CLEAN AND RENEWABLE ENERGY AND ENERGY WASTE REDUCTION ACT (EXCERPT)
Act 295 of 2008

SUBPART C.
ENERGY WASTE REDUCTION

460.1071 Proposed energy optimization plan; filing; time period; energy waste reduction plan; goal; provisions; limitation on expenditures.

Sec. 71. (1) A provider shall file a proposed energy optimization plan with the commission within the following time period:
(a) For a provider whose rates are regulated by the commission, by March 3, 2009.
(b) For a cooperative electric utility that has elected to become member-regulated under the electric cooperative member-regulation act, 2008 PA 167, MCL 460.31 to 460.39, or a municipally owned electric utility, by April 2, 2009.
(2) Energy optimization plans filed under subsection (1) remain in effect, subject to any amendments, as energy waste reduction plans.
(3) The overall goal of an energy waste reduction plan shall be to help the provider's customers reduce energy waste and to reduce the future costs of provider service to customers. In particular, an electric provider's energy waste reduction plan shall be designed to delay the need for constructing new electric generating facilities and thereby protect consumers from incurring the costs of such construction.
(4) An energy waste reduction plan shall do all of the following:
(a) Propose a set of energy waste reduction programs that include offerings for each customer class, including low-income residential. The commission shall allow a provider flexibility to tailor the relative amount of effort devoted to each customer class based on the specific characteristics of the provider's service territory.
(b) Specify necessary funding levels.
(c) Describe how energy waste reduction program costs will be recovered as provided in section 89(2).
(d) Ensure, to the extent feasible, that charges collected from a particular customer rate class are spent on energy waste reduction programs that benefit that rate class.
(e) Demonstrate that the proposed energy waste reduction programs and funding are sufficient to ensure the achievement of applicable energy waste reduction standards.
(f) Specify whether the number of megawatt hours of electricity or decatherms or MCFs of natural gas used in the calculation of incremental energy savings under section 77 will be weather-normalized or based on the average number of megawatt hours of electricity or decatherms or MCFs of natural gas sold by the provider annually during the previous 3 years to retail customers in this state. Once the plan is approved by the commission, this option shall not be changed.
(g) Demonstrate that the provider's energy waste reduction programs, excluding program offerings to low-income residential customers, will collectively be cost-effective.
(h) Provide for the practical and effective administration of the proposed energy waste reduction programs. The commission shall allow providers flexibility in designing their energy waste reduction programs and administrative approach, including the flexibility to determine the relative amount of effort to be devoted to each customer class based on the specific characteristics of the provider's service territory. A provider's energy waste reduction programs or any part thereof, may be administered, at the provider's option, by the provider, alone or jointly with other providers, by a state agency, or by an appropriate experienced nonprofit organization selected after a competitive bid process.
(i) Include a process for obtaining an independent expert evaluation of the actual energy waste reduction programs to verify the incremental energy savings from each energy waste reduction program for purposes of section 77. All such evaluations are subject to public review and commission oversight.
(5) Subject to subsection (6), an energy waste reduction plan may do 1 or more of the following:
(a) Utilize educational programs designed to alter consumer behavior or any other measures that can reasonably be used to meet the goals set forth in subsection (3).
(b) Propose to the commission measures that are designed to meet the goals set forth in subsection (3) and that provide additional customer benefits.
(6) Expenditures under subsection (5) shall not exceed 3% of the costs of implementing the energy waste reduction plan.


Compiler's note: Enacting section 1 of Act 295 of 2008 provides:
"Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."
Sec. 73. (1) A provider’s energy waste reduction plan shall be filed with, reviewed by, and approved or rejected by the commission. For a provider whose rates are regulated by the commission, the plan shall be enforced by the commission. For a provider whose rates are not regulated by the commission, the plan shall be enforced as provided in section 99. Notwithstanding any other provision of this subpart, the commission shall allow municipally owned electric utilities to design and administer energy waste reduction plans in a manner consistent with the administrative changes approved in the commission’s April 17, 2012 order in case nos. U-16688 to U-16728 and U-17008.

