

**SUBSTITUTE FOR
SENATE BILL NO. 437**

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 the title and sections 6a, 6j, 6k, 6l, 6m, 6s, 10, 10a, 10c, 10f, 10p, 10r, 10t, 10dd, and 11 (MCL 460.6a, 460.6j, 460.6k,

460.6l, 460.6m, 460.6s, 460.10, 460.10a, 460.10c, 460.10f, 460.10p, 460.10r, 460.10t, 460.10dd, and 460.11), the title as amended by 2005 PA 190, sections 6a, 10, 10a, 10p, and 10r as amended and sections 6s and 10dd as added by 2008 PA 286, section 6j as amended by 1987 PA 81, section 6k as added by 1982 PA 304, section 6l as amended and sections 10c, 10f, and 10t as added by 2000 PA 141, section 6m as amended by 2014 PA 170, and section 11 as amended by 2014 PA 169, and by adding sections 6t, 6u, 6v, 6w, 6x, 6y, 10ee, and 10ff; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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TITLE

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 POWERS AND DUTIES OF CERTAIN STATE GOVERNMENTAL OFFICERS AND ENTITIES;** 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~~

1 ~~provided in this state,~~ to encourage the utilization of resource
2 recovery facilities; to prohibit certain acts and practices of
3 providers of energy; to allow for the securitization of stranded
4 costs; to reduce rates; to provide for appeals; to provide
5 appropriations; to declare the effect and purpose of this act; to
6 prescribe remedies and penalties; and to repeal acts and parts of
7 acts.

8 Sec. 6a. (1) A gas ~~or~~ **UTILITY**, electric utility, **OR STEAM**
9 **UTILITY** shall not increase its rates and charges or alter, change,
10 or amend any rate or rate schedules, the effect of which will be to
11 increase the cost of services to its customers, without first
12 receiving commission approval as provided in this section. **A**
13 **UTILITY SHALL COORDINATE WITH THE COMMISSION STAFF IN ADVANCE OF**
14 **FILING ITS GENERAL RATE CASE APPLICATION UNDER THIS SECTION TO**
15 **AVOID RESOURCE CHALLENGES WITH APPLICATIONS BEING FILED AT THE SAME**
16 **TIME AS APPLICATIONS FILED UNDER THIS SECTION BY OTHER UTILITIES.**
17 **IN THE CASE OF ELECTRIC UTILITIES SERVING MORE THAN 1,000,000**
18 **CUSTOMERS IN THIS STATE, THE COMMISSION MAY, IF NECESSARY, ORDER A**
19 **DELAY IN FILING AN APPLICATION TO ESTABLISH A 21-DAY SPACING**
20 **BETWEEN FILINGS OF ELECTRIC UTILITIES SERVING MORE THAN 1,000,000**
21 **CUSTOMERS IN THIS STATE.** The utility shall place in evidence facts
22 relied upon to support the utility's petition or application to
23 increase its rates and charges, or to alter, change, or amend any
24 rate or rate schedules. The commission shall require notice to be
25 given to all interested parties within the service area to be
26 affected, and all interested parties shall have a reasonable
27 opportunity for a full and complete hearing. A utility may use

1 projected costs and revenues for a future consecutive 12-month
2 period in developing its requested rates and charges. The
3 commission shall notify the utility within 30 days ~~of~~ **AFTER** filing,
4 whether the utility's petition or application is complete. A
5 petition or application is considered complete if it complies with
6 the rate application filing forms and instructions adopted under
7 subsection (6). ~~(8). A petition or application pending before the~~
8 ~~commission prior to the adoption of filing forms and instructions~~
9 ~~pursuant to subsection (6) shall be evaluated based upon the filing~~
10 ~~requirements in effect at the time the petition or application was~~
11 ~~filed.~~ If the application is not complete, the commission shall
12 notify the utility of all information necessary to make that filing
13 complete. If the commission has not notified the utility within 30
14 days of whether the utility's petition or application is complete,
15 the application is considered complete. **CONCURRENTLY WITH FILING A**
16 **COMPLETE APPLICATION, OR AT ANY TIME AFTER FILING A COMPLETE**
17 **APPLICATION, A GAS UTILITY SERVING FEWER THAN 1,000,000 CUSTOMERS**
18 **IN THIS STATE MAY FILE A MOTION SEEKING PARTIAL AND IMMEDIATE RATE**
19 **RELIEF. AFTER PROVIDING NOTICE TO THE INTERESTED PARTIES WITHIN THE**
20 **SERVICE AREA TO BE AFFECTED AND AFFORDING INTERESTED PARTIES A**
21 **REASONABLE OPPORTUNITY TO PRESENT WRITTEN EVIDENCE AND WRITTEN**
22 **ARGUMENTS RELEVANT TO THE MOTION SEEKING PARTIAL AND IMMEDIATE RATE**
23 **RELIEF, THE COMMISSION SHALL MAKE A FINDING AND ENTER AN ORDER**
24 **GRANTING OR DENYING PARTIAL AND IMMEDIATE RELIEF WITHIN 180 DAYS**
25 **AFTER THE MOTION SEEKING PARTIAL AND IMMEDIATE RATE RELIEF WAS**
26 **SUBMITTED. THE COMMISSION HAS 12 MONTHS TO ISSUE A FINAL ORDER IN A**
27 **CASE IN WHICH A GAS UTILITY HAS FILED A MOTION SEEKING PARTIAL AND**

1 **IMMEDIATE RATE RELIEF.**

2 (2) If the commission has not issued an order within 180 days
3 of the filing of a complete application, the utility may implement
4 up to the amount of the proposed annual rate request through equal
5 percentage increases or decreases applied to all base rates. ~~For a~~
6 ~~petition or application pending before the commission prior to the~~
7 ~~effective date of the amendatory act that added this sentence, the~~
8 ~~180-day period commences on the effective date of the amendatory~~
9 ~~act that added this sentence.~~ If the utility uses projected costs
10 and revenues for a future period in developing its requested rates
11 and charges, the utility may not implement the equal percentage
12 increases or decreases ~~prior to~~ **BEFORE** the calendar date
13 corresponding to the start of the projected 12-month period. For
14 good cause, the commission may issue a temporary order preventing
15 or delaying a utility from implementing its proposed rates or
16 charges. If a utility implements increased rates or charges under
17 this subsection before the commission issues a final order, that
18 utility shall refund to customers, with interest, any portion of
19 the total revenues collected through application of the equal
20 percentage increase that exceed the total that would have been
21 produced by the rates or charges subsequently ordered by the
22 commission in its final order. The commission shall allocate any
23 refund required by this ~~section~~ **SUBSECTION** among primary customers
24 based upon their pro rata share of the total revenue collected
25 through the applicable increase, and among secondary and
26 residential customers in a manner to be determined by the
27 commission. The rate of interest for refunds shall equal 5% plus

1 the London interbank offered rate (LIBOR) for the appropriate time
2 period. For any portion of the refund ~~which,~~ **THAT**, exclusive of
3 interest, exceeds 25% of the annual revenue increase awarded by the
4 commission in its final order, the rate of interest shall be the
5 authorized rate of return on the common stock of the utility during
6 the appropriate period. Any refund or interest awarded under this
7 subsection shall not be included, in whole or in part, in any
8 application for a rate increase by a utility. ~~Nothing in this~~ **THIS**
9 **SUBSECTION ONLY APPLIES TO COMPLETED APPLICATIONS FILED WITH THE**
10 **COMMISSION BEFORE THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT**
11 **ADDED SECTION 6T.**

12 (3) ~~THIS~~ **DOES NOT IMPAIR** the commission's
13 ability to issue a show cause order as part of its rate-making
14 authority. An alteration or amendment in rates or rate schedules
15 applied for by a public utility that will not result in an increase
16 in the cost of service to its customers may be authorized and
17 approved without notice or hearing. There shall be no increase in
18 rates based upon changes in cost of fuel, ~~or~~ **OR**
19 **PURCHASED STEAM** unless notice has been given within the service
20 area to be affected, and there has been an opportunity for a full
21 and complete hearing on the cost of fuel, ~~or~~ **OR**
22 **PURCHASED STEAM**. The rates charged by any utility ~~pursuant to~~ **UNDER**
23 an automatic fuel, ~~or~~ **OR PURCHASED STEAM** adjustment
24 clause shall not be altered, changed, or amended unless notice has
25 been given within the service area to be affected, and there has
26 been an opportunity for a full and complete hearing on the cost of
27 the fuel, ~~or~~ **OR PURCHASED STEAM**.

1 (4) ~~(2)~~—The commission shall adopt rules and procedures for
2 the filing, investigation, and hearing of petitions or applications
3 to increase or decrease utility rates and charges as the commission
4 finds necessary or appropriate to enable it to reach a final
5 decision with respect to petitions or applications within a period
6 of ~~12–10~~ months ~~from~~ **AFTER** the filing of the complete petitions or
7 applications. The commission shall not authorize or approve
8 adjustment clauses that operate without notice and an opportunity
9 for a full and complete hearing, and all such clauses ~~shall be~~ **ARE**
10 abolished. The commission may hold a full and complete hearing to
11 determine the cost of fuel, purchased gas, **PURCHASED STEAM**, or
12 purchased power separately from a full and complete hearing on a
13 general rate case and may ~~be held~~ **HOLD THAT HEARING** concurrently
14 with the general rate case. The commission shall authorize a
15 utility to recover the cost of fuel, purchased gas, **PURCHASED**
16 **STEAM**, or purchased power only to the extent that the purchases are
17 reasonable and prudent. ~~As used in this section:~~

18 ~~—— (a) "Full and complete hearing" means a hearing that provides~~
19 ~~interested parties a reasonable opportunity to present and cross-~~
20 ~~examine evidence and present arguments relevant to the specific~~
21 ~~element or elements of the request that are the subject of the~~
22 ~~hearing.~~

23 ~~—— (b) "General rate case" means a proceeding initiated by a~~
24 ~~utility in an application filed with the commission that alleges a~~
25 ~~revenue deficiency and requests an increase in the schedule of~~
26 ~~rates or charges based on the utility's total cost of providing~~
27 ~~service.~~

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1 (5) ~~(3)~~—Except as otherwise provided in this subsection **AND**
 2 **SUBSECTION (1)**, if the commission fails to reach a final decision
 3 with respect to a completed petition or application to increase or
 4 decrease utility rates within the ~~12-month~~**10-MONTH** period
 5 following the filing of the completed petition or application, the
 6 petition or application is considered approved. If a utility makes
 7 any significant amendment to its filing, the commission has an
 8 additional ~~12-10~~ months ~~from~~**AFTER** the date of the amendment to
 9 reach a final decision on the petition or application. If the
 10 utility files for an extension of time, the commission shall extend
 11 the ~~12-month~~**10-MONTH** period by the amount of additional time
 12 requested by the utility.

13 (6) ~~(4)~~—A utility shall not file a general rate case
 14 application for an increase in rates earlier than 12 months after
 15 the date of the filing of a complete prior general rate case
 16 application. A utility may not file a new general rate case
 17 application until the commission has issued a final order on a
 18 prior general rate case or until the rates are approved under
 19 subsection ~~(3)~~**(5)**.

20 (7) ~~(5)~~—The commission shall, if requested by a gas utility,
 21 establish load retention transportation rate schedules or approve
 22 gas transportation contracts as required for the purpose of
 23 ~~<<retaining~~**SERVING**>> industrial or commercial customers whose individual
 24 annual transportation volumes exceed 500,000 decatherms on the gas
 25 utility's system. The commission shall approve these rate schedules
 26 or approve transportation contracts entered into by the utility in
 27 good faith if the industrial or commercial customer has the

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1 installed capability to use an alternative fuel or otherwise has a
 2 viable alternative to receiving natural gas transportation service
 3 from the utility, the customer can obtain the alternative fuel or
 4 gas transportation from an alternative source at a price ~~which~~**THAT**
 5 would cause them ~~<<to cease using~~**NOT TO USE>>** the gas utility's system,
 and the
 6 customer, as a result of their use of the system and receipt of
 7 transportation service, makes a significant contribution to the
 8 utility's fixed costs. The commission shall adopt accounting and
 9 rate-making policies to ensure that the discounts associated with
 10 the transportation rate schedules and contracts are recovered by
 11 the gas utility through charges applicable to other customers if
 12 the incremental costs related to the discounts are no greater than
 13 the costs that would be passed on to those customers as the result
 14 of a loss of the industrial or commercial customer's contribution
 15 to a utility's fixed costs.

16 (8) ~~(6) Within 90 days of the effective date of the amendatory~~
~~act that added this subsection, the~~**THE** commission shall adopt
 17 standard rate application filing forms and instructions for use in
 18 all general rate cases filed by utilities whose rates are regulated
 19 by the commission. For cooperative electric utilities whose rates
 20 are regulated by the commission, in addition to rate applications
 21 filed under this section, the commission shall continue to allow
 22 for rate filings based on the cooperative's times interest earned
 23 ratio. The commission may ~~, in its discretion,~~ modify the standard
 24 rate application forms and instructions adopted under this
 25 subsection.
 26

27 (9) ~~(7)~~—If, on or before January 1, 2008, a merchant plant

1 entered into a contract with an initial term of 20 years or more to
2 sell electricity to an electric utility whose rates are regulated
3 by the commission with 1,000,000 or more retail customers in this
4 state and if, ~~prior to~~ **BEFORE** January 1, 2008, the merchant plant
5 generated electricity under that contract, in whole or in part,
6 from wood or solid wood wastes, then the merchant plant shall, upon
7 petition by the merchant plant, and subject to the limitation set
8 forth in subsection ~~(8)~~, **(10)**, recover the amount, if any, by which
9 the merchant plant's reasonably and prudently incurred actual fuel
10 and variable operation and maintenance costs exceed the amount that
11 the merchant plant is paid under the contract for those costs. This
12 subsection does not apply to landfill gas plants, hydro plants,
13 municipal solid waste plants, or to merchant plants engaged in
14 litigation against an electric utility seeking higher payments for
15 power delivered pursuant to contract.

16 **(10)** ~~(8)~~—The total aggregate additional amounts recoverable by
17 merchant plants ~~pursuant to~~ **UNDER** subsection ~~(7)~~ **(9)** in excess of
18 the amounts paid under the contracts shall not exceed \$1,000,000.00
19 per month for each affected electric utility. The \$1,000,000.00 per
20 month limit specified in this subsection shall be reviewed by the
21 commission upon petition of the merchant plant filed no more than
22 once per year and may be adjusted if the commission finds that the
23 eligible merchant plants reasonably and prudently incurred actual
24 fuel and variable operation and maintenance costs exceed the amount
25 that those merchant plants are paid under the contract by more than
26 \$1,000,000.00 per month. The annual amount of the adjustments shall
27 not exceed a rate equal to the United States consumer price index.

1 ~~An~~ **THE COMMISSION SHALL NOT MAKE AN** adjustment shall not be made by
2 ~~the commission~~ unless each affected merchant plant files a petition
3 with the commission. ~~As used in this subsection, "United States~~
4 ~~consumer price index" means the United States consumer price index~~
5 ~~for all urban consumers as defined and reported by the United~~
6 ~~States department of labor, bureau of labor statistics.~~ If the
7 total aggregate amount by which the eligible merchant plants
8 reasonably and prudently incurred actual fuel and variable
9 operation and maintenance costs determined by the commission exceed
10 the amount that the merchant plants are paid under the contract by
11 more than \$1,000,000.00 per month, the commission shall allocate
12 the additional \$1,000,000.00 per month payment among the eligible
13 merchant plants based upon the relationship of excess costs among
14 the eligible merchant plants. The \$1,000,000.00 limit specified in
15 this subsection, as adjusted, shall ~~DOES~~ not apply with respect to
16 actual fuel and variable operation and maintenance costs that are
17 incurred due to changes in federal or state environmental laws or
18 regulations that are implemented after ~~the effective date of the~~
19 ~~amendatory act that added this subsection.~~ **OCTOBER 6, 2008.** The
20 \$1,000,000.00 per month payment limit under this subsection shall
21 **DOES** not apply to merchant plants eligible under subsection ~~(7)~~ **(9)**
22 whose electricity is purchased by a utility that is using wood or
23 wood waste or fuels derived from those materials for fuel in their
24 power plants. **AS USED IN THIS SUBSECTION, "UNITED STATES CONSUMER**
25 **PRICE INDEX" MEANS THE UNITED STATES CONSUMER PRICE INDEX FOR ALL**
26 **URBAN CONSUMERS AS DEFINED AND REPORTED BY THE UNITED STATES**
27 **DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS.**

1 (11) ~~(9)~~—The commission shall issue orders to permit the
2 recovery authorized under subsections ~~(7)~~—(9) and ~~(8)~~—(10) upon
3 petition of the merchant plant. The merchant plant shall not be
4 required to alter or amend the existing contract with the electric
5 utility in order to obtain the recovery under subsections ~~(7)~~—(9)
6 and ~~(8)~~—(10). The commission shall permit or require the electric
7 utility whose rates are regulated by the commission to recover from
8 its ratepayers all fuel and variable operation and maintenance
9 costs that the electric utility is required to pay to the merchant
10 plant as reasonably and prudently incurred costs.

11 (12) SUBJECT TO SUBSECTIONS (14) AND (15), IF REQUESTED BY A
12 NATURAL GAS OR ELECTRIC UTILITY, THE COMMISSION SHALL APPROVE AN
13 APPROPRIATE REVENUE DECOUPLING MECHANISM THAT ADJUSTS FOR DECREASES
14 IN ACTUAL SALES COMPARED TO THE PROJECTED LEVELS USED IN THAT
15 UTILITY'S MOST RECENT RATE CASE THAT ARE THE RESULT OF IMPLEMENTED
16 ENERGY WASTE REDUCTION, CONSERVATION, DEMAND-SIDE PROGRAMS, AND
17 OTHER WASTE REDUCTION MEASURES, IF THE UTILITY FIRST DEMONSTRATES
18 THE FOLLOWING TO THE COMMISSION:

19 (A) THAT THE PROJECTED SALES FORECAST IN THE UTILITY'S MOST
20 RECENT RATE CASE IS REASONABLE.

21 (B) FOR AN ELECTRIC UTILITY SERVING MORE THAN 200,000
22 CUSTOMERS IN THIS STATE, THAT IT HAS ACHIEVED ANNUAL INCREMENTAL
23 ENERGY SAVINGS AT LEAST EQUAL TO 1% OF ITS TOTAL ANNUAL RETAIL
24 ELECTRICITY SALES IN THE PREVIOUS YEAR.

25 (C) IN THE CASE OF AN ELECTRIC UTILITY SERVING NO MORE THAN
26 200,000 CUSTOMERS IN THIS STATE, THAT IT HAS ACHIEVED ANNUAL
27 INCREMENTAL ENERGY SAVINGS AT LEAST EQUAL TO THE LESSER OF THE

1 FOLLOWING:

2 (i) ONE PERCENT OF ITS TOTAL ANNUAL RETAIL ELECTRICITY SALES
3 IN THE PREVIOUS YEAR.

4 (ii) THE AMOUNT OF ANY INCREMENTAL SAVINGS YIELDED BY ENERGY
5 WASTE REDUCTION, CONSERVATION, DEMAND-SIDE PROGRAMS, AND OTHER
6 WASTE REDUCTION MEASURES APPROVED BY THE COMMISSION IN THAT
7 UTILITY'S MOST RECENT INTEGRATED RESOURCE PLAN.

8 (D) FOR A NATURAL GAS UTILITY, THAT IT HAS ACHIEVED
9 INCREMENTAL ENERGY SAVINGS AT LEAST EQUAL TO 0.75% OF ITS TOTAL
10 ANNUAL NATURAL GAS SALES IN THE PREVIOUS YEAR OR ANY ALTERNATIVE
11 MINIMUM GAS ENERGY SAVINGS TARGET ESTABLISHED BY THE COMMISSION
12 UNDER SUBPART C OF PART 2 OF THE CLEAN AND RENEWABLE ENERGY AND
13 ENERGY WASTE REDUCTION ACT, 2008 PA 295, MCL 460.1071 TO 460.1099.

14 (13) SUBJECT TO SUBSECTIONS (14) AND (15), IF REQUESTED BY A
15 NATURAL GAS OR ELECTRIC UTILITY, THE COMMISSION MAY APPROVE A
16 REVENUE DECOUPLING MECHANISM THAT ADJUSTS FOR INCREASES OR
17 DECREASES IN ACTUAL SALES COMPARED TO THE PROJECTED LEVELS USED IN
18 THAT UTILITY'S MOST RECENT RATE CASE FOR REASONS OTHER THAN THOSE
19 IN SUBSECTION (12), IF THE UTILITY FIRST DEMONSTRATES THE FOLLOWING
20 TO THE COMMISSION:

21 (A) THAT THE PROJECTED SALES FORECAST IN THE UTILITY'S MOST
22 RECENT RATE CASE IS REASONABLE.

23 (B) FOR AN ELECTRIC UTILITY SERVING MORE THAN 200,000
24 CUSTOMERS IN THIS STATE, THAT IT HAS ACHIEVED ANNUAL INCREMENTAL
25 ENERGY SAVINGS AT LEAST EQUAL TO 1% OF ITS TOTAL ANNUAL RETAIL
26 ELECTRICITY SALES IN THE PREVIOUS YEAR.

27 (C) IN THE CASE OF AN ELECTRIC UTILITY SERVING NO MORE THAN

1 200,000 CUSTOMERS IN THIS STATE, THAT IT HAS ACHIEVED ANNUAL
2 INCREMENTAL ENERGY SAVINGS AT LEAST EQUAL TO THE LESSER OF THE
3 FOLLOWING:

4 (i) ONE PERCENT OF ITS TOTAL ANNUAL RETAIL ELECTRICITY SALES
5 IN THE PREVIOUS YEAR.

6 (ii) THE AMOUNT OF ANY INCREMENTAL SAVINGS YIELDED BY ENERGY
7 WASTE REDUCTION, CONSERVATION, DEMAND-SIDE PROGRAMS, AND OTHER
8 WASTE REDUCTION MEASURES APPROVED BY THE COMMISSION IN THAT
9 UTILITY'S MOST RECENT INTEGRATED RESOURCE PLAN.

10 (D) FOR A NATURAL GAS UTILITY, THAT IT HAS ACHIEVED
11 INCREMENTAL ENERGY SAVINGS AT LEAST EQUAL TO 0.75% OF ITS TOTAL
12 ANNUAL RETAIL NATURAL GAS SALES IN THE PREVIOUS YEAR OR ANY
13 ALTERNATIVE MINIMUM GAS ENERGY SAVINGS TARGET ESTABLISHED BY THE
14 COMMISSION UNDER SUBPART C OF PART 2 OF THE CLEAN AND RENEWABLE
15 ENERGY AND ENERGY WASTE REDUCTION ACT, 2008 PA 295, MCL 460.1071 TO
16 460.1099.

17 (14) A NATURAL GAS UTILITY THAT IMPLEMENTS REVENUE DECOUPLING
18 UNDER SUBPART C OF PART 2 OF THE CLEAN AND RENEWABLE ENERGY AND
19 ENERGY WASTE REDUCTION ACT, 2008 PA 295, MCL 460.1071 TO 460.1099,
20 SHALL NOT ALSO IMPLEMENT A REVENUE DECOUPLING MECHANISM UNDER THIS
21 SECTION.

22 (15) THE COMMISSION SHALL CONSIDER THE AGGREGATE REVENUES
23 ATTRIBUTABLE TO REVENUE DECOUPLING MECHANISMS AND SHARED SAVINGS
24 MECHANISMS THE COMMISSION HAS APPROVED FOR AN ELECTRIC OR NATURAL
25 GAS UTILITY RELATIVE TO ENERGY WASTE REDUCTION, CONSERVATION,
26 DEMAND-SIDE PROGRAMS, PEAK LOAD REDUCTION, AND OTHER WASTE
27 REDUCTION MEASURES. THE COMMISSION MAY APPROVE AN ALTERNATIVE

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1 METHODOLOGY FOR A REVENUE DECOUPLING MECHANISM AUTHORIZED UNDER
2 SUBSECTION (12) OR (13) OR A SHARED SAVINGS MECHANISM AUTHORIZED
3 UNDER SECTION 6X IF THE COMMISSION DETERMINES THAT THE RESULTING
4 AGGREGATE REVENUES FROM THOSE MECHANISMS WOULD NOT RESULT IN A
5 REASONABLE AND COST-EFFECTIVE METHOD TO ENSURE THAT INVESTMENTS IN
6 ENERGY WASTE REDUCTION, DEMAND-SIDE PROGRAMS, PEAK LOAD REDUCTION,
7 AND OTHER WASTE REDUCTION MEASURES ARE NOT DISFAVORED WHEN COMPARED
8 TO UTILITY SUPPLY-SIDE INVESTMENTS. THE COMMISSION'S CONSIDERATION
9 OF AN ALTERNATIVE METHODOLOGY UNDER THIS SUBSECTION SHALL BE
10 CONDUCTED AS A CONTESTED CASE PURSUANT TO CHAPTER 4 OF THE
11 ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.271 TO
12 24.287.

