

HOUSE BILL No. 5969

November 13, 2014, Introduced by Reps. VerHeulen, Kesto, Singh, Callton, Muxlow, Foster, Schmidt, Haines and Hobbs 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 6, 6s, and 10a (MCL 460.6, 460.6s, and 460.10a), section 6 as amended by 2005 PA 190 and section 6s as

added and section 10a as amended by 2008 PA 286.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 6. (1) The public service commission is vested with
2 complete power and jurisdiction to regulate all public utilities in
3 the state except a municipally owned utility, the owner of a
4 renewable resource power production facility as provided in section
5 6d, and except as otherwise restricted by law. The public service
6 commission is vested with the power and jurisdiction to regulate
7 all rates, fares, fees, charges, services, rules, conditions of
8 service, and all other matters pertaining to the formation,
9 operation, or direction of public utilities. The public service
10 commission is further granted the power and jurisdiction to hear
11 and pass upon all matters pertaining to, necessary, or incident to
12 the regulation of public utilities, including electric light and
13 power companies, whether private, corporate, or cooperative; water,
14 telegraph, oil, gas, and pipeline companies; motor carriers;
15 private wastewater treatment facilities; and all public
16 transportation and communication agencies other than railroads and
17 railroad companies.

18 (2) **THE PUBLIC SERVICE COMMISSION SHALL CONSIDER THE FOLLOWING**
19 **CRITERIA WHEN MAKING DECISIONS REGARDING THE REGULATION OF PUBLIC**
20 **UTILITIES IN THIS STATE:**

21 (A) **KEEPING THE COST OF ENERGY OR OTHER SERVICES AFFORDABLE TO**
22 **HOUSEHOLDS AND BUSINESSES IN THIS STATE, CONSIDERING BOTH THE COST**
23 **OF THE SERVICE AND ANY EXTERNAL COSTS.**

24 (B) **REDUCING THE RISK AND UNCERTAINTY FOR RATEPAYERS,**
25 **INCLUDING, BUT NOT LIMITED TO, ALL OF THE FOLLOWING:**

1 (i) RISKS THAT RATES WILL RISE IN THE FUTURE BASED ON THE COST
2 OF FUEL OR OTHER INPUTS.

3 (ii) RISKS THAT CAPITAL INVESTMENTS WILL BE UNDERUSED,
4 INCREASING THE COSTS ALLOCATED TO RATEPAYERS.

5 (iii) RISKS THAT PROVIDING A SERVICE WILL RESULT IN HARM TO
6 PUBLIC HEALTH AND NATURAL RESOURCES.

7 (C) ESTABLISHING RATES THAT REQUIRE EACH CUSTOMER TO PAY THAT
8 CUSTOMER'S FAIR SHARE OF THE COST OF SERVICE. FOR ELECTRIC POWER,
9 THOSE RATES SHOULD BE BASED PRIMARILY ON THE TYPE OF CONNECTION TO
10 THE GRID AND THE TIMES AT WHICH POWER IS USED. RATES BASED ON
11 CLASSIFICATION OF CUSTOMER TYPES SHOULD BE REPLACED BY RATES BASED
12 ON ACTUAL SERVICES PROVIDED TO INDIVIDUAL CUSTOMERS.

13 (3) ~~(2)~~A private, investor-owned wastewater utility may apply
14 to the commission for rate regulation. If an application is filed
15 under this subsection, the commission is vested with the specific
16 grant of jurisdictional authority to regulate the rates, fares,
17 fees, and charges of private, investor-owned wastewater utilities.
18 As used in this subsection, "private, investor-owned wastewater
19 utilities" means a utility that delivers wastewater treatment
20 services through a sewage system and the physical assets of which
21 are wholly owned by an individual or group of individual
22 shareholders.