(2) The commission shall not approve a proposed energy waste reduction plan unless the commission determines that the energy waste reduction plan meets the utility system resource cost test and, subject to section 78, is reasonable and prudent. In determining whether the energy waste reduction plan is reasonable and prudent, the commission shall review each element and consider whether it would reduce the future cost of service for the provider’s customers. In addition, the commission shall consider at least all of the following:

(a) The specific changes in customers’ consumption patterns that the proposed energy waste reduction plan is attempting to influence.

(b) The cost and benefit analysis and other justification for specific programs and measures included in a proposed energy waste reduction plan.

(c) Whether the proposed energy waste reduction plan is consistent with any long-range resource plan filed by the provider with the commission.

(d) Whether the proposed energy waste reduction plan will result in any unreasonable prejudice or disadvantage to any class of customers.

(e) The extent to which the energy waste reduction plan provides programs that are available, affordable, and useful to all customers.

(3) Every 2 years after initial approval of an energy waste reduction plan under subsection (2), the commission shall review the plan. For a provider whose rates are regulated by the commission, the commission shall conduct a contested case hearing on the plan pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. After the hearing, the commission shall approve, with any changes consented to by the provider, or reject the plan and any proposed amendments to the plan.

(4) If a provider proposes to amend its plan at a time other than during the biennial review process under subsection (3), the provider shall file the proposed amendment with the commission. After the hearing and within 90 days after the amendment is filed, the commission shall approve, with any changes consented to by the provider, or reject the plan and the proposed amendment or amendments to the plan.

(5) If the commission rejects a proposed plan or amendment under this section, the commission shall explain in writing the reasons for its determination.

(6) After December 31, 2021, this section does not apply to an electric provider whose rates are not regulated by the commission.


Compiler’s note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable.”

Sec. 74. (1) This section applies only to a provider whose rates are regulated by the commission. Concurrent with the submission of each report under section 97, the commission shall commence an annual proceeding, to be known as an energy waste reduction cost reconciliation, for each provider whose rates are regulated by the commission. The energy waste reduction cost reconciliation shall be conducted as a contested case pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Reasonable discovery shall be permitted before and during the energy waste reduction cost reconciliation to assist in obtaining evidence concerning reconciliation issues including, but not limited to, the reasonableness and prudence of expenditures and the amounts collected pursuant to energy waste reduction charges set by the commission.

(2) At the energy waste reduction cost reconciliation, a provider may propose any necessary modifications of the energy waste reduction charges previously set by the commission to ensure the provider’s recovery of its costs to comply with the energy waste reduction standards.

(3) The commission shall reconcile the pertinent revenues recorded with the amounts actually expended and projected according to the provider’s plan for compliance. The commission shall consider any issue
regarding the reasonableness and prudence of expenses for which customers were charged in the relevant reconciliation period. In its order, the commission shall do both of the following:

(a) Make a determination of a provider’s compliance with the energy waste reduction standards.

(b) Adjust, if necessary, the energy waste reduction charges previously set by the commission.


### 460.1075 Energy waste reduction plan; exceeding standard; authorization for commensurate financial incentive; payment; limitations.

Sec. 75. (1) An energy waste reduction plan of a provider whose rates are regulated by the commission may authorize a commensurate financial incentive for the provider for exceeding the energy waste reduction standard. Payment of any financial incentive authorized in the energy waste reduction plan is subject to the approval of the commission.

(2) The total amount of a financial incentive for an electric provider that achieves annual incremental savings of greater than 1.5% of its total annual retail electricity sales in megawatt hours in the preceding year or a natural gas provider that achieves annual incremental savings of greater than 1% of its total annual retail natural gas sales in decatherms in the preceding year shall not exceed the lesser of the following amounts:

(a) 30% of the net present value of life-cycle cost reductions experienced by the provider's customers as a result of implementation, during the year for which the financial incentive is paid, of the energy waste reduction plan.

(b) 20% of the provider's actual energy waste reduction program expenditures for the year.

(3) The total amount of the financial incentive for an electric provider that achieves annual incremental savings of greater than 1.25% but not greater than 1.5% of its total annual retail electricity sales in megawatt hours in the preceding year or a natural gas provider that achieves annual incremental savings of greater than 0.875% but not greater than 1% of its total annual retail natural gas sales in decatherms in the preceding year shall not exceed the lesser of the following amounts:

(a) 27.5% of the net present value of life-cycle cost reductions experienced by the provider's customers as a result of implementation, during the year for which the financial incentive is paid, of the energy waste reduction plan.