13 (16) IN DETERMINING AN ELECTRIC UTILITY'S RATES UNDER THIS
14 SECTION, THE COMMISSION SHALL <<BY DECEMBER 1, 2017,>> ESTABLISH A
15 NONDISCRIMINATORY, FAIR,
16 AND EQUITABLE GRID CHARGE TO APPLY TO CUSTOMERS WHO PARTICIPATE IN
17 A NET METERING OR DISTRIBUTED GENERATION PROGRAM UNDER THE CLEAN
18 AND RENEWABLE ENERGY AND ENERGY WASTE REDUCTION ACT, 2008 PA 295,
19 MCL 460.1001 TO 460.1211, AFTER THE EFFECTIVE DATE OF THE
20 AMENDATORY ACT THAT ADDED SECTION 6T. THE GRID CHARGE SHALL ENSURE
21 RECOVERY OF THE CUSTOMERS' ALLOCATED COST-BASED SHARE OF ALL COSTS
22 ASSOCIATED WITH THE ELECTRIC UTILITY'S DISTRIBUTION SYSTEM,
23 TRANSMISSION COSTS, AND FIXED GENERATION CAPACITY COSTS. IN
24 DETERMINING THE GRID CHARGE, THE COMMISSION SHALL ALSO CONSIDER THE
25 COSTS TO UTILITY REVENUE REQUIREMENTS, NET OF ANY BENEFITS OF
26 INCORPORATING ADDITIONAL DISTRIBUTED GENERATION RESOURCES ONTO THE
27 GRID, INCLUDING REDUCED DISTRIBUTION SYSTEM CAPACITY AND REDUCED
28 GENERATION CAPACITY COSTS THAT ARE ATTRIBUTED TO THE GENERATING

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1 TECHNOLOGY USED BY THE CUSTOMER. THE GRID CHARGE ESTABLISHED UNDER
2 THIS SUBSECTION SHALL NOT BE REDUCED BY CREDITS PROVIDED TO
3 CUSTOMERS PURSUANT TO A NET METERING OR DISTRIBUTED GENERATION
4 PROGRAM UNDER THE CLEAN AND RENEWABLE ENERGY AND ENERGY WASTE
5 REDUCTION ACT, 2008 PA 295, MCL 460.1001 TO 460.1211. THE GRID
6 CHARGE ESTABLISHED UNDER THIS SUBSECTION DOES NOT APPLY TO
7 CUSTOMERS PARTICIPATING IN A NET METERING PROGRAM UNDER THE CLEAN
8 AND RENEWABLE ENERGY AND ENERGY WASTE REDUCTION ACT, 2008 PA 295,
9 MCL 460.1001 TO 460.1211, <<BEFORE THE DATE THAT THE COMMISSION
10 ESTABLISHES A GRID CHARGE UNDER THIS SUBSECTION >>, WHO CONTINUE TO
PARTICIPATE IN THE
11 PROGRAM AT THEIR CURRENT SITE OR FACILITY.

12 (17) EXCEPT AS OTHERWISE PROVIDED IN THIS ACT, "UTILITY" AND
13 "ELECTRIC UTILITY" DO NOT INCLUDE A MUNICIPALLY OWNED ELECTRIC
14 UTILITY.

15 (18) AS USED IN THIS SECTION:

16 (A) "FULL AND COMPLETE HEARING" MEANS A HEARING THAT PROVIDES
17 INTERESTED PARTIES A REASONABLE OPPORTUNITY TO PRESENT AND CROSS-
18 EXAMINE EVIDENCE AND PRESENT ARGUMENTS RELEVANT TO THE SPECIFIC
19 ELEMENT OR ELEMENTS OF THE REQUEST THAT ARE THE SUBJECT OF THE
20 HEARING.

21 (B) "GENERAL RATE CASE" MEANS A PROCEEDING INITIATED BY A
22 UTILITY IN AN APPLICATION FILED WITH THE COMMISSION THAT ALLEGES A
23 REVENUE DEFICIENCY AND REQUESTS AN INCREASE IN THE SCHEDULE OF
24 RATES OR CHARGES BASED ON THE UTILITY'S TOTAL COST OF PROVIDING
25 SERVICE.

26 (C) "STEAM UTILITY" MEANS A STEAM DISTRIBUTION COMPANY
27 REGULATED BY THE COMMISSION.

1 Sec. 6j. (1) As used in this act:

2 **(A) "FIRM GAS TRANSPORTATION" MEANS A BINDING AGREEMENT**
3 **ENTERED INTO BETWEEN THE ELECTRIC UTILITY AND A NATURAL GAS**
4 **TRANSMISSION PROVIDER FOR A SET PERIOD OF TIME TO PROVIDE**
5 **GUARANTEED DELIVERY OF NATURAL GAS TO AN ELECTRIC GENERATION**
6 **FACILITY.**

7 **(B)** ~~(a)~~—"Power supply cost recovery clause" means a clause in
8 the electric rates or rate schedule of ~~a~~**AN ELECTRIC** utility ~~which~~
9 **THAT** permits the monthly adjustment of rates for power supply to
10 allow the utility to recover the booked costs, including
11 transportation costs, reclamation costs, and disposal and
12 reprocessing costs, of fuel burned by the utility for electric
13 generation and the booked costs of purchased and net interchanged
14 power transactions by the utility incurred under reasonable and
15 prudent policies and practices.

16 **(C)** ~~(b)~~—"Power supply cost recovery factor" means that element
17 of the rates to be charged for electric service to reflect power
18 supply costs incurred by an electric utility and made pursuant to a
19 power supply cost recovery clause incorporated in the rates or rate
20 schedule of an electric utility.

21 ~~(2) Pursuant to its authority under this act, the~~**THE** public
22 service commission may incorporate a power supply cost recovery
23 clause in the electric rates or rate schedule of ~~a~~**AN ELECTRIC**
24 utility. ~~, but is not required to do so.~~ Any order incorporating a
25 power supply cost recovery clause shall be as a result of a hearing
26 solely on the question of the inclusion of the clause in the rates
27 or rate schedule. ~~, which~~**A hearing UNDER THIS SUBSECTION** shall be

1 conducted as a contested case pursuant to chapter 4 of the
2 administrative procedures act of 1969, ~~Act No. 306 of the Public~~
3 ~~Acts of 1969, being sections 24.271 to 24.287 of the Michigan~~
4 ~~Compiled Laws, 1969 PA 306, MCL 24.271 TO 24.287~~, or, pursuant to
5 subsection (18), as a result of a general rate case. Any order
6 incorporating a power supply cost recovery clause shall replace and
7 rescind any previous fuel cost adjustment clause or purchased and
8 net interchanged power adjustment clause incorporated in the
9 electric rates of the utility upon the effective date of the first
10 power supply cost recovery factor authorized for the utility under
11 its power supply cost recovery clause.

12 (3) In order to implement the power supply cost recovery
13 clause established pursuant to ~~UNDER~~ subsection (2), ~~a~~ **AN ELECTRIC**
14 utility annually shall file, pursuant to procedures established by
15 the commission, if any, a complete power supply cost recovery plan
16 describing the expected sources of electric power supply and
17 changes in the cost of power supply anticipated over a future 12-
18 month period specified by the commission and requesting for each of
19 those 12 months a specific power supply cost recovery factor. The
20 plan shall be filed not ~~less~~ **LATER** than 3 months before the
21 beginning of the 12-month period covered by the plan. The plan
22 shall describe all major contracts and power supply arrangements
23 entered into by the utility for providing power supply during the
24 specified 12-month period. The description of the major contracts
25 and arrangements shall include the price of fuel, the duration of
26 the contract or arrangement, and an explanation or description of
27 any other term or provision as required by the commission. **FOR GAS**

1 FUEL SUPPLY CONTRACTS OR ARRANGEMENTS, THE DESCRIPTION SHALL
2 INCLUDE WHETHER THE SUPPLY CONTRACTS OR ARRANGEMENTS INCLUDE FIRM
3 GAS TRANSPORTATION AND, IF NOT, AN EXPLANATION OF HOW THE UTILITY
4 PROPOSES TO ENSURE RELIABLE AND REASONABLY PRICED GAS FUEL SUPPLY
5 TO ITS GENERATION FACILITIES DURING THE SPECIFIED 12-MONTH PERIOD.

6 The plan shall also include the utility's evaluation of the
7 reasonableness and prudence of its decisions to provide power
8 supply in the manner described in the plan, in light of its
9 existing sources of electrical generation, and an explanation of
10 the actions taken by the utility to minimize the cost of fuel to
11 the utility.

12 (4) In order to implement the power supply cost recovery
13 clause established pursuant to subsection (2), a utility shall
14 file, contemporaneously with the power supply cost recovery plan
15 required by subsection (3), a 5-year forecast of the power supply
16 requirements of its customers, its anticipated sources of supply,
17 and projections of power supply costs, in light of its existing
18 sources of electrical generation and sources of electrical
19 generation under construction. The forecast shall include a
20 description of all relevant major contracts and power supply
21 arrangements entered into or contemplated by the utility, and such
22 other information as the commission may require. **THIS SUBSECTION**
23 **DOES NOT APPLY AFTER DECEMBER 31, 2018.**

24 (5) If a ~~AN ELECTRIC~~ utility files a power supply cost
25 recovery plan **UNDER SUBSECTION (3)** and, **UNTIL DECEMBER 31, 2018**, a
26 5-year forecast ~~as provided in subsections (3) and~~ **UNDER SUBSECTION**
27 (4), the commission shall conduct a proceeding, to be known as a

1 power supply and cost review, for the purpose of evaluating the
2 reasonableness and prudence of the power supply cost recovery plan
3 filed by a utility ~~pursuant to~~ **UNDER** subsection (3), and
4 establishing the power supply cost recovery factors to implement a
5 power supply cost recovery clause incorporated in the electric
6 rates or rate schedule of the utility. The power supply and cost
7 review shall be conducted as a contested case pursuant to chapter 4
8 of the administrative procedures act of 1969, ~~Act No. 306 of the~~
9 ~~Public Acts of 1969.~~ **1969 PA 306, MCL 24.271 TO 24.287.**

10 (6) In its final order in a power supply and cost review, the
11 commission shall evaluate the reasonableness and prudence of the
12 decisions underlying the power supply cost recovery plan filed by
13 ~~the~~ **AN ELECTRIC** utility ~~pursuant to~~ **UNDER** subsection (3), and shall
14 approve, disapprove, or amend the power supply cost recovery plan
15 accordingly. In evaluating the decisions underlying the power
16 supply cost recovery plan, the commission shall consider the cost
17 and availability of the electrical generation available to the
18 utility; the cost of short-term firm purchases available to the
19 utility; the availability of interruptible service; the ability of
20 the utility to reduce or to eliminate any firm sales to out-of-
21 state customers if the utility is not a multi-state utility whose
22 firm sales are subject to other regulatory authority; whether the
23 utility has taken all appropriate actions to minimize the cost of
24 fuel; and other relevant factors. The commission shall approve,
25 reject, or amend the 12 monthly power supply cost recovery factors
26 requested by the utility in its power supply cost recovery plan.
27 The factors shall not reflect items the commission could reasonably

1 anticipate would be disallowed under subsection (13). The factors
2 ordered shall be described in fixed dollar amounts per unit of
3 electricity, but may include specific amounts contingent on future
4 events.

5 (7) In its final order in a power supply and cost review, the
6 commission shall evaluate the decisions underlying the 5-year
7 forecast filed by a utility ~~pursuant to~~ **UNDER** subsection (4). The
8 commission may also indicate any cost items in the 5-year forecast
9 that, on the basis of present evidence, the commission would be
10 unlikely to permit the utility to recover from its customers in
11 rates, rate schedules, or power supply cost recovery factors
12 established in the future. **THIS SUBSECTION DOES NOT APPLY AFTER**
13 **DECEMBER 31, 2018.**

14 (8) The commission, on its own motion or the motion of any
15 party, may make a finding and enter a temporary order granting
16 approval or partial approval of a power supply cost recovery plan
17 in a power supply and cost recovery review, after first ~~having~~
18 ~~given~~ **GIVING** notice to the parties to the review, and after ~~having~~
19 ~~afforded to~~ **GIVING** the parties to the review a reasonable
20 opportunity for a full and complete hearing. A temporary order made
21 ~~pursuant to~~ **UNDER** this subsection ~~shall be~~ **IS** considered a final
22 order for purposes of judicial review.

23 (9) If the commission has made a final or temporary order in a
24 power supply and cost review, ~~the~~ **AN ELECTRIC** utility may each
25 month incorporate in its rates for the period covered by the order
26 any amounts up to the power supply cost recovery factors permitted
27 in that order. If the commission has not made a final or temporary

1 order within 3 months ~~of~~ **AFTER** the submission of a complete power
2 supply cost recovery plan, or by the beginning of the period
3 covered in the plan, whichever comes later, or if a temporary order
4 has expired without being extended or replaced, then pending an
5 order ~~which~~ **THAT** determines the power supply cost recovery factors,
6 a utility may each month adjust its rates to incorporate all or a
7 part of the power supply cost recovery factors requested in its
8 plan. Any amounts collected under the power supply cost recovery
9 factors before the commission makes its final order ~~shall be~~ **IS**
10 subject to prompt refund with interest to the extent that the total
11 amounts collected exceed the total amounts determined in the
12 commission's final order to be reasonable and prudent for the same
13 period of time.

14 (10) Not ~~less~~ **LATER** than 3 months before the beginning of the
15 third quarter of the 12-month period ~~, the~~ **DESCRIBED IN SUBSECTION**
16 **(3), AN ELECTRIC** utility may file a revised power supply cost
17 recovery plan ~~which shall cover~~ **THAT COVERS** the remainder of the
18 12-month period. Upon receipt of the revised power supply cost
19 recovery plan, the commission shall reopen the power supply and
20 cost review. In addition, the commission may reopen the power
21 supply and cost review on its own motion or on the showing of good
22 cause by any party if at least 6 months have elapsed since the
23 utility submitted its complete filing and if there are at least 60
24 days remaining in the 12-month period under consideration. A
25 reopened power supply and cost review shall be conducted as a
26 contested case pursuant to chapter 4 of the administrative
27 procedures act of 1969, ~~Act No. 306 of the Public Acts of 1969,~~

1 1969 PA 306, MCL 24.271 TO 24.287, and in accordance with
2 subsections (3), (6), (8), and (9).

3 (11) Not ~~more~~**LATER** than 45 days ~~following~~**AFTER** the last day
4 of each billing month in which a power supply cost recovery factor
5 has been applied to customers' bills, ~~the~~**AN ELECTRIC** utility shall
6 file with the commission a detailed statement for that month of the
7 revenues recorded pursuant to the power supply cost recovery factor
8 and the allowance for cost of power supply included in the base
9 rates established in the latest commission order for the utility,
10 and the cost of power supply. The detailed statement shall be in
11 the manner and form prescribed by the commission. The commission
12 shall establish procedures for insuring that the detailed statement
13 is promptly verified and corrected if necessary.

14 (12) Not less than once a year, and not later than 3 months
15 after the end of the 12-month period covered by ~~a~~**AN ELECTRIC**
16 utility's power supply cost recovery plan, the commission shall
17 commence a proceeding, to be known as a power supply cost
18 reconciliation, as a contested case pursuant to chapter 4 of the
19 administrative procedures act of 1969, ~~Act No. 306 of the Public~~
20 ~~Acts of 1969. Reasonable~~**1969 PA 306, MCL 24.271 TO 24.287. THE**
21 **COMMISSION SHALL PERMIT REASONABLE** discovery ~~shall be permitted~~
22 before and during the reconciliation proceeding in order to assist
23 parties and interested persons in obtaining evidence concerning
24 reconciliation issues including, but not limited to, the
25 reasonableness and prudence of expenditures and the amounts
26 collected pursuant to the clause. At the power supply cost
27 reconciliation the commission shall reconcile the revenues recorded

1 pursuant to the power supply cost recovery factors and the
2 allowance for cost of power supply included in the base rates
3 established in the latest commission order for the utility with the
4 amounts actually expensed and included in the cost of power supply
5 by the utility. The commission shall consider any issue regarding
6 the reasonableness and prudence of expenses for which customers
7 were charged if the issue was not considered adequately at a
8 previously conducted power supply and cost review.

9 (13) In its order in a power supply cost reconciliation, the
10 commission shall **DO ALL OF THE FOLLOWING:**

11 (a) Disallow cost increases resulting from changes in
12 accounting or rate-making expense treatment not previously approved
13 by the commission. The commission may order the utility to pay a
14 penalty **OF** not ~~to exceed~~ **MORE THAN** 25% of the amount improperly
15 collected. Costs incurred by the utility for penalty payments shall
16 not be charged to customers.

17 ~~(b) Disallow any capacity charges associated with power~~
18 ~~purchased for periods in excess of 6 months unless the utility has~~
19 ~~obtained the prior approval of the commission. If~~ **NOT DISALLOW THE**
20 **CAPACITY CHARGES FOR ANY FACILITIES FOR WHICH THE ELECTRIC UTILITY**
21 **WOULD OTHERWISE HAVE A PURCHASE OBLIGATION IF** the commission has
22 approved capacity charges in a contract with a qualifying facility,
23 as **THAT TERM IS** defined by the ~~federal energy regulatory commission~~
24 **FEDERAL ENERGY REGULATORY COMMISSION** pursuant to the public
25 utilities regulatory policies act of 1978, Public Law 95-617, 92
26 Stat. **STAT** 3117, ~~the commission shall not disallow the capacity~~
27 ~~charges for the facility in the power supply cost reconciliation~~

1 unless the commission has ordered revised capacity charges upon
2 reconsideration ~~pursuant to~~ **UNDER** this subsection. A contract ~~shall~~
3 ~~be~~ **IS** valid and binding in accordance with its terms, and capacity
4 charges paid pursuant to ~~such a~~ **THAT** contract ~~shall be~~ **ARE**
5 recoverable costs of the utility for rate-making purposes
6 notwithstanding that the order approving ~~such a~~ **THAT** contract is
7 later vacated, modified, or otherwise held to be invalid in whole
8 or in part if the order approving the contract has not been stayed
9 or suspended by a competent court within 30 days after the date of
10 the order, or ~~within 30 days of the effective date of the 1987~~
11 ~~amendatory act that added subsection (19)~~ **BY JULY 29, 1987** if the
12 order was issued after September 1, 1986, ~~and before the effective~~
13 ~~date of the 1987 amendatory act that added subsection (19)~~. **JUNE**
14 **29, 1987**. The scope and manner of the review of capacity charges
15 for a qualifying facility shall be determined by the commission.
16 Except as to approvals for qualifying facilities granted by the
17 commission ~~prior to~~ **BEFORE** June 1, 1987, proceedings before the
18 commission seeking ~~such~~ **THOSE** approvals shall be conducted as a
19 contested case pursuant to chapter 4 of the administrative
20 procedures act of 1969, ~~Act No. 306 of the Public Acts of 1969.~~
21 **1969 PA 306, MCL 24.271 TO 24.287**. The commission, upon its own
22 motion or upon application of any person, may reconsider its
23 approval of capacity charges **FOR A QUALIFYING FACILITY** in a
24 contested case hearing after passage of a period necessary for
25 financing the qualifying facility, ~~provided that~~ **IF BOTH OF THE**
26 **FOLLOWING APPLY:**

27 (i) The commission has first issued an order making a finding

1 based on evidence presented in a contested case that there has been
2 a substantial change in circumstances since the commission's
3 initial approval. ~~and~~

4 (ii) ~~Such a~~ **THE** commission finding ~~shall be~~ **IS** set forth in a
5 commission order subject to immediate judicial review.

6 The financing period for a qualifying facility during which
7 previously approved capacity charges ~~shall~~ **ARE** not ~~be~~ subject to
8 commission reconsideration shall be 17.5 years, beginning with the
9 date of commercial operation, for all qualifying facilities, except
10 that the minimum financing period before reconsideration of the
11 previously approved capacity charges shall be for the duration of
12 the financing for a qualifying facility ~~which~~ **THAT** produces
13 electric energy by the use of biomass, waste, wood, hydroelectric,
14 wind, and other renewable resources, or any combination of
15 renewable resources, as the primary energy source.

16 (c) Disallow net increased costs attributable to a generating
17 plant outage of more than 90 days in duration unless the utility
18 demonstrates by clear and satisfactory evidence that the outage, or
19 any part of the outage, was not caused or prolonged by the
20 utility's negligence or by unreasonable or imprudent management.

21 (d) Disallow transportation costs attributable to capital
22 investments to develop a utility's capability to transport fuel or
23 relocate fuel at the utility's facilities and disallow unloading
24 and handling expenses incurred after receipt of fuel by the
25 utility.

26 (e) Disallow the cost of fuel purchased from an affiliated
27 company to the extent that ~~such~~ **THE** fuel is more costly than fuel

1 of requisite quality available at or about the same time from other
2 suppliers with whom it would be comparably cost beneficial to deal.

3 (f) Disallow charges unreasonably or imprudently incurred for
4 fuel not taken.

5 (g) Disallow additional costs resulting from unreasonably or
6 imprudently renegotiated fuel contracts.

7 (h) Disallow penalty charges unreasonably or imprudently
8 incurred.

9 (i) Disallow demurrage charges.

10 (j) Disallow increases in charges for nuclear fuel disposal
11 unless the utility has received the prior approval of the
12 commission.

13 (14) In its order in a power supply cost reconciliation, the
14 commission shall require ~~a~~**AN ELECTRIC** utility to refund to
15 customers or credit to customers' bills any net amount determined
16 to have been recovered over the period covered in excess of the
17 amounts determined to have been actually expensed by the utility
18 for power supply, and to have been incurred through reasonable and
19 prudent actions not precluded by the commission order in the power
20 supply and cost review. ~~Such~~**THE COMMISSION SHALL APPORTION THE**
21 refunds or credits ~~shall be apportioned~~ among the customers of the
22 utility utilizing procedures that the commission determines to be
23 reasonable. The commission may adopt different procedures with
24 respect to customers served under the various rate schedules of the
25 utility and may, in appropriate circumstances, order refunds or
26 credits in proportion to the excess amounts actually collected from
27 each such customer during the period covered.

1 (15) In its order in a power supply cost reconciliation, the
2 commission shall authorize a ~~an~~ **ELECTRIC** utility to recover from
3 customers any net amount by which the amount determined to have
4 been recovered over the period covered was less than the amount
5 determined to have been actually expensed by the utility for power
6 supply, and to have been incurred through reasonable and prudent
7 actions not precluded by the commission order in the power supply
8 and cost review. For excess costs incurred through management
9 actions contrary to the commission's power supply and cost review
10 order, the commission shall authorize a utility to recover costs
11 incurred for power supply in the reconciliation period in excess of
12 the amount recovered over the period only if the utility
13 demonstrates by clear and convincing evidence that the excess
14 expenses were beyond the ability of the utility to control through
15 reasonable and prudent actions. For excess costs incurred through
16 management actions consistent with the commission's power supply
17 and cost review order, the commission shall authorize a utility to
18 recover costs incurred for power supply in the reconciliation
19 period in excess of the amount recovered over the period only if
20 the utility demonstrates that the level of ~~such~~ **THOSE** expenses
21 resulted from reasonable and prudent management actions. ~~Such~~ **THE**
22 amounts in excess of the amounts actually recovered by the utility
23 for power supply shall be apportioned among and charged to the
24 customers of the utility utilizing procedures that the commission
25 determines to be reasonable. The commission may adopt different
26 procedures with respect to customers served under the various rate
27 schedules of the utility and may, in appropriate circumstances,

1 order charges to be made in proportion to the amounts ~~which~~ **THAT**
2 would have been paid by ~~such~~ **THOSE** customers if the amounts in
3 excess of the amounts actually recovered by the utility for cost of
4 power supply had been included in the power supply cost recovery
5 factors with respect to ~~such~~ **THOSE** customers during the period
6 covered. Charges for ~~such~~ **THE** excess amounts shall be spread over a
7 period that the commission determines to be appropriate.

8 (16) If the commission orders refunds or credits ~~pursuant to~~
9 **UNDER** subsection (14), or additional charges to customers ~~pursuant~~
10 ~~to~~ **UNDER** subsection (15), in its final order in a power supply cost
11 reconciliation, the refunds, credits, or additional charges shall
12 include interest. In determining the interest included in a refund,
13 credit, or additional charge ~~pursuant to~~ **UNDER** this subsection, the
14 commission shall consider, to the extent material and practicable,
15 the time at which the excess recoveries or insufficient recoveries,
16 or both occurred. The commission shall determine a rate of interest
17 for excess recoveries, refunds, and credits equal to the greater of
18 the average short-term borrowing rate available to the utility
19 during the appropriate period, or the authorized rate of return on
20 the common stock of the utility during that same period. Costs
21 incurred by the utility for refunds and interest on refunds shall
22 not be charged to customers. The commission shall determine a rate
23 of interest for insufficient recoveries and additional charges
24 equal to the average short-term borrowing rate available to the
25 utility during the appropriate period.

26 (17) To avoid undue hardship or unduly burdensome or excessive
27 cost, the commission may **DO BOTH OF THE FOLLOWING:**

1 (a) Exempt an electric utility with fewer than 200,000
2 customers in ~~the THIS~~ state of Michigan from 1 or more of the
3 procedural provisions of this section or may modify the filing
4 requirements of this section.

