

# HOUSE BILL No. 5974

October 17, 2012, Introduced by Reps. McMillin and Opsommer and referred to the  
Committee on Energy and Technology.

A bill to amend 1939 PA 3, entitled

"An act to provide for the regulation and control of public and certain private utilities and other services affected with a public interest within this state; to provide for alternative energy suppliers; to provide for licensing; to include municipally owned utilities and other providers of energy under certain provisions of this act; to create a public service commission and to prescribe and define its powers and duties; to abolish the Michigan public utilities commission and to confer the powers and duties vested by law on the public service commission; to provide for the continuance, transfer, and completion of certain matters and proceedings; to abolish automatic adjustment clauses; to prohibit certain rate increases without notice and hearing; to qualify residential energy conservation programs permitted under state law for certain federal exemption; to create a fund; to provide for a restructuring of the manner in which energy is provided in this state; to encourage the utilization of resource recovery facilities; to prohibit certain acts and practices of providers of energy; to allow for the securitization of stranded costs; to reduce rates; to provide for appeals; to provide appropriations; to declare the effect and purpose of this act; to prescribe remedies and penalties; and to repeal acts and parts of acts,"

by amending sections 10a and 10q (MCL 460.10a and 460.10q), section 10a as amended by 2008 PA 286 and section 10q as added by 2000 PA

141.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 10a. (1) The commission shall issue orders establishing  
2 the rates, terms, and conditions of service that allow all retail  
3 customers of an electric utility or provider to choose an  
4 alternative electric supplier. The orders shall do all of the  
5 following:

6           (a) Provide that no more than 10% of an electric utility's  
7 average weather-adjusted retail sales for the preceding calendar  
8 year may take service from an alternative electric supplier at any  
9 time.

10           (b) Set forth procedures necessary to administer and allocate  
11 the amount of load that will be allowed to be served by alternative  
12 electric suppliers, through the use of annual energy allotments  
13 awarded on a calendar year basis, and shall provide, among other  
14 things, that existing customers who are taking electric service  
15 from an alternative electric supplier at a facility on ~~the~~  
16 ~~effective date of the amendatory act that added this subdivision~~  
17 **OCTOBER 6, 2008** shall be given an allocated annual energy allotment  
18 for that service at that facility, that customers seeking to expand  
19 usage at a facility served through an alternative electric supplier  
20 will be given next priority, with the remaining available load, if  
21 any, allocated on a first-come first-served basis. The procedures  
22 shall also provide how customer facilities will be defined for the  
23 purpose of assigning the annual energy allotments to be allocated  
24 under this section. The commission shall not allocate additional  
25 annual energy allotments at any time when the total annual energy

1 allotments for the utility's distribution service territory is  
2 greater than 10% of the utility's weather-adjusted retail sales in  
3 the calendar year preceding the date of allocation. If the sales of  
4 a utility are less in a subsequent year or if the energy usage of a  
5 customer receiving electric service from an alternative electric  
6 supplier exceeds its annual energy allotment for that facility,  
7 that customer shall not be forced to purchase electricity from a  
8 utility, but may purchase electricity from an alternative electric  
9 supplier for that facility during that calendar year.

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

19 (d) Notwithstanding any other provision of this section, any  
20 customer operating an iron ore mining facility, iron ore processing  
21 facility, or both, located in the Upper Peninsula of this state,  
22 shall be permitted to purchase all or any portion of its  
23 electricity from an alternative electric supplier, regardless of  
24 whether the sales exceed 10% of the serving electric utility's  
25 average weather-adjusted retail sales.