(b) 17.5% of the provider's actual energy waste reduction program expenditures for the year.

(4) The total amount of a financial incentive for an electric provider that achieves annual incremental savings of at least 1.0% but not greater than 1.25% of its total annual retail electricity sales in megawatt hours in the preceding year or a natural gas provider that achieves annual incremental savings of at least 0.75% but not greater than 0.875% of its total annual retail natural gas sales in decatherms in the preceding year shall not exceed the lesser of the following amounts:

(a) 25% of the net present value of life-cycle cost reductions experienced by the provider's customers as a result of implementation, during the year for which the financial incentive is paid, of the energy waste reduction plan.

(b) 15% of the provider's actual energy waste reduction program expenditures for the year.


**Compiler's note:** Enacting section 1 of Act 295 of 2008 provides:

"Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

### 460.1077 Incremental energy savings; determination; calculations; basis; substitution.

Sec. 77. (1) Except as provided in section 81 and subject to section 97, an electric provider's energy waste reduction programs under this subpart shall collectively achieve incremental energy savings each year through 2021 equivalent to 1.0% of total annual retail electricity sales in megawatt hours in the preceding year.

(2) If an electric provider uses load management to achieve energy savings under its energy waste reduction plan, the minimum energy savings required under subsection (1) shall be adjusted by an amount such that the ratio of the minimum energy savings to the sum of actual expenditures for implementing its approved energy waste reduction plan and the load management expenditures remains constant.

(3) Subject to section 97, a natural gas provider's energy waste reduction program under this subpart shall achieve annual incremental energy savings each year equivalent to 0.75% of total annual retail natural gas sales in decatherms or equivalent MCFs in the preceding year.

(4) Incremental energy savings under subsection (1) or (3) for a year shall be determined for a provider by adding the energy savings expected to be achieved by energy waste reduction measures implemented during that year under any energy waste reduction programs consistent with the provider's energy waste reduction plan. The energy savings expected to be achieved shall be determined using a savings database or other savings measurement approach as determined reasonable by the commission.
(5) For purposes of calculations under subsection (1) or (3), total annual retail electricity or natural gas sales in a year shall be based on 1 of the following at the option of the provider as specified in its energy waste reduction plan:

(a) The number of weather-normalized megawatt hours or decatherms or equivalent MCFs sold by the provider to retail customers in this state during the year preceding the year for which incremental energy savings are being calculated.

(b) The average number of megawatt hours or decatherms or equivalent MCFs sold by the provider during the 3 years preceding the year for which incremental energy savings are being calculated.

(6) For any year after 2012, an electric provider may substitute renewable energy credits associated with renewable energy generated that year from a renewable energy system constructed after October 6, 2008, load management that reduces overall energy usage, or a combination thereof for energy waste reduction credits otherwise required to meet the energy waste reduction standard, if the substitution is approved by the commission. The commission shall not approve a substitution unless the commission determines that the substitution is cost-effective.

(7) Renewable energy credits, load management that reduces overall energy usage, or a combination thereof shall not be used by a provider to meet more than 10% of the energy waste reduction standard. Substitutions for energy waste reduction credits shall be made at the rate of 1 renewable energy credit per energy waste reduction credit.


Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1078 Energy waste reduction plan amendment; petition by electric provider to establish alternative energy waste reduction level; petition by natural gas provider to establish alternative energy waste reduction standard; determination.

Sec. 78. (1) By January 1, 2022, and every 2 years thereafter, an electric provider whose rates are regulated by the commission shall file an energy waste reduction plan amendment with the commission under section 73 pursuant to a filing schedule established by the commission. The amendment shall detail the amount of energy waste reduction the electric provider proposes to achieve for the succeeding 2-year period. If the electric provider whose rates are regulated by the commission proposes a level of energy waste reduction that is higher than the level specified in the provider's current energy waste reduction plan, the commission may approve the proposed higher level if the commission finds that it is the most reasonable and prudent. If the electric provider whose rates are regulated by the commission proposes a level of energy waste reduction that is lower than the level specified in the provider's current energy waste reduction plan, the commission may approve the proposed lower level if the commission finds that it is the most reasonable and prudent. If the commission finds that the proposed lower level of energy waste reduction is not the most reasonable and prudent, the level of energy waste reduction to be achieved by the electric provider whose rates are regulated by the commission for the succeeding 2-year period under the energy waste reduction plan shall be the same as the level specified in the provider's current energy waste reduction plan.