5 (b) Exempt an energy utility organized as a cooperative
6 corporation pursuant to ~~UNDER~~ sections 98 to 109 of Act No. 327 of
7 the Public Acts of 1931, being sections 450.98 to 450.109 of the
8 Michigan Compiled Laws, **1931 PA 327, MCL 450.98 TO 450.109**, from 1
9 or more of the provisions of this section.

10 (18) Notwithstanding any other provision of this act, the
11 commission may, upon application by an electric utility, set power
12 supply cost recovery factors, in a manner otherwise consistent with
13 this act, in an order resulting from a general rate case. ~~Within~~
14 ~~120 days following the effective date of this section,~~ **BY OCTOBER**
15 **27, 1987**, for the purpose of setting power supply cost recovery
16 factors, the commission shall permit an electric utility to reopen
17 a general rate case in which a final order was issued within 120
18 days before or after ~~the effective date of this section~~ **JUNE 29,**
19 **1987** or to amend an application or reopen the evidentiary record in
20 a pending general rate case. If the commission sets power supply
21 cost recovery factors in an order resulting from a general rate
22 case, **ALL OF THE FOLLOWING APPLY:**

23 (a) The power supply cost recovery factors shall cover a
24 future period of 48 months or the number of months ~~which~~ **THAT**
25 elapse until the commission orders new power supply cost recovery
26 factors in a general rate case, whichever is the shorter period.

27 (b) Annual reconciliation proceedings shall be conducted

1 ~~pursuant to~~ **UNDER** subsection (12) and if an annual reconciliation
2 proceeding shows a recoverable amount ~~pursuant to~~ **UNDER** subsection
3 (15), the commission shall authorize the electric utility to defer
4 the amount and to accumulate interest on the amount ~~pursuant to~~
5 **UNDER** subsection (16), and in the next order resulting from a
6 general rate case authorize the utility to recover the amount and
7 interest from its customers in the manner provided in subsection
8 (15).

9 (c) The power supply cost recovery factors ~~shall~~ **ARE** not be
10 subject to revision ~~pursuant to~~ **UNDER** subsection (10).

11 ~~—— (19) Five years after the effective date of the amendatory act~~
12 ~~that added this subsection, and every 5 years thereafter, the~~
13 ~~standing committees of the house and senate that deal with public~~
14 ~~utilities shall review the amendatory act that added this~~
15 ~~subsection.~~

16 Sec. 6k. (1) This section ~~shall govern~~ **GOVERNS** the initial
17 filing and implementation of a power supply cost recovery plan
18 under section 6j(3).

19 (2) The initial power supply cost recovery plan may be for a
20 period of less than 12 months and shall be filed **AS FOLLOWS:**

21 (a) By an electric utility subject to commission rate
22 jurisdiction with at least 200,000 residential customers in the
23 state of Michigan, ~~within 4 months after the effective date of this~~
24 ~~section.~~ **BY FEBRUARY 13, 1983.**

25 (b) By all other electric utilities subject to commission rate
26 jurisdiction, ~~within 15 months after the effective date of this~~
27 ~~section.~~ **BY JANUARY 13, 1984** in accordance with the provisions of

1 this act which the commission determines to be appropriate for the
2 individual utility.

3 (3) Notwithstanding section ~~6a(3)~~, ~~6A(5)~~, until the expiration
4 of 3 months plus the remainder of the then current billing month
5 following the last day on which a utility is required to file its
6 first power supply cost recovery plan ~~pursuant to~~ **UNDER** subsection
7 (2), ~~of this section~~, the utility may alter its rate schedule in
8 accordance with an existing fuel cost adjustment clause or
9 purchased and net interchanged power adjustment clause. Thereafter,
10 the utility may make charges in excess of base rates for the cost
11 of power supply pursuant only to subsections (2) and (4). ~~of this~~
12 ~~section. After the effective date of this section, OCTOBER 13,~~
13 **1982**, any revenues resulting from an existing fuel cost adjustment
14 clause or purchased and net interchanged power adjustment clause
15 and recorded for an annual reconciliation period ending ~~prior to~~
16 **BEFORE** January 1, 1983, by an electric utility ~~shall be~~ **ARE** subject
17 to the existing reconciliation proceeding established by the
18 commission for the utility. In this proceeding, the commission
19 shall consider the reasonableness and prudence of expenditures
20 charged pursuant to an existing fuel cost adjustment clause or
21 purchased and net interchanged power adjustment clause after ~~the~~
22 ~~effective date of this section. OCTOBER 13, 1982.~~ On and after
23 January 1, 1983, all fuel cost and purchased and net interchanged
24 power revenues received by an electric utility, whether included in
25 base rates or collected pursuant to a fuel or purchased and net
26 interchanged power adjustment clause or a power supply cost
27 recovery clause, ~~shall be~~ **ARE** subject to annual reconciliation with

1 the cost of fuel and purchased and net interchanged power. ~~Such~~ **THE**
2 annual reconciliations shall be conducted in accordance with the
3 reconciliation procedures described in section 6j(12) to (18),
4 including the provisions for refunds, additional charges, deferral
5 and recovery, and shall include consideration by the commission of
6 the reasonableness and prudence of expenditures charged pursuant to
7 any fuel or purchased and net interchanged power adjustment clause
8 in existence during the period being reconciled. If the utility has
9 a lag correction provision included in its existing adjustment
10 clauses, the commission shall allow any adjustment to rates
11 attributable to ~~such~~ **THAT** lag correction provision to be
12 implemented for the 3 billing months immediately succeeding the
13 final billing month in which the existing adjustment clauses as
14 operative.

15 (4) Until the commission approves or disapproves a power
16 supply cost recovery clause in a final commission order in a
17 contested case required by section 6j(2), a utility ~~which~~ **THAT** had
18 a fuel cost adjustment clause or purchased and net interchanged
19 power adjustment clause on ~~the effective date of this section~~
20 **OCTOBER 13, 1982** and which has applied for a power supply cost
21 recovery clause under section 6j may adjust its rates ~~pursuant to~~
22 **UNDER** section 6j(3) to (18), to include power supply cost recovery
23 factors.

24 Sec. 6l. (1) For purposes of implementing sections **6A**, 6h, ~~6i~~,
25 6j, and ~~6k~~, **6S, AND 6T**, this section and section 6m shall provide
26 means of insuring equitable representation of the interests of
27 energy utility customers.

1 (2) As used in this section and section 6m:

2 (a) "Annual receipts" means the payments received by the fund
3 under section 6m(2)(a), ~~and (b)~~, **(C), AND (D)** during a calendar
4 year.

5 (b) "Board" means the utility consumer participation board
6 created under subsection (3).

7 **(C) "COMMISSION" MEANS THE MICHIGAN PUBLIC SERVICE COMMISSION.**

8 **(D) ~~(e)~~"Department" means the department of management and**
9 **budget. LICENSING AND REGULATORY AFFAIRS.**

10 **(E) ~~(d)~~"Energy cost recovery proceeding" means any proceeding**
11 **to establish or implement a gas cost recovery clause or a power**
12 **supply cost recovery clause as provided in sections ~~SECTION~~ 6h ~~7~~**
13 **~~6i, OR 6j, or 6k,~~ to set gas cost recovery factors pursuant to**
14 **UNDER section 6h(17), or to set power supply cost recovery factors**
15 **pursuant to UNDER section 6j(18).**

16 **(F) ~~(e)~~"Energy utility" means each electric or gas company**
17 **regulated by the ~~public service~~ commission.**

18 **(G) ~~(f)~~"Fund" means the utility consumer representation fund**
19 **created in section 6m.**

20 **(H) ~~(g)~~"Household" means a single-family home, duplex, mobile**
21 **home, seasonal dwelling, farm home, cooperative, condominium, or**
22 **apartment ~~which~~ THAT has normal household facilities such as a**
23 **bathroom, individual cooking facilities, and kitchen sink**
24 **facilities. Household does not include a penal or corrective**
25 **institution, or a motel, hotel, or other similar structure if used**
26 **as a transient dwelling.**

27 **(I) ~~(h)~~"Jurisdictional" means subject to rate regulation by**

1 the ~~Michigan public service~~ commission.

2 (J) ~~(i)~~ "Net grant proceeds" means the annual receipts of the
3 fund less the amounts reserved for the attorney general's use and
4 the amounts expended for board expenses and operation.

5 (K) ~~(j)~~ "Residential energy utility consumer" or "consumer"
6 means a customer of an energy utility who receives utility service
7 for use within an individual household or an improvement reasonably
8 appurtenant to and normally associated with an individual
9 household.

10 (L) ~~(k)~~ "Residential tariff sales" means those sales by an
11 energy utility ~~which~~ **THAT** are subject to residential tariffs on
12 file with the commission.

13 (M) ~~(l)~~ "Utility consuming industry" means a person, sole
14 proprietorship, partnership, association, corporation, or other
15 entity ~~which~~ **THAT** receives utility service ordinarily and primarily
16 for use in connection with the manufacture, sale, or distribution
17 of goods or the provision of services, but does not include a
18 nonprofit organization representing residential utility customers.

19 (3) The utility consumer participation board is created within
20 the department and shall exercise its powers and duties under this
21 act independently of the department. The procurement and related
22 management functions of the ~~commission~~ **BOARD** shall be performed
23 under the direction and supervision of the department. The board
24 shall consist of 5 members appointed by the governor, 1 of whom
25 shall be chosen from 1 or more lists of qualified persons submitted
26 by the attorney general.

27 (4) For the purposes of subsection (5) only, "utility" means

1 an electric or gas company located in or outside of this state.

2 (5) Each member of the board shall meet the following
3 requirements:

4 (a) Shall be an advocate for the interests of residential
5 utility consumers, as demonstrated by the member's knowledge of and
6 support for consumer interests and concerns in general or
7 specifically related to utility matters.

8 (b) Shall not be, or shall not have been within the 5 years
9 preceding appointment, a member of a governing body of, or employed
10 in a managerial or professional or consulting capacity by a utility
11 or an association representing utilities; an enterprise or
12 professional practice ~~which~~**THAT** received over \$1,500.00 in the
13 year preceding the appointment as a supplier of goods or services
14 to a utility or association representing utilities; or an
15 organization representing employees of such a utility, association,
16 enterprise, or professional practice, or an association ~~which~~**THAT**
17 represents such an organization.

18 (c) Shall not have, or shall not have had within 1 year
19 preceding appointment, a financial interest exceeding \$1,500.00 in
20 a utility, an association representing utilities, or an enterprise
21 or professional practice ~~which~~**THAT** received over \$1,500.00 in the
22 year preceding the appointment as a supplier of goods or services
23 to a utility or association representing utilities.

24 (d) Shall not be an officer or director of an applicant for a
25 grant under section 6m.

26 (e) Shall not be a member of the immediate family of ~~a person~~
27 **AN INDIVIDUAL** who would be ineligible under ~~subdivisions~~

1 **SUBDIVISION** (a), (b), (c), or (d).

2 (6) The members of the board shall be appointed for 2-year
3 terms beginning with the first day of a legislative session in an
4 odd-numbered year and ending on the day before the first day of the
5 legislative session in the next odd-numbered year or when the
6 members' successors are appointed, whichever occurs later. The
7 governor shall not appoint a member to the board for a term
8 commencing after the governor's term of office has ended. A vacancy
9 shall be filled in the same manner as the original appointment. If
10 the vacancy is created other than by expiration of a term, the
11 member shall be appointed for the balance of the unexpired term of
12 the member to be succeeded.

13 (7) The governor shall remove a member of the board if that
14 member is absent for any reason from either 3 consecutive board
15 meetings or more than 50% of the meetings held by the board in a
16 calendar year. However, ~~a person~~ **AN INDIVIDUAL** who is removed due
17 to absenteeism is eligible for reappointment to fill a vacancy
18 ~~which~~ **THAT** occurs in the board membership. The governor also shall
19 remove a member of the board if the member is subsequently
20 determined to be ineligible under subsection (5).

21 (8) The board shall hold bimonthly meetings and additional
22 meetings as necessary. A quorum consists of 3 members. A majority
23 vote of the members appointed and serving is necessary for a
24 decision. At its first meeting following the appointment of new
25 members, or as soon as possible after the first meeting, the board
26 shall elect biennially from its membership a chairperson and a
27 vice-chairperson.

1 (9) The board shall not act directly to represent the
2 interests of residential utility consumers except through
3 administration of the fund and grant program under this section.

4 (10) The business ~~which~~ **THAT** the board may perform shall be
5 conducted at a public meeting of the board held in compliance with
6 the open meetings act, ~~Act No. 267 of the Public Acts of 1976,~~
7 ~~being sections 15.261 to 15.275 of the Michigan Compiled Laws. 1976~~
8 **PA 267, MCL 15.261 TO 15.275.** Public notice of the time, date, and
9 place of the meeting shall be given in the manner required by ~~Act~~
10 ~~No. 267 of the Public Acts of 1976.~~ **THE OPEN MEETINGS ACT, 1976 PA**
11 **267, MCL 15.261 TO 15.275.**

12 (11) A writing prepared, owned, used, in the possession of, or
13 retained by the board in the performance of an official function
14 shall be made available to the public in compliance with the
15 freedom of information act, ~~Act No. 442 of the Public Acts of 1976,~~
16 ~~being sections 15.231 to 15.246 of the Michigan Compiled Laws. 1976~~
17 **PA 442, MCL 15.231 TO 15.246.**

18 (12) A member of the board may be reimbursed for actual and
19 necessary expenses, including travel expenses to and from each
20 meeting held by the board, incurred in discharging the member's
21 duties under this section and section 6m. In addition to expense
22 reimbursement, a board member may receive remuneration from the
23 board of \$100.00 per meeting attended, not to exceed \$1,000.00 in a
24 calendar year. These limits shall be adjusted proportionately to an
25 adjustment in the remittance amounts under section 6m(4) to allow
26 for changes in the cost of living.

27 ~~— (13) Until the board certifies that it is operating and ready~~

1 ~~to perform all duties under this act, the director of the energy~~
 2 ~~administration created by executive directives 1976-2 and 1976-5~~
 3 ~~shall serve as temporary administrator of the fund and exercise all~~
 4 ~~duties and powers of the board.~~

5 Sec. 6m. (1) The utility consumer representation fund is
 6 created as a special fund. The state treasurer shall be the
 7 custodian of the fund and shall maintain a separate account of the
 8 money in the fund. The money in the fund shall be invested in the
 9 bonds, notes, and other evidences of indebtedness issued or insured
 10 by the United States government and its agencies, and in prime
 11 commercial paper. The state treasurer shall release money from the
 12 fund, including interest earned, in the manner and at the time
 13 directed by the board.

14 (2) Except as provided in subsection ~~(6)~~, **(5)**, each energy
 15 utility that has applied to the ~~public service~~ commission for the
 16 initiation of an energy cost recovery proceeding shall remit to the
 17 fund before or upon filing its initial application for that
 18 proceeding, and on or before the first anniversary of that
 19 application, an amount of money determined by the board in the
 20 following manner:

21 (a) In the case of an energy utility company serving at least
 22 100,000 customers in this state, ~~an amount that bears to~~
 23 ~~\$300,000.00, multiplied~~ **ITS PROPORTIONAL SHARE OF \$900,000.00**
 24 **ADJUSTED ANNUALLY** by a factor as provided in subsection (4). ~~the~~
 25 ~~same proportion as~~ **THIS ADJUSTED AMOUNT SHALL BECOME THE NEW BASE**
 26 **AMOUNT TO WHICH THE FACTOR PROVIDED IN SUBSECTION (4) IS APPLIED IN**
 27 **THE SUCCEEDING YEAR. A UTILITY'S PROPORTIONAL SHARE SHALL BE**

1 **CALCULATED BY DIVIDING** the company's jurisdictional ~~1981~~-total
2 operating revenues **FOR THE PRECEDING YEAR**, as stated in its annual
3 report, ~~bear to the jurisdictional 1981~~ **BY THE** total operating
4 revenues **FOR THE PRECEDING YEAR** of all energy utility companies
5 serving at least 100,000 customers in this state. This amount shall
6 be made available by the board for use by the attorney general for
7 the purposes described in subsection ~~(17)~~-(16).

8 (b) In the case of an energy utility company serving at least
9 100,000 residential customers in this state, ~~an amount that bears~~
10 ~~to \$300,000.00, multiplied~~ **ITS PROPORTIONAL SHARE OF \$650,000.00**
11 **ADJUSTED ANNUALLY** by a factor as provided in subsection (4). ~~the~~
12 ~~same proportion as~~ **THIS ADJUSTED AMOUNT SHALL BECOME THE NEW BASE**
13 **AMOUNT TO WHICH THE FACTOR PROVIDED IN SUBSECTION (4) IS APPLIED IN**
14 **THE SUCCEEDING YEAR. A UTILITY'S PROPORTIONAL SHARE SHALL BE**
15 **CALCULATED BY DIVIDING** the company's jurisdictional ~~1981~~-gross
16 revenues from residential tariff sales ~~bear to the jurisdictional~~
17 ~~1981~~ **FOR THE PRECEDING YEAR BY THE** gross revenues from residential
18 tariff sales **FOR THE PRECEDING YEAR** of all energy utility companies
19 serving at least 100,000 residential customers in this state. This
20 amount shall be used for grants under subsection ~~(11)~~-(10).

21 (c) **IN THE CASE OF AN ENERGY UTILITY COMPANY SERVING FEWER**
22 **THAN 100,000 CUSTOMERS IN THIS STATE, ITS PROPORTIONAL SHARE OF**
23 **\$100,000.00 ADJUSTED ANNUALLY BY A FACTOR AS PROVIDED IN SUBSECTION**
24 **(4). THIS ADJUSTED AMOUNT SHALL BECOME THE NEW BASE AMOUNT TO WHICH**
25 **THE FACTOR PROVIDED IN SUBSECTION (4) IS APPLIED IN THE SUCCEEDING**
26 **YEAR. A UTILITY'S PROPORTIONAL SHARE SHALL BE CALCULATED BY**
27 **DIVIDING THE COMPANY'S JURISDICTIONAL TOTAL OPERATING REVENUES FOR**

1 THE PRECEDING YEAR, AS STATED IN ITS ANNUAL REPORT, BY THE TOTAL
2 OPERATING REVENUES FOR THE PRECEDING YEAR OF ALL ENERGY UTILITY
3 COMPANIES SERVING FEWER THAN 100,000 CUSTOMERS IN THIS STATE. THIS
4 AMOUNT SHALL BE MADE AVAILABLE BY THE BOARD FOR USE BY THE ATTORNEY
5 GENERAL FOR THE PURPOSES DESCRIBED IN SUBSECTION (16).

6 (D) IN THE CASE OF AN ENERGY UTILITY COMPANY SERVING FEWER
7 THAN 100,000 RESIDENTIAL CUSTOMERS IN THIS STATE, ITS PROPORTIONAL
8 SHARE OF \$100,000.00 ADJUSTED ANNUALLY BY A FACTOR AS PROVIDED IN
9 SUBSECTION (4). THIS ADJUSTED AMOUNT SHALL BECOME THE NEW BASE
10 AMOUNT TO WHICH THE FACTOR PROVIDED IN SUBSECTION (4) IS APPLIED IN
11 THE SUCCEEDING YEAR. A UTILITY'S PROPORTIONAL SHARE SHALL BE
12 CALCULATED BY DIVIDING THE COMPANY'S JURISDICTIONAL GROSS REVENUES
13 FROM RESIDENTIAL TARIFF SALES FOR THE PRECEDING YEAR BY THE GROSS
14 REVENUES FROM RESIDENTIAL TARIFF SALES FOR THE PRECEDING YEAR OF
15 ALL ENERGY UTILITY COMPANIES SERVING FEWER THAN 100,000 RESIDENTIAL
16 CUSTOMERS IN THIS STATE. THIS AMOUNT SHALL BE USED FOR GRANTS UNDER
17 SUBSECTION (10).

18 (3) Payments made by an energy utility under subsection (2)(a)
19 OR (C) are operating expenses of the utility that the ~~public~~
20 ~~service~~-commission shall permit the utility to charge to its
21 customers. Payments made by a utility under subsection (2)(b) OR
22 (D) are operating expenses of the utility that the ~~public service~~
23 commission shall permit the utility to charge to its residential
24 customers.

25 (4) For purposes of subsection (2), the **BOARD SHALL SET THE**
26 factor ~~shall be set by the board~~ at a level not to exceed the
27 percentage increase in the index known as the consumer price index

1 for urban wage earners and clerical workers, select areas, all
2 items indexed, for the Detroit standard metropolitan statistical
3 area, compiled by the ~~bureau of labor statistics~~ **BUREAU OF LABOR**
4 **STATISTICS** of the United States ~~department of labor,~~ **DEPARTMENT OF**
5 **LABOR,** or any successor agency, that has occurred between January
6 ~~1981~~ **OF THE PRECEDING YEAR** and January of the year in which the
7 payment is required to be made. In the event that more than 1 such
8 index is compiled, the index yielding the largest payment shall be
9 the maximum allowable factor. The board shall advise utilities of
10 the factor.

11 ~~—— (5) On or before the second and succeeding anniversaries of~~
12 ~~its initial application for an energy cost recovery proceeding, an~~
13 ~~energy utility shall remit to the board amounts equal to 5/6 of the~~
14 ~~amounts required under subsection (2).~~

15 (5) ~~(6)~~—The remittance requirements of this section do not
16 apply to an energy utility organized as a cooperative corporation
17 under sections 98 to 109 of 1931 PA 327, MCL 450.98 to 450.109, and
18 grants from the fund shall not be used to participate in an energy
19 cost recovery proceeding primarily affecting such a utility.

20 (6) ~~(7)~~—In the event of a dispute between the board and an
21 energy utility about the amount of payment due, the utility shall
22 pay the undisputed amount and, if the utility and the board cannot
23 agree, the board may initiate civil action in the circuit court for
24 Ingham ~~county~~ **COUNTY** for recovery of the disputed amount. The
25 commission shall not accept or take action on an application for an
26 energy cost recovery proceeding from an energy utility subject to
27 this section that has not fully paid undisputed remittances

1 required by this section.

2 (7) ~~(8)~~—The commission shall not accept or take action on an
3 application for an energy cost recovery proceeding from an energy
4 utility subject to this section until 30 days after it has been
5 notified by the board ~~or the director of the energy administration,~~
6 ~~if section 6/(13) is applicable,~~ that the board ~~or the director~~ is
7 ready to process grant applications, will transfer funds payable to
8 the attorney general immediately upon the receipt of those funds,
9 and will within 30 days approve grants and remit funds to qualified
10 grant applicants.

11 (8) ~~(9)~~—The board may accept a gift or grant from any source
12 to be deposited in the fund if the conditions or purposes of the
13 gift or grant are consistent with this section.

14 (9) ~~(10)~~—The costs of operation and expenses incurred by the
15 board in performing its duties under this section and section 6/,
16 including remuneration to board members, shall be paid from the
17 fund. A maximum of 5% of the annual receipts of the fund may be
18 budgeted and used to pay expenses other than grants made under
19 subsection ~~(11)~~-(10).

20 (10) ~~(11)~~—The net grant proceeds shall finance a grant program
21 from which the board may award to an applicant an amount that the
22 board determines shall be used for the purposes set forth in this
23 section.

24 (11) ~~(12)~~—The board shall create and make available to
25 applicants an application form. Each applicant shall indicate on
26 the application how the applicant meets the eligibility
27 requirements provided for in this section and how the applicant

1 proposes to use a grant from the fund to participate in 1 or more
2 proceedings as authorized in subsection ~~(17)~~-(16) that have been or
3 are expected to be filed. **EACH APPLICANT SHALL ALSO IDENTIFY ON THE**
4 **APPLICATION ANY ADDITIONAL FUNDS OR RESOURCES, OTHER THAN THE GRANT**
5 **FUNDS BEING REQUESTED, THAT ARE TO BE USED TO PARTICIPATE IN THE**
6 **PROCEEDING FOR WHICH THE GRANT IS BEING REQUESTED AND HOW THOSE**
7 **FUNDS OR RESOURCES WILL BE UTILIZED.** The board shall receive an
8 application requesting a grant from the fund only from a nonprofit
9 organization or a unit of local government in this state. The board
10 shall consider only applications for grants containing proposals
11 that are consistent with subsections ~~(17)~~-(16) and ~~(18)~~-(17) and
12 that serve the interests of residential utility consumers. For
13 purposes of making grants, the board may consider ~~protection of the~~
14 ~~environment, energy conservation, the creation of employment and a~~
15 ~~healthy economy in the state, and~~ **ENERGY WASTE REDUCTION, DEMAND**
16 **RESPONSE, AND RATE DESIGN OPTIONS TO ENCOURAGE ENERGY CONSERVATION,**
17 **ENERGY WASTE REDUCTION, AND DEMAND RESPONSE, AS WELL AS** the
18 maintenance of adequate energy resources. The board shall not
19 consider an application that primarily benefits the applicant or a
20 service provided or administered by the applicant. The board shall
21 not consider an application from a nonprofit organization if 1 of
22 the organization's principal interests or unifying principles is
23 the welfare of a utility or its investors or employees, or the
24 welfare of 1 or more businesses or industries, other than farms not
25 owned or operated by a corporation, that receive utility service
26 ordinarily and primarily for use in connection with the profit-
27 seeking manufacture, sale, or distribution of goods or services.

1 Mere ownership of securities by a nonprofit organization or its
2 members does not disqualify an application submitted by that
3 organization.