26 **(E) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, ANY**  
27 **CUSTOMER THAT DOES NOT WANT AN ADVANCED METER INSTALLED MAY**

1 PURCHASE ALL OR ANY PORTION OF ITS ELECTRICITY FROM AN ALTERNATIVE  
2 ELECTRIC SUPPLIER, REGARDLESS OF WHETHER THE SALES EXCEED 10% OF  
3 THE SERVING ELECTRIC UTILITY'S AVERAGE WEATHER-ADJUSTED RETAIL  
4 SALES. AN ALTERNATIVE ELECTRIC SUPPLIER MAY INSTALL AN ELECTRIC  
5 METER OTHER THAN AN ADVANCED METER FOR ANY CUSTOMER UNDER THIS  
6 SUBDIVISION. THE COMMISSION SHALL ESTABLISH STANDARDS FOR THE  
7 INSTALLATION OF ELECTRIC METERS BY ALTERNATIVE ELECTRIC SUPPLIERS  
8 UNDER THIS SUBDIVISION.

9 (2) The commission shall issue orders establishing a licensing  
10 procedure for all alternative electric suppliers. To ensure  
11 adequate service to customers in this state, the commission shall  
12 require that an alternative electric supplier maintain an office  
13 within this state, shall assure that an alternative electric  
14 supplier has the necessary financial, managerial, and technical  
15 capabilities, shall require that an alternative electric supplier  
16 maintain records ~~which~~ **THAT** the commission considers necessary, and  
17 shall ensure an alternative electric supplier's accessibility to  
18 the commission, to consumers, and to electric utilities in this  
19 state. The commission also shall require alternative electric  
20 suppliers to agree that they will collect and remit to local units  
21 of government all applicable users, sales, and use taxes. An  
22 alternative electric supplier is not required to obtain any  
23 certificate, license, or authorization from the commission other  
24 than as required by this act.

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

1           (4) No later than December 2, 2000, the commission shall  
2 establish a code of conduct that shall apply to all electric  
3 utilities. The code of conduct shall include, but is not limited  
4 to, measures to prevent cross-subsidization, information sharing,  
5 and preferential treatment, between a utility's regulated and  
6 unregulated services, whether those services are provided by the  
7 utility or the utility's affiliated entities. The code of conduct  
8 established under this subsection shall also be applicable to  
9 electric utilities and alternative electric suppliers consistent  
10 with section 10, this section, and sections 10b through 10cc.

11           (5) An electric utility may offer its customers an appliance  
12 service program. Except as otherwise provided by this section, the  
13 utility shall comply with the code of conduct established by the  
14 commission under subsection (4). ~~As used in this section,~~  
15 ~~"appliance service program" or "program" means a subscription~~  
16 ~~program for the repair and servicing of heating and cooling systems~~  
17 ~~or other appliances.~~

18           (6) A utility offering a program under subsection (5) shall do  
19 all of the following:

20           (a) Locate within a separate department of the utility or  
21 affiliate within the utility's corporate structure the personnel  
22 responsible for the day-to-day management of the program.

23           (b) Maintain separate books and records for the program,  
24 access to which shall be made available to the commission upon  
25 request.

26           (c) Not promote or market the program through the use of  
27 utility billing inserts, printed messages on the utility's billing

1 materials, or other promotional materials included with customers'  
2 utility bills.

3 (7) All costs directly attributable to an appliance service  
4 program allowed under subsection (5) shall be allocated to the  
5 program as required by this subsection. The direct and indirect  
6 costs of employees, vehicles, equipment, office space, and other  
7 facilities used in the appliance service program shall be allocated  
8 to the program based upon the amount of use by the program as  
9 compared to the total use of the employees, vehicles, equipment,  
10 office space, and other facilities. The cost of the program shall  
11 include administrative and general expense loading to be determined  
12 in the same manner as the utility determines administrative and  
13 general expense loading for all of the utility's regulated and  
14 unregulated activities. A subsidy by a utility does not exist if  
15 costs allocated as required by this subsection do not exceed the  
16 revenue of the program.

17 (8) A utility may include charges for its appliance service  
18 program on its monthly billings to its customers if the utility  
19 complies with all of the following requirements:

20 (a) All costs associated with the billing process, including  
21 the postage, envelopes, paper, and printing expenses, are allocated  
22 as required under subsection (7).

