 those costs are reasonable and prudent, **INCURRED BEFORE THE**
16 **EFFECTIVE DATE OF THE AMENDATORY ACT THAT REPEALED SECTION 27**, and
17 not already approved for recovery in electric rates as of ~~the~~
18 ~~effective date of this act~~ **OCTOBER 6, 2008**:

19 (i) Capital, operating, and maintenance costs of renewable
20 energy systems or advanced cleaner energy systems, including
21 property taxes, insurance, and return on equity associated with an
22 electric provider's renewable energy systems or advanced cleaner
23 energy systems, including the electric provider's renewable energy
24 portfolio established to achieve compliance with the renewable
25 energy standards and any additional renewable energy systems or
26 advanced cleaner energy systems, that are built or acquired by the
27 electric provider to maintain compliance with the renewable energy

1 standards during the 20-year period beginning when the electric
2 provider's plan is approved by the commission.

3 (ii) Financing costs attributable to capital, operating, and
4 maintenance costs of capital facilities associated with renewable
5 energy systems or advanced cleaner energy systems used to meet the
6 renewable energy standard.

7 (iii) Costs that are not otherwise recoverable in rates approved
8 by the federal energy regulatory commission and that are related to
9 the infrastructure required to bring renewable energy systems or
10 advanced cleaner energy systems used to achieve compliance with the
11 renewable energy standards on to the transmission system, including
12 interconnection and substation costs for renewable energy systems
13 or advanced cleaner energy systems used to meet the renewable
14 energy standard.

15 (iv) Ancillary service costs determined by the commission to be
16 necessarily incurred to ensure the quality and reliability of
17 renewable energy or advanced cleaner energy used to meet the
18 renewable energy standards, regardless of the ownership of a
19 renewable energy system or advanced cleaner energy technology.

20 (v) Except to the extent the costs are allocated under a
21 different subparagraph, all of the following:

22 (A) The costs of renewable energy credits purchased under this
23 act.

24 (B) The costs of contracts described in section 33(1).

25 (vi) Expenses incurred as a result of state or federal
26 governmental actions related to renewable energy systems or
27 advanced cleaner energy systems attributable to the renewable

1 energy standards, including changes in tax or other law.

2 (vii) Any additional electric provider costs determined by the
3 commission to be necessarily incurred to ensure the quality and
4 reliability of renewable energy or advanced cleaner energy used to
5 meet the renewable energy standards.

6 (b) Subtract from the sum of costs not already included in
7 electric rates determined under subdivision (a) the sum of the
8 following revenues:

9 (i) Revenue derived from the sale of environmental attributes
10 associated with the generation of renewable energy or advanced
11 cleaner energy systems attributable to the renewable energy
12 standards. Such revenue shall not be considered in determining
13 power supply cost recovery factors under section 6j of 1939 PA 3,
14 MCL 460.6j.

15 (ii) Interest on regulatory liabilities.

16 (iii) Tax credits specifically designed to promote renewable
17 energy or advanced cleaner energy.

18 (iv) Revenue derived from the provision of renewable energy or
19 advanced cleaner energy to retail electric customers subject to a
20 power supply cost recovery clause under section 6j of 1939 PA 3,
21 MCL 460.6j, of an electric provider whose rates are regulated by
22 the commission. After providing an opportunity for a contested case
23 hearing for an electric provider whose rates are regulated by the
24 commission, the commission shall annually establish a price per
25 megawatt hour. In addition, an electric provider whose rates are
26 regulated by the commission may at any time petition the commission
27 to revise the price. In setting the price per megawatt hour under

1 this subparagraph, the commission shall consider factors including,
2 but not limited to, projected capacity, energy, maintenance, and
3 operating costs; information filed under section 6j of 1939 PA 3,
4 MCL 460.6j; and information from wholesale markets, including, but
5 not limited to, locational marginal pricing. This price shall be
6 multiplied by the sum of the number of megawatt hours of renewable
7 energy and the number of megawatt hours of advanced cleaner energy
8 used to maintain compliance with the renewable energy standard. The
9 product shall be considered a booked cost of purchased and net
10 interchanged power transactions under section 6j of 1939 PA 3, MCL
11 460.6j. For energy purchased by such an electric provider under a
12 renewable energy contract or advanced cleaner energy contract, the
13 price shall be the lower of the amount established by the
14 commission or the actual price paid and shall be multiplied by the
15 number of megawatt hours of renewable energy or advanced cleaner
16 energy purchased. The resulting value shall be considered a booked
17 cost of purchased and net interchanged power under section 6j of
18 1939 PA 3, MCL 460.6j.