4 (12) ~~(13)~~—The board shall encourage the representation of the
5 interests of identifiable types of residential utility consumers
6 whose interests may differ, including various social and economic
7 classes and areas of the state, and if necessary, may make grants
8 to more than 1 applicant whose applications are related to a
9 similar issue to achieve this type of representation. In addition,
10 the board shall consider and balance the following criteria in
11 determining whether to make a grant to an applicant:

12 (a) Evidence of the applicant's competence, experience, and
13 commitment to advancing the interests of residential utility
14 consumers.

15 (B) **THE ANTICIPATED INVOLVEMENT OF THE ATTORNEY GENERAL IN A**
16 **PROCEEDING AND WHETHER ACTIVITIES OF THE APPLICANT WILL BE**
17 **DUPLICATIVE OR SUPPLEMENTAL TO THOSE OF THE ATTORNEY GENERAL.**

18 (C) ~~(b)~~—In the case of a nongovernmental applicant, the extent
19 to which the applicant is representative of or has a previous
20 history of advocating the interests of citizens, especially
21 residential utility consumers.

22 (D) ~~(e)~~—The anticipated effect of the proposal contained in
23 the application on residential utility consumers, including the
24 immediate and long-term impacts of the proposal.

25 (E) ~~(d)~~—Evidence demonstrating the potential for continuity of
26 effort and the development of expertise in relation to the proposal
27 contained in the application.

1 (F) ~~(e)~~—The uniqueness or innovativeness of an applicant's
2 position or point of view **AS IT RELATES TO ADVOCATING FOR**
3 **RESIDENTIAL UTILITY CONSUMERS CONCERNING ENERGY COSTS OR RATES**, and
4 the probability and desirability of that position or point of view
5 prevailing.

6 (13) ~~(14)~~—As an alternative to choosing between 2 or more
7 applications that have similar proposals, the board may invite 2 or
8 more of the applicants to file jointly and award a grant to be
9 managed cooperatively.

10 (14) ~~(15)~~—The board shall make disbursements pursuant to a
11 grant in advance of an applicant's proposed actions as set forth in
12 the application if necessary to enable the applicant to initiate,
13 continue, or complete the proposed actions.

14 (15) ~~(16)~~—Any notice to utility customers and the general
15 public of hearings or other state proceedings in which grants from
16 the fund may be used shall contain a notice of the availability of
17 the fund and the address of the board.

18 (16) ~~(17)~~—The annual receipts and interest earned, less
19 administrative costs, may be used only for participation in
20 administrative and judicial proceedings under sections **6A**, 6h, ~~6i~~,
21 6j, and ~~6k~~, **6S, AND 6T, AND** in federal administrative and judicial
22 proceedings that directly affect the energy costs **OR RATES** paid by
23 Michigan energy utilities, and in cost allocation and rate design
24 proceedings initiated under section 11(3). **UTILITY CUSTOMERS IN**
25 **THIS STATE**. Amounts that have been in the fund more than 12 months
26 may be retained in the fund for future grants, **PROCEEDINGS AND ANY**
27 **UNEXPENDED MONEY IN THE FUND SHALL BE RESERVED TO FULFILL THE**

1 **PURPOSES FOR WHICH IT WAS APPROPRIATED** or may be returned to energy
2 utility companies or used to offset their future remittances in
3 proportion to their previous remittances to the fund, as the board
4 ~~determines~~ **AND ATTORNEY GENERAL DETERMINE** will best serve the
5 interests of consumers.

6 (17) ~~(18)~~ The following conditions shall apply to all grants
7 from the fund:

8 (a) Disbursements from the fund may be used only to advocate
9 the interests of **RESIDENTIAL** energy utility customers ~~or classes of~~
10 ~~energy utility customers,~~ **CONCERNING ENERGY COSTS OR RATES** and not
11 for representation of merely individual interests.

12 (b) The board shall attempt to maintain a reasonable
13 relationship between the payments from a particular energy utility
14 and the benefits to consumers of that utility.

15 (c) The board shall coordinate the funded activities of grant
16 recipients with those of the attorney general to avoid duplication
17 of effort, **PARTICULARLY AS IT RELATES TO THE HIRING OF EXPERT**
18 **WITNESSES**, to promote supplementation of effort, and to maximize
19 the number of hearings and proceedings with intervenor
20 participation.

21 (18) ~~(19)~~ A recipient of a grant under subsection ~~(11)~~ **(10)**
22 may use the grant only for the advancement of the proposed action
23 approved by the board, including, but not limited to, costs of
24 staff, hired consultants and counsel, and research.

25 **(19) A RECIPIENT OF A GRANT UNDER SUBSECTION (10) SHALL**
26 **PREPARE FOR AND PARTICIPATE IN ALL DISCUSSIONS AMONG THE PARTIES**
27 **DESIGNED TO FACILITATE SETTLEMENT OR NARROWING OF THE CONTESTED**

1 **ISSUES BEFORE A HEARING IN ORDER TO MINIMIZE LITIGATION COSTS FOR**
2 **ALL PARTIES.**

3 (20) A recipient of a grant under subsection ~~(11)~~**(10)** shall
4 file a report with the board within 90 days following the end of
5 the year or a shorter period for which the grant is made. The
6 report shall be made in a form prescribed by the board and is
7 subject to audit by the board. **THE BOARD SHALL INCLUDE EACH REPORT**
8 **RECEIVED UNDER THIS SUBSECTION AS PART OF THE BOARD'S ANNUAL REPORT**
9 **REQUIRED UNDER SUBSECTION (22).** The report **UNDER THIS SUBSECTION**
10 shall include the following information:

11 (a) An account of all grant expenditures made by the grant
12 recipient. Expenditures shall be reported within the following
13 categories:

14 (i) Employee and contract for services costs.

15 (ii) Costs of materials and supplies.

16 (iii) Filing fees and other costs required to effectively
17 represent residential utility consumers as provided in this
18 section.

19 **(B) A DETAILED LIST OF THE REGULATORY ISSUES RAISED BY THE**
20 **GRANT RECIPIENT AND HOW EACH ISSUE WAS DETERMINED BY THE**
21 **COMMISSION, COURT, OR OTHER TRIBUNAL.**

22 **(C) ~~(b)~~Any additional information concerning uses of the**
23 **grant required by the board.**

24 ~~The~~**ON OR BEFORE JULY 1 OF EACH YEAR, THE** attorney
25 general shall file a report with the house and senate committees on
26 appropriations ~~within 90 days following the end of each fiscal~~
27 ~~year.~~**AND THE HOUSE AND SENATE COMMITTEES WITH JURISDICTION OVER**

1 **ENERGY AND UTILITY POLICY ISSUES.** The report shall include the
2 following information:

3 (a) An account of all expenditures made by the attorney
4 general of ~~unds~~ **MONEY** received under this section. Expenditures
5 shall be reported within the following categories:

6 (i) Employee and contract for services costs.

7 (ii) Costs of materials and supplies.

8 (iii) Filing fees and other costs required to effectively
9 represent utility consumers as provided in this section.

10 (b) Any additional information concerning uses of the ~~unds~~
11 **MONEY** received under this section required by the committees.

12 (22) On or before July 1 of each calendar year, the board
13 shall submit a detailed report to the ~~legislature~~ **HOUSE AND SENATE**
14 **COMMITTEES WITH JURISDICTION OVER ENERGY AND UTILITY POLICY ISSUES**
15 regarding the discharge of duties and responsibilities under this
16 section and section 6/ during the preceding calendar year.

17 ~~—— (23) By October 13, 1985, and at 3-year intervals thereafter,~~
18 ~~a senate committee chosen by the majority leader of the senate and~~
19 ~~a house committee chosen by the speaker of the house of~~
20 ~~representatives shall review the relationship between costs and~~
21 ~~benefits resulting from this section and sections 6h through 6l,~~
22 ~~and may recommend changes to the legislature.~~

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 submit an application to the commission seeking
2 a certificate of necessity for that construction, investment, or
3 purchase if that construction, investment, or purchase costs
4 ~~\$500,000,000.00~~ **\$100,000,000.00** or more and a portion of the costs
5 would be allocable to retail customers in this state. A significant
6 investment in an electric generation facility includes a group of
7 investments reasonably planned to be made over a multiple year
8 period not to exceed 6 years for a singular purpose such as
9 increasing the capacity of an existing electric generation plant.
10 The commission shall not issue a certificate of necessity under
11 this section for any environmental upgrades to existing electric
12 generation facilities. ~~or for a renewable energy system.~~ **IF THE**
13 **APPLICATION IS FOR THE CONSTRUCTION OF AN ELECTRIC GENERATION**
14 **FACILITY OF 225 MEGAWATTS OR MORE OR FOR THE CONSTRUCTION OF AN**
15 **ADDITIONAL GENERATING UNIT OR UNITS TOTALING 225 MEGAWATTS OR MORE**
16 **AT AN EXISTING ELECTRIC GENERATION FACILITY SUBMITTED AS REQUIRED**
17 **UNDER SECTION 6T(13), THE COMMISSION SHALL CONSOLIDATE ITS**
18 **PROCEEDINGS UNDER SECTION 6T AND THIS SECTION. IF THE COMMISSION**
19 **APPROVES OR DENIES AN APPLICATION FOR AN ELECTRIC GENERATION**
20 **FACILITY UNDER THIS SECTION THAT HAS BEEN SUBMITTED AS REQUIRED**
21 **UNDER SECTION 6T(13), THE PROVISIONS OF THIS SECTION PREVAIL IN A**
22 **CONFLICT WITH SECTION 6T.**

23 (2) The commission may implement separate review criteria and
24 approval standards for electric utilities with less than 1,000,000
25 retail customers ~~who~~ **THAT** seek a certificate of necessity for
26 projects costing less than ~~\$500,000,000.00~~ **\$100,000,000.00**.

27 (3) An electric utility submitting an application under this

1 section may request 1 or more of the following:

2 (a) A certificate of necessity that the power to be supplied
3 as a result of the proposed construction, investment, or purchase
4 is needed.

5 (b) A certificate of necessity that the size, fuel type, and
6 other design characteristics of the existing or proposed electric
7 generation facility or the terms of the power purchase agreement
8 represent the most reasonable and prudent means of meeting that
9 power need.

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

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

20 (4) Within 270 days ~~of~~ **AFTER** the filing of an application
21 under this section, **OR, FOR AN APPLICATION FOR AN ELECTRIC**
22 **GENERATION FACILITY SUBMITTED AS REQUIRED UNDER SECTION 6T(13),**
23 **CONCURRENTLY WITH A FINAL ORDER ISSUED UNDER SECTION 6T,** the
24 commission shall issue an order granting or denying the requested
25 certificate of necessity. The commission shall hold a hearing on
26 the application. The hearing shall be conducted as a contested case
27 pursuant to chapter 4 of the administrative procedures act of 1969,

1 1969 PA 306, MCL 24.271 to 24.287. The commission shall allow
2 intervention by interested persons. ~~Reasonable~~ **THE COMMISSION SHALL**
3 **PERMIT REASONABLE** discovery ~~shall be permitted~~ before and during
4 the hearing in order to assist parties and interested persons in
5 obtaining evidence concerning the application, including, but not
6 limited to, the reasonableness and prudence of the construction,
7 investment, or purchase for which the certificate of necessity has
8 been requested. The commission shall grant the request if it
9 determines all of the following:

10 (a) That the electric utility has demonstrated a need for the
11 power that would be supplied by the existing or proposed electric
12 generation facility or pursuant to the proposed power purchase
13 agreement through its approved integrated resource plan ~~that~~
14 ~~complies with~~ **UNDER SECTION 6T OR** subsection (11).

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

19 (c) The estimated cost of power from the existing or proposed
20 electric generation facility or the price of power specified in the
21 proposed power purchase agreement is reasonable. The commission
22 shall find that the cost is reasonable if, in the construction or
23 investment in a new or existing facility, to the extent it is
24 commercially practicable, the estimated costs are the result of
25 competitively bid engineering, procurement, and construction
26 contracts, or in a power purchase agreement, the cost is the result
27 of a competitive solicitation. Up to 150 days after an electric

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

11 (d) The existing or proposed electric generation facility or
12 proposed power purchase agreement represents the most reasonable
13 and prudent means of meeting the power need relative to other
14 resource options for meeting power demand, including energy
15 efficiency programs, ~~and~~ electric transmission efficiencies, **AND**
16 **ANY EVIDENTIARY ALTERNATIVES SUBMITTED UNDER THIS SECTION,**
17 **INCLUDING ALTERNATIVE PROPOSALS SUBMITTED UNDER SUBSECTION (13).**

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

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

1 (6) In a certificate of necessity under this section, the
2 commission shall specify the costs approved for the construction of
3 or significant investment in the electric generation facility, the
4 price approved for the purchase of the existing electric generation
5 facility, or the price approved for the purchase of power pursuant
6 to the terms of the power purchase agreement. **FOR POWER PURCHASE**
7 **AGREEMENTS THAT AN ELECTRIC UTILITY ENTERS INTO WITH AN ENTITY THAT**
8 **IS NOT AFFILIATED WITH THAT ELECTRIC UTILITY AFTER THE EFFECTIVE**
9 **DATE OF THE AMENDATORY ACT THAT ADDED SECTION 6T, THE COMMISSION**
10 **SHALL CONSIDER AND MAY AUTHORIZE A FINANCIAL INCENTIVE FOR THAT**
11 **UTILITY THAT DOES NOT EXCEED THE ELECTRIC UTILITY'S WEIGHTED**
12 **AVERAGE COST OF CAPITAL.**

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

18 (8) If the commission denies any of the relief requested by an
19 electric utility, the electric utility may withdraw its application
20 or proceed with the proposed construction, purchase, investment, or
21 power purchase agreement without a certificate and the assurances
22 granted under this section.

23 (9) Once the electric generation facility or power purchase
24 agreement is considered used and useful or as otherwise provided in
25 subsection (12), the commission shall include in an electric
26 utility's retail rates all reasonable and prudent costs for an
27 electric generation facility or power purchase agreement for which

1 a certificate of necessity has been granted. The commission shall
2 not disallow recovery of costs an electric utility incurs in
3 constructing, investing in, or purchasing an electric generation
4 facility or in purchasing power pursuant to a power purchase
5 agreement for which a certificate of necessity has been granted, if
6 the costs do not exceed the costs approved by the commission in the
7 certificate. **THE PORTION OF THE COST OF A PLANT, FACILITY, OR POWER**
8 **PURCHASE AGREEMENT THAT EXCEEDS THE COST APPROVED BY THE COMMISSION**
9 **IS PRESUMED TO HAVE BEEN INCURRED DUE TO A LACK OF PRUDENCE.** Once
10 the electric generation facility or power purchase agreement is
11 considered used and useful or as otherwise provided in subsection
12 (12), the commission shall include in the electric utility's retail
13 rates costs actually incurred by the electric utility that exceed
14 the costs approved by the commission only if the commission finds
15 **BY A PREPONDERANCE OF THE EVIDENCE** that the additional costs are
16 ~~reasonable and prudent. If the actual costs incurred by the~~
17 ~~electric utility exceed the costs approved by the commission, the~~
18 ~~electric utility has the burden of proving by a preponderance of~~
19 ~~the evidence that the costs are reasonable and prudent. The portion~~
20 ~~of the cost of a plant, facility, or power purchase agreement which~~
21 ~~exceeds 110% of the cost approved by the commission is presumed to~~
22 ~~have been incurred due to a lack of prudence. The commission may~~
23 ~~include any or all of the portion of the cost in excess of 110% of~~
24 ~~the cost approved by the commission if the commission finds by a~~
25 ~~preponderance of the evidence that the costs were prudently~~
26 incurred.

27 (10) ~~Within 90 days of the effective date of the amendatory~~

1 ~~act that added this section, the~~ **THE** commission shall adopt
2 standard application filing forms and instructions for use in all
3 requests for a certificate of necessity under this section. The
4 commission may ~~, in its discretion,~~ modify the standard application
5 filing forms and instructions adopted under this section.

6 (11) The commission shall establish standards for an
7 integrated resource plan that shall be filed by an electric utility
8 requesting a certificate of necessity under this section. **THIS**
9 **SUBSECTION DOES NOT APPLY TO AN ELECTRIC UTILITY THAT HAS AN**
10 **APPROVED INTEGRATED RESOURCE PLAN UNDER SECTION 6T.** An integrated
11 resource plan shall include all of the following:

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

14 (b) The type of generation technology proposed for the
15 generation facility and the proposed capacity of the generation
16 facility, including projected fuel and regulatory costs under
17 various reasonable scenarios.

18 (c) Projected energy and capacity purchased or produced by the
19 electric utility ~~pursuant to~~ **UNDER** any renewable portfolio
20 standard.

21 (d) Projected energy efficiency program savings under any
22 energy efficiency program requirements and the projected costs for
23 that program.

24 (e) Projected load management and demand response savings for
25 the electric utility and the projected costs for those programs.

26 (f) An analysis of the availability and costs of other
27 electric resources that could defer, displace, or partially

1 displace the proposed generation facility or purchased power
2 agreement, including additional renewable energy, energy efficiency
3 programs, load management, and demand response, beyond those
4 amounts contained in subdivisions (c) to (e).

5 (g) Electric transmission options for the electric utility.

6 (12) The commission ~~shall~~**MAY** allow financing interest cost
7 recovery in an electric utility's base rates on construction work
8 in progress for capital improvements approved under this section
9 prior to the assets being considered used and useful. Regardless of
10 whether or not the commission authorizes base rate treatment for
11 construction work in progress financing interest expense, an
12 electric utility shall be allowed to recognize, accrue, and defer
13 the allowance for funds used during construction. ~~related to equity~~
14 ~~capital.~~

15 (13) ~~As used in this section, "renewable energy system" means~~
16 ~~that term as defined in the clean, renewable, and efficient energy~~
17 ~~act.~~**AN EXISTING SUPPLIER OF ELECTRIC GENERATION CAPACITY CURRENTLY**
18 **PRODUCING AT LEAST 200 MEGAWATTS OF FIRM ELECTRIC GENERATION**
19 **CAPACITY RESOURCES LOCATED IN THE INDEPENDENT SYSTEM OPERATOR'S**
20 **ZONE IN WHICH THE UTILITY'S LOAD IS SERVED THAT SEEKS TO PROVIDE**
21 **ELECTRIC GENERATION CAPACITY RESOURCES TO THE UTILITY MAY SUBMIT A**
22 **WRITTEN PROPOSAL DIRECTLY TO THE COMMISSION AS AN ALTERNATIVE TO**
23 **THE CONSTRUCTION, INVESTMENT, OR PURCHASE FOR WHICH THE CERTIFICATE**
24 **OF NECESSITY IS SOUGHT UNDER THIS SECTION. THE ENTITY SUBMITTING AN**
25 **ALTERNATIVE PROPOSAL UNDER THIS SUBSECTION HAS STANDING TO**
26 **INTERVENE AND THE COMMISSION SHALL ALLOW REASONABLE DISCOVERY IN**
27 **THE CONTESTED CASE PROCEEDING CONDUCTED UNDER THIS SECTION. IN**

1 EVALUATING AN ALTERNATIVE PROPOSAL, THE COMMISSION SHALL CONSIDER
2 THE COST OF THE ALTERNATIVE PROPOSAL AND THE SUBMITTING ENTITY'S
3 QUALIFICATIONS, TECHNICAL COMPETENCE, CAPABILITY, RELIABILITY,
4 CREDITWORTHINESS, AND PAST PERFORMANCE. IN REVIEWING AN
5 APPLICATION, THE COMMISSION MAY CONSIDER ANY ALTERNATIVE PROPOSALS
6 SUBMITTED UNDER THIS SUBSECTION. THIS SUBSECTION DOES NOT LIMIT THE
7 COMMISSION'S AUTHORITY TO GRANT STANDING TO INTERESTED PARTIES
8 UNDER SUBSECTION (4), AND DOES NOT RESTRICT INTERESTED PARTIES FROM
9 SUBMITTING EVIDENTIARY ALTERNATIVES TO THE CONSTRUCTION,
10 INVESTMENT, OR PURCHASE FOR WHICH THE CERTIFICATE OF NECESSITY IS
11 SOUGHT UNDER THIS SECTION. THIS SUBSECTION DOES NOT AUTHORIZE THE
12 COMMISSION TO ORDER OR OTHERWISE REQUIRE AN ELECTRIC UTILITY TO
13 ADOPT ANY ALTERNATIVE PROPOSAL SUBMITTED UNDER THIS SUBSECTION.

14 (14) AN ORDER OF THE COMMISSION FOLLOWING A HEARING UNDER THIS
15 SECTION IS SUBJECT TO JUDICIAL REVIEW AS PROVIDED UNDER SECTION 28
16 OF ARTICLE VI OF THE STATE CONSTITUTION OF 1963 AND CHAPTER 6 OF
17 THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.301
18 TO 24.306, EXCEPT THAT THE FILING OF A PETITION FOR REVIEW MUST BE
19 FILED IN THE COURT OF APPEALS WITHIN 30 DAYS AFTER THE ORDER OF THE
20 COMMISSION IS ISSUED AND THE REVIEW SHALL BE CONDUCTED BY THE COURT
21 AS EXPEDITIOUSLY AS POSSIBLE WITH LAWFUL PRECEDENCE OVER OTHER
22 MATTERS.

23 SEC. 6T. (1) THE COMMISSION SHALL, WITHIN 120 DAYS OF THE
24 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION AND
25 EVERY 5 YEARS THEREAFTER, COMMENCE A PROCEEDING AND, IN
26 CONSULTATION WITH THE MICHIGAN AGENCY FOR ENERGY, THE DEPARTMENT OF
27 ENVIRONMENTAL QUALITY, AND OTHER INTERESTED PARTIES, DO ALL OF THE

1 FOLLOWING AS PART OF THE PROCEEDING:

2 (A) CONDUCT AN ASSESSMENT OF THE POTENTIAL FOR ENERGY WASTE
3 REDUCTION IN THIS STATE, BASED ON WHAT IS ECONOMICALLY AND
4 TECHNOLOGICALLY FEASIBLE, AS WELL AS WHAT IS REASONABLY ACHIEVABLE.

5 (B) CONDUCT AN ASSESSMENT FOR THE USE OF DEMAND RESPONSE
6 PROGRAMS IN THIS STATE, BASED ON WHAT IS ECONOMICALLY AND
7 TECHNOLOGICALLY FEASIBLE, AS WELL AS WHAT IS REASONABLY ACHIEVABLE.
8 THE ASSESSMENT SHALL EXPRESSLY ACCOUNT FOR ADVANCED METERING
9 INFRASTRUCTURE THAT HAS ALREADY BEEN INSTALLED IN THIS STATE AND
10 SHALL SEEK TO FULLY MAXIMIZE POTENTIAL BENEFITS TO RATEPAYERS IN
11 LOWERING UTILITY BILLS.

12 (C) IDENTIFY SIGNIFICANT STATE OR FEDERAL ENVIRONMENTAL
13 REGULATIONS, LAWS, OR RULES AND HOW EACH REGULATION, LAW, OR RULE
14 WOULD AFFECT ELECTRIC UTILITIES IN THIS STATE.

15 (D) IDENTIFY ANY FORMALLY PROPOSED STATE OR FEDERAL
16 ENVIRONMENTAL REGULATION, LAW, OR RULE THAT HAS BEEN PUBLISHED IN
17 THE MICHIGAN REGISTER OR THE FEDERAL REGISTER AND HOW THE PROPOSED
18 REGULATION, LAW, OR RULE WOULD AFFECT ELECTRIC UTILITIES IN THIS
19 STATE.

20 (E) IDENTIFY ANY REQUIRED PLANNING RESERVE MARGINS AND LOCAL
21 CLEARING REQUIREMENTS IN AREAS OF THIS STATE.

22 (F) ESTABLISH THE MODELING SCENARIOS AND ASSUMPTIONS EACH
23 ELECTRIC UTILITY SHOULD INCLUDE IN ADDITION TO ITS OWN SCENARIOS
24 AND ASSUMPTIONS IN DEVELOPING ITS INTEGRATED RESOURCE PLAN FILED
25 UNDER SUBSECTION (3), INCLUDING, BUT NOT LIMITED TO, ALL OF THE
26 FOLLOWING:

27 (i) ANY REQUIRED PLANNING RESERVE MARGINS AND LOCAL CLEARING

1 REQUIREMENTS.

2 (ii) ALL APPLICABLE STATE AND FEDERAL ENVIRONMENTAL
3 REGULATIONS, LAWS, AND RULES IDENTIFIED IN THIS SUBSECTION.

4 (iii) ANY SUPPLY-SIDE AND DEMAND-SIDE RESOURCES THAT
5 REASONABLY COULD ADDRESS ANY NEED FOR ADDITIONAL GENERATION
6 CAPACITY, INCLUDING, BUT NOT LIMITED TO, THE TYPE OF GENERATION
7 TECHNOLOGY FOR ANY PROPOSED GENERATION FACILITY, PROJECTED ENERGY
8 WASTE REDUCTION SAVINGS, AND PROJECTED LOAD MANAGEMENT AND DEMAND
9 RESPONSE SAVINGS.

10 (iv) ANY REGIONAL INFRASTRUCTURE LIMITATIONS IN THIS STATE.