23 Sec. 6s. (1) An electric utility ~~that proposes to construct an~~
24 ~~electric generation facility, make a significant investment in an~~
25 ~~existing electric generation facility, purchase an existing~~
26 ~~electric generation facility, or enter into a power purchase~~
27 ~~agreement for the purchase of electric capacity for a period of 6~~

1 ~~years or longer may~~ **SHALL** submit an application to the commission
2 seeking a certificate of necessity for ~~that~~ **EACH OF THE FOLLOWING:**

3 (A) A POWER SUPPLY PLAN INCLUDING ALL INVESTMENTS TO BE MADE
4 OVER THE NEXT 3 YEARS TO MEET CURRENT AND FUTURE DEMAND FOR
5 ELECTRIC GENERATION AND TRANSMISSION FOR CUSTOMERS OF THAT ELECTRIC
6 UTILITY. THE PUBLIC SERVICE COMMISSION SHALL ESTABLISH A POWER
7 SUPPLY PLAN FILING SCHEDULE FOR ALL ELECTRIC UTILITIES PROVIDING
8 ELECTRIC SERVICE WITHIN THIS STATE. THE COMMISSION SHALL REQUIRE
9 EACH ELECTRIC UTILITY TO FILE ITS FIRST PLAN AFTER APPROVAL OF THAT
10 UTILITY'S FIRST ENERGY OPTIMIZATION PLAN FOLLOWING THE EFFECTIVE
11 DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBDIVISION AND BEFORE
12 DECEMBER 31, 2017. AN ELECTRIC UTILITY SHALL SUBMIT A POWER SUPPLY
13 PLAN EVERY THIRD YEAR AFTER ITS INITIAL FILING.

14 (B) ANY construction, investment, or purchase **NOT INCLUDED IN**
15 **AN APPLICATION SEEKING A CERTIFICATE OF NECESSITY UNDER SUBDIVISION**
16 (A), if that construction, investment, or purchase costs
17 \$500,000,000.00 or more and a portion of the costs would be
18 allocable to retail customers in this state. A significant
19 investment in an electric generation facility includes a group of
20 investments reasonably planned to be made over a multiple year
21 period not to exceed 6 years for a singular purpose such as
22 increasing the capacity of an existing electric generation plant.
23 The commission shall not issue a certificate of necessity under
24 this section for any environmental upgrades to existing electric
25 generation facilities or for a renewable energy system.

26 (2) The commission may implement separate review criteria and
27 approval standards for electric utilities with less than 1,000,000

1 retail customers who seek a certificate of necessity for projects
2 costing less than \$500,000,000.00.

3 (3) An electric utility submitting an application under this
4 section may request 1 or more of the following:

5 (a) A certificate of necessity that the power to be supplied
6 as a result of the **CONTINUED OPERATION OF AN EXISTING ELECTRIC**
7 **GENERATION FACILITY AND OF ANY** proposed construction, investment,
8 or purchase is needed.

9 (b) A certificate of necessity that the size, fuel type, and
10 other design characteristics of the existing or proposed electric
11 generation facility or the terms of the power purchase agreement
12 represent the most reasonable and prudent means of meeting ~~that~~
13 **FUTURE power need-NEEDS AND MEET THE CRITERIA SET FORTH IN SECTION**
14 **6(2)**.

15 (c) A certificate of necessity that the price specified in the
16 power purchase agreement will be recovered in rates from the
17 electric utility's customers.

18 (d) A certificate of necessity that the estimated purchase or
19 capital costs of and the financing plan for the existing or
20 proposed electric generation facility, including, but not limited
21 to, the costs of siting and licensing a new facility and the
22 estimated cost of power from the new or proposed electric
23 generation facility, will be recoverable in rates from the electric
24 utility's customers subject to subsection (4)(c).

25 (4) Within 270 days of the filing of an application under this
26 section, the commission shall issue an order granting or denying
27 the requested certificate of necessity. The commission shall hold a

1 hearing on the application. The hearing shall be conducted as a
2 contested case pursuant to chapter 4 of the administrative
3 procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. The
4 commission shall allow intervention by interested persons.
5 Reasonable discovery shall be permitted before and during the
6 hearing in order to assist parties and interested persons in
7 obtaining evidence concerning the application, including, but not
8 limited to, the reasonableness and prudence of the construction,
9 investment, or purchase for which the certificate of necessity has
10 been requested. The commission shall grant the request if it
11 determines all of the following:

12 (a) That the electric utility has demonstrated a need for the
13 power that would be supplied by the existing or proposed electric
14 generation facility or pursuant to the proposed power purchase
15 agreement through its approved integrated resource plan that
16 complies with subsection ~~(11)~~ (10).

17 (b) The information supplied indicates that the existing or
18 proposed electric generation facility will comply with all
19 applicable state and federal environmental standards, laws, and
20 rules.