(2) If over a 2-year period an electric provider whose rates are regulated by the commission cannot achieve the level of energy waste reduction provided for in the energy waste reduction plan pursuant to subsection (1) in a cost-effective manner, the provider may petition the commission in a contested case hearing under section 73 to establish an alternative energy waste reduction level for that provider.

(3) If over a 2-year period a natural gas provider cannot achieve the energy waste reduction standard in a cost-effective manner, the natural gas provider may petition the commission to establish an alternative energy waste reduction standard for that provider.

(4) A petition filed pursuant to subsection (3) shall do all of the following:

(a) Identify the efforts taken by the natural gas provider to meet the energy waste reduction standard.

(b) Explain why the energy waste reduction standard cannot reasonably and cost-effectively be achieved.

(c) Propose a revised energy waste reduction standard to be achieved by the natural gas provider.

(5) If, based on a review of the petition filed under subsection (3), the commission determines that the natural gas provider has been unable to reasonably and cost-effectively achieve the energy waste reduction standard, the commission shall revise the energy waste reduction standard as applied to the natural gas provider to a level that can reasonably and cost-effectively be achieved.


Compiler's note: The repealed section pertained to location of advanced cleaner energy systems.

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460.1081 Applicability of section to certain electric providers; petition identifying efforts to meet energy waste reduction standards; findings by commission; revision; repeal of section.

Sec. 81. (1) This section applies to electric providers that meet both of the following requirements:
   (a) Serve not more than 200,000 customers in this state.
   (b) Had average electric rates for residential customers using 1,000 kilowatt hours per month that were less than 75% of the average electric rates for residential customers using 1,000 kilowatt hours per month for all electric utilities in this state, according to the January 1, 2007, "comparison of average rates for MPSC-regulated electric utilities in Michigan" compiled by the commission.

(2) Beginning 2 years after a provider described in subsection (1) begins implementation of its energy waste reduction plan, the provider may petition the commission to establish alternative energy waste reduction standards. The petition shall identify the efforts taken by the provider to meet the electric provider energy waste reduction standards and demonstrate why the energy waste reduction standards cannot reasonably be met with energy waste reduction programs that are collectively cost-effective. If the commission finds that the petition meets the requirements of this subsection, the commission shall revise the energy waste reduction standards as applied to that electric provider to a level that can reasonably be met with energy waste reduction programs that are collectively cost-effective.

(3) This section is repealed effective January 1, 2022.


Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1083 Energy waste reduction credit; grant; expiration; carrying forward excess credits.

Sec. 83. (1) One energy waste reduction credit shall be granted to a provider for each megawatt hour of annual incremental energy savings achieved through energy waste reduction.

(2) An energy waste reduction credit expires as follows:
   (a) When used by a provider to comply with its energy waste reduction standard.
   (b) When substituted for a renewable energy credit under section 28.
   (c) As provided in subsection (3).

(3) If a provider's incremental energy savings in any year exceed the applicable energy waste reduction standard, the associated energy waste reduction credits may be carried forward and applied to the next year's energy waste reduction standard. However, all of the following apply:
   (a) The number of energy waste reduction credits carried forward shall not exceed 1/3 of the next year's standard. Any energy waste reduction credits carried forward to the next year shall expire that year. Any remaining energy waste reduction credits shall expire at the end of the year in which the incremental energy savings were achieved, unless substituted, by an electric provider, for renewable energy credits under section 28.
   (b) Energy waste reduction credits shall not be carried forward if, for its performance during the same year, the provider accepts a financial incentive under section 75. The excess energy waste reduction credits shall expire at the end of the year in which the incremental energy savings were achieved, unless substituted, by an electric provider, for renewable energy credits under section 28.


Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1085 Energy waste reduction credit; transfer prohibited.

Sec. 85. An energy waste reduction credit is not transferable to another entity.


Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1087 Certification and tracking program; credit.