11 (v) THE PROJECTED COSTS OF DIFFERENT TYPES OF FUEL USED FOR
12 ELECTRIC GENERATION.

13 (G) ALLOW OTHER STATE AGENCIES TO PROVIDE INPUT REGARDING ANY
14 OTHER REGULATORY REQUIREMENTS THAT SHOULD BE INCLUDED IN MODELING
15 SCENARIOS OR ASSUMPTIONS.

16 (H) PUBLISH A COPY OF THE PROPOSED MODELING SCENARIOS AND
17 ASSUMPTIONS TO BE USED IN INTEGRATED RESOURCE PLANS ON THE
18 COMMISSION'S WEBSITE.

19 (I) BEFORE ISSUING THE FINAL MODELING SCENARIOS AND
20 ASSUMPTIONS EACH ELECTRIC UTILITY SHOULD INCLUDE IN DEVELOPING ITS
21 INTEGRATED RESOURCE PLAN, RECEIVE WRITTEN COMMENTS AND HOLD
22 HEARINGS TO SOLICIT PUBLIC INPUT REGARDING THE PROPOSED MODELING
23 SCENARIOS AND ASSUMPTIONS.

24 (2) A PROCEEDING COMMENCED UNDER SUBSECTION (1) SHALL BE
25 COMPLETED WITHIN 120 DAYS, AND SHALL NOT BE A CONTESTED CASE UNDER
26 CHAPTER 4 OF THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA
27 306, MCL 24.271 TO 24.287. THE DETERMINATION OF THE MODELING

1 ASSUMPTIONS FOR INTEGRATED RESOURCE PLANS MADE UNDER SUBSECTION (1)
2 IS NOT CONSIDERED A FINAL ORDER FOR PURPOSES OF JUDICIAL REVIEW.
3 THE DETERMINATIONS MADE UNDER SUBSECTION (1) ARE ONLY SUBJECT TO
4 JUDICIAL REVIEW AS PART OF THE FINAL COMMISSION ORDER APPROVING AN
5 INTEGRATED RESOURCE PLAN UNDER THIS SECTION.

6 (3) NOT LATER THAN 2 YEARS AFTER THE EFFECTIVE DATE OF THE
7 AMENDATORY ACT THAT ADDED THIS SECTION, EACH ELECTRIC UTILITY WHOSE
8 RATES ARE REGULATED BY THE COMMISSION SHALL FILE WITH THE
9 COMMISSION AN INTEGRATED RESOURCE PLAN THAT PROVIDES A 5-YEAR, 10-
10 YEAR, AND 15-YEAR PROJECTION OF THE UTILITY'S LOAD OBLIGATIONS AND
11 A PLAN TO MEET THOSE OBLIGATIONS, TO MEET THE UTILITY'S
12 REQUIREMENTS TO PROVIDE GENERATION RELIABILITY, INCLUDING MEETING
13 PLANNING RESERVE MARGIN AND LOCAL CLEARING REQUIREMENTS DETERMINED
14 BY THE COMMISSION OR THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR,
15 AND TO MEET ALL APPLICABLE STATE AND FEDERAL RELIABILITY AND
16 ENVIRONMENTAL REGULATIONS OVER THE ENSUING TERM OF THE PLAN. THE
17 COMMISSION SHALL ISSUE AN ORDER ESTABLISHING FILING REQUIREMENTS,
18 INCLUDING APPLICATION FORMS AND INSTRUCTIONS, AND FILING DEADLINES
19 FOR AN INTEGRATED RESOURCE PLAN FILED BY AN ELECTRIC UTILITY WHOSE
20 RATES ARE REGULATED BY THE COMMISSION. THE ELECTRIC UTILITY'S PLAN
21 MAY INCLUDE ALTERNATIVE MODELING SCENARIOS AND ASSUMPTIONS IN
22 ADDITION TO THOSE IDENTIFIED UNDER SUBSECTION (1).

23 (4) FOR AN ELECTRIC UTILITY WITH FEWER THAN 1,000,000
24 CUSTOMERS IN THIS STATE WHOSE RATES ARE REGULATED BY THE
25 COMMISSION, THE COMMISSION MAY ISSUE AN ORDER IMPLEMENTING SEPARATE
26 FILING REQUIREMENTS, REVIEW CRITERIA, AND APPROVAL STANDARDS THAT
27 DIFFER FROM THOSE ESTABLISHED UNDER SUBSECTION (3). AN ELECTRIC

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1 UTILITY PROVIDING ELECTRIC TARIFF SERVICE TO CUSTOMERS BOTH IN THIS
2 STATE AND IN AT LEAST 1 OTHER STATE MAY DESIGN ITS INTEGRATED
3 RESOURCE PLAN TO COVER ALL ITS CUSTOMERS ON THAT MULTISTATE BASIS.
4 IF AN ELECTRIC UTILITY HAS FILED A MULTISTATE INTEGRATED RESOURCE
5 PLAN THAT INCLUDES ITS SERVICE AREA IN THIS STATE WITH THE RELEVANT
6 UTILITY REGULATORY COMMISSION IN ANOTHER STATE IN WHICH IT PROVIDES
7 TARIFF SERVICE TO RETAIL CUSTOMERS, THE COMMISSION SHALL ACCEPT
8 THAT INTEGRATED RESOURCE PLAN FILING FOR FILING PURPOSES IN THIS
9 STATE. HOWEVER, THE COMMISSION MAY REQUIRE SUPPLEMENTAL INFORMATION
10 IF NECESSARY AS PART OF ITS EVALUATION AND DETERMINATION OF WHETHER
11 TO APPROVE THE PLAN. UPON REQUEST OF AN ELECTRIC UTILITY, THE
12 COMMISSION MAY ADJUST THE FILING DATES FOR A MULTISTATE INTEGRATED
13 RESOURCE PLAN FILING IN THIS STATE TO PLACE ITS REVIEW ON THE SAME
14 TIMELINE AS OTHER RELEVANT STATE REVIEWS.

15 (5) AN INTEGRATED RESOURCE PLAN SHALL INCLUDE ALL OF THE
16 FOLLOWING:

17 (A) A LONG-TERM FORECAST OF THE ELECTRIC UTILITY'S SALES AND
18 PEAK DEMAND UNDER VARIOUS REASONABLE SCENARIOS.

19 (B) THE TYPE OF GENERATION TECHNOLOGY PROPOSED FOR A
20 GENERATION FACILITY CONTAINED IN THE PLAN AND THE PROPOSED CAPACITY
21 OF THE GENERATION FACILITY, INCLUDING PROJECTED FUEL COSTS UNDER
22 VARIOUS REASONABLE SCENARIOS.

23 (C) PROJECTED ENERGY PURCHASED OR PRODUCED BY THE ELECTRIC
24 UTILITY FROM A RENEWABLE ENERGY RESOURCE. BEGINNING JANUARY 1,
25 <<2022>>, THE PROJECTED AMOUNT OF ENERGY PURCHASED OR PRODUCED BY THE
26 ELECTRIC UTILITY FROM A RENEWABLE RESOURCE UNDER THIS SUBDIVISION
27 MUST EQUAL AT LEAST <<15%>>. AN ELECTRIC UTILITY MAY COMPLY WITH THE

1 REQUIREMENT OF THIS SUBDIVISION USING RENEWABLE ENERGY IN ANY FORM,
2 INCLUDING GENERATING ELECTRICITY FROM RENEWABLE ENERGY SYSTEMS FOR
3 SALE TO RETAIL CUSTOMERS OR PURCHASING OR OTHERWISE ACQUIRING
4 RENEWABLE ENERGY CREDITS WITH OR WITHOUT ASSOCIATED RENEWABLE
5 ENERGY, ALLOWED UNDER SECTION 27 OF THE CLEAN AND RENEWABLE ENERGY
6 AND ENERGY WASTE REDUCTION ACT, 2008 PA 295, MCL 460.1027, AS IT
7 EXISTED BEFORE THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
8 THIS SECTION.

9 (D) DETAILS REGARDING THE UTILITY'S PLAN TO ELIMINATE ENERGY
10 WASTE, INCLUDING THE TOTAL AMOUNT OF ENERGY WASTE REDUCTION
11 EXPECTED TO BE ACHIEVED ANNUALLY, THE COST OF THE PLAN, AND THE
12 EXPECTED SAVINGS FOR ITS RETAIL CUSTOMERS.

13 (E) AN ANALYSIS OF HOW THE COMBINED AMOUNTS OF RENEWABLE
14 ENERGY AND ENERGY WASTE REDUCTION ACHIEVED UNDER THE PLAN COMPARE
15 TO THE RENEWABLE ENERGY RESOURCES AND ENERGY WASTE REDUCTION GOAL
16 PROVIDED IN SECTION 1 OF THE CLEAN AND RENEWABLE ENERGY AND ENERGY
17 WASTE REDUCTION ACT, 2008 PA 295, MCL 460.1001. THIS ANALYSIS AND
18 COMPARISON MAY INCLUDE RENEWABLE ENERGY AND CAPACITY IN ANY FORM,
19 INCLUDING GENERATING ELECTRICITY FROM RENEWABLE ENERGY SYSTEMS FOR
20 SALE TO RETAIL CUSTOMERS OR PURCHASING OR OTHERWISE ACQUIRING
21 RENEWABLE ENERGY CREDITS WITH OR WITHOUT ASSOCIATED RENEWABLE
22 ENERGY, ALLOWED UNDER SECTION 27 OF THE CLEAN AND RENEWABLE ENERGY
23 AND ENERGY WASTE REDUCTION ACT, 2008 PA 295, MCL 460.1027, AS IT
24 EXISTED BEFORE THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
25 THIS SECTION.

26 (F) PROJECTED LOAD MANAGEMENT AND DEMAND RESPONSE SAVINGS FOR
27 THE ELECTRIC UTILITY AND THE PROJECTED COSTS FOR THOSE PROGRAMS.

1 (G) PROJECTED ENERGY AND CAPACITY PURCHASED OR PRODUCED BY THE
2 ELECTRIC UTILITY FROM A COGENERATION RESOURCE.

3 (H) AN ANALYSIS OF POTENTIAL NEW OR UPGRADED ELECTRIC
4 TRANSMISSION OPTIONS FOR THE ELECTRIC UTILITY.

5 (I) DATA REGARDING THE UTILITY'S CURRENT GENERATION PORTFOLIO,
6 INCLUDING THE AGE, CAPACITY FACTOR, LICENSING STATUS, AND REMAINING
7 ESTIMATED TIME OF OPERATION FOR EACH FACILITY IN THE PORTFOLIO.

8 (J) PLANS FOR MEETING CURRENT AND FUTURE CAPACITY NEEDS WITH
9 THE COST ESTIMATES FOR ALL PROPOSED CONSTRUCTION AND MAJOR
10 INVESTMENTS, INCLUDING ANY TRANSMISSION OR DISTRIBUTION
11 INFRASTRUCTURE THAT WOULD BE REQUIRED TO SUPPORT THE PROPOSED
12 CONSTRUCTION OR INVESTMENT, AND POWER PURCHASE AGREEMENTS.

13 (K) AN ANALYSIS OF THE COST, CAPACITY FACTOR, AND VIABILITY OF
14 ALL REASONABLE GENERATION OPTIONS AVAILABLE TO MEET PROJECTED
15 CAPACITY NEEDS, INCLUDING, BUT NOT LIMITED TO, EXISTING ELECTRIC
16 GENERATION FACILITIES IN THIS STATE.

17 (L) PROJECTED RATE IMPACT FOR THE PERIODS COVERED BY THE PLAN.

18 (M) HOW THE UTILITY WILL COMPLY WITH ALL APPLICABLE STATE AND
19 FEDERAL ENVIRONMENTAL REGULATIONS, LAWS, AND RULES, AND THE
20 PROJECTED COSTS OF COMPLYING WITH THOSE REGULATIONS, LAWS, AND
21 RULES.

22 (N) A FORECAST OF THE UTILITY'S PEAK DEMAND AND DETAILS
23 REGARDING THE AMOUNT OF PEAK DEMAND REDUCTION THE UTILITY EXPECTS
24 TO ACHIEVE AND THE ACTIONS THE UTILITY PROPOSES TO TAKE IN ORDER TO
25 ACHIEVE THAT PEAK DEMAND REDUCTION.

26 (6) BEFORE FILING AN INTEGRATED RESOURCE PLAN UNDER THIS
27 SECTION, EACH ELECTRIC UTILITY WHOSE RATES ARE REGULATED BY THE

1 COMMISSION SHALL ISSUE A REQUEST FOR PROPOSALS TO PROVIDE ANY NEW
2 SUPPLY-SIDE GENERATION CAPACITY RESOURCES NEEDED TO SERVE THE
3 UTILITY'S REASONABLY PROJECTED ELECTRIC LOAD, APPLICABLE PLANNING
4 RESERVE MARGIN, AND LOCAL CLEARING REQUIREMENT FOR ITS CUSTOMERS IN
5 THIS STATE AND CUSTOMERS THE UTILITY SERVES IN OTHER STATES DURING
6 THE INITIAL 3-YEAR PLANNING PERIOD TO BE CONSIDERED IN EACH
7 INTEGRATED RESOURCE PLAN TO BE FILED UNDER THIS SECTION. AN
8 ELECTRIC UTILITY SHALL DEFINE QUALIFYING PERFORMANCE STANDARDS,
9 CONTRACT TERMS, TECHNICAL COMPETENCE, CAPABILITY, RELIABILITY,
10 CREDITWORTHINESS, PAST PERFORMANCE, AND OTHER CRITERIA THAT
11 RESPONSES AND RESPONDENTS TO THE REQUEST FOR PROPOSALS MUST MEET IN
12 ORDER TO BE CONSIDERED BY THE UTILITY IN ITS INTEGRATED RESOURCE
13 PLAN TO BE FILED UNDER THIS SECTION. RESPONDENTS TO A REQUEST FOR
14 PROPOSALS MAY REQUEST THAT CERTAIN PROPRIETARY INFORMATION BE
15 EXEMPT FROM PUBLIC DISCLOSURE AS ALLOWED BY THE COMMISSION. A
16 UTILITY THAT ISSUES A REQUEST FOR PROPOSALS UNDER THIS SUBSECTION
17 SHALL USE THE RESULTING PROPOSALS TO INFORM ITS INTEGRATED RESOURCE
18 PLAN FILED UNDER THIS SECTION AND INCLUDE ALL OF THE SUBMITTED
19 PROPOSALS AS ATTACHMENTS TO ITS INTEGRATED RESOURCE PLAN FILING
20 REGARDLESS OF WHETHER THE PROPOSALS MET THE QUALIFYING PERFORMANCE
21 STANDARDS, CONTRACT TERMS, TECHNICAL COMPETENCE, CAPABILITY,
22 RELIABILITY, CREDITWORTHINESS, PAST PERFORMANCE, OR OTHER CRITERIA
23 SPECIFIED FOR THE UTILITY'S REQUEST FOR PROPOSALS UNDER THIS
24 SECTION. AN EXISTING SUPPLIER OF ELECTRIC GENERATION CAPACITY
25 CURRENTLY PRODUCING AT LEAST 200 MEGAWATTS OF FIRM ELECTRIC
26 GENERATION CAPACITY RESOURCES LOCATED IN THE INDEPENDENT SYSTEM
27 OPERATOR'S ZONE IN WHICH THE UTILITY'S LOAD IS SERVED THAT SEEKS TO

1 PROVIDE ELECTRIC GENERATION CAPACITY RESOURCES TO THE UTILITY MAY
2 SUBMIT A WRITTEN PROPOSAL DIRECTLY TO THE COMMISSION AS AN
3 ALTERNATIVE TO ANY SUPPLY-SIDE GENERATION CAPACITY RESOURCE
4 INCLUDED IN THE ELECTRIC UTILITY'S INTEGRATED RESOURCE PLAN
5 SUBMITTED UNDER THIS SECTION, AND HAS STANDING TO INTERVENE IN THE
6 CONTESTED CASE PROCEEDING CONDUCTED UNDER THIS SECTION. THIS
7 SUBSECTION DOES NOT REQUIRE AN ENTITY THAT SUBMITS AN ALTERNATIVE
8 UNDER THIS SUBSECTION TO SUBMIT AN INTEGRATED RESOURCE PLAN. THE
9 COMMISSION SHALL ONLY CONSIDER AN ALTERNATIVE PROPOSAL SUBMITTED
10 UNDER THIS SUBSECTION AS PART OF ITS APPROVAL PROCESS UNDER
11 SUBSECTION (8). THE ELECTRIC UTILITY SUBMITTING AN INTEGRATED
12 RESOURCE PLAN UNDER THIS SECTION IS NOT REQUIRED TO ADOPT ANY
13 PROPOSALS SUBMITTED UNDER THIS SUBSECTION. TO THE EXTENT
14 PRACTICABLE, EACH ELECTRIC UTILITY IS ENCOURAGED, BUT NOT REQUIRED,
15 TO PARTNER WITH OTHER ELECTRIC PROVIDERS IN THE SAME LOCAL RESOURCE
16 ZONE AS THE UTILITY'S LOAD IS SERVED IN THE DEVELOPMENT OF ANY NEW
17 SUPPLY-SIDE GENERATION CAPACITY RESOURCES INCLUDED AS PART OF ITS
18 INTEGRATED RESOURCE PLAN.

19 (7) NOT LATER THAN 300 DAYS AFTER AN ELECTRIC UTILITY FILES AN
20 INTEGRATED RESOURCE PLAN UNDER THIS SECTION, THE COMMISSION SHALL
21 STATE IF THE COMMISSION HAS ANY RECOMMENDED CHANGES, AND IF SO,
22 DESCRIBE THEM IN SUFFICIENT DETAIL TO ALLOW THEIR INCORPORATION IN
23 THE INTEGRATED RESOURCE PLAN. IF THE COMMISSION DOES NOT RECOMMEND
24 CHANGES, IT SHALL ISSUE A FINAL, APPEALABLE ORDER APPROVING OR
25 DENYING THE PLAN FILED BY THE ELECTRIC UTILITY. IF THE COMMISSION
26 RECOMMENDS CHANGES, THE COMMISSION SHALL SET A SCHEDULE ALLOWING
27 PARTIES AT LEAST 15 DAYS AFTER THAT RECOMMENDATION TO FILE COMMENTS

1 REGARDING THOSE RECOMMENDATIONS, AND ALLOWING THE ELECTRIC UTILITY
2 AT LEAST 30 DAYS TO CONSIDER THE RECOMMENDED CHANGES AND SUBMIT A
3 REVISED INTEGRATED RESOURCE PLAN THAT INCORPORATES 1 OR MORE OF THE
4 RECOMMENDED CHANGES. IF THE ELECTRIC UTILITY SUBMITS A REVISED
5 INTEGRATED RESOURCE PLAN UNDER THIS SECTION, THE COMMISSION SHALL
6 ISSUE A FINAL, APPEALABLE ORDER APPROVING THE PLAN AS REVISED BY
7 THE ELECTRIC UTILITY OR DENYING THE PLAN. THE COMMISSION SHALL
8 ISSUE A FINAL, APPEALABLE ORDER NO LATER THAN 360 DAYS AFTER AN
9 ELECTRIC UTILITY FILES AN INTEGRATED RESOURCE PLAN UNDER THIS
10 SECTION. UP TO 150 DAYS AFTER AN ELECTRIC UTILITY MAKES ITS INITIAL
11 FILING, THE ELECTRIC UTILITY MAY FILE TO UPDATE ITS COST ESTIMATES
12 IF THOSE COST ESTIMATES HAVE MATERIALLY CHANGED. A UTILITY SHALL
13 NOT MODIFY ANY OTHER ASPECT OF THE INITIAL FILING UNLESS THE
14 UTILITY WITHDRAWS AND REFILES THE APPLICATION. A UTILITY'S FILING
15 UPDATING ITS COST ESTIMATES DOES NOT EXTEND THE PERIOD FOR THE
16 COMMISSION TO ISSUE AN ORDER APPROVING OR DENYING THE INTEGRATED
17 RESOURCE PLAN. THE COMMISSION SHALL REVIEW THE INTEGRATED RESOURCE
18 PLAN IN A CONTESTED CASE PROCEEDING CONDUCTED PURSUANT TO CHAPTER 4
19 OF THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL
20 24.271 TO 24.287. THE COMMISSION SHALL ALLOW INTERVENTION BY
21 INTERESTED PERSONS INCLUDING ELECTRIC CUSTOMERS OF THE UTILITY,
22 RESPONDENTS TO THE UTILITY'S REQUEST FOR PROPOSALS UNDER THIS
23 SECTION, OR OTHER PARTIES APPROVED BY THE COMMISSION. THE
24 COMMISSION SHALL REQUEST AN ADVISORY OPINION FROM THE DEPARTMENT OF
25 ENVIRONMENTAL QUALITY REGARDING WHETHER ANY POTENTIAL DECREASE IN
26 EMISSIONS OF SULFUR DIOXIDE, OXIDES OF NITROGEN, MERCURY, AND
27 PARTICULATE MATTER WOULD REASONABLY BE EXPECTED TO RESULT IF THE

1 INTEGRATED RESOURCE PLAN PROPOSED BY THE ELECTRIC UTILITY UNDER
2 SUBSECTION (3) WAS APPROVED AND WHETHER THE INTEGRATED RESOURCE
3 PLAN CAN REASONABLY BE EXPECTED TO ACHIEVE COMPLIANCE WITH THE
4 REGULATIONS, LAWS, OR RULES IDENTIFIED IN SUBSECTION (1). THE
5 COMMISSION MAY TAKE OFFICIAL NOTICE OF THE OPINION ISSUED BY THE
6 DEPARTMENT OF ENVIRONMENTAL QUALITY UNDER THIS SUBSECTION PURSUANT
7 TO R 792.10428 OF THE MICHIGAN ADMINISTRATIVE CODE. INFORMATION
8 SUBMITTED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY UNDER THIS
9 SUBSECTION IS ADVISORY AND IS NOT BINDING ON FUTURE DETERMINATIONS
10 BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY OR THE COMMISSION IN ANY
11 PROCEEDING OR PERMITTING PROCESS. THIS SECTION DOES NOT PREVENT AN
12 ELECTRIC UTILITY FROM APPLYING FOR, OR RECEIVING, ANY NECESSARY
13 PERMITS FROM THE DEPARTMENT OF ENVIRONMENTAL QUALITY. THE
14 COMMISSION MAY INVITE OTHER STATE AGENCIES TO PROVIDE TESTIMONY
15 REGARDING OTHER RELEVANT REGULATORY REQUIREMENTS RELATED TO THE
16 INTEGRATED RESOURCE PLAN. THE COMMISSION SHALL PERMIT REASONABLE
17 DISCOVERY AFTER AN INTEGRATED RESOURCE PLAN IS FILED AND DURING THE
18 HEARING IN ORDER TO ASSIST PARTIES AND INTERESTED PERSONS IN
19 OBTAINING EVIDENCE CONCERNING THE INTEGRATED RESOURCE PLAN,
20 INCLUDING, BUT NOT LIMITED TO, THE REASONABLENESS AND PRUDENCE OF
21 THE PLAN AND ALTERNATIVES TO THE PLAN RAISED BY INTERVENING
22 PARTIES.

23 (8) THE COMMISSION SHALL APPROVE THE INTEGRATED RESOURCE PLAN
24 UNDER SUBSECTION (7) IF THE COMMISSION DETERMINES ALL OF THE
25 FOLLOWING:

26 (A) THE PROPOSED INTEGRATED RESOURCE PLAN REPRESENTS THE MOST
27 REASONABLE AND PRUDENT MEANS OF MEETING THE ELECTRIC UTILITY'S

1 ENERGY AND CAPACITY NEEDS. TO DETERMINE WHETHER THE INTEGRATED
2 RESOURCE PLAN IS THE MOST REASONABLE AND PRUDENT MEANS OF MEETING
3 ENERGY AND CAPACITY NEEDS, THE COMMISSION SHALL CONSIDER WHETHER
4 THE PLAN APPROPRIATELY BALANCES ALL OF THE FOLLOWING FACTORS:

5 (i) RESOURCE ADEQUACY AND CAPACITY TO SERVE ANTICIPATED PEAK
6 ELECTRIC LOAD, APPLICABLE PLANNING RESERVE MARGIN, AND LOCAL
7 CLEARING REQUIREMENT.

8 (ii) COMPLIANCE WITH APPLICABLE STATE AND FEDERAL
9 ENVIRONMENTAL REGULATIONS.

10 (iii) COMPETITIVE PRICING.

11 (iv) RELIABILITY.

12 (v) COMMODITY PRICE RISKS.

13 (vi) DIVERSITY OF GENERATION SUPPLY.

14 (vii) WHETHER THE PROPOSED LEVELS OF PEAK LOAD REDUCTION AND
15 ENERGY WASTE REDUCTION ARE REASONABLE AND COST EFFECTIVE. EXCEEDING
16 THE RENEWABLE ENERGY RESOURCES AND ENERGY WASTE REDUCTION GOAL IN
17 SECTION 1 OF THE CLEAN AND RENEWABLE ENERGY AND ENERGY WASTE
18 REDUCTION ACT, 2008 PA 295, MCL 460.1001, BY A UTILITY SHALL NOT,
19 IN AND OF ITSELF, BE GROUNDS FOR DETERMINING THAT THE PROPOSED
20 LEVELS OF PEAK LOAD REDUCTION, RENEWABLE ENERGY, AND ENERGY WASTE
21 REDUCTION ARE NOT REASONABLE AND COST EFFECTIVE.