21 (c) The estimated cost of power from the existing or proposed
22 electric generation facility or the price of power specified in the
23 proposed power purchase agreement is reasonable. The commission
24 shall find that the cost is reasonable if, in the construction or
25 investment in a new or existing facility, to the extent it is
26 commercially practicable, the estimated costs are the result of
27 competitively bid engineering, procurement, and construction

1 contracts, or in a power purchase agreement, the cost is the result
2 of a competitive solicitation. Up to 150 days after an electric
3 utility makes its initial filing, ~~it~~**THE UTILITY** may file to update
4 its cost estimates if ~~they~~**THOSE ESTIMATES** have materially changed.
5 No other aspect of the initial filing may be modified unless the
6 application is withdrawn and refiled. A utility's filing updating
7 its cost estimates does not extend the period for the commission to
8 issue an order granting or denying a certificate of necessity. An
9 affiliate of an electric utility that serves customers in this
10 state and at least 1 other state may participate in the competitive
11 bidding to provide engineering, procurement, and construction
12 services to that electric utility for a project covered by this
13 section.

14 (d) The existing or proposed electric generation facility or
15 proposed power purchase agreement represents the most reasonable
16 and prudent means of meeting the power need relative to other
17 resource options for meeting power demand, including energy
18 efficiency programs and electric transmission efficiencies.

19 (e) To the extent practicable, the construction or investment
20 in a new or existing facility in this state is completed using a
21 workforce composed of residents of this state as determined by the
22 commission. This subdivision does not apply to a facility that is
23 located in a county that lies on the border with another state.

24 (5) The commission may consider any other costs or information
25 related to the costs associated with the power that would be
26 supplied by the existing or proposed electric generation facility
27 or pursuant to the proposed purchase agreement or alternatives to

1 the proposal raised by intervening parties.

2 (6) In a certificate of necessity under this section, the
3 commission shall specify the costs approved for the construction of
4 or significant investment in the electric generation facility, the
5 price approved for the purchase of the existing electric generation
6 facility, or the price approved for the purchase of power pursuant
7 to the terms of the power purchase agreement.

8 (7) The utility shall annually file, or more frequent if
9 required by the commission, reports to the commission regarding the
10 status of any project for which a certificate of necessity has been
11 granted under subsection (4), including an update concerning the
12 cost and schedule of that project.

13 ~~—— (8) If the commission denies any of the relief requested by an~~
14 ~~electric utility, the electric utility may withdraw its application~~
15 ~~or proceed with the proposed construction, purchase, investment, or~~
16 ~~power purchase agreement without a certificate and the assurances~~
17 ~~granted under this section.~~

18 (8) ~~(9)~~ Once the electric generation facility or power
19 purchase agreement is considered used and useful or as otherwise
20 provided in subsection (12), the commission shall include in an
21 electric utility's retail rates all reasonable and prudent costs
22 for an electric generation facility or power purchase agreement for
23 which a certificate of necessity has been granted. The commission
24 shall not disallow recovery of costs an electric utility incurs in
25 constructing, investing in, or purchasing an electric generation
26 facility or in purchasing power pursuant to a power purchase
27 agreement for which a certificate of necessity has been granted, if

1 the costs do not exceed the costs approved by the commission in the
2 certificate. Once the electric generation facility or power
3 purchase agreement is considered used and useful or as otherwise
4 provided in subsection (12), the commission shall include in the
5 electric utility's retail rates costs actually incurred by the
6 electric utility that exceed the costs approved by the commission
7 only if the commission finds that the additional costs are
8 reasonable and prudent. If the actual costs incurred by the
9 electric utility exceed the costs approved by the commission, the
10 electric utility has the burden of proving by a preponderance of
11 the evidence that the costs are reasonable and prudent. The portion
12 of the cost of a plant, facility, or power purchase agreement which
13 exceeds 110% of the cost approved by the commission is presumed to
14 have been incurred due to a lack of prudence. The commission may
15 include any or all of the portion of the cost in excess of 110% of
16 the cost approved by the commission if the commission finds by a
17 preponderance of the evidence that the costs were prudently
18 incurred.

19 (9) ~~(10) Within 90 days of the effective date of the~~
20 ~~amendatory act that added this section, the~~ **THE** commission shall
21 adopt standard application filing forms and instructions for use in
22 all requests for a certificate of necessity under this section. **THE**
23 **STANDARD APPLICATION FILING FORMS AND INSTRUCTIONS SHALL SPECIFY**
24 **THE METHODS BY WHICH A UTILITY MUST EVALUATE AND VALUE ANY EFFECTS**
25 **OF THE PROPOSED PLAN.** The commission may, in its discretion, modify
26 the standard application filing forms and instructions adopted
27 under this section.