23 (b) A customer's regulated utility service is not terminated  
24 for nonpayment of the appliance service program portion of the  
25 bill.

26 (c) Unless the customer directs otherwise in writing, a  
27 partial payment by a customer is applied first to the bill for

1 regulated service.

2 (9) In marketing its appliance service program to the public,  
3 a utility shall do all of the following:

4 (a) The list of customers receiving regulated service from the  
5 utility shall be available to a provider of appliance repair  
6 service upon request within 2 business days. The customer list  
7 shall be provided in the same electronic format as ~~such~~ **THAT**  
8 information is provided to the appliance service program. A new  
9 customer shall be added to the customer list within 1 business day  
10 of the date the customer requested to turn on service.

11 (b) Appropriately allocate costs as required under subsection  
12 (7) when personnel employed at a utility's call center provide  
13 appliance service program marketing information to a prospective  
14 customer.

15 (c) ~~Prior to~~ **BEFORE** enrolling a customer into the program, the  
16 utility shall inform the potential customer of all of the  
17 following:

18 (i) That appliance service programs may be available from  
19 another provider.

20 (ii) That the appliance service program is not regulated by the  
21 commission.

22 (iii) That a new customer ~~shall have~~ **HAS** 10 days after  
23 enrollment to cancel his or her appliance service program contract  
24 without penalty.

25 (iv) That the customer's regulated rates and conditions of  
26 service provided by the utility are not affected by enrollment in  
27 the program or by the decision of the customer to use the services

1 of another provider of appliance repair service.

2 (d) The utility name and logo may be used to market the  
3 appliance service program ~~provided that~~ ~~IF~~ the program is not  
4 marketed in conjunction with a regulated service. ~~To the extent~~  
5 ~~that~~ ~~IF~~ a program utilizes the utility's name and logo in marketing  
6 the program, the program shall include language on all material  
7 indicating that the program is not regulated by the commission.  
8 Costs shall not be allocated to the program for the use of the  
9 utility's name or logo.

10 (10) This section does not prohibit the commission from  
11 requiring a utility to include revenues from an appliance service  
12 program in establishing base rates. If the commission includes the  
13 revenues of an appliance service program in determining a utility's  
14 base rates, the commission shall also include all of the costs of  
15 the program as determined under this section.

16 (11) Except as otherwise provided in this section, the code of  
17 conduct with respect to an appliance service program shall not  
18 require a utility to form a separate affiliate or division to  
19 operate an appliance service program, impose further restrictions  
20 on the sharing of employees, vehicles, equipment, office space, and  
21 other facilities, or require the utility to provide other providers  
22 of appliance repair service with access to utility employees,  
23 vehicles, equipment, office space, or other facilities.

24 (12) This act does not prohibit or limit the right of a person  
25 to obtain self-service power and does not impose a transition,  
26 implementation, exit fee, or any other similar charge on self-  
27 service power. A person using self-service power is not an electric



1 supplier, electric utility, or a person conducting an electric  
2 utility business. As used in this subsection, "self-service power"  
3 means any of the following:

4 (a) Electricity generated and consumed at an industrial site  
5 or contiguous industrial site or single commercial establishment or  
6 single residence without the use of an electric utility's  
7 transmission and distribution system.

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

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

19 (d) A commercial or industrial facility or single residence  
20 that meets the requirements of subdivision (a) or (b) meets this  
21 definition whether or not the generation facility is owned by an  
22 entity different from the owner of the commercial or industrial  
23 site or single residence.

24 (13) This act does not prohibit or limit the right of a person  
25 to engage in affiliate wheeling and does not impose a transition,  
26 implementation, exit fee, or any other similar charge on a person  
27 engaged in affiliate wheeling. ~~As used in this section:~~

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

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

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

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

26 (14) The rights of parties to existing contracts and  
27 agreements in effect as of January 1, 2000 between electric

1 utilities and qualifying facilities, including the right to have  
2 the charges recovered from the customers of an electric utility, or  
3 its successor, shall not be abrogated, increased, or diminished by  
4 this act, nor shall the receipt of any proceeds of the  
5 securitization bonds by an electric utility be a basis for any  
6 regulatory disallowance. Further, any securitization or financing  
7 order issued by the commission that relates to a qualifying  
8 facility's power purchase contract shall fully consider that  
9 qualifying facility's legal and financial interests.