Sec. 87. (1) The commission shall establish an energy waste reduction credit certification and tracking program. The certification and tracking program may be contracted to and performed by a third party through a system of competitive bidding. The program shall include all of the following:
(a) A determination of the date after which energy waste reduction must be achieved to be eligible for an energy waste reduction credit.

(b) A method for ensuring that each energy waste reduction credit substituted for a renewable energy credit under section 28 or carried forward under section 83 is properly accounted for.

(c) If the system is established by the commission, allowance for issuance and use of energy waste reduction credits in electronic form.

(2) One energy waste reduction credit shall be granted to an electric provider for each megawatt hour of annual incremental energy savings achieved through energy waste reduction.


Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1089 Recovery of costs; limitation; capitalization costs; funding level for low income residential programs; authorization of natural gas provider to implement revenue decoupling mechanism.

Sec. 89. (1) The commission shall allow a provider whose rates are regulated by the commission to recover the actual costs of implementing its approved energy waste reduction plan. However, costs exceeding the overall funding levels specified in the energy waste reduction plan are not recoverable unless those costs are reasonable and prudent and meet the utility system resource cost test. Furthermore, costs for load management undertaken by an electric provider pursuant to an energy waste reduction plan are not recoverable as energy waste reduction program costs under this section, but may be recovered as described in section 95.

(2) Under subsection (1), costs shall be recovered from all natural gas customers and from residential electric customers by volumetric charges, from all other metered electric customers by per-meter charges, and from unmetered electric customers by an appropriate charge. Fixed, per-meter charges under this subsection may vary by rate class. Charges under this subsection may be itemized on utility bills but shall not be itemized on or after January 1, 2021.

(3) Upon petition by a provider whose rates are regulated by the commission, the commission shall authorize the provider to capitalize all energy efficiency and energy conservation equipment, materials, and installation costs with an expected economic life greater than 1 year incurred in implementing its energy waste reduction plan, including such costs paid to third parties, such as customer rebates and customer incentives. The provider shall also propose depreciation treatment with respect to its capitalized costs in its energy waste reduction plan, and the commission shall order reasonable depreciation treatment related to these capitalized costs. A provider shall not capitalize payments made to an independent energy waste reduction program administrator under section 91.

(4) The established funding level for low income residential programs shall be provided from each customer rate class in proportion to that customer rate class's funding of the provider's total energy waste reduction programs. Charges shall be applied to distribution customers regardless of the source of their electricity or natural gas supply.

(5) The commission shall authorize a natural gas provider that spends a minimum of 0.5% of total natural gas retail sales revenues, including natural gas commodity costs, in a year on commission-approved energy waste reduction programs to implement a symmetrical revenue decoupling true-up mechanism that adjusts for sales that are above or below the projected levels that were used to determine the revenue requirement authorized in the natural gas provider's most recent rate case. In determining the symmetrical revenue decoupling true-up mechanism utilized for each provider, the commission shall give deference to the proposed mechanism submitted by the provider. The commission may approve an alternative mechanism if the commission determines that the alternative mechanism is reasonable and prudent. The commission shall authorize the natural gas provider to decouple rates regardless of whether the natural gas provider's energy waste reduction programs are administered by the provider or an independent energy waste reduction program administrator under section 91.


Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1091 Alternative compliance payment.

Sec. 91. (1) Except for section 89(5), sections 71 to 89 do not apply to a provider that each year pays not less than 2.0% of total utility sales revenues for the second year preceding, including electricity or natural gas commodity costs, to an independent energy waste reduction program administrator selected by the commission.
(2) An alternative compliance payment received from a provider by the energy waste reduction program administrator under subsection (1) shall be used to administer energy efficiency programs for the provider.

(3) The commission shall allow a provider to recover an alternative compliance payment under subsection (1). This cost shall be recovered from residential customers by volumetric charges, from all other metered customers by per-meter charges, and from unmetered customers by an appropriate charge. Fixed, per-meter charges under this subsection may vary by rate class. Charges under this subsection may be itemized on utility bills, but shall not be itemized on or after January 1, 2021.

(4) A provider’s alternative compliance payment under subsection (1) shall only be used to fund energy waste reduction programs for that provider's customers. To the extent feasible, charges collected from a particular customer rate class and paid to the energy waste reduction program administrator under subsection (1) shall be devoted to energy waste reduction programs and services for that rate class.