22 (B) TO THE EXTENT PRACTICABLE, THE CONSTRUCTION OR INVESTMENT
23 IN A NEW OR EXISTING CAPACITY RESOURCE IN THIS STATE IS COMPLETED
24 USING A WORKFORCE COMPOSED OF RESIDENTS OF THIS STATE AS DETERMINED
25 BY THE COMMISSION. THIS SUBDIVISION DOES NOT APPLY TO A CAPACITY
26 RESOURCE THAT IS LOCATED IN A COUNTY THAT LIES ON THE BORDER WITH
27 ANOTHER STATE.

1 (C) THE PLAN MEETS THE REQUIREMENTS OF SUBSECTION (5).

2 (9) IF THE COMMISSION DENIES A UTILITY'S INTEGRATED RESOURCE
3 PLAN, THE UTILITY, WITHIN 60 DAYS AFTER THE DATE OF THE FINAL ORDER
4 DENYING THE INTEGRATED RESOURCE PLAN, MAY SUBMIT REVISIONS TO THE
5 INTEGRATED RESOURCE PLAN TO THE COMMISSION FOR APPROVAL. THE
6 COMMISSION SHALL COMMENCE A NEW CONTESTED CASE HEARING UNDER
7 CHAPTER 4 OF THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA
8 306, MCL 24.271 TO 24.287. NOT LATER THAN 90 DAYS AFTER THE DATE
9 THAT THE UTILITY SUBMITS THE REVISED INTEGRATED RESOURCE PLAN TO
10 THE COMMISSION UNDER THIS SUBSECTION, THE COMMISSION SHALL ISSUE AN
11 ORDER APPROVING OR DENYING, WITH RECOMMENDATIONS, THE REVISED
12 INTEGRATED RESOURCE PLAN IF THE REVISIONS ARE NOT SUBSTANTIAL OR
13 INCONSISTENT WITH THE ORIGINAL INTEGRATED RESOURCE PLAN FILED UNDER
14 THIS SECTION. IF THE REVISIONS ARE SUBSTANTIAL OR INCONSISTENT WITH
15 THE ORIGINAL INTEGRATED RESOURCE PLAN, THE COMMISSION HAS UP TO 150
16 DAYS TO ISSUE AN ORDER APPROVING OR DENYING, WITH RECOMMENDATIONS,
17 THE REVISED INTEGRATED RESOURCE PLAN.

18 (10) IF THE COMMISSION DENIES AN ELECTRIC UTILITY'S INTEGRATED
19 RESOURCE PLAN, THE ELECTRIC UTILITY MAY PROCEED WITH A PROPOSED
20 CONSTRUCTION, PURCHASE, INVESTMENT, OR POWER PURCHASE AGREEMENT
21 CONTAINED IN THE INTEGRATED RESOURCE PLAN WITHOUT THE ASSURANCES
22 GRANTED UNDER THIS SECTION.

23 (11) IN APPROVING AN INTEGRATED RESOURCE PLAN UNDER THIS
24 SECTION, THE COMMISSION SHALL SPECIFY THE COSTS APPROVED FOR THE
25 CONSTRUCTION OF OR SIGNIFICANT INVESTMENT IN AN ELECTRIC GENERATION
26 FACILITY, THE PURCHASE OF AN EXISTING ELECTRIC GENERATION FACILITY,
27 THE PURCHASE OF POWER UNDER THE TERMS OF THE POWER PURCHASE

1 AGREEMENT, OR OTHER INVESTMENTS OR RESOURCES USED TO MEET ENERGY
2 AND CAPACITY NEEDS THAT ARE INCLUDED IN THE APPROVED INTEGRATED
3 RESOURCE PLAN. THE COSTS FOR SPECIFICALLY IDENTIFIED INVESTMENTS,
4 INCLUDING THE COSTS FOR FACILITIES UNDER SUBSECTION (12), INCLUDED
5 IN AN APPROVED INTEGRATED RESOURCE PLAN THAT ARE COMMENCED WITHIN 3
6 YEARS AFTER THE COMMISSION'S ORDER APPROVING THE INITIAL PLAN,
7 AMENDED PLAN, OR PLAN REVIEW ARE CONSIDERED REASONABLE AND PRUDENT
8 FOR COST RECOVERY PURPOSES.

9 (12) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (13), FOR A
10 NEW ELECTRIC GENERATION FACILITY APPROVED IN AN INTEGRATED RESOURCE
11 PLAN THAT IS TO BE OWNED BY THE ELECTRIC UTILITY AND THAT IS
12 COMMENCED WITHIN 3 YEARS AFTER THE COMMISSION'S ORDER APPROVING THE
13 PLAN, THE COMMISSION SHALL FINALIZE THE APPROVED COSTS FOR THE
14 FACILITY ONLY AFTER THE UTILITY HAS DONE ALL OF THE FOLLOWING AND
15 FILED THE RESULTS, ANALYSIS, AND RECOMMENDATIONS WITH THE
16 COMMISSION:

17 (A) IMPLEMENTED A COMPETITIVE BIDDING PROCESS FOR ALL MAJOR
18 ENGINEERING, PROCUREMENT, AND CONSTRUCTION CONTRACTS ASSOCIATED
19 WITH THE CONSTRUCTION OF THE FACILITY.

20 (B) IMPLEMENTED A COMPETITIVE BIDDING PROCESS THAT ALLOWS
21 THIRD PARTIES TO SUBMIT FIRM AND BINDING BIDS FOR THE CONSTRUCTION
22 OF AN ELECTRIC GENERATION FACILITY ON BEHALF OF THE UTILITY THAT
23 WOULD MEET ALL OF THE TECHNICAL, COMMERCIAL, AND OTHER
24 SPECIFICATIONS REQUIRED BY THE UTILITY FOR THE GENERATION FACILITY,
25 SUCH THAT OWNERSHIP OF THE ELECTRIC GENERATION FACILITY VESTS WITH
26 THE UTILITY NO LATER THAN THE DATE THE ELECTRIC GENERATION FACILITY
27 BECOMES COMMERCIALY AVAILABLE.

1 (C) DEMONSTRATED TO THE COMMISSION THAT THE FINALIZED COSTS
2 FOR THE NEW ELECTRIC GENERATION FACILITY ARE NOT SIGNIFICANTLY
3 HIGHER THAN THE INITIALLY APPROVED COSTS UNDER SUBSECTION (11). IF
4 THE FINALIZED COSTS ARE FOUND TO BE SIGNIFICANTLY HIGHER THAN THE
5 INITIALLY APPROVED COSTS, THE COMMISSION SHALL REVIEW AND APPROVE
6 THE PROPOSED COSTS IF THE COMMISSION DETERMINES THOSE COSTS ARE
7 REASONABLE AND PRUDENT.

8 (13) IF THE CAPACITY RESOURCE UNDER SUBSECTION (12) IS FOR THE
9 CONSTRUCTION OF AN ELECTRIC GENERATION FACILITY OF 225 MEGAWATTS OR
10 MORE OR FOR THE CONSTRUCTION OF AN ADDITIONAL GENERATING UNIT OR
11 UNITS TOTALING 225 MEGAWATTS OR MORE AT AN EXISTING ELECTRIC
12 GENERATION FACILITY, THE UTILITY SHALL SUBMIT AN APPLICATION TO THE
13 COMMISSION SEEKING A CERTIFICATE OF NECESSITY UNDER SECTION 6S.

14 (14) AN ELECTRIC UTILITY SHALL ANNUALLY, OR MORE FREQUENTLY IF
15 REQUIRED BY THE COMMISSION, FILE REPORTS TO THE COMMISSION
16 REGARDING THE STATUS OF ANY PROJECTS INCLUDED IN THE INITIAL 3-YEAR
17 PERIOD OF AN INTEGRATED RESOURCE PLAN APPROVED UNDER SUBSECTION
18 (7).

19 (15) FOR POWER PURCHASE AGREEMENTS THAT A UTILITY ENTERS INTO
20 AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
21 SECTION WITH AN ENTITY THAT IS NOT AFFILIATED WITH THAT UTILITY,
22 THE COMMISSION SHALL CONSIDER AND MAY AUTHORIZE A FINANCIAL
23 INCENTIVE FOR THAT UTILITY THAT DOES NOT EXCEED THE UTILITY'S
24 WEIGHTED AVERAGE COST OF CAPITAL.

25 (16) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN ORDER BY
26 THE COMMISSION APPROVING AN INTEGRATED RESOURCE PLAN MAY BE
27 REVIEWED BY THE COURT OF APPEALS UPON A FILING BY A PARTY TO THE

1 COMMISSION PROCEEDING WITHIN 30 DAYS AFTER THE ORDER IS ISSUED. ALL
2 APPEALS OF THE ORDER SHALL BE HEARD AND DETERMINED AS EXPEDITIOUSLY
3 AS POSSIBLE WITH LAWFUL PRECEDENCE OVER OTHER MATTERS. REVIEW ON
4 APPEAL SHALL BE BASED SOLELY ON THE RECORD BEFORE THE COMMISSION
5 AND BRIEFS TO THE COURT AND IS LIMITED TO WHETHER THE ORDER
6 CONFORMS TO THE CONSTITUTION AND LAWS OF THIS STATE AND THE UNITED
7 STATES AND IS WITHIN THE AUTHORITY OF THE COMMISSION UNDER THIS
8 ACT.

9 (17) THE COMMISSION SHALL INCLUDE IN AN ELECTRIC UTILITY'S
10 RETAIL RATES ALL REASONABLE AND PRUDENT COSTS FOR AN INTEGRATED
11 RESOURCE PLAN APPROVED BY THE COMMISSION. THE COMMISSION SHALL NOT
12 DISALLOW RECOVERY OF COSTS AN ELECTRIC UTILITY INCURS IN
13 IMPLEMENTING AN APPROVED INTEGRATED RESOURCE PLAN, IF THE COSTS DO
14 NOT EXCEED THE COSTS APPROVED BY THE COMMISSION UNDER SUBSECTIONS
15 (11) AND (12). IF THE ACTUAL COSTS INCURRED BY THE ELECTRIC UTILITY
16 EXCEED THE COSTS APPROVED BY THE COMMISSION, THE ELECTRIC UTILITY
17 HAS THE BURDEN OF PROVING BY A PREPONDERANCE OF THE EVIDENCE THAT
18 THE COSTS ARE REASONABLE AND PRUDENT. THE PORTION OF THE COST OF A
19 PLANT, FACILITY, POWER PURCHASE AGREEMENT, OR OTHER INVESTMENT IN A
20 RESOURCE THAT MEETS A DEMONSTRATED NEED FOR CAPACITY THAT EXCEEDS
21 THE COST APPROVED BY THE COMMISSION IS PRESUMED TO HAVE BEEN
22 INCURRED DUE TO A LACK OF PRUDENCE. THE COMMISSION MAY INCLUDE ANY
23 OR ALL OF THE PORTION OF THE COST IN EXCESS OF THE COST APPROVED BY
24 THE COMMISSION IF THE COMMISSION FINDS BY A PREPONDERANCE OF THE
25 EVIDENCE THAT THE COSTS ARE REASONABLE AND PRUDENT. THE COMMISSION
26 SHALL DISALLOW COSTS THE COMMISSION FINDS HAVE BEEN INCURRED AS THE
27 RESULT OF FRAUD, CONCEALMENT, GROSS MISMANAGEMENT, OR LACK OF

1 QUALITY CONTROLS AMOUNTING TO GROSS MISMANAGEMENT. THE COMMISSION
2 SHALL ALSO REQUIRE REFUNDS WITH INTEREST TO RATEPAYERS OF ANY OF
3 THESE COSTS ALREADY RECOVERED THROUGH THE ELECTRIC UTILITY'S RATES
4 AND CHARGES. IF THE ASSUMPTIONS UNDERLYING AN APPROVED INTEGRATED
5 RESOURCE PLAN MATERIALLY CHANGE, AN ELECTRIC UTILITY MAY REQUEST,
6 OR THE COMMISSION ON ITS OWN MOTION MAY INITIATE, A PROCEEDING TO
7 REVIEW WHETHER IT IS REASONABLE AND PRUDENT TO COMPLETE AN
8 UNFINISHED PROJECT OR PROGRAM INCLUDED IN AN APPROVED INTEGRATED
9 RESOURCE PLAN. IF THE COMMISSION FINDS THAT COMPLETION OF THE
10 PROJECT OR PROGRAM IS NO LONGER REASONABLE AND PRUDENT, THE
11 COMMISSION MAY MODIFY OR CANCEL APPROVAL OF THE PROJECT OR PROGRAM
12 AND UNINCURRED COSTS IN THE ELECTRIC UTILITY'S INTEGRATED RESOURCE
13 PLAN. EXCEPT FOR COSTS THE COMMISSION FINDS AN ELECTRIC UTILITY HAS
14 INCURRED AS THE RESULT OF FRAUD, CONCEALMENT, GROSS MISMANAGEMENT,
15 OR LACK OF QUALITY CONTROLS AMOUNTING TO GROSS MISMANAGEMENT, IF
16 COMMISSION APPROVAL IS MODIFIED OR CANCELED, THE COMMISSION SHALL
17 NOT DISALLOW REASONABLE AND PRUDENT COSTS ALREADY INCURRED OR
18 COMMITTED TO BY CONTRACT BY AN ELECTRIC UTILITY. ONCE THE
19 COMMISSION FINDS THAT COMPLETION OF THE PROJECT OR PROGRAM IS NO
20 LONGER REASONABLE AND PRUDENT, THE COMMISSION MAY LIMIT FUTURE COST
21 RECOVERY TO THOSE COSTS THAT COULD NOT BE REASONABLY AVOIDED.

22 (18) THE COMMISSION MAY ALLOW FINANCING INTEREST COST RECOVERY
23 IN AN ELECTRIC UTILITY'S BASE RATES ON CONSTRUCTION WORK IN
24 PROGRESS FOR CAPITAL IMPROVEMENTS APPROVED UNDER THIS SECTION PRIOR
25 TO THE ASSETS' BEING CONSIDERED USED AND USEFUL. REGARDLESS OF
26 WHETHER OR NOT THE COMMISSION AUTHORIZES BASE RATE TREATMENT FOR
27 CONSTRUCTION WORK IN PROGRESS FINANCING INTEREST EXPENSE, AN

1 ELECTRIC UTILITY MAY RECOGNIZE, ACCRUE, AND DEFER THE ALLOWANCE FOR
2 FUNDS USED DURING CONSTRUCTION.

3 (19) AN ELECTRIC UTILITY MAY SEEK TO AMEND AN APPROVED
4 INTEGRATED RESOURCE PLAN. EXCEPT AS OTHERWISE PROVIDED UNDER THIS
5 SUBSECTION, THE COMMISSION SHALL CONSIDER THE AMENDMENTS UNDER THE
6 SAME PROCESS AND STANDARDS THAT GOVERN THE REVIEW AND APPROVAL OF A
7 REVISED INTEGRATED RESOURCE PLAN UNDER SUBSECTION (9). THE
8 COMMISSION MAY ORDER AN ELECTRIC UTILITY THAT SEEKS TO AMEND AN
9 APPROVED INTEGRATED RESOURCE PLAN UNDER THIS SUBSECTION TO FILE A
10 PLAN REVIEW UNDER SUBSECTION (21).

11 (20) AN ELECTRIC UTILITY SHALL FILE AN APPLICATION FOR REVIEW
12 OF ITS INTEGRATED RESOURCE PLAN NOT LATER THAN 5 YEARS AFTER THE
13 EFFECTIVE DATE OF THE MOST RECENT COMMISSION ORDER APPROVING A
14 PLAN, A PLAN AMENDMENT, OR A PLAN REVIEW. THE COMMISSION SHALL
15 CONSIDER A PLAN REVIEW UNDER THE SAME PROCESS AND STANDARDS
16 ESTABLISHED IN THIS SECTION FOR REVIEW AND APPROVAL OF AN
17 INTEGRATED RESOURCE PLAN. A COMMISSION ORDER APPROVING A PLAN
18 REVIEW HAS THE SAME EFFECT AS AN ORDER APPROVING AN INTEGRATED
19 RESOURCE PLAN.

20 (21) THE COMMISSION MAY, ON ITS OWN MOTION OR AT THE REQUEST
21 OF THE ELECTRIC UTILITY, ORDER AN ELECTRIC UTILITY TO FILE A PLAN
22 REVIEW. THE DEPARTMENT OF ENVIRONMENTAL QUALITY MAY REQUEST THE
23 COMMISSION TO ORDER A PLAN REVIEW TO ADDRESS MATERIAL CHANGES IN
24 ENVIRONMENTAL REGULATIONS AND REQUIREMENTS THAT OCCUR AFTER THE
25 COMMISSION'S APPROVAL OF AN INTEGRATED RESOURCE PLAN. AN ELECTRIC
26 UTILITY MUST FILE A PLAN REVIEW WITHIN 270 DAYS AFTER THE
27 COMMISSION ORDERS THE UTILITY TO FILE A PLAN REVIEW.

1 SEC. 6U. (1) NOT LATER THAN 90 DAYS AFTER THE EFFECTIVE DATE
2 OF THE AMENDATORY ACT THAT ADDED THIS SECTION, THE COMMISSION SHALL
3 COMMENCE A STUDY IN COLLABORATION WITH REPRESENTATIVES OF EACH
4 CUSTOMER CLASS, UTILITIES WHOSE RATES ARE REGULATED BY THE
5 COMMISSION, AND OTHER INTERESTED PARTIES REGARDING PERFORMANCE-
6 BASED REGULATION, UNDER WHICH A UTILITY'S AUTHORIZED RATE OF RETURN
7 WOULD DEPEND ON THE UTILITY ACHIEVING TARGETED POLICY OUTCOMES.

8 (2) IN THE STUDY REQUIRED UNDER THIS SECTION, THE COMMISSION
9 SHALL REVIEW PERFORMANCE-BASED REGULATION SYSTEMS THAT HAVE BEEN
10 IMPLEMENTED IN ANOTHER STATE OR COUNTRY, INCLUDING, BUT NOT LIMITED
11 TO, THE RIIO (REVENUE = INCENTIVES + INNOVATION + OUTPUTS) MODEL
12 UTILIZED IN THE UNITED KINGDOM.

13 (3) IN REVIEWING VARIOUS PERFORMANCE-BASED REGULATION SYSTEMS,
14 THE COMMISSION SHALL EVALUATE, BUT NOT BE LIMITED TO, ALL OF THE
15 FOLLOWING FACTORS:

16 (A) METHODS FOR ESTIMATING THE REVENUE NEEDED BY A UTILITY
17 DURING A MULTIYEAR PRICING PERIOD, AND A FAIR RETURN, THAT USES
18 FORECASTS OF EFFICIENT TOTAL EXPENDITURES BY THE UTILITY INSTEAD OF
19 DISTINGUISHING BETWEEN OPERATING AND CAPITAL COSTS.

20 (B) METHODS TO INCREASE THE LENGTH OF TIME BETWEEN RATE CASES,
21 TO PROVIDE UTILITIES WITH MORE OPPORTUNITY TO RETAIN COST SAVINGS
22 WITHOUT THE THREAT OF IMMINENT RATE ADJUSTMENTS, AND TO ENCOURAGE
23 UTILITIES TO MAKE INVESTMENTS THAT HAVE EXTENDED PAYBACK PERIODS.

24 (C) OPTIONS FOR ESTABLISHING INCENTIVES AND PENALTIES THAT
25 PERTAIN TO ISSUES SUCH AS CUSTOMER SATISFACTION, SAFETY,
26 RELIABILITY, ENVIRONMENTAL IMPACT, AND SOCIAL OBLIGATIONS.

27 (D) PROFIT-SHARING PROVISIONS THAT CAN SPREAD EFFICIENCY GAINS

1 AMONG CONSUMERS AND UTILITY SHAREHOLDERS AND CAN REDUCE THE DEGREE
2 OF DOWNSIDE RISK ASSOCIATED WITH ATTEMPTS AT INNOVATION.

3 (4) NOT LATER THAN 1 YEAR AFTER THE EFFECTIVE DATE OF THE
4 AMENDATORY ACT THAT ADDED THIS SECTION, THE COMMISSION SHALL REPORT
5 AND MAKE RECOMMENDATIONS IN WRITING TO THE LEGISLATURE AND GOVERNOR
6 BASED ON THE RESULT OF THE STUDY CONDUCTED UNDER THIS SECTION.

7 (5) THIS SECTION DOES NOT LIMIT THE COMMISSION'S AUTHORITY TO
8 AUTHORIZE PERFORMANCE-BASED REGULATION.

9 SEC. 6V. (1) NOTWITHSTANDING ANY EXISTING POWER PURCHASE
10 AGREEMENT, THE COMMISSION SHALL, AT LEAST EVERY 5 YEARS, CONDUCT A
11 PROCEEDING, AS A CONTESTED CASE PURSUANT TO CHAPTER 4 OF THE
12 ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.271 TO
13 24.287, TO REEVALUATE THE PROCEDURES AND RATES SCHEDULES INCLUDING
14 AVOIDED COST RATES, AS ORIGINALLY ESTABLISHED BY THE COMMISSION IN
15 AN ORDER DATED MARCH 17, 1981 IN CASE NO. U-6798, TO IMPLEMENT
16 TITLE II, SECTION 210, OF THE PUBLIC UTILITY REGULATORY POLICIES
17 ACT OF 1978, AS IT RELATES TO QUALIFYING FACILITIES FROM WHICH
18 UTILITIES IN THIS STATE HAVE AN OBLIGATION TO PURCHASE ENERGY AND
19 CAPACITY. NOTHING IN THIS SECTION SUPERSEDES THE PROVISIONS OF
20 PURPA OR THE FEDERAL ENERGY REGULATORY COMMISSION'S REGULATIONS AND
21 ORDERS IMPLEMENTING PURPA.

22 (2) IN SETTING RATES FOR AVOIDED COSTS, THE COMMISSION SHALL
23 TAKE INTO CONSIDERATION THE FACTORS REGARDING AVOIDED COSTS SET
24 FORTH IN PURPA AND THE FEDERAL ENERGY REGULATORY COMMISSION'S
25 REGULATIONS AND ORDERS IMPLEMENTING PURPA.

26 (3) AFTER AN INITIAL CONTESTED CASE UNDER SUBSECTION (1), FOR
27 A UTILITY SERVING LESS THAN 1,000,000 ELECTRIC CUSTOMERS IN THIS

1 STATE, THE COMMISSION MAY CONDUCT ANY PERIODIC REEVALUATIONS OF THE
2 PROCEDURES, RATE SCHEDULES, AND AVOIDED COST RATES FOR THAT UTILITY
3 USING NOTICE AND COMMENT PROCEDURES INSTEAD OF A FULL CONTESTED
4 CASE. THE COMMISSION SHALL CONDUCT THE PERIODIC REEVALUATION IN A
5 CONTESTED CASE UNDER CHAPTER 4 OF THE ADMINISTRATIVE PROCEDURES ACT
6 OF 1969, 1969 PA 306, MCL 24.271 TO 24.287, IF A QUALIFYING
7 FACILITY FILES A COMMENT DISPUTING THE UTILITY FILING AND
8 REQUESTING A CONTESTED CASE.

9 (4) AN ORDER ISSUED BY THE COMMISSION UNDER SUBSECTION (1)
10 SHALL DO ALL OF THE FOLLOWING:

11 (A) ENSURE THAT THE RATES FOR PURCHASES BY AN ELECTRIC UTILITY
12 FROM, AND RATES FOR SALES TO, A QUALIFYING FACILITY SHALL, OVER THE
13 TERM OF A CONTRACT, BE JUST AND REASONABLE AND IN THE PUBLIC
14 INTEREST, AS DEFINED BY PURPA.

15 (B) ENSURE THAT AN ELECTRIC UTILITY DOES NOT DISCRIMINATE
16 AGAINST A QUALIFYING FACILITY WITH RESPECT TO THE CONDITIONS OR
17 PRICE FOR PROVISION OF MAINTENANCE POWER, BACKUP POWER,
18 INTERRUPTIBLE POWER, AND SUPPLEMENTARY POWER OR FOR ANY OTHER
19 SERVICE.

20 (C) REQUIRE THAT ANY PRICES CHARGED BY AN ELECTRIC UTILITY FOR
21 MAINTENANCE POWER, BACKUP POWER, INTERRUPTIBLE POWER, AND
22 SUPPLEMENTARY POWER AND ALL OTHER SUCH SERVICES ARE COST-BASED AND
23 JUST AND REASONABLE.

24 (D) ESTABLISH A SCHEDULE OF AVOIDED COST PRICE UPDATES FOR
25 EACH ELECTRIC UTILITY.

26 (E) REQUIRE ELECTRIC UTILITIES TO PUBLISH ON THEIR WEBSITES
27 TEMPLATE CONTRACTS FOR POWER PURCHASE AGREEMENTS FOR QUALIFYING

1 FACILITIES OF LESS THAN 3 MEGAWATTS THAT NEED NOT INCLUDE TERMS FOR
2 EITHER PRICE OR DURATION OF THE CONTRACT. THE TERMS OF A TEMPLATE
3 CONTRACT PUBLISHED UNDER THIS SUBSECTION ARE NOT BINDING ON EITHER
4 AN ELECTRIC UTILITY OR A QUALIFYING FACILITY AND MAY BE NEGOTIATED
5 AND ALTERED UPON AGREEMENT BETWEEN AN ELECTRIC UTILITY AND A
6 QUALIFYING FACILITY.