10 (15) A customer who elects to receive service from an  
11 alternative electric supplier may subsequently provide notice to  
12 the electric utility of the customer's desire to receive standard  
13 tariff service from the electric utility. The procedures in place  
14 for each electric utility as of January 1, 2008 that set forth the  
15 terms ~~pursuant to~~ **UNDER** which a customer receiving service from an  
16 alternative electric supplier may return to full service from the  
17 electric utility are ratified and shall remain in effect and may be  
18 amended by the commission as needed. If an electric utility did not  
19 have the procedures in place as of January 1, 2008, the commission  
20 shall adopt those procedures.

21 (16) The commission shall authorize rates that will ensure  
22 that an electric utility that offered retail open access service  
23 from 2002 through ~~the effective date of the amendatory act that~~  
24 ~~added this subsection~~ **OCTOBER 6, 2008** fully recovers its  
25 restructuring costs and any associated accrued regulatory assets.  
26 This includes, but is not limited to, implementation costs,  
27 stranded costs, and costs authorized pursuant to section 10d(4) as

1 ~~it existed prior to the effective date of the amendatory act that~~  
2 ~~added this subsection, BEFORE OCTOBER 6, 2008,~~ that have been  
3 authorized for recovery by the commission in orders issued ~~prior to~~  
4 ~~the effective date of the amendatory act that added this subsection~~  
5 **BEFORE OCTOBER 6, 2008.** The commission shall approve surcharges  
6 that will ensure full recovery of all such costs ~~within 5 years of~~  
7 ~~the effective date of the amendatory act that added this~~  
8 ~~subsection.~~ **BY OCTOBER 6, 2008.**

9 (17) AS USED IN THIS SECTION:

10 (A) "ADVANCED METER" MEANS A METER THAT IS CAPABLE OF  
11 MEASURING, RECORDING, STORING, AND REPORTING USAGE ACCORDING TO  
12 PREDETERMINED TIME CRITERIA AND THAT ALLOWS 2-WAY COMMUNICATIONS  
13 SUITED FOR DEMAND-RESPONSE PROGRAMS.

14 (B) "AFFILIATE" MEANS A PERSON OR ENTITY THAT DIRECTLY, OR  
15 INDIRECTLY THROUGH 1 OR MORE INTERMEDIATES, CONTROLS, IS CONTROLLED  
16 BY, OR IS UNDER COMMON CONTROL WITH ANOTHER SPECIFIED ENTITY. AS  
17 USED IN THIS SUBDIVISION, "CONTROL" MEANS, WHETHER THROUGH AN  
18 OWNERSHIP, BENEFICIAL, CONTRACTUAL, OR EQUITABLE INTEREST, THE  
19 POSSESSION, DIRECTLY OR INDIRECTLY, OF THE POWER TO DIRECT OR TO  
20 CAUSE THE DIRECTION OF THE MANAGEMENT OR POLICIES OF A PERSON OR  
21 ENTITY OR THE OWNERSHIP OF AT LEAST 7% OF AN ENTITY EITHER DIRECTLY  
22 OR INDIRECTLY.