1 (10) ~~(11)~~—The commission shall establish standards for an
 2 integrated resource plan that shall be filed by an electric utility
 3 requesting a certificate of necessity under this section. An
 4 integrated resource plan shall include all of the following:

5 (a) A long-term forecast of the electric utility's load growth
 6 under various reasonable scenarios.

7 (b) The **NUMBER AND** type of generation technology proposed **TO**
 8 **MEET ELECTRIC DEMAND** for the generation facility and the proposed
 9 capacity of the generation facility, including projected fuel and
 10 regulatory costs under various reasonable scenarios ~~—INCLUDING BOTH~~
 11 **OF THE FOLLOWING:**

12 (i) ~~(e)~~—Projected energy and capacity purchased or produced by
 13 the electric utility pursuant to any renewable portfolio standard
 14 **AND ANY ADDITIONAL RENEWABLE ENERGY CAPACITY CONSTRUCTED OR**
 15 **PROPOSED TO MEET FUTURE DEMAND.**

16 (ii) ~~(d)~~—Projected energy efficiency program savings under any
 17 energy efficiency program requirements, **ANY ADDITIONAL ENERGY**
 18 **EFFICIENCY INVESTMENTS MADE OR PROPOSED TO MEET FUTURE DEMAND,** and
 19 the projected costs for ~~that program~~ **THOSE PROGRAMS.**

20 (c) ~~(e)~~—Projected load management and demand response savings
 21 for the electric utility and the projected costs for those
 22 programs.

23 (d) ~~(f)~~—An analysis of the availability and costs of other
 24 electric resources that could **REPLACE,** defer, displace, or
 25 partially displace ~~the~~ **ANY** proposed **OR EXISTING** generation facility
 26 or purchased power agreement. ~~—including~~ **THOSE RESOURCES MAY**
 27 **INCLUDE** additional renewable energy, energy efficiency programs,

1 load management, and demand response, beyond those amounts
2 contained in subdivisions ~~(e)~~-(B) to ~~(e)~~-(C).

3 (E) ~~(g)~~—Electric transmission options for the electric
4 utility.

5 (F) ALL INVESTMENTS NECESSARY TO MEET CURRENT AND ANTICIPATED
6 POWER SUPPLY FOR THE NEXT 20 YEARS.

7 (11) THE COMMISSION SHALL ESTABLISH A PROCESS FOR DEVELOPING
8 ALTERNATIVE SCENARIOS TO MEET FUTURE DEMAND TO BE MODELED BY THE
9 UTILITY. THAT PROCESS SHALL INCLUDE THE SUBMISSION OF PROPOSED
10 SCENARIOS BY INTERVENING PARTIES AND A REQUIREMENT FOR THE UTILITY
11 TO INCLUDE ANALYSIS OF AT LEAST A PORTION OF THOSE ALTERNATIVE
12 SCENARIOS AS PART OF THE UTILITY'S INTEGRATED RESOURCE PLAN.

13 (12) The commission shall allow financing interest cost
14 recovery in an electric utility's base rates on construction work
15 in progress for capital improvements approved under this section
16 prior to the assets being considered used and useful. Regardless of
17 whether or not the commission authorizes base rate treatment for
18 construction work in progress financing interest expense, an
19 electric utility ~~shall be~~ IS allowed to recognize, accrue, and
20 defer the allowance for funds used during construction related to
21 equity capital.

22 (13) AN ELECTRIC UTILITY SHALL NOT SPEND MORE THAN
23 \$10,000,000.00 ON PLANNING, ENGINEERING, AND PREPARING A COST
24 ESTIMATION BEFORE SEEKING A CERTIFICATE OF NECESSITY UNDER
25 SUBSECTION (1).

26 (14) ~~(13)~~—As used in this section, "renewable energy system"
27 means that term as defined in SECTION 11 OF the clean, renewable,

1 and efficient energy act, 2008 PA 295, MCL 460.1011.