(5) Money paid to the energy waste reduction program administrator under subsection (1) and not spent by the administrator that year shall remain available for expenditure the following year, subject to the requirements of subsection (4).

(6) The commission shall select a qualified nonprofit organization to serve as an energy waste reduction program administrator under this section, through a competitive bid process.

(7) The commission shall arrange for a biennial independent audit of the energy waste reduction program administrator.


Compiler’s note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1093 Self-directed energy waste reduction plan.

Sec. 93. (1) An eligible electric customer is exempt from charges the customer would otherwise incur as an electric customer under section 89 or 91 if the customer files with its electric provider and implements a self-directed energy waste reduction plan as provided in this section.

(2) Subject to subsection (3), an electric customer is not eligible under subsection (1) unless it is a commercial or industrial electric customer and had an annual peak demand in the preceding year of at least 1 megawatt in the aggregate at all sites to be covered by the self-directed plan.

(3) The eligibility requirements of subsection (2) do not apply to a commercial or industrial customer that installs or modifies an electric energy efficiency improvement under a property assessed clean energy program pursuant to the property assessed clean energy act, 2010 PA 270, MCL 460.931 to 460.949.

(4) The commission shall by order establish the rates, terms, and conditions of service for customers related to this subpart.

(5) The commission shall by order do all of the following:

(a) Require a customer to utilize the services of an energy waste reduction service company to develop and implement a self-directed plan. This subdivision does not apply to a customer that had an annual peak demand in the preceding year of at least 2 megawatts at each site to be covered by the self-directed plan or 10 megawatts in the aggregate at all sites to be covered by the self-directed plan.

(b) Provide a mechanism to recover from customers under subdivision (a) the costs for provider level review and evaluation.

(c) Provide a mechanism to cover the costs of the low-income energy waste reduction program under section 89.

(6) All of the following apply to a self-directed energy waste reduction plan under subsection (1):

(a) The self-directed plan shall be a multiyear plan for an ongoing energy waste reduction program.

(b) The self-directed plan shall provide for aggregate energy savings that each year meet or exceed the energy waste reduction standards based on the electricity purchases in the previous year for the site or sites covered by the self-directed plan.

(c) Under the self-directed plan, energy waste reduction shall be calculated based on annual electricity usage. Annual electricity usage shall be normalized so that none of the following are included in the calculation of the percentage of incremental energy savings:

(i) Changes in electricity usage because of changes in business activity levels not attributable to energy waste reduction.

(ii) Changes in electricity usage because of the installation, operation, or testing of pollution control equipment.

(d) The self-directed plan shall specify whether electricity usage will be weather-normalized or based on the average number of megawatt hours of electricity sold by the electric provider annually during the previous 3 years to retail customers in this state. Once the self-directed plan is submitted to the provider, this option
shall not be changed.

(e) The self-directed plan shall outline how the customer intends to achieve the incremental energy savings specified in the self-directed plan.

(7) A self-directed energy waste reduction plan shall be incorporated into the relevant electric provider's energy waste reduction plan. The self-directed plan and information submitted by the customer under subsection (10) are confidential and exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. Projected energy savings from measures implemented under a self-directed plan shall be attributed to the relevant provider's energy waste reduction programs for the purposes of determining annual incremental energy savings achieved by the provider under section 77 or 81, as applicable.

(8) Once a customer begins to implement a self-directed plan at a site covered by the self-directed plan, that site is exempt from energy waste reduction program charges under section 89 or 91 and is not eligible to participate in the relevant electric provider's energy waste reduction programs.

(9) A customer implementing a self-directed energy waste reduction plan under this section shall annually submit to the customer's electric provider a brief report documenting the energy efficiency measures taken under the self-directed plan during the previous year, and the corresponding energy savings that will result. The report shall provide sufficient information for the provider and the commission to monitor progress toward the goals in the self-directed plan and to develop reliable estimates of the energy savings that are being achieved from self-directed plans. The customer report shall indicate the level of incremental energy savings achieved for the year covered by the report and whether that level of incremental energy savings meets the goal set forth in the customer's self-directed plan. If a customer submitting a report under this subsection wishes to amend its self-directed plan, the customer shall submit with the report an amended self-directed plan. A report under this subsection shall be accompanied by an affidavit from a knowledgeable official of the customer that the information in the report is true and correct to the best of the official's knowledge and belief.