7 (5) WITHIN 1 YEAR AFTER THE EFFECTIVE DATE OF THE AMENDATORY
8 ACT THAT ADDED THIS SECTION, AND EVERY 2 YEARS THEREAFTER, THE
9 COMMISSION SHALL ISSUE A REPORT TO THE MICHIGAN AGENCY FOR ENERGY
10 AND THE STANDING COMMITTEES OF THE SENATE AND HOUSE OF
11 REPRESENTATIVES WITH PRIMARY RESPONSIBILITY FOR ENERGY AND
12 ENVIRONMENTAL ISSUES. THE REPORT SHALL PROVIDE A DESCRIPTION AND
13 STATUS OF QUALIFYING FACILITIES IN THIS STATE, THE CURRENT STATUS
14 OF POWER PURCHASE AGREEMENTS OF EACH QUALIFYING FACILITY, AND THE
15 COMMISSION'S EFFORTS TO COMPLY WITH THE REQUIREMENTS OF PURPA.

16 (6) AS USED IN THIS SECTION:

17 (A) "AVOIDED COSTS" MEANS THAT TERM AS DEFINED IN 18 CFR
18 292.101.

19 (B) "BACKUP POWER" MEANS ELECTRIC ENERGY OR CAPACITY SUPPLIED
20 BY AN ELECTRIC UTILITY TO REPLACE ELECTRIC ENERGY ORDINARILY
21 GENERATED BY A QUALIFYING FACILITY'S OWN ELECTRIC GENERATION
22 EQUIPMENT DURING AN UNSCHEDULED OUTAGE OF THE QUALIFYING FACILITY.

23 (C) "MAINTENANCE POWER" MEANS ELECTRIC ENERGY OR CAPACITY
24 SUPPLIED BY AN ELECTRIC UTILITY DURING SCHEDULED OUTAGES OF THE
25 QUALIFYING FACILITY.

26 (D) "PURPA" MEANS TITLE II, SECTION 210, OF THE PUBLIC UTILITY
27 REGULATORY POLICIES ACT OF 1978.

1 (E) "QUALIFYING FACILITY" OR "FACILITIES" MEANS QUALIFYING
2 COGENERATION FACILITIES OR QUALIFYING SMALL POWER PRODUCTION
3 FACILITIES FROM WHICH AN ELECTRIC UTILITY WITHIN THIS STATE HAS AN
4 OBLIGATION TO PURCHASE ENERGY AND CAPACITY WITHIN THE MEANING OF
5 SECTIONS 201 AND 210 OF PURPA, 16 USC 796 AND 824A-3, AND
6 ASSOCIATED FEDERAL REGULATIONS AND ORDERS.

7 (F) "SUPPLEMENTARY POWER" MEANS ELECTRIC ENERGY OR CAPACITY
8 SUPPLIED BY AN ELECTRIC UTILITY, REGULARLY USED BY A QUALIFYING
9 FACILITY IN ADDITION TO THE ELECTRIC ENERGY OR CAPACITY THAT THE
10 QUALIFYING FACILITY GENERATES.

11 SEC. 6W. (1) IF THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR
12 PROPOSES TO IMPLEMENT A RESOURCE ADEQUACY TARIFF THAT INCLUDES THE
13 OPTION FOR A STATE TO IMPLEMENT A PREVAILING STATE COMPENSATION
14 MECHANISM FOR CAPACITY AND THE FEDERAL ENERGY REGULATORY COMMISSION
15 PUTS THAT RESOURCE ADEQUACY TARIFF INTO EFFECT, THE COMMISSION
16 SHALL IMPLEMENT THE PREVAILING STATE COMPENSATION MECHANISM. THE
17 CHARGE TO BE ASSESSED UNDER THE PREVAILING STATE COMPENSATION
18 MECHANISM SHALL BE DETERMINED IN THE SAME MANNER AS THE CAPACITY
19 CHARGE UNDER SECTION 10A(1)(I) AND SHALL BE INCLUDED IN THE
20 CUSTOMER'S RETAIL RATES. IF THE APPROPRIATE INDEPENDENT SYSTEM
21 OPERATOR DETERMINES THAT AT ANY POINT WITHIN THE NEXT 4-YEAR
22 PLANNING PERIOD THAT THERE WILL BE INSUFFICIENT CAPACITY TO MEET
23 THE LOCAL CLEARING REQUIREMENT WITHIN THIS STATE OR THAT THE
24 RESOURCE ADEQUACY TARIFF THAT HAS BEEN PUT INTO EFFECT DOES NOT
25 INCLUDE A PREVAILING STATE COMPENSATION MECHANISM, THE COMMISSION
26 SHALL IMMEDIATELY HOLD A CONTESTED CASE HEARING PURSUANT TO CHAPTER
27 4 OF THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL

Senate Bill No. 437 as amended November 10, 2016

1 24.271 TO 24.287, TO DETERMINE IF THE RESOURCE ADEQUACY TARIFF WILL
2 RESULT IN SUFFICIENT CAPACITY TO MEET THE LOCAL CLEARING
3 REQUIREMENT IN THIS STATE. IN ORDER TO MAKE A DETERMINATION OF
4 WHETHER A TARIFF THAT DOES NOT INCLUDE A PREVAILING STATE
5 COMPENSATION MECHANISM WILL RESULT IN SUFFICIENT CAPACITY TO MEET
6 THE LOCAL CLEARING REQUIREMENT, THE COMMISSION SHALL FIND THAT THE
7 TARIFF WILL RESULT IN AT LEAST THE SAME CAPACITY AS THAT WHICH
8 WOULD BE ACHIEVED UNDER SUBSECTION (2).

9 (2) IF BY OCTOBER 1, 2017 THE FEDERAL ENERGY REGULATORY
10 COMMISSION HAS NOT PUT INTO EFFECT A RESOURCE ADEQUACY TARIFF FOR
11 THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR THAT INCLUDES AN OPTION
12 FOR A STATE TO IMPLEMENT A PREVAILING STATE COMPENSATION MECHANISM
13 FOR CAPACITY OR THE COMMISSION HAS NOT DETERMINED THAT THE TARIFF
14 OF THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR WILL RESULT IN
15 SUFFICIENT CAPACITY TO MEET THE LOCAL CLEARING REQUIREMENT AS
16 PROVIDED UNDER SUBSECTION (1), ALL OF THE FOLLOWING APPLY:

17 (A) AN ELECTRIC UTILITY SHALL BY OCTOBER 1, 2017, AND BY
18 OCTOBER 1 OF EACH YEAR THEREAFTER, DEMONSTRATE TO THE COMMISSION,
19 IN A FORMAT DETERMINED BY THE COMMISSION, THAT FOR THE PLANNING
20 YEAR BEGINNING THE FOLLOWING JUNE 1 AND THE SUBSEQUENT PLANNING
21 YEAR, THE ELECTRIC UTILITY OWNS OR HAS CONTRACTUAL RIGHTS TO
22 SUFFICIENT DEDICATED AND FIRM ELECTRIC CAPACITY TO MEET 90% OF ITS
23 PROPORTIONAL SHARE OF THE LOCAL CLEARING REQUIREMENT AS DETERMINED
24 BY THE COMMISSION UNDER SUBSECTION (3). THE ELECTRIC UTILITY MAY
25 MEET THIS REQUIREMENT THROUGH ANY RESOURCE<<, THAT MAY INCLUDE A RESOURCE
ACQUIRED THROUGH A 3-YEAR CAPACITY AUCTION,>> THAT THE APPROPRIATE
26 INDEPENDENT SYSTEM OPERATOR ALLOWS TO QUALIFY FOR MEETING THE LOCAL
27 CLEARING REQUIREMENT.

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1 (B) AN ALTERNATIVE ELECTRIC SUPPLIER, A COOPERATIVE ELECTRIC
2 UTILITY, OR A MUNICIPALLY OWNED ELECTRIC UTILITY SHALL BY OCTOBER
3 1, 2017 DEMONSTRATE TO THE COMMISSION, IN A FORMAT DETERMINED BY
4 THE COMMISSION, THAT FOR THE PLANNING YEAR BEGINNING JUNE 1, 2018,
5 THE ALTERNATIVE ELECTRIC SUPPLIER, COOPERATIVE ELECTRIC UTILITY, OR
6 MUNICIPALLY OWNED ELECTRIC UTILITY OWNS OR HAS CONTRACTUAL RIGHTS
7 TO SUFFICIENT DEDICATED AND FIRM ELECTRIC CAPACITY TO MEET THE
8 EQUIVALENT OF 50% OF ITS PROPORTIONAL SHARE OF THE LOCAL CLEARING
9 REQUIREMENT AS DETERMINED BY THE COMMISSION UNDER SUBSECTION (3).
10 THE ALTERNATIVE ELECTRIC SUPPLIER MAY MEET THIS REQUIREMENT BY
11 DEMONSTRATING THAT ITS CUSTOMERS WILL PAY A GENERATION CAPACITY
12 CHARGE THAT IS DETERMINED, ASSESSED, AND APPLIED IN THE SAME MANNER
13 AS UNDER SECTION 10A(1) (I). THE ALTERNATIVE ELECTRIC SUPPLIER,
14 COOPERATIVE ELECTRIC UTILITY, OR MUNICIPALLY OWNED ELECTRIC UTILITY
15 MAY MEET THIS REQUIREMENT THROUGH ANY RESOURCE<<, THAT MAY INCLUDE A
16 RESOURCE ACQUIRED THROUGH A 3-YEAR CAPACITY AUCTION,>> THAT THE
17 APPROPRIATE
18 INDEPENDENT SYSTEM OPERATOR ALLOWS TO QUALIFY FOR MEETING THE LOCAL
19 CLEARING REQUIREMENT.

18 (C) AN ALTERNATIVE ELECTRIC SUPPLIER, A COOPERATIVE ELECTRIC
19 UTILITY, OR A MUNICIPALLY OWNED ELECTRIC UTILITY SHALL BY OCTOBER
20 1, 2018, AND BY OCTOBER 1 OF EACH YEAR THEREAFTER, DEMONSTRATE TO
21 THE COMMISSION, IN A FORMAT DETERMINED BY THE COMMISSION, THAT FOR
22 THE PLANNING YEAR BEGINNING THE FOLLOWING JUNE 1 AND THE SUBSEQUENT
23 PLANNING YEAR, THE ALTERNATIVE ELECTRIC SUPPLIER, COOPERATIVE
24 ELECTRIC UTILITY, OR MUNICIPALLY OWNED ELECTRIC UTILITY OWNS OR HAS
25 CONTRACTUAL RIGHTS TO SUFFICIENT DEDICATED AND FIRM ELECTRIC
26 CAPACITY TO MEET THE EQUIVALENT OF 90% OF ITS PROPORTIONAL SHARE OF
27 THE LOCAL CLEARING REQUIREMENT AS DETERMINED BY THE COMMISSION

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1 UNDER SUBSECTION (3). THE ALTERNATIVE ELECTRIC SUPPLIER MAY MEET
2 THIS 90% REQUIREMENT BY DEMONSTRATING THAT ITS CUSTOMERS WILL PAY A
3 GENERATION CAPACITY CHARGE THAT IS DETERMINED, ASSESSED, AND
4 APPLIED IN THE SAME MANNER AS UNDER SECTION 10A(1)(I). THE
5 ALTERNATIVE ELECTRIC SUPPLIER, COOPERATIVE ELECTRIC UTILITY, OR
6 MUNICIPALLY OWNED ELECTRIC UTILITY MAY MEET THIS REQUIREMENT
7 THROUGH ANY RESOURCE<<, THAT MAY INCLUDE A RESOURCE ACQUIRED THROUGH A 3
8 -YEAR CAPACITY AUCTION,>> THAT THE APPROPRIATE INDEPENDENT SYSTEM
9 OPERATOR ALLOWS TO QUALIFY FOR MEETING THE LOCAL CLEARING
10 REQUIREMENT.

11 (D) NOTWITHSTANDING SUBDIVISIONS (A), (B), AND (C), A
12 PROVIDER'S PAYMENT OF <<AN AUCTION PRICE RELATED TO A CAPACITY
13 DEFICIENCY>> AS PART OF AN AUCTION
14 CONDUCTED BY THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR DOES NOT
15 BY ITSELF SATISFY THE RESOURCE ADEQUACY REQUIREMENTS OF THIS
16 SECTION UNLESS THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR CAN
17 DIRECTLY TIE THAT PROVIDER'S PAYMENT TO A CAPACITY RESOURCE THAT
18 MEETS THE REQUIREMENTS OF SUBDIVISIONS (B) AND (C). IN ADDITION, IF
19 THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR DETERMINES, FOR ANY
20 PLANNING YEAR, COMMENCING WITH THE PLANNING YEAR BEGINNING JUNE 1,
21 2018, THAT THE APPLICABLE RESOURCE ZONE DOES NOT MEET THE LOCAL
22 CLEARING REQUIREMENT, ALL ELECTRIC PROVIDERS IN THAT RESOURCE ZONE
23 MUST, AT THE NEXT DEMONSTRATION UNDER SUBDIVISION (C), DEMONSTRATE
24 THAT THEY MEET 100% OF THEIR PROPORTIONAL SHARE OF THE LOCAL
25 CLEARING REQUIREMENT FOR THE NEXT 3 PLANNING YEARS THROUGH
26 OWNERSHIP OR CONTRACTUAL RIGHTS TO ANY RESOURCE<<, THAT MAY INCLUDE A
27 RESOURCE ACQUIRED THROUGH A 3-YEAR CAPACITY AUCTION,>> THAT THE
28 APPROPRIATE INDEPENDENT SYSTEM OPERATOR ALLOWS TO QUALIFY FOR
29 MEETING THE LOCAL CLEARING REQUIREMENT. THE DEMONSTRATION BY AN
30 ELECTRIC PROVIDER THAT THEY MEET 100% OF THEIR PROPORTIONAL

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1 CLEARING REQUIREMENT FOR THE NEXT 3 PLANNING YEARS UNDER THIS
2 SUBDIVISION ONLY APPLIES FOR THE 3 PLANNING YEARS AFTER THE
3 APPROPRIATE INDEPENDENT SYSTEM OPERATOR DETERMINES THAT THE
4 APPLICABLE RESOURCE ZONE DOES NOT MEET THE LOCAL CLEARING
5 REQUIREMENT, UNLESS THE COMMISSION DETERMINES THAT THE ELECTRIC
6 PROVIDER NEEDS TO CONTINUE TO DEMONSTRATE THAT THEY MEET 100% OF
7 THEIR PROPORTIONAL CLEARING REQUIREMENT FOR ADDITIONAL PLANNING
8 YEARS. THE COMMISSION SHALL NOT REQUIRE MORE THAN AN ADDITIONAL 3
9 PLANNING YEARS FOR EACH DETERMINATION UNDER THIS SUBDIVISION. AN
10 <<ALTERNATIVE ELECTRIC SUPPLIER>> MAY DEMONSTRATE THAT IT MEETS ITS
PROPORTIONAL
11 SHARE OF THE LOCAL CLEARING REQUIREMENT BY HAVING ITS CUSTOMERS PAY
12 A GENERATION CAPACITY CHARGE THAT IS DETERMINED, ASSESSED, AND
13 APPLIED IN THE SAME MANNER AS UNDER SECTION 10A(1)(I). <<AN ELECTRIC
PROVIDER MAY MEET THE REQUIREMENTS OF THIS SUBDIVISION THROUGH ANY
RESOURCE THAT THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR ALLOWS TO
QUALIFY FOR MEETING THE LOCAL CLEARING REQUIREMENT.>>

14 (E) ONE OR MORE MUNICIPALLY OWNED ELECTRIC UTILITIES MAY
15 AGGREGATE THEIR CAPACITY RESOURCES THAT ARE LOCATED IN THE SAME
16 LOCAL RESOURCE ZONE TO MEET THE REQUIREMENTS OF SUBDIVISIONS (B),
17 (C), AND (D). ONE OR MORE COOPERATIVE ELECTRIC UTILITIES MAY
18 AGGREGATE THEIR CAPACITY RESOURCES THAT ARE LOCATED IN THE SAME
19 LOCAL RESOURCE ZONE TO MEET THE REQUIREMENTS OF SUBDIVISIONS (B)
20 AND (C).

21 (F) AFTER RECEIVING A SUBMISSION FROM AN ALTERNATIVE ELECTRIC
22 SUPPLIER UNDER SUBDIVISION (B) OR (C), THE COMMISSION SHALL
23 DETERMINE AND NOTIFY IN WRITING EACH ALTERNATIVE ELECTRIC SUPPLIER
24 WHETHER THE ALTERNATIVE ELECTRIC SUPPLIER HAS DEMONSTRATED THAT IT
25 CAN MEET THE CAPACITY REQUIREMENTS OF SUBDIVISIONS (B) AND (C). IF
26 THE COMMISSION DETERMINES THAT AN ALTERNATIVE ELECTRIC SUPPLIER HAS
27 FAILED TO DEMONSTRATE THAT IT CAN MEET ANY OF THE REQUIREMENTS OF

1 SUBDIVISION (B) OR (C), THE COMMISSION SHALL COMMENCE A SHOW CAUSE
2 PROCEEDING TO LIMIT THE ALTERNATIVE ELECTRIC SUPPLIER TO PROVIDING
3 THE AMOUNT OF CAPACITY THE ALTERNATIVE ELECTRIC SUPPLIER HAS
4 DEMONSTRATED IT HAS OBTAINED TO MEET THE REQUIREMENTS OF
5 SUBDIVISIONS (B) AND (C). THE COMMISSION SHALL COMPLETE A SHOW
6 CAUSE PROCEEDING UNDER THIS SUBDIVISION NOT LATER THAN MARCH 15 OF
7 THE YEAR FOLLOWING THE DEMONSTRATION REQUIREMENT OF SUBDIVISION (B)
8 OR (C). IF AN ALTERNATIVE ELECTRIC SUPPLIER FAILS TO REMEDY THE
9 DEFICIENCY IDENTIFIED BY THE COMMISSION OR FAILS TO OTHERWISE
10 DEMONSTRATE THAT IT HAS SUFFICIENT CAPACITY TO MEET THE
11 REQUIREMENTS OF SUBDIVISIONS (B) AND (C), THE COMMISSION SHALL
12 LIMIT, ON A PRO RATA BASIS, THE ELECTRICITY THE ALTERNATIVE
13 ELECTRIC SUPPLIER MAY PROVIDE TO AN AMOUNT CONSISTENT WITH THE
14 AMOUNT OF CAPACITY THE SUPPLIER HAS DEMONSTRATED IT HAS TO MEET THE
15 REQUIREMENTS OF SUBDIVISIONS (B) AND (C) FOR THE PLANNING YEARS
16 UNDER REVIEW. ALL CONTRACTS FOR SERVICE BETWEEN A CUSTOMER IN THIS
17 STATE AND AN ALTERNATIVE ELECTRIC SUPPLIER ENTERED INTO AFTER THE
18 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION SHALL
19 INCLUDE A PROVISION ALLOWING THE CUSTOMER TO WITHDRAW FROM THE
20 CONTRACT WITHOUT PENALTY IF THE COMMISSION ORDERS A LIMITATION OF
21 CAPACITY UNDER THIS SUBDIVISION THAT RESULTS IN THE ALTERNATIVE
22 ELECTRIC SUPPLIER BEING UNABLE TO SUPPLY THE CUSTOMER WITH THE
23 CAPACITY REQUIRED UNDER SUBDIVISIONS (B) AND (C) AT ANY TIME DURING
24 THE PLANNING YEARS UNDER REVIEW. NOTWITHSTANDING ANY OTHER
25 PROVISION OF THIS SECTION, AN ALTERNATIVE ELECTRIC SUPPLIER SHALL
26 NOT SERVE MORE LOAD DURING THE PLANNING YEARS UNDER REVIEW THAN THE
27 PRORATED LOAD SUPPORTED BY THE CAPACITY DEMONSTRATED UNDER

1 SUBDIVISIONS (B) AND (C). AN ALTERNATIVE ELECTRIC SUPPLIER MAY
2 DEMONSTRATE THAT IT HAS SUFFICIENT CAPACITY TO MEET THE
3 REQUIREMENTS OF SUBDIVISIONS (B) AND (C) BY HAVING ITS CUSTOMERS
4 PAY A GENERATION CAPACITY CHARGE THAT IS DETERMINED, ASSESSED, AND
5 APPLIED IN THE SAME MANNER AS UNDER SECTION 10A(1)(I). THE
6 ALTERNATIVE ELECTRIC SUPPLIER MAY MEET THE REQUIREMENTS OF
7 SUBDIVISIONS (B) AND (C) THROUGH ANY RESOURCE THAT THE APPROPRIATE
8 INDEPENDENT SYSTEM OPERATOR ALLOWS TO QUALIFY FOR MEETING THE LOCAL
9 CLEARING REQUIREMENT. THE SHOW CAUSE PROCEEDING UNDER THIS
10 SUBSECTION SHALL BE CONDUCTED AS A CONTESTED CASE PURSUANT TO
11 CHAPTERS 4 AND 5 OF THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969
12 PA 306, MCL 24.271 TO 24.292.

13 (3) NOT LATER THAN JULY 1 OF EACH YEAR, THE COMMISSION SHALL
14 REPORT TO THE GOVERNOR AND LEGISLATURE A FORECAST OF THE CAPACITY
15 RESOURCE ADEQUACY FOR A PERIOD OF NOT LESS THAN 5 YEARS. THE REPORT
16 REQUIRED UNDER THIS SUBSECTION SHALL INCLUDE, FOR THE PLANNING
17 YEARS COVERED UNDER SUBSECTION (2)(A), (B), AND (C), A
18 DETERMINATION BY THE COMMISSION OF THE LOCAL CLEARING REQUIREMENT
19 FOR EACH LOCAL RESOURCE ZONE AND THE PROPORTIONAL SHARE OF THE
20 LOCAL CLEARING REQUIREMENTS FOR EACH ELECTRIC PROVIDER IN THE STATE
21 AND A PROJECTION OF THE PLANNING RESERVE MARGIN REQUIREMENT FOR
22 EACH LOCAL RESOURCE ZONE. IN MAKING A DETERMINATION OR PROJECTION
23 UNDER THIS SUBSECTION, THE COMMISSION SHALL CONSULT WITH AND
24 CONSIDER ANY FINDINGS, PROJECTIONS, AND OTHER DATA OF THE
25 APPROPRIATE INDEPENDENT SYSTEM OPERATOR. THE COMMISSION MAY ADJUST
26 THE PROPORTIONAL SHARE OF THE LOCAL CLEARING REQUIREMENT FOR AN
27 ALTERNATIVE ELECTRIC SUPPLIER AS PART OF A SHOW CAUSE HEARING UNDER

1 SUBSECTION (2) (F) TO MAKE THE PROPORTIONAL SHARE OF THE LOCAL
2 CLEARING REQUIREMENT CONSISTENT WITH ANY FINDINGS OF THE
3 APPROPRIATE INDEPENDENT SYSTEM OPERATOR. THE COMMISSION SHALL
4 SPECIFICALLY DETERMINE WHETHER 100% OF THE CAPACITY RESOURCES
5 NEEDED TO MEET THE LOCAL CLEARING REQUIREMENT FOR EACH LOCAL
6 RESOURCE ZONE IS FORECASTED TO BE MET FOR EACH YEAR IN THE 5-YEAR
7 FORECASTED PERIOD. A DETERMINATION BY THE COMMISSION UNDER THIS
8 SUBSECTION SHALL BE CONDUCTED AS A CONTESTED CASE PURSUANT TO
9 CHAPTER 4 OF THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA
10 306, MCL 24.271 TO 24.287. TO THE EXTENT PRACTICABLE, THE
11 COMMISSION'S DETERMINATION OF THE LOCAL CLEARING REQUIREMENT SHALL
12 BE CONSISTENT WITH THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR'S
13 POLICIES AND PROCEDURES. IN A FORMAT DETERMINED BY THE COMMISSION,
14 ALL ELECTRIC PROVIDERS AND UNREGULATED GENERATION PROVIDERS IN THIS
15 STATE SHALL SUBMIT PRESCRIBED DATA NECESSARY FOR THE COMMISSION TO
16 MAKE THE FORECAST AND DETERMINATIONS REQUIRED UNDER THIS
17 SUBSECTION. INFORMATION AND MATERIALS SUBMITTED BY AN ENTITY UNDER
18 THIS SUBSECTION, INCLUDING ALL CUSTOMER-SPECIFIC INFORMATION, ARE
19 EXEMPT FROM DISCLOSURE UNDER THE FREEDOM OF INFORMATION ACT, 1976
20 PA 442, MCL 15.231 TO 15.246. THE COMMISSION SHALL ISSUE PROTECTIVE
21 ORDERS AS ARE NECESSARY TO PROTECT THE INFORMATION AND MATERIALS
22 SUBMITTED UNDER THIS SUBSECTION. NOTHING IN THIS SECTION SHALL BE
23 READ TO TAMPER WITH OR OTHERWISE IMPEDE THE SETTING OF A LOCAL
24 CLEARING REQUIREMENT BY AN INDEPENDENT SYSTEM OPERATOR OR THE
25 FEDERAL ENERGY REGULATORY COMMISSION, OR THEIR SUCCESSORS, THAT
26 DIFFERS FROM A DETERMINATION OF THE COMMISSION UNDER THIS SECTION.

