

HOUSE BILL No. 5907

February 25, 2010, Introduced by Reps. Byrnes, Scripps, Huckleberry, Angerer, Robert Jones, Roberts, Lisa Brown, Tlaib, Switalski, Warren, Liss, Lipton, Polidori and Meadows 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 27, 31, and 47 (MCL 460.1027, 460.1031, and
460.1047).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 27. (1) Subject to sections 31 and 45, and in addition to
2 the requirements of subsection (3), an electric provider that is an
3 electric utility with 1,000,000 or more retail customers in this
4 state as of January 1, 2008 shall achieve a renewable energy
5 capacity portfolio of not less than the following:

6 (a) For an electric provider with more than 1,000,000 but less
7 than 2,000,000 retail electric customers in this state on January
8 1, 2008, a renewable energy capacity portfolio of 200 megawatts by
9 December 31, 2013 and ~~500~~**584** megawatts by December 31, 2015.

1 (b) For an electric provider with more than 2,000,000 retail
2 electric customers in this state on January 1, 2008, a renewable
3 energy capacity portfolio of 300 megawatts by December 31, 2013 and
4 600 megawatts by December 31, 2015.

5 (2) An electric provider's renewable energy capacity portfolio
6 shall be calculated by adding the following:

7 (a) The nameplate capacity in megawatts of renewable energy
8 systems owned by the electric provider that were not in commercial
9 operation before ~~the effective date of this act~~ **OCTOBER 6, 2008**.

10 (b) The capacity in megawatts of renewable energy that the
11 electric provider is entitled to purchase under contracts that were
12 not in effect before ~~the effective date of this act~~ **OCTOBER 6,**
13 **2008**.

14 (3) Subject to sections 31 and 45, an electric provider shall
15 achieve a renewable energy credit portfolio as follows:

16 (a) In 2012, 2013, 2014, and 2015, a renewable energy credit
17 portfolio based on the sum of the following:

18 (i) The number of renewable energy credits from electricity
19 generated in the 1-year period preceding ~~the effective date of this~~
20 ~~act~~ **OCTOBER 6, 2008** that would have been transferred to the
21 electric provider pursuant to section 35(1), if this act had been
22 in effect during that 1-year period.

23 (ii) The number of renewable energy credits equal to the number
24 of megawatt hours of electricity produced or obtained by the
25 electric provider in the 1-year period preceding ~~the effective date~~
26 ~~of this act~~ **OCTOBER 6, 2008** from renewable energy systems for which
27 recovery in electric rates was approved ~~on the effective date of~~

~~this act~~ **AS OF OCTOBER 6, 2008.**

(iii) Renewable energy credits in an amount calculated as follows:

(A) Taking into account the number of renewable energy credits under subparagraphs (i) and (ii), determine the number of additional renewable energy credits that the electric provider would need to reach a ~~10%~~ renewable energy CREDIT portfolio in that year **EQUAL TO 10% OF THE NUMBER OF MEGAWATT HOURS PROVIDED BY THE ELECTRIC PROVIDER IN THAT YEAR AS DETERMINED SUBJECT TO SECTION 21(2)(B).**

(B) Multiply the number under sub-subparagraph (A) by 20% for 2012, 33% for 2013, 50% for 2014, and 100% for 2015.

(b) In 2016, ~~and each year thereafter 2017, 2018, AND 2019,~~ maintain a renewable energy credit portfolio that consists of at least the same number of renewable energy credits as were required in 2015 under subdivision (a).