If the customer has retained an independent energy waste reduction service company, the requirements of this subsection shall be met by the energy waste reduction service company.

(10) An electric provider shall provide an annual report to the commission that identifies customers implementing self-directed energy waste reduction plans and summarizes the results achieved cumulatively under those self-directed plans. The commission may request additional information from the electric provider. If the commission has sufficient reason to believe the information is inaccurate or incomplete, it may request additional information from the customer to ensure accuracy of the report.

(11) If the commission determines after a contested case hearing that the minimum energy waste reduction goals under subsection (6)(b) have not been achieved at the sites covered by a self-directed plan, in aggregate, the commission shall order the customer or customers collectively to pay to this state an amount calculated as follows:

(a) Determine the proportion of the shortfall in achieving the minimum energy waste reduction goals under subsection (6)(b).

(b) Multiply the figure under subdivision (a) by the energy waste reduction charges from which the customer or customers collectively were exempt under subsection (1).

(c) Multiply the product under subdivision (b) by a number not less than 1 or greater than 2, as determined by the commission based on the reasons for failure to meet the minimum energy waste reduction goals.

(12) If a customer has submitted a self-directed plan to an electric provider, the customer, the customer's energy waste reduction service company, if applicable, or the electric provider shall provide a copy of the self-directed plan to the commission upon request.

(13) By September 1, 2010, following a public hearing, the commission shall establish an approval process for energy waste reduction service companies. The approval process shall ensure that energy waste reduction service companies have the expertise, resources, and business practices to reliably provide energy waste reduction services that meet the requirements of this section. The commission may adopt by reference the past or current standards of a national or regional certification or licensing program for energy waste reduction service companies. However, the approval process shall also provide an opportunity for energy waste reduction service companies that are not recognized by such a program to be approved by posting a bond in an amount determined by the commission and meeting any other requirements adopted by the commission for the purposes of this subsection. The approval process for energy waste reduction service companies shall require adherence to a code of conduct governing the relationship between energy waste reduction service companies and electric providers.

(14) The department of licensing and regulatory affairs shall maintain on the department's website a list of energy waste reduction service companies approved under subsection (13).

460.1095 Duties and authority of commission; duties of Michigan agency for energy.

Sec. 95. (1) Subject to subsection (2), the commission shall do all of the following:

(a) Promote load management in appropriate circumstances, including expansion of existing and establishment of new load management programs in which an electric provider may manage the operation of energy consuming devices and remotely shut down air conditioning or other energy intensive systems of participating customers, demand response programs that use time of day pricing and dynamic rate pricing, and similar programs, for utility customers that have advanced metering infrastructure. Electric provider participation and customer enrollment in such programs are voluntary. However, electric providers whose rates are regulated by the commission and whose rates include the cost of advanced metering infrastructure shall offer commission-approved demand response programs. The programs may provide incentives for customer participation and shall include customer protection provisions as required by the commission. To participate in a program, a customer shall agree to remain in the program for at least 1 year.

(b) Actively pursue increasing public awareness of load management techniques.

(c) Engage in regional load management efforts to reduce the annual demand for energy whenever possible.

(d) Work with residential, commercial, and industrial customers to reduce annual demand and conserve energy through load management techniques and other activities it considers appropriate.

(2) Subsection (1) shall not be construed to prevent an electric utility from doing any of the following:

(a) Recovering the full cost associated with providing electric service and load management programs.

(b) Installing metering and retrieving metering data necessary to properly, accurately, and efficiently bill for the electric utility's services without manual intervention or manual calculation.

(3) The commission may allow a provider whose rates are regulated by the commission to recover costs for load management through base rates as part of a proceeding under section 6a of 1939 PA 3, MCL 460.6a, if the costs are reasonable and prudent and meet the utility systems resource cost test.

(4) The Michigan agency for energy shall do all of the following:

(a) Promote energy efficiency and energy conservation.

(b) Actively pursue increasing public awareness of energy conservation and energy efficiency.

(c) Actively engage in energy conservation and energy efficiency efforts with providers.