19 (v) Revenue from wholesale renewable energy sales and advanced
20 cleaner energy sales. Such revenue shall not be considered in
21 determining power supply cost recovery factors under section 6j of
22 1939 PA 3, MCL 460.6j.

23 (vi) Any additional electric provider revenue considered by the
24 commission to be attributable to the renewable energy standards.

25 (vii) Any revenues recovered in rates for renewable energy
26 costs that are included under subdivision (a).

27 (3) The commission shall authorize an electric provider whose

1 rates are regulated by the commission to spend in any given month
2 more to comply with this act and implement an approved renewable
3 energy plan than the revenue actually generated by the revenue
4 recovery mechanism. An electric provider whose rates are regulated
5 by the commission shall recover its commission approved pre-tax
6 rate of return on regulatory assets during the appropriate period.
7 An electric provider whose rates are regulated by the commission
8 shall record interest on regulatory liabilities at the average
9 short-term borrowing rate available to the electric provider during
10 the appropriate period. Any regulatory assets or liabilities
11 resulting from the recovery costs of renewable energy or advanced
12 cleaner energy attributable to renewable energy standards through
13 the power supply cost recovery clause under section 6j of 1939 PA
14 3, MCL 460.6j, shall continue to be reconciled under that section.

15 (4) If an electric provider's incremental costs of compliance
16 in any given month during the 20-year period beginning when the
17 electric provider's plan is approved by the commission are in
18 excess of the revenue recovery mechanism as adjusted under section
19 49 and in excess of the balance of any accumulated reserve funds,
20 subject to the minimum balance established under section 21, the
21 electric provider shall immediately notify the commission. The
22 commission shall promptly commence a contested case hearing
23 pursuant to the administrative procedures act of 1969, 1969 PA 306,
24 MCL 24.201 to 24.328, and modify the revenue recovery mechanism so
25 that the minimum balance is restored. However, if the commission
26 determines that recovery of the incremental costs of compliance
27 would otherwise exceed the maximum retail rate impacts specified

1 under section 45, it shall set the revenue recovery mechanism for
2 that electric provider to correspond to the maximum retail rate
3 impacts. Excess costs shall be accrued and deferred for recovery.
4 Not later than the expiration of the 20-year period beginning when
5 the electric provider's plan is approved by the commission, for an
6 electric provider whose rates are regulated by the commission, the
7 commission shall determine the amount of deferred costs to be
8 recovered under the revenue recovery mechanism and the recovery
9 period, which shall not extend more than 5 years beyond the
10 expiration of the 20-year period beginning when the electric
11 provider's plan is approved by the commission. The recovery of
12 excess costs shall be proportional to the retail rate impact limits
13 in section 45 for each customer class. The recovery of excess costs
14 alone, or, if begun before the expiration of the 20-year period, in
15 combination with the recovery of incremental costs of compliance
16 under the revenue recovery mechanism, shall not exceed the retail
17 rate impact limits of section 45 for each customer class.

18 (5) If, at the expiration of the 20-year period beginning when
19 the electric provider's plan is approved by the commission, an
20 electric provider whose rates are regulated by the commission has a
21 regulatory liability, the refund to customer classes shall be
22 proportional to the amounts paid by those customer classes under
23 the revenue recovery mechanism.