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

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

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

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

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

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

25 (2) The commission shall issue orders establishing a licensing
26 procedure for all alternative electric suppliers. To ensure
27 adequate service to customers in this state, the commission shall

1 require that an alternative electric supplier maintain an office
2 within this state, shall assure that an alternative electric
3 supplier has the necessary financial, managerial, and technical
4 capabilities, shall require that an alternative electric supplier
5 maintain records ~~which~~**THAT** the commission considers necessary, and
6 shall ensure an alternative electric supplier's accessibility to
7 the commission, to consumers, and to electric utilities in this
8 state. The commission also shall require alternative electric
9 suppliers to agree that they will collect and remit to local units
10 of government all applicable users, sales, and use taxes. An
11 alternative electric supplier is not required to obtain any
12 certificate, license, or authorization from the commission other
13 than as required by this act.

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

17 (4) ~~No later than December 2, 2000, the~~**THE** commission shall
18 establish a code of conduct that ~~shall apply~~**APPLIES** to all
19 electric utilities. The code of conduct shall include, but is not
20 limited to, measures to prevent cross-subsidization, information
21 sharing, and preferential treatment, between a utility's regulated
22 and unregulated services, whether those services are provided by
23 the utility or the utility's affiliated entities. The code of
24 conduct established under this subsection ~~shall also be applicable~~
25 **APPLIES** to electric utilities and alternative electric suppliers
26 consistent with section 10, this section, and sections 10b through
27 10cc.

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

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

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

13 (b) Maintain separate books and records for the program,
14 access to which shall be made available to the commission upon
15 request.

16 (c) Not promote or market the program through the use of
17 utility billing inserts, printed messages on the utility's billing
18 materials, or other promotional materials included with customers'
19 utility bills.

20 (7) All costs directly attributable to an appliance service
21 program allowed under subsection (5) shall be allocated to the
22 program as required by this subsection. The direct and indirect
23 costs of employees, vehicles, equipment, office space, and other
24 facilities used in the appliance service program shall be allocated
25 to the program based upon the amount of use by the program as
26 compared to the total use of the employees, vehicles, equipment,
27 office space, and other facilities. The cost of the program shall

1 include administrative and general expense loading to be determined
2 in the same manner as the utility determines administrative and
3 general expense loading for all of the utility's regulated and
4 unregulated activities. A subsidy by a utility does not exist if
5 costs allocated as required by this subsection do not exceed the
6 revenue of the program.

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

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

13 (b) A customer's regulated utility service is not terminated
14 for nonpayment of the appliance service program portion of the
15 bill.

16 (c) Unless the customer directs otherwise in writing, a
17 partial payment by a customer is applied first to the bill for
18 regulated service.

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

21 (a) The list of customers receiving regulated service from the
22 utility shall be available to a provider of appliance repair
23 service upon request within 2 business days. The customer list
24 shall be provided in the same electronic format as ~~such~~**THE**
25 information is provided to the appliance service program. A new
26 customer shall be added to the customer list within 1 business day
27 of the date the customer requested to turn on service.

1 (b) Appropriately allocate costs as required under subsection
2 (7) when personnel employed at a utility's call center provide
3 appliance service program marketing information to a prospective
4 customer.

5 (c) ~~Prior to~~ **BEFORE** enrolling a customer into the program, the
6 utility shall inform the potential customer of all of the
7 following:

8 (i) That appliance service programs may be available from
9 another provider.

10 (ii) That the appliance service program is not regulated by the
11 commission.

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

15 (iv) That the customer's regulated rates and conditions of
16 service provided by the utility are not affected by enrollment in
17 the program or by the decision of the customer to use the services
18 of another provider of appliance repair service.

19 (d) The utility name and logo may be used to market the
20 appliance service program provided that the program is not marketed
21 in conjunction with a regulated service. ~~To the extent that~~ **IF** a
22 program utilizes the utility's name and logo in marketing the
23 program, the program shall include language on all material
24 indicating that the program is not regulated by the commission.
25 Costs shall not be allocated to the program for the use of the
26 utility's name or logo.

27 (10) This section does not prohibit the commission from

1 requiring a utility to include revenues from an appliance service
2 program in establishing base rates. If the commission includes the
3 revenues of an appliance service program in determining a utility's
4 base rates, the commission shall also include all of the costs of
5 the program as determined under this section.

6 (11) Except as otherwise provided in this section, the code of
7 conduct with respect to an appliance service program shall not
8 require a utility to form a separate affiliate or division to
9 operate an appliance service program, impose further restrictions
10 on the sharing of employees, vehicles, equipment, office space, and
11 other facilities, or require the utility to provide other providers
12 of appliance repair service with access to utility employees,
13 vehicles, equipment, office space, or other facilities.