(d) Engage in regional efforts to reduce demand for energy through energy conservation and energy efficiency.

(5) This subpart does not limit the authority of the commission, following an integrated resource plan proceeding and as part of a rate-making process, to allow a provider whose rates are regulated by the commission to recover for additional prudent energy efficiency and energy conservation measures not included in the provider's energy waste reduction plan if the provider has met the requirements of the energy waste reduction program.


Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

For the transfer of powers and duties of the Michigan agency for energy and abolishment of the Michigan agency for energy, see E.R.O. 2019-1, compiled at MCL 324.99923.

460.1097 Compliance with energy waste reduction standards; reports; applicability of subsection (5).

Sec. 97. (1) By a time determined by the commission, each provider shall submit to the commission an annual report that provides information relating to the actions taken by the provider to comply with the energy waste reduction standards. By that same time, a municipally owned electric utility shall submit a copy of the report to the governing body of the municipally owned electric utility, and a cooperative electric utility shall submit a copy of the report to its board of directors.

(2) An annual report under subsection (1) shall include all of the following information:

(a) The amount of energy waste reduction achieved during the reporting period.

(b) Expenditures made in the past year and anticipated future expenditures to comply with this subpart.

(c) Any other information that the commission determines necessary.

(3) Concurrent with the submission of each report under subsection (1), a municipally owned electric utility shall submit a summary of the report to its customers in their bills with a bill insert and to its governing body. Concurrent with the submission of each report under subsection (1), a cooperative electric utility shall submit a summary of the report to its members in a periodical issued by an association of rural electric...
cooperatives and to its board of directors. A municipally owned electric utility or cooperative electric provider shall make a copy of the report available at its office and shall post a copy of the report on its website. A summary under this section shall indicate that a copy of the report is available at the office or website.

(4) The commission shall submit to the standing committees of the senate and house of representatives with primary responsibility for energy issues an annual report that evaluates and determines whether this subpart has been cost-effective and makes recommendations to the legislature. The report may be combined with the annual report under section 5a of 1939 PA 3, MCL 460.5a.

(5) Subject to subsection (6), if the commission determines that a provider's energy waste reduction program under this subpart has not been cost-effective, the provider's program is suspended beginning 180 days after the date of the determination. If a provider's energy waste reduction program is suspended under this subsection, both of the following apply:

(a) The provider shall maintain cumulative incremental energy savings in megawatt hours or decatherms or equivalent MCFs in subsequent years at the level actually achieved during the year preceding the year in which the commission's determination is made.

(b) The provider shall not impose energy waste reduction charges in subsequent years except to the extent necessary to recover unrecovered energy waste reduction expenses incurred under this subpart before suspension of the provider's program.

(6) Subsection (5) does not apply to an electric provider on or after January 1, 2022.


Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1099 Civil action against municipally owned electric utility or cooperative electric utility.

Sec. 99. The attorney general or any customer of a municipally owned electric utility or a cooperative electric utility that is member-regulated under the electric cooperative member-regulation act, 2008 PA 167, MCL 460.31 to 460.39, may commence a civil action for injunctive relief against that municipally owned electric utility or cooperative electric utility if the municipally owned electric utility or cooperative electric utility fails to meet the applicable requirements of this subpart or an order issued or rule promulgated under this subpart. The attorney general or customer shall commence an action under this subsection in the circuit court for the circuit in which the principal office of the municipally owned electric utility or cooperative electric utility is located. The attorney general or customer shall not file an action under this subsection unless the attorney general or customer has given the municipally owned electric utility or cooperative electric utility at least 60 days' written notice of the intent to sue, the basis for the suit, and the relief sought. Within 30 days after the municipally owned electric utility or cooperative electric utility receives written notice of the intent to sue, the municipally owned electric utility or cooperative electric utility and the attorney general or customer shall meet and make a good-faith attempt to determine if there is a credible basis for the action. The municipally owned electric utility or cooperative electric utility shall take all reasonable and prudent steps necessary to comply with the applicable requirements of this subpart or an order issued or rule promulgated under this subpart within 90 days after the meeting if there is a credible basis for the action. If the parties do not agree as to whether there is a credible basis for the action, the attorney general or customer may proceed to file the suit.