24 ~~—— (6) After achieving compliance with the renewable energy~~
25 ~~standard for 2015, the actual costs reasonably and prudently~~
26 ~~incurred to continue to comply with this subpart both during and~~
27 ~~after the conclusion of the 20-year period beginning when the~~

~~1 electric provider's plan is approved by the commission shall be
2 considered costs of service. The commission shall determine a
3 mechanism for an electric provider whose rates are regulated by the
4 commission to recover these costs in its retail electric rates,
5 subject to the retail rate impact limits in section 45. Remaining
6 and future regulatory assets shall be recovered consistent with
7 subsections (2) and (3) and section 49.~~

8 Sec. 89. (1) The commission shall allow a provider whose rates
9 are regulated by the commission to recover the actual costs of
10 implementing its approved energy optimization plan **INCURRED BEFORE**
11 **THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT REPEALED SECTION 77.**
12 However, costs exceeding the overall funding levels specified in
13 the energy optimization plan are not recoverable unless those costs
14 are reasonable and prudent and meet the utility system resource
15 cost test. Furthermore, costs for load management undertaken
16 pursuant to an energy optimization plan are not recoverable as
17 energy optimization program costs under this section, but may be
18 recovered as described in section 95.

19 (2) Under subsection (1), costs shall be recovered from all
20 natural gas customers and from residential electric customers by
21 volumetric charges, from all other metered electric customers by
22 per-meter charges, and from unmetered electric customers by an
23 appropriate charge, applied to utility bills as an itemized charge.

24 (3) For the electric primary customer rate class customers of
25 electric providers and customers of natural gas providers with an
26 aggregate annual natural gas billing demand of more than 100,000
27 decatherms or equivalent MCFs for all sites in the natural gas

1 utility's service territory, the cost recovery under subsection (1)
2 shall not exceed 1.7% of total retail sales revenue for that
3 customer class. For electric secondary customers and for
4 residential customers, the cost recovery shall not exceed 2.2% of
5 total retail sales revenue for those customer classes.

6 (4) Upon petition by a provider whose rates are regulated by
7 the commission, the commission shall authorize the provider to
8 capitalize all energy efficiency and energy conservation equipment,
9 materials, and installation costs with an expected economic life
10 greater than 1 year incurred **BEFORE THE EFFECTIVE DATE OF THE**
11 **AMENDATORY ACT THAT REPEALED SECTION 77** in implementing its energy
12 optimization plan, including such costs paid to third parties, such
13 as customer rebates and customer incentives. The provider shall
14 also propose depreciation treatment with respect to its capitalized
15 costs in its energy optimization plan, and the commission shall
16 order reasonable depreciation treatment related to these
17 capitalized costs. A provider shall not capitalize payments made to
18 an independent energy optimization program administrator under
19 section 91.

20 (5) The established funding level for low income residential
21 programs shall be provided from each customer rate class in
22 proportion to that customer rate class's funding of the provider's
23 total energy optimization programs. Charges shall be applied to
24 distribution customers regardless of the source of their
25 electricity or natural gas supply.

26 (6) The commission shall authorize a natural gas provider that
27 spends a minimum of 0.5% of total natural gas retail sales

1 revenues, including natural gas commodity costs, in a year on
2 commission-approved energy optimization programs to implement a
3 symmetrical revenue decoupling true-up mechanism that adjusts for
4 sales volumes that are above or below the projected levels that
5 were used to determine the revenue requirement authorized in the
6 natural gas provider's most recent rate case. In determining the
7 symmetrical revenue decoupling true-up mechanism utilized for each
8 provider, the commission shall give deference to the proposed
9 mechanism submitted by the provider. The commission may approve an
10 alternative mechanism if the commission determines that the
11 alternative mechanism is reasonable and prudent. The commission
12 shall authorize the natural gas provider to decouple rates
13 regardless of whether the natural gas provider's energy
14 optimization programs are administered by the provider or an
15 independent energy optimization program administrator under section
16 91.

17 (7) A natural gas provider or an electric provider shall not
18 spend more than the following percentage of total utility retail
19 sales revenues, including electricity or natural gas commodity
20 costs, in any year to comply with the energy optimization
21 performance standard without specific approval from the commission:

22 (a) In 2009, 0.75% of total retail sales revenues for 2007.

23 (b) In 2010, 1.0% of total retail sales revenues for 2008.

24 (c) In 2011, 1.5% of total retail sales revenues for 2009.

25 ~~(d) In 2012 and each year thereafter, 2.0% of total retail~~
26 ~~sales revenues for the 2 years preceding.~~

27 Enacting section 1. Sections 27, 77, and 81 of the clean,

1 renewable, and efficient energy act, 2008 PA 295, MCL 460.1027,
2 460.1077, and 460.1081, are repealed.