14 (12) This act does not prohibit or limit the right of a
15 **MICROGRID OR** person to obtain self-service power and does not
16 impose a transition, implementation, exit fee, or any other similar
17 charge on self-service power. ~~A person~~ **AN ENTITY** using self-service
18 power is not an electric supplier, electric utility, or a person
19 conducting an electric utility business. As used in this
20 subsection, "self-service power" means any of the following:

21 (a) Electricity generated and consumed at an industrial site
22 or contiguous industrial site or single commercial establishment or
23 single residence without the use of an electric utility's
24 transmission and distribution system.

25 (b) Electricity generated primarily by the use of by-product
26 fuels, including waste water solids, which electricity is consumed
27 as part of a contiguous facility, with the use of an electric

1 utility's transmission and distribution system, but only if the
2 point or points of receipt of the power within the facility are not
3 greater than 3 miles distant from the point of generation.

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

9 (d) A commercial or industrial facility or single residence
10 that meets the requirements of subdivision (a) or (b) meets this
11 definition whether or not the generation facility is owned by an
12 entity different from the owner of the commercial or industrial
13 site or single residence.

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

18 ~~—— (a) "Affiliate" means a person or entity that directly, or~~
19 ~~indirectly through 1 or more intermediates, controls, is controlled~~
20 ~~by, or is under common control with another specified entity. As~~
21 ~~used in this subdivision, "control" means, whether through an~~
22 ~~ownership, beneficial, contractual, or equitable interest, the~~
23 ~~possession, directly or indirectly, of the power to direct or to~~
24 ~~cause the direction of the management or policies of a person or~~
25 ~~entity or the ownership of at least 7% of an entity either directly~~
26 ~~or indirectly.~~

27 ~~—— (b) "Affiliate wheeling" means a person's use of direct access~~

1 ~~service where an electric utility delivers electricity generated at~~
2 ~~a person's industrial site to that person or that person's~~
3 ~~affiliate at a location, or general aggregated locations, within~~
4 ~~this state that was either 1 of the following:~~

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

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

16 (14) The rights of parties to existing contracts and
17 agreements in effect as of January 1, 2000 between electric
18 utilities and qualifying facilities, including the right to have
19 the charges recovered from the customers of an electric utility, or
20 its successor, ~~shall~~**ARE** not ~~be~~ abrogated, increased, or diminished
21 by this act, nor shall the receipt of any proceeds of the
22 securitization bonds by an electric utility be a basis for any
23 regulatory disallowance. Further, any securitization or financing
24 order issued by the commission that relates to a qualifying
25 facility's power purchase contract shall fully consider that
26 qualifying facility's legal and financial interests.

27 (15) A customer ~~who~~**THAT** elects to receive service from an

1 alternative electric supplier may subsequently provide notice to
2 the electric utility of the customer's desire to receive standard
3 tariff service from the electric utility. The procedures in place
4 for each electric utility as of January 1, 2008 that set forth the
5 terms ~~pursuant to~~ **UNDER** which a customer receiving service from an
6 alternative electric supplier may return to full service from the
7 electric utility are ratified, ~~and shall remain in effect~~, and may
8 be amended by the commission as needed. If an electric utility did
9 not have the procedures in place as of January 1, 2008, the
10 commission shall adopt those procedures.

11 (16) The commission shall authorize rates that will ensure
12 that an electric utility that offered retail open access service
13 from 2002 through ~~the effective date of the amendatory act that~~
14 ~~added this subsection~~ **OCTOBER 6, 2008** fully recovers its
15 restructuring costs and any associated accrued regulatory assets.
16 This includes, but is not limited to, implementation costs,
17 stranded costs, and costs authorized ~~pursuant to~~ **UNDER** section
18 10d(4) as it existed ~~prior to the effective date of the amendatory~~
19 ~~act that added this subsection~~, **BEFORE OCTOBER 6, 2008** that have
20 been authorized for recovery by the commission in orders issued
21 ~~prior to the effective date of the amendatory act that added this~~
22 ~~subsection~~. **BEFORE OCTOBER 6, 2008**. The commission shall approve
23 surcharges that will ensure full recovery of all such costs ~~within~~
24 ~~5 years of the effective date of the amendatory act that added this~~
25 ~~subsection~~. **BY OCTOBER 6, 2013**.