(C) **IN 2020, A RENEWABLE ENERGY CREDIT PORTFOLIO BASED ON THE SUM OF THE FOLLOWING:**

(i) **THE TOTAL NUMBER OF RENEWABLE ENERGY CREDITS UNDER SUBDIVISION (A) (i) AND (ii).**

(ii) **TAKING INTO ACCOUNT THE NUMBER OF RENEWABLE ENERGY CREDITS UNDER SUBPARAGRAPH (i), THE NUMBER OF ADDITIONAL RENEWABLE ENERGY CREDITS THAT THE ELECTRIC PROVIDER NEEDS TO REACH A RENEWABLE ENERGY CREDIT PORTFOLIO IN THAT YEAR EQUAL TO 20% OF THE NUMBER OF MEGAWATT HOURS OF ELECTRICITY PROVIDED BY THE ELECTRIC PROVIDER IN THAT YEAR AS DETERMINED SUBJECT TO SECTION 21(2)(B).**

(D) **IN 2021 AND EACH YEAR THEREAFTER, MAINTAIN A RENEWABLE ENERGY CREDIT PORTFOLIO THAT CONSISTS OF AT LEAST THE SAME NUMBER**

1 OF RENEWABLE ENERGY CREDITS AS WERE REQUIRED IN 2020 UNDER
2 SUBDIVISION (C).

3 (4) An electric provider's renewable energy credit portfolio
4 shall be calculated as follows:

5 (a) Determine the number of renewable energy credits used to
6 comply with this subpart during the applicable year.

7 (b) Divide by 1 of the following at the option of the electric
8 provider as specified in its renewable energy plan:

9 (i) The number of weather-normalized megawatt hours of
10 electricity sold by the electric provider during the previous year
11 to retail customers in this state.

12 (ii) The average number of megawatt hours of electricity sold
13 by the electric provider annually during the previous 3 years to
14 retail customers in this state.

15 (c) Multiply the quotient under subdivision (b) by 100.

16 (5) Subject to subsection (6), each electric provider shall
17 meet the renewable energy credit standards with renewable energy
18 credits obtained by 1 or more of the following means:

19 (a) Generating electricity from renewable energy systems for
20 sale to retail customers.

21 (b) Purchasing or otherwise acquiring renewable energy credits
22 with or without the associated renewable energy.

23 (6) An electric provider may substitute energy optimization
24 credits, advanced cleaner energy credits with or without the
25 associated advanced cleaner energy, or a combination thereof for
26 renewable energy credits otherwise required to meet the renewable
27 energy credit standards if the substitution is approved by the

1 commission. However, commission approval is not required to
2 substitute advanced cleaner energy from industrial cogeneration for
3 renewable energy credits. The commission shall not approve a
4 substitution unless the commission determines that the substitution
5 is cost-effective compared to other sources of renewable energy
6 credits and, if the substitution involves advanced cleaner energy
7 credits, that the advanced cleaner energy system provides carbon
8 dioxide emissions benefits. In determining whether the substitution
9 of advanced cleaner energy credits is cost-effective, the
10 commission shall include as part of the costs of the system the
11 environmental costs attributed to the advanced cleaner energy
12 system, including the costs of environmental control equipment or
13 greenhouse gas constraints or taxes. The commission's
14 determinations shall be made after a contested case hearing that
15 includes consultation with the department of environmental quality
16 on the issue of carbon dioxide emissions benefits, if relevant, and
17 environmental costs.

18 (7) Under subsection (6), energy optimization credits,
19 advanced cleaner energy credits, or a combination thereof shall not
20 be used by a provider to meet more than 10% of the renewable energy
21 credit standards. Advanced cleaner energy from advanced cleaner
22 energy systems in existence on January 1, 2008 shall not be used by
23 a provider to meet more than 70% of this 10% limit. This 10% limit
24 does not apply to advanced cleaner energy credits from plasma arc
25 gasification.

26 (8) Substitutions under subsection (6) shall be made at the
27 following rates per renewable energy credit:

(a) One energy optimization credit.

(b) One advanced cleaner energy credit from plasma arc gasification or industrial cogeneration.

(c) Ten advanced cleaner energy credits other than from plasma arc gasification or industrial cogeneration.