23 (C) "AFFILIATE WHEELING" MEANS A PERSON'S USE OF DIRECT ACCESS  
24 SERVICE WHERE AN ELECTRIC UTILITY DELIVERS ELECTRICITY GENERATED AT  
25 A PERSON'S INDUSTRIAL SITE TO THAT PERSON OR THAT PERSON'S  
26 AFFILIATE AT A LOCATION, OR GENERAL AGGREGATED LOCATIONS, WITHIN  
27 THIS STATE THAT WAS EITHER 1 OF THE FOLLOWING:

1 (i) FOR AT LEAST 90 DAYS DURING THE PERIOD FROM JANUARY 1, 1996  
2 TO OCTOBER 1, 1999, SUPPLIED BY SELF-SERVICE POWER, BUT ONLY TO THE  
3 EXTENT OF THE CAPACITY RESERVED OR LOAD SERVED BY SELF-SERVICE  
4 POWER DURING THE PERIOD.

5 (ii) CAPABLE OF BEING SUPPLIED BY A PERSON'S COGENERATION  
6 CAPACITY WITHIN THIS STATE THAT HAS HAD SINCE JANUARY 1, 1996 A  
7 RATED CAPACITY OF 15 MEGAWATTS OR LESS, WAS PLACED IN SERVICE  
8 BEFORE DECEMBER 31, 1975, AND HAS BEEN IN CONTINUOUS SERVICE SINCE  
9 THAT DATE. A PERSON ENGAGING IN AFFILIATE WHEELING IS NOT AN  
10 ELECTRIC SUPPLIER, AN ELECTRIC UTILITY, OR CONDUCTING AN ELECTRIC  
11 UTILITY BUSINESS WHEN A PERSON ENGAGES IN AFFILIATE WHEELING.

12 (D) "APPLIANCE SERVICE PROGRAM" OR "PROGRAM" MEANS A  
13 SUBSCRIPTION PROGRAM FOR THE REPAIR AND SERVICING OF HEATING AND  
14 COOLING SYSTEMS OR OTHER APPLIANCES.

15 (18) ~~(17)~~—As used in subsections (1) and (15):

16 (a) "Customer" means the building or facilities served through  
17 a single existing electric billing meter and does not mean the  
18 person, corporation, partnership, association, governmental body,  
19 or other entity owning or having possession of the building or  
20 facilities.

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

26 Sec. 10q. (1) A person shall not engage in the business of an  
27 alternative electric supplier in this state unless the person

1 obtains and maintains a license issued under section 10a.

2 (2) In addition to any other information required by the  
3 commission in connection with a licensing application, the  
4 applicant shall be required to do both of the following:

5 (a) Provide information, including information as to the  
6 applicant's safety record and its history of service quality and  
7 reliability, as to the applicant's technical ability, as defined  
8 under regulations of the commission, to safely and reliably  
9 generate or otherwise obtain and deliver electricity and provide  
10 any other proposed services.

11 (b) Demonstrate that the employees of the applicant that will  
12 be installing, operating, and maintaining generation or  
13 transmission facilities within this state, or any entity with which  
14 the applicant has contracted to perform those functions within this  
15 state, have the requisite knowledge, skills, and competence to  
16 perform those functions in a safe and responsible manner in order  
17 to provide safe and reliable service.

18 (3) The commission shall order the applicant to post a bond or  
19 provide a letter of credit or other financial guarantee in a  
20 reasonable amount established by the commission of not less than  
21 \$40,000.00, if the commission finds after an investigation and  
22 review that the requirement of a bond would be in the public  
23 interest.

24 (4) ~~Only~~ **EXCEPT AS OTHERWISE PROVIDED IN SECTION 10A, ONLY**  
25 investor-owned, cooperative, or municipal electric utilities shall  
26 own, construct, or operate electric distribution facilities or  
27 electric meter equipment used in the distribution of electricity in

1 this state. This subsection does not prohibit a self-service power  
2 provider from owning, constructing, or operating electric  
3 distribution facilities or electric metering equipment for the sole  
4 purpose of providing or utilizing self-service power. This act does  
5 not affect the current rights, if any, of a nonutility to construct  
6 or operate a private distribution system on private property or  
7 private easements. This does not preclude crossing of public  
8 rights-of-way.

9 (5) The commission shall not prohibit an electric utility from  
10 metering and billing its customers for services provided by the  
11 electric utility.