26 (17) **WITHIN 270 DAYS OF THE EFFECTIVE DATE OF THE AMENDATORY**
27 **ACT THAT ADDED THIS SUBSECTION, THE COMMISSION SHALL ISSUE ORDERS**

1 THAT ALLOW MUNICIPALLY OWNED ELECTRIC UTILITIES, ELECTRIC
2 UTILITIES, AND PRIVATE ENTITIES TO ESTABLISH MICROGRIDS WITHIN THIS
3 STATE. THE ORDER SHALL DO ALL OF THE FOLLOWING:

4 (A) ALLOW THE ESTABLISHMENT OF MICROGRIDS TO SUPPORT 1 OR MORE
5 CRITICAL FACILITIES.

6 (B) ENSURE THAT INTERCONNECTIONS ARE UNIFORM ACROSS ALL
7 ELECTRIC UTILITIES AND THAT THOSE INTERCONNECTIONS FOLLOW THE
8 STANDARDS PROMULGATED BY THE COMMISSION, WHICH SHALL ALLOW FOR
9 MICROGRID OPERATIONS CONSISTENT WITH THIS ACT.

10 (C) ALLOW FOR THE OPERATION OF MICROGRIDS DURING AN EMERGENCY.

11 (D) ALLOW MICROGRIDS TO SERVE 1 OR MORE FACILITIES THAT ARE
12 NOT CRITICAL FACILITIES IF THOSE FACILITIES ARE ELECTRICALLY
13 CONTIGUOUS TO THE CRITICAL FACILITIES WHEN THE MICROGRID IS IN
14 ISLAND MODE.

15 (18) NOT LATER THAN JULY 1, 2016, THE COMMISSION SHALL ISSUE A
16 REPORT TO THE LEGISLATURE EVALUATING THE COSTS AND BENEFITS OF
17 USING MICROGRIDS TO PROVIDE ELECTRIC SERVICE TO CRITICAL
18 FACILITIES.

19 (19) BY DECEMBER 31, 2015, THE COMMISSION SHALL ISSUE A REPORT
20 TO THE GOVERNOR AND THE LEGISLATURE THAT ANALYZES THE RELIABILITY
21 OF THE ELECTRIC DISTRIBUTION SYSTEMS IN THIS STATE. THE REPORT
22 SHALL INCLUDE ALL OF THE FOLLOWING:

23 (A) THE BEST TECHNICAL, ECONOMIC, AND REGULATORY APPROACH TO
24 ENSURE RELIABLE ELECTRIC SERVICE WHEN THE ELECTRIC DISTRIBUTION
25 SYSTEMS IN THIS STATE ARE CONFRONTED WITH NATURAL DISASTERS AND
26 OTHER THREATS.

27 (B) THE STRUCTURAL, REGULATORY, LEGAL, OR OTHER BARRIERS IN

1 THIS STATE TO ADOPTING THOSE BEST PRACTICES IDENTIFIED IN
2 SUBDIVISION (A) .

3 (C) THE BENEFITS AND COSTS OF THOSE BEST PRACTICES IDENTIFIED
4 IN SUBDIVISION (A) .

5 (D) THE OPPORTUNITIES AND BARRIERS IN THIS STATE TO
6 IMPLEMENTING INNOVATIVE MULTITECHNOLOGY APPROACHES TO IMPROVE THE
7 RESILIENCE, EFFICIENCY, FUNCTIONALITY, AND PERFORMANCE OF THE
8 ELECTRIC DISTRIBUTION SYSTEMS IN THIS STATE.

9 (E) PERFORMANCE STANDARDS THAT COULD BE ADOPTED TO IMPROVE THE
10 RESILIENCE, EFFICIENCY, FUNCTIONALITY, AND PERFORMANCE OF THE
11 ELECTRIC DISTRIBUTION SYSTEMS IN THIS STATE.

12 (20) THE COMMISSION SHALL CONVENE AN ADVISORY PANEL TO ASSIST
13 IN PREPARING THE REPORT UNDER SUBSECTION (19). THE ADVISORY PANEL
14 SHALL CONSIST OF ALL OF THE FOLLOWING:

15 (A) ONE INDIVIDUAL REPRESENTING INVESTOR-OWNED ELECTRIC
16 UTILITIES.

17 (B) ONE INDIVIDUAL REPRESENTING LOCAL UNITS OF GOVERNMENT.