Sec. 31. (1) Upon petition by an electric provider, the commission may for good cause grant ~~2 extensions~~ **AN EXTENSION** of the 2015 **OR 2020** renewable energy standard deadline under section 27. **THE COMMISSION SHALL NOT GRANT MORE THAN 1 EXTENSION OF EACH DEADLINE UNDER THIS SUBSECTION.** Each extension shall be for up to 1 year.

~~—— (2) If 2 extensions of the 2015 renewable energy standard deadline have been granted to an electric provider under subsection (1), upon subsequent petition by the electric provider at least 3 months before the expiration of the second extended deadline, the commission shall, after consideration of prior extension requests under this section and for good cause, establish a revised renewable energy standard attainable by the electric provider. If the electric provider achieves the revised renewable energy standard, the provider is considered to be in compliance with this subpart.~~

(2) ~~(3) An electric provider that makes a good faith effort to spend the full amount of incremental costs of compliance as outlined in its approved renewable energy plan and that complies with its approved plan, subject to any approved extensions or revisions, AND, IF THE PROVIDER'S RATES ARE REGULATED BY THE COMMISSION, MAKES A GOOD-FAITH EFFORT TO SPEND THE FULL AMOUNT OF~~

1 **THE EXPECTED INCREMENTAL COSTS OF COMPLIANCE AS SET FORTH IN THE**
2 **PLAN** shall be considered to be in compliance with this subpart.

3 (3) ~~(4)~~—As used in this section, "good cause" includes, but is
4 not limited to, the electric provider's inability, as determined by
5 the commission, to meet a renewable energy standard because of a
6 renewable energy system feasibility limitation including, but not
7 limited to, any of the following:

8 (a) Renewable energy system site requirements, zoning, siting,
9 land use issues, permits, including environmental permits, any
10 certificate of ~~need~~ **NECESSITY** process under section 6s of 1939 PA
11 3, MCL 460.6s, or any other necessary governmental approvals that
12 effectively limit availability of renewable energy systems, if the
13 electric provider exercised reasonable diligence in attempting to
14 secure the necessary governmental approvals. For purposes of this
15 subdivision, "reasonable diligence" includes, but is not limited
16 to, submitting timely applications for the necessary governmental
17 approvals and making good faith efforts to ensure that the
18 applications are administratively complete and technically
19 sufficient.

20 (b) ~~Equipment cost or availability issues including electrical~~
21 ~~equipment or renewable energy system component shortages or high~~
22 ~~costs that~~ **HIGH COSTS OF OR SHORTAGES OF RENEWABLE ENERGY SYSTEM**
23 **COMPONENTS OR ELECTRICAL EQUIPMENT IF THE HIGH COSTS OR SHORTAGES**
24 effectively limit availability of renewable energy systems.

25 (c) Cost, availability, or time requirements for electric
26 transmission and interconnection.

27 (d) Projected or actual unfavorable electric system

1 reliability or operational impacts.

2 (e) Labor shortages that effectively limit availability of
3 renewable energy systems.

4 (f) An order of a court of competent jurisdiction that
5 effectively limits the availability of renewable energy systems.

6 Sec. 47. (1) Subject to the retail rate impact limits under
7 section 45, the commission shall consider all actual costs
8 reasonably and prudently incurred in good faith to implement a
9 commission-approved renewable energy plan by an electric provider
10 whose rates are regulated by the commission to be a cost of service
11 to be recovered by the electric provider. Subject to the retail
12 rate impact limits under section 45, an electric provider whose
13 rates are regulated by the commission shall recover through its
14 retail electric rates all of the electric provider's incremental
15 costs of compliance during the 20-year period beginning when the
16 electric provider's plan is approved by the commission and all
17 reasonable and prudent ongoing costs of compliance during and after
18 that period. The recovery shall include, but is not limited to, the
19 electric provider's authorized rate of return on equity for costs
20 approved under this section, which shall remain fixed at the rate
21 of return and debt to equity ratio that was in effect in the
22 electric provider's base rates when the electric provider's
23 renewable energy plan was approved.

24 (2) Incremental costs of compliance shall be calculated as
25 follows:

26 (a) Determine the sum of the following costs to the extent
27 those costs are reasonable and prudent and not already approved for

1 recovery in electric rates as of ~~the effective date of this act~~
2 **OCTOBER 6, 2008:**

3 (i) Capital, operating, and maintenance costs of renewable
4 energy systems or advanced cleaner energy systems, including
5 property taxes, insurance, and return on equity associated with an
6 electric provider's renewable energy systems or advanced cleaner
7 energy systems, including the electric provider's renewable energy
8 portfolio established to achieve compliance with the renewable
9 energy standards and any additional renewable energy systems or
10 advanced cleaner energy systems —that are built or acquired by the
11 electric provider to maintain compliance with the renewable energy
12 standards during the 20-year period beginning when the electric
13 provider's plan is approved by the commission.

14 (ii) Financing costs attributable to capital, operating, and
15 maintenance costs of capital facilities associated with renewable
16 energy systems or advanced cleaner energy systems used to meet the
17 renewable energy standard.

18 (iii) Costs that are not otherwise recoverable in rates approved
19 by the federal energy regulatory commission and that are related to
20 the infrastructure required to bring renewable energy systems or
21 advanced cleaner energy systems used to achieve compliance with the
22 renewable energy standards on to the transmission system, including
23 interconnection and substation costs for renewable energy systems
24 or advanced cleaner energy systems used to meet the renewable
25 energy standard.

26 (iv) Ancillary service costs determined by the commission to be
27 necessarily incurred to ensure the quality and reliability of

1 renewable energy or advanced cleaner energy used to meet the
2 renewable energy standards, regardless of the ownership of a
3 renewable energy system or advanced cleaner energy technology.

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

6 (A) The costs of renewable energy credits purchased under this
7 act.

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

9 (vi) Expenses incurred as a result of state or federal
10 governmental actions related to renewable energy systems or
11 advanced cleaner energy systems attributable to the renewable
12 energy standards, including changes in tax or other law.

13 (vii) Any additional electric provider costs determined by the
14 commission to be necessarily incurred to ensure the quality and
15 reliability of renewable energy or advanced cleaner energy used to
16 meet the renewable energy standards.

17 (b) Subtract from the sum of costs not already included in
18 electric rates determined under subdivision (a) the sum of the
19 following revenues:

20 (i) Revenue derived from the sale of environmental attributes
21 associated with the generation of renewable energy or advanced
22 cleaner energy ~~systems~~ attributable to the renewable energy
23 standards. Such revenue shall not be considered in determining
24 power supply cost recovery factors under section 6j of 1939 PA 3,
25 MCL 460.6j.

26 (ii) Interest on regulatory liabilities.

27 (iii) Tax credits specifically designed to promote renewable

1 energy or advanced cleaner energy.

2 (iv) Revenue derived from the provision of renewable energy or
3 advanced cleaner energy to retail electric customers subject to a
4 power supply cost recovery clause under section 6j of 1939 PA 3,
5 MCL 460.6j, of an electric provider whose rates are regulated by
6 the commission. After providing an opportunity for a contested case
7 hearing for an electric provider whose rates are regulated by the
8 commission, the commission shall annually establish a price per
9 megawatt hour. ~~In addition, an~~ **AN** electric provider whose rates are
10 regulated by the commission may at any time petition the commission
11 to revise the price. In setting the price per megawatt hour under
12 this subparagraph, the commission shall consider factors including,
13 but not limited to, projected capacity, energy, maintenance, and
14 operating costs; information filed under section 6j of 1939 PA 3,
15 MCL 460.6j; and information from wholesale markets, including, but
16 not limited to, locational marginal pricing. This price shall be
17 multiplied by the sum of the number of megawatt hours of renewable
18 energy and the number of megawatt hours of advanced cleaner energy
19 used to maintain compliance with the renewable energy standard. The
20 product shall be considered a booked cost of purchased and net
21 interchanged power transactions under section 6j of 1939 PA 3, MCL
22 460.6j. For energy purchased by such an electric provider under a
23 renewable energy contract or advanced cleaner energy contract, the
24 price shall be the lower of the amount established by the
25 commission or the actual price paid and shall be multiplied by the
26 number of megawatt hours of renewable energy or advanced cleaner
27 energy purchased. The resulting value shall be considered a booked

1 cost of purchased and net interchanged power under section 6j of
2 1939 PA 3, MCL 460.6j.