18 (C) ONE INDIVIDUAL REPRESENTING MUNICIPALLY OWNED ELECTRIC
19 UTILITIES.

20 (D) ONE INDIVIDUAL REPRESENTING COOPERATIVE ELECTRIC
21 UTILITIES.

22 (E) ONE INDIVIDUAL REPRESENTING A STATEWIDE ENVIRONMENTAL
23 ORGANIZATION.

24 (F) ONE INDIVIDUAL REPRESENTING ELECTRIC CONSUMERS.

25 (G) ONE INDIVIDUAL REPRESENTING THE ENERGY INDUSTRY.

26 (H) ONE INDIVIDUAL REPRESENTING A STATEWIDE LABOR
27 ORGANIZATION.

1 (21) AS USED IN THIS SECTION:

2 (A) "AFFILIATE" MEANS A PERSON OR ENTITY THAT DIRECTLY, OR
3 INDIRECTLY THROUGH 1 OR MORE INTERMEDIATES, CONTROLS, IS CONTROLLED
4 BY, OR IS UNDER COMMON CONTROL WITH ANOTHER SPECIFIED ENTITY. AS
5 USED IN THIS SUBDIVISION, "CONTROL" MEANS, WHETHER THROUGH AN
6 OWNERSHIP, BENEFICIAL, CONTRACTUAL, OR EQUITABLE INTEREST, THE
7 POSSESSION, DIRECTLY OR INDIRECTLY, OF THE POWER TO DIRECT OR TO
8 CAUSE THE DIRECTION OF THE MANAGEMENT OR POLICIES OF A PERSON OR
9 ENTITY OR THE OWNERSHIP OF AT LEAST 7% OF AN ENTITY EITHER DIRECTLY
10 OR INDIRECTLY.

11 (B) "AFFILIATE WHEELING" MEANS A PERSON'S USE OF DIRECT ACCESS
12 SERVICE WHERE AN ELECTRIC UTILITY DELIVERS ELECTRICITY GENERATED AT
13 A PERSON'S INDUSTRIAL SITE TO THAT PERSON OR THAT PERSON'S
14 AFFILIATE AT A LOCATION, OR GENERAL AGGREGATED LOCATIONS, WITHIN
15 THIS STATE THAT WAS EITHER 1 OF THE FOLLOWING:

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

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

27 (C) "APPLIANCE SERVICE PROGRAM" OR "PROGRAM" MEANS A

1 SUBSCRIPTION PROGRAM FOR THE REPAIR AND SERVICING OF HEATING AND
2 COOLING SYSTEMS OR OTHER APPLIANCES.

3 (D) "CRITICAL FACILITY" MEANS ANY HOSPITAL, POLICE STATION,
4 FIRE STATION, WATER TREATMENT PLANT, SEWAGE TREATMENT PLANT, PUBLIC
5 SHELTER, CORRECTIONAL FACILITY, OR ANY OTHER FACILITY THE
6 COMMISSION DESIGNATES AS CRITICAL.

7 (E) "EMERGENCY" MEANS WHENEVER THE MACROGRID IS INOPERABLE OR
8 WHENEVER THE POWER QUALITY IN THE MACROGRID IS OUT OF
9 SPECIFICATIONS.

10 (F) "ISLAND MODE" MEANS THAT A MICROGRID IS IN A STATUS IN
11 WHICH LOADS AND ENERGY RESOURCES WITHIN THE MICROGRID ARE ABLE TO
12 OPERATE BUT POWER IS NOT EXCHANGED WITH THE UTILITY-OWNED
13 TRANSMISSION OR DISTRIBUTION NETWORK.

14 (G) "MICROGRID" MEANS A GROUP OF INTERCONNECTED LOADS AND
15 DISTRIBUTED ENERGY RESOURCES THAT ACTS AS A SINGLE CONTROLLABLE
16 ENTITY WITH RESPECT TO THE MACROGRID AND THAT CONNECTS AND
17 DISCONNECTS FROM THE MACROGRID TO ENABLE IT TO OPERATE IN GRID-
18 CONNECTED OR ISLAND MODE.

19 (22) ~~(17)~~As used in subsections (1) and (15):

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

25 (b) "Standard tariff service" means, for each regulated
26 electric utility, the retail rates, terms, and conditions of
27 service approved by the commission for service to customers who do

- 1 not elect to receive generation service from alternative electric
- 2 suppliers.