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

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

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

11 (3) The commission shall authorize an electric provider whose
12 rates are regulated by the commission to spend in any given month
13 more to comply with this act and implement an approved renewable
14 energy plan than the revenue actually generated by the revenue
15 recovery mechanism. An electric provider whose rates are regulated
16 by the commission shall recover its commission approved pre-tax
17 rate of return on regulatory assets during the appropriate period.
18 An electric provider whose rates are regulated by the commission
19 shall record interest on regulatory liabilities at the average
20 short-term borrowing rate available to the electric provider during
21 the appropriate period. Any regulatory assets or liabilities
22 resulting from the recovery costs of renewable energy or advanced
23 cleaner energy attributable to renewable energy standards through
24 the power supply cost recovery clause under section 6j of 1939 PA
25 3, MCL 460.6j, shall continue to be reconciled under that section.

26 (4) If an electric provider's incremental costs of compliance
27 in any given month during the 20-year period beginning when the

1 electric provider's plan is approved by the commission are in
2 excess of the revenue recovery mechanism as adjusted under section
3 49 and in excess of the balance of any accumulated reserve funds,
4 subject to the minimum balance established under section 21, the
5 electric provider shall immediately notify the commission. The
6 commission shall promptly commence a contested case hearing
7 pursuant to the administrative procedures act of 1969, 1969 PA 306,
8 MCL 24.201 to 24.328, and modify the revenue recovery mechanism so
9 that the minimum balance is restored. However, if the commission
10 determines that recovery of the incremental costs of compliance
11 would otherwise exceed the maximum retail rate impacts specified
12 under section 45, it shall set the revenue recovery mechanism for
13 that electric provider to correspond to the maximum retail rate
14 impacts. Excess costs shall be accrued and deferred for recovery.
15 Not later than the expiration of the 20-year period beginning when
16 the electric provider's plan is approved by the commission, for an
17 electric provider whose rates are regulated by the commission, the
18 commission shall determine the amount of deferred costs to be
19 recovered under the revenue recovery mechanism and the recovery
20 period, which shall not extend more than 5 years beyond the
21 expiration of the 20-year period beginning when the electric
22 provider's plan is approved by the commission. The recovery of
23 excess costs shall be proportional to the retail rate impact limits
24 in section 45 for each customer class. The recovery of excess costs
25 alone, or, if begun before the expiration of the 20-year period, in
26 combination with the recovery of incremental costs of compliance
27 under the revenue recovery mechanism, shall not exceed the retail

1 rate impact limits of section 45 for each customer class.

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

8 (6) After achieving compliance with the renewable energy
9 standard for ~~2015~~—2020, the actual costs reasonably and prudently
10 incurred to continue to comply with this subpart both during and
11 after the conclusion of the 20-year period beginning when the
12 electric provider's plan is approved by the commission shall be
13 considered costs of service. The commission shall determine a
14 mechanism for an electric provider whose rates are regulated by the
15 commission to recover these costs in its retail electric rates,
16 subject to the retail rate impact limits in section 45. Remaining
17 and future regulatory assets shall be recovered consistent with
18 subsections ~~(2)~~—(3) and ~~(3)~~—(4) and section 49.

19 Enacting section 1. This amendatory act does not take effect
20 unless Senate Bill No.____ or House Bill No. 5906(request no.
21 03965'09 *) of the 95th Legislature is enacted into law.