27 (4) THE ATTORNEY GENERAL OR ANY CUSTOMER OF A MUNICIPALLY

1 OWNED ELECTRIC UTILITY OR COOPERATIVE ELECTRIC UTILITY MAY COMMENCE
2 A CIVIL ACTION FOR INJUNCTIVE RELIEF AGAINST THAT MUNICIPALLY OWNED
3 ELECTRIC UTILITY OR COOPERATIVE ELECTRIC UTILITY IF THE MUNICIPALLY
4 OWNED ELECTRIC UTILITY OR COOPERATIVE ELECTRIC UTILITY FAILS TO
5 MEET THE APPLICABLE REQUIREMENTS OF SUBSECTIONS (1) TO (3). THE
6 ATTORNEY GENERAL OR CUSTOMER SHALL COMMENCE AN ACTION UNDER THIS
7 SUBSECTION IN THE CIRCUIT COURT FOR THE CIRCUIT IN WHICH THE
8 PRINCIPAL OFFICE OF THE MUNICIPALLY OWNED ELECTRIC UTILITY OR
9 COOPERATIVE ELECTRIC UTILITY IS LOCATED. THE ATTORNEY GENERAL OR
10 CUSTOMER SHALL NOT FILE AN ACTION UNDER THIS SUBSECTION UNLESS THE
11 ATTORNEY GENERAL OR CUSTOMER HAS GIVEN THE MUNICIPALLY OWNED
12 ELECTRIC UTILITY OR COOPERATIVE ELECTRIC UTILITY AT LEAST 60 DAYS'
13 WRITTEN NOTICE OF THE INTENT TO SUE, THE BASIS FOR THE SUIT, AND
14 THE RELIEF SOUGHT. WITHIN 30 DAYS AFTER THE MUNICIPALLY OWNED
15 ELECTRIC UTILITY OR COOPERATIVE ELECTRIC UTILITY RECEIVES WRITTEN
16 NOTICE OF THE INTENT TO SUE, THE MUNICIPALLY OWNED ELECTRIC UTILITY
17 OR COOPERATIVE ELECTRIC UTILITY AND THE ATTORNEY GENERAL OR
18 CUSTOMER SHALL MEET AND MAKE A GOOD-FAITH ATTEMPT TO DETERMINE IF
19 THERE IS A CREDIBLE BASIS FOR THE ACTION. THE MUNICIPALLY OWNED
20 ELECTRIC UTILITY OR COOPERATIVE ELECTRIC UTILITY SHALL TAKE ALL
21 REASONABLE AND PRUDENT STEPS NECESSARY TO COMPLY WITH THE
22 APPLICABLE REQUIREMENTS OF SUBSECTIONS (1) TO (3) WITHIN 90 DAYS
23 AFTER THE MEETING IF THERE IS A CREDIBLE BASIS FOR THE ACTION. IF
24 THE PARTIES DO NOT AGREE AS TO WHETHER THERE IS A CREDIBLE BASIS
25 FOR THE ACTION, THE ATTORNEY GENERAL OR CUSTOMER MAY PROCEED TO
26 FILE THE SUIT.

27 (5) THE COMMISSION SHALL MONITOR WHETHER ANY ENTITY HAS

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1 ENGAGED IN MARKET MANIPULATIONS RELATED TO THE LOCAL CLEARING
2 REQUIREMENTS OF THIS SECTION. AN ALTERNATIVE ELECTRIC SUPPLIER OR A
3 CUSTOMER OF AN ALTERNATIVE ELECTRIC SUPPLIER MAY FILE A COMPLAINT
4 WITH THE COMMISSION IF THE ALTERNATIVE ELECTRIC SUPPLIER OR
5 CUSTOMER BELIEVES THAT AVAILABLE CAPACITY HAS BEEN UNREASONABLY
6 WITHHELD FROM THE LOCAL CLEARING REQUIREMENTS OF THIS SECTION BY AN
7 ELECTRIC UTILITY OR AN UNREGULATED GENERATION PROVIDER BASED IN
8 THIS STATE. IF THE COMMISSION FINDS EVIDENCE THAT ANY AVAILABLE
9 CAPACITY WAS UNREASONABLY WITHHELD BY AN UNREGULATED GENERATION
10 PROVIDER BASED IN THIS STATE, THE COMMISSION SHALL IMMEDIATELY
11 FORWARD THAT EVIDENCE TO THE STATE ATTORNEY GENERAL, THE MARKET
12 MONITOR FOR THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR, AND
13 APPROPRIATE FEDERAL AUTHORITIES FOR ENFORCEMENT. IF THE COMMISSION
14 DETERMINES AFTER NOTICE AND HEARING THAT AN ELECTRIC UTILITY HAS
15 UNREASONABLY WITHHELD EXCESS CAPACITY, IT MAY DISALLOW COST
16 RECOVERY FOR THE UTILITY-OWNED CAPACITY THAT WAS IN EXCESS OF THE
17 UTILITY'S CAPACITY REQUIREMENTS UNDER THIS SECTION.

18 (6) THE COMMISSION <<SHALL >> ADJUST THE DATES IN
19 SUBSECTION (2) IF NEEDED TO ENSURE PROPER ALIGNMENT WITH THE
20 APPROPRIATE INDEPENDENT SYSTEM OPERATOR'S PROCEDURES AND
21 REQUIREMENTS. HOWEVER, ANY CHANGES TO THE DATES IN SUBSECTION (2)
22 MUST ENSURE THAT PROVIDERS STILL MEET THE RELIABILITY REQUIREMENTS
23 FOR THE SUBSEQUENT 2 PLANNING YEARS.

24 (7) AS USED IN THIS SECTION:

25 (A) "DEDICATED AND FIRM ELECTRIC CAPACITY" MEANS CAPACITY THAT
26 IS OWNED OR <<IS A RESOURCE, THAT MAY INCLUDE A RESOURCE ACQUIRED THROUGH
27 A 3-YEAR CAPACITY AUCTION, THAT THE APPROPRIATE INDEPENDENT SYSTEM

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1 OPERATOR ALLOWS TO QUALIFY FOR MEETING THE LOCAL CLEARING REQUIREMENT

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(B) "ELECTRIC PROVIDER" MEANS ANY OF THE FOLLOWING:

(i) ANY PERSON OR ENTITY THAT IS REGULATED BY THE COMMISSION FOR THE PURPOSE OF SELLING ELECTRICITY TO RETAIL CUSTOMERS IN THIS STATE.

(ii) A MUNICIPALLY OWNED ELECTRIC UTILITY IN THIS STATE.

(iii) A COOPERATIVE ELECTRIC UTILITY IN THIS STATE.

(iv) AN ALTERNATIVE ELECTRIC SUPPLIER LICENSED UNDER SECTION 10A.

(C) "LOCAL CLEARING REQUIREMENT" MEANS THE AMOUNT OF CAPACITY RESOURCES REQUIRED TO BE IN THE LOCAL RESOURCE ZONE IN WHICH THE ELECTRIC PROVIDER'S DEMAND IS SERVED TO ENSURE RELIABILITY IN THAT ZONE AS DETERMINED BY THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR FOR THE LOCAL RESOURCE ZONE IN WHICH THE ELECTRIC PROVIDER'S DEMAND IS SERVED AND BY THE COMMISSION UNDER SUBSECTION (3).

(D) "PLANNING RESERVE MARGIN REQUIREMENT" MEANS THE AMOUNT OF CAPACITY EQUAL TO THE FORECASTED COINCIDENT PEAK DEMAND THAT OCCURS WHEN THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR FOOTPRINT PEAK DEMAND OCCURS PLUS A RESERVE MARGIN THAT MEETS AN ACCEPTABLE LOSS OF LOAD EXPECTATION AS SET BY THE COMMISSION OR APPROPRIATE INDEPENDENT SYSTEM OPERATOR.

(E) "PLANNING YEAR" MEANS JUNE 1 THROUGH THE FOLLOWING MAY 31 OF EACH YEAR.

(F) "PREVAILING STATE COMPENSATION MECHANISM" MEANS AN OPTION

1 FOR A STATE TO ELECT A PREVAILING COMPENSATION RATE FOR CAPACITY
2 CONSISTENT WITH THE REQUIREMENTS OF THE APPROPRIATE INDEPENDENT
3 SYSTEM OPERATOR'S RESOURCE ADEQUACY TARIFF.

4 (G) "PROPORTIONAL SHARE OF THE LOCAL CLEARING REQUIREMENT"
5 MEANS THE MINIMUM AMOUNT OF CAPACITY AN ELECTRIC PROVIDER MUST OWN
6 OR HAVE CONTRACTUAL RIGHTS TO THAT EQUALS THE PROVIDER'S PERCENTAGE
7 SHARE OF THE CAPACITY REQUIREMENT FOR THE LOCAL RESOURCE ZONE IN
8 WHICH THE PROVIDER'S DEMAND IS SERVED. THE PERCENTAGE SHARE OF THE
9 CAPACITY REQUIREMENT SHALL BE DETERMINED BASED ON THE TOTAL
10 COINCIDENT PEAK ELECTRIC DEMAND AS DETERMINED BY THE APPROPRIATE
11 INDEPENDENT SYSTEM OPERATOR SERVED BY THE PROVIDER AS A PERCENTAGE
12 OF THE TOTAL COINCIDENT PEAK ELECTRIC DEMAND AS DETERMINED BY THE
13 APPROPRIATE INDEPENDENT SYSTEM OPERATOR OF ALL PROVIDERS IN THE
14 LOCAL RESOURCE ZONE AT THE TIME THE DETERMINATION IS MADE.

15 SEC. 6X. (1) SUBJECT TO SECTION 6A(15), IN ORDER TO ENSURE
16 EQUIVALENT CONSIDERATION OF ENERGY WASTE REDUCTION RESOURCES WITHIN
17 THE INTEGRATED RESOURCE PLANNING PROCESS, THE COMMISSION SHALL BY
18 JANUARY 1, 2021 AUTHORIZE A SHARED SAVINGS MECHANISM FOR AN
19 ELECTRIC UTILITY TO THE EXTENT THAT THE ELECTRIC UTILITY HAS NOT
20 OTHERWISE CAPITALIZED THE COSTS OF THE ENERGY WASTE REDUCTION,
21 CONSERVATION, DEMAND REDUCTION, AND OTHER WASTE REDUCTION MEASURES.

22 (2) FOR AN ELECTRIC UTILITY THAT ACHIEVES ANNUAL ELECTRIC
23 ENERGY SAVINGS OF AT LEAST 1% BUT NOT GREATER THAN 1.25% OF ITS
24 TOTAL ANNUAL WEATHER-ADJUSTED RETAIL SALES IN MEGAWATT HOURS IN THE
25 PREVIOUS CALENDAR YEAR, THE SHARED SAVINGS INCENTIVE SHALL BE 15%
26 OF THE NET BENEFITS VALIDATED AS A RESULT OF THE PROGRAMS
27 IMPLEMENTED BY THE ELECTRIC UTILITY RELATED TO ENERGY WASTE

1 REDUCTION, CONSERVATION, DEMAND REDUCTION, AND OTHER WASTE
2 REDUCTION. A SHARED SAVINGS MECHANISM AUTHORIZED UNDER THIS
3 SUBSECTION SHALL NOT EXCEED 20% OF THE ELECTRIC UTILITY'S
4 EXPENDITURES ASSOCIATED WITH IMPLEMENTING ENERGY WASTE REDUCTION
5 PROGRAMS FOR THE CALENDAR YEAR IN WHICH THE SHARED SAVINGS
6 MECHANISM WAS AUTHORIZED. THE COMMISSION SHALL DETERMINE NET
7 BENEFITS BY CALCULATING THE NET PRESENT VALUE OF THE LIFETIME
8 AVOIDED UTILITY COSTS THAT ARE PROJECTED FROM THE UTILITY'S ENERGY
9 WASTE REDUCTION PROGRAMS IMPLEMENTED IN A CALENDAR YEAR LESS THE
10 UTILITY EXPENDITURES ASSOCIATED WITH IMPLEMENTING THE ENERGY WASTE
11 PROGRAM IN THAT CALENDAR YEAR, INCLUDING ALL OVERHEAD AND
12 ADMINISTRATIVE COSTS. THE COMMISSION SHALL CALCULATE NET PRESENT
13 VALUE BY USING A DISCOUNT RATE OF THE UTILITY'S WEIGHTED AVERAGE
14 COST OF CAPITAL IN THAT CALENDAR YEAR.

15 (3) FOR AN ELECTRIC UTILITY THAT ACHIEVES ANNUAL ELECTRIC
16 ENERGY SAVINGS OF GREATER THAN 1.25% BUT NOT GREATER THAN 1.5% OF
17 THE TOTAL ANNUAL WEATHER-ADJUSTED RETAIL SALES IN MEGAWATT HOURS IN
18 THE PREVIOUS CALENDAR YEAR, THE SHARED SAVINGS INCENTIVE SHALL BE
19 17.5% OF THE NET BENEFITS VALIDATED AS A RESULT OF THE PROGRAMS
20 IMPLEMENTED BY THE ELECTRIC UTILITY RELATED TO ENERGY WASTE
21 REDUCTION, CONSERVATION, DEMAND REDUCTION, AND OTHER WASTE
22 REDUCTION. A SHARED SAVINGS MECHANISM AUTHORIZED UNDER THIS
23 SUBSECTION SHALL NOT EXCEED 22.5% OF THE ELECTRIC UTILITY'S
24 EXPENDITURES ASSOCIATED WITH IMPLEMENTING ENERGY WASTE REDUCTION
25 PROGRAMS FOR THE CALENDAR YEAR IN WHICH THE SHARED SAVINGS
26 MECHANISM WAS AUTHORIZED. THE COMMISSION SHALL DETERMINE NET
27 BENEFITS BY CALCULATING THE NET PRESENT VALUE OF THE LIFETIME

1 AVOIDED UTILITY COSTS THAT ARE PROJECTED FROM THE UTILITY'S ENERGY
2 WASTE REDUCTION PROGRAMS IMPLEMENTED IN A CALENDAR YEAR LESS THE
3 UTILITY EXPENDITURES ASSOCIATED WITH IMPLEMENTING THE ENERGY WASTE
4 PROGRAM IN THAT CALENDAR YEAR, INCLUDING ALL OVERHEAD AND
5 ADMINISTRATIVE COSTS. THE COMMISSION SHALL CALCULATE NET PRESENT
6 VALUE BY USING A DISCOUNT RATE OF THE UTILITY'S WEIGHTED AVERAGE
7 COST OF CAPITAL IN THAT CALENDAR YEAR.

8 (4) FOR AN ELECTRIC UTILITY THAT ACHIEVES ANNUAL ELECTRIC
9 ENERGY SAVINGS GREATER THAN 1.5% OF THE TOTAL ANNUAL WEATHER-
10 ADJUSTED RETAIL SALES IN MEGAWATT HOURS IN THE PREVIOUS CALENDAR
11 YEAR, THE SHARED SAVINGS INCENTIVE SHALL BE 20% OF THE NET BENEFITS
12 VALIDATED AS A RESULT OF THE PROGRAMS IMPLEMENTED BY THE ELECTRIC
13 UTILITY RELATED TO ENERGY WASTE REDUCTION, CONSERVATION, DEMAND
14 REDUCTION, AND OTHER WASTE REDUCTION. A SHARED SAVINGS MECHANISM
15 AUTHORIZED UNDER THIS SUBSECTION SHALL NOT EXCEED 25% OF THE
16 ELECTRIC UTILITY'S EXPENDITURES ASSOCIATED WITH IMPLEMENTING ENERGY
17 WASTE REDUCTION PROGRAMS FOR THE CALENDAR YEAR IN WHICH THE SHARED
18 SAVINGS MECHANISM WAS AUTHORIZED. THE COMMISSION SHALL DETERMINE
19 NET BENEFITS BY CALCULATING THE NET PRESENT VALUE OF THE LIFETIME
20 AVOIDED UTILITY COSTS THAT ARE PROJECTED FROM THE UTILITY'S ENERGY
21 WASTE REDUCTION PROGRAMS IMPLEMENTED IN A CALENDAR YEAR LESS THE
22 UTILITY EXPENDITURES ASSOCIATED WITH IMPLEMENTING THE ENERGY WASTE
23 PROGRAM IN THAT CALENDAR YEAR, INCLUDING ALL OVERHEAD AND
24 ADMINISTRATIVE COSTS. THE COMMISSION SHALL CALCULATE NET PRESENT
25 VALUE BY USING A DISCOUNT RATE OF THE UTILITY'S WEIGHTED AVERAGE
26 COST OF CAPITAL IN THAT CALENDAR YEAR.

27 SEC. 6Y. (1) NOT LATER THAN 150 DAYS AFTER THE EFFECTIVE DATE

1 OF THE AMENDATORY ACT THAT ADDED THIS SECTION, THE MICHIGAN AGENCY
2 FOR ENERGY, IN COORDINATION WITH THE COMMISSION, SHALL FORM A
3 SPECIAL TASK FORCE SPECIFICALLY NAMED THE NORTHERN MICHIGAN
4 ELECTRIC RELIABILITY TASK FORCE.

5 (2) THE TASK FORCE SHALL CREATE A COMPREHENSIVE PUBLIC REPORT
6 THAT IDENTIFIES EXISTING AND POTENTIAL ISSUES AFFECTING THE
7 AVAILABILITY, RELIABILITY, AND AFFORDABILITY OF ELECTRICITY FOR
8 RESIDENTS AND BUSINESSES IN THE AFFECTED AREA AS WELL AS POTENTIAL
9 OPTIONS AND COST ESTIMATES TO RESOLVE THOSE ISSUES. THE REPORT
10 SHALL INCLUDE ALL OF THE FOLLOWING:

11 (A) IDENTIFICATION OF EXISTING AND POTENTIAL ELECTRIC
12 GENERATION RESOURCES SERVING THE AFFECTED AREA.

13 (B) IDENTIFICATION OF EXISTING AND POTENTIAL ELECTRIC
14 TRANSMISSION RESOURCES SERVING THE AFFECTED AREA.

15 (C) IDENTIFICATION OF EXISTING OR POTENTIAL ELECTRIC
16 RELIABILITY ISSUES IN THE AFFECTED AREA AND POTENTIAL SOLUTIONS.

17 (D) IDENTIFICATION OF OPPORTUNITIES AND IMPEDIMENTS TO
18 UTILIZING EXISTING RESOURCES OR ASSETS OWNED OR CONTROLLED BY THE
19 STATE THAT COULD IMPACT ELECTRIC SERVICE OR RELIABILITY IN THE
20 AFFECTED AREA.

21 (E) AN EVALUATION OF THE ADVANTAGES, DISADVANTAGES, AND COST
22 EFFECTIVENESS OF INCREASING OR ENHANCING ELECTRICAL CONNECTIVITY
23 BETWEEN THE STATE'S 2 PENINSULAS AS COMPARED TO INCREASING OR
24 ENHANCING ELECTRICAL CONNECTIVITY BETWEEN THIS STATE AND ANOTHER
25 STATE OR PROVINCE.

26 (F) IDENTIFICATION OF SPECIFIC PROJECTS OR ACTIONS THAT COULD
27 BE TAKEN TO ENHANCE THE AVAILABILITY, RELIABILITY, AND

1 AFFORDABILITY OF ELECTRICITY FOR RESIDENTS AND BUSINESSES IN THE
2 AFFECTED AREA.

3 (G) ANALYSIS OF POTENTIAL COST IMPACTS AND BENEFITS TO
4 RATEPAYERS BOTH WITHIN AND OUTSIDE THE AFFECTED AREA OF ANY
5 PROJECTS OR ACTIONS IDENTIFIED BY THE TASK FORCE.

6 (H) A RECOMMENDATION REGARDING ANY PROJECT OR PROJECTS THE
7 TASK FORCE BELIEVES WOULD POSITIVELY AFFECT THE AVAILABILITY,
8 RELIABILITY, AND AFFORDABILITY OF ELECTRICITY FOR RESIDENTS AND
9 BUSINESSES OF THE AFFECTED AREA AS WELL AS APPROPRIATE ACTIONS THAT
10 SHOULD BE TAKEN BY THE STATE.

11 (3) THE TASK FORCE SHALL BE MADE UP OF INDIVIDUALS WITH THE
12 RELEVANT EXPERIENCE AND EXPERTISE TO PROPERLY EVALUATE THE ITEMS
13 IDENTIFIED IN SUBSECTION (2). THE EXECUTIVE DIRECTOR OF THE
14 MICHIGAN AGENCY FOR ENERGY SHALL SERVE AS CHAIR OF THE TASK FORCE.

15 (4) THE TASK FORCE MAY REQUEST THAT THE APPROPRIATE
16 INDEPENDENT SYSTEM OPERATOR INITIATE A REVIEW AND CONDUCT MODELING
17 FOR ANY OPTION WHERE THE TASK FORCE FINDS A MORE IN-DEPTH ANALYSIS
18 IS WARRANTED.

19 (5) THE TASK FORCE SHALL CONSULT WITH THE COMMISSION, THE
20 NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION, THE APPROPRIATE
21 INDEPENDENT SYSTEM OPERATOR, AND ANY OTHER BODY DEDICATED TO
22 MAINTAINING ELECTRIC RELIABILITY IN THE AFFECTED AREA CONCERNING
23 AVAILABLE DATA, PLANS, STUDIES, AND INFORMATION RELATED TO ELECTRIC
24 RELIABILITY ISSUES IN THE AFFECTED AREA. THIS SECTION DOES NOT
25 RESTRICT THE ABILITY OF THE COMMISSION OR THE MICHIGAN AGENCY FOR
26 ENERGY TO REQUEST STUDIES, DATA, OR ANY OTHER ANALYSES FROM THE
27 APPROPRIATE INDEPENDENT SYSTEM OPERATOR.

1 (6) THE TASK FORCE SHALL REQUEST INFORMATION AND FEEDBACK FROM
2 ALL RELEVANT LOAD SERVING ENTITIES AND TRANSMISSION COMPANIES
3 OPERATING IN THE AFFECTED AREA REGARDING ISSUES AND RECOMMENDATIONS
4 AFFECTING THE AVAILABILITY, RELIABILITY, AND AFFORDABILITY OF
5 ELECTRICITY IN THE AFFECTED AREA AS WELL AS ANY EFFORTS CURRENTLY
6 BEING TAKEN OR THAT ARE PROPOSED BY THE ENTITY TO ADDRESS THOSE
7 ISSUES.

8 (7) THE TASK FORCE MAY UTILIZE THE RESOURCES OF OUTSIDE
9 CONSULTANTS OR EXPERTS IN THE GATHERING AND ANALYSIS OF THE
10 INFORMATION REQUIRED UNDER THIS SECTION.

11 (8) ALL MEETINGS AND DELIBERATIONS OF THE TASK FORCE SHALL BE
12 OPEN TO THE PUBLIC AND ARE SUBJECT TO THE OPEN MEETINGS ACT, 1976
13 PA 267, MCL 15.261 TO 15.275.

14 (9) PRIVILEGED OR PROPRIETARY INFORMATION SUBMITTED BY A LOAD
15 SERVING ENTITY OR TRANSMISSION COMPANY UNDER THIS SECTION CLEARLY
16 DESIGNATED BY THAT ENTITY AS CONFIDENTIAL IS EXEMPT FROM DISCLOSURE
17 UNDER THE FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL 15.231 TO
18 15.246.

19 (10) WITHIN 1 YEAR AFTER THE EFFECTIVE DATE OF THE AMENDATORY
20 ACT THAT ADDED THIS SECTION, THE REPORT REQUIRED UNDER THIS SECTION
21 SHALL BE DELIVERED TO THE GOVERNOR, THE LEGISLATURE, THE HOUSE AND
22 SENATE COMMITTEES WITH JURISDICTION OVER ENERGY ISSUES, AND THE
23 COMMISSION. THE COMMISSION AND THE MICHIGAN AGENCY FOR ENERGY SHALL
24 ALSO MAKE THE REPORT AVAILABLE TO THE PUBLIC ON THEIR RESPECTIVE
25 WEBSITES.

26 (11) AS USED IN THIS SECTION, "AFFECTED AREA" MEANS THE UPPER
27 PENINSULA AND NORTHERN LOWER PENINSULA OF MICHIGAN.

1 Sec. 10. ~~(1) Sections 10 through 10bb shall be known and may~~
2 ~~be cited as the "customer choice and electricity reliability act".~~

3 ~~(2) The purpose of sections 10a through 10bb is to do all of~~
4 ~~the following:~~

5 ~~(a) To ensure that all retail customers in this state of~~
6 ~~electric power have a choice of electric suppliers.~~

7 ~~(b) To allow and encourage the Michigan public service~~
8 ~~commission to foster competition in this state in the provision of~~
9 ~~electric supply and maintain regulation of electric supply for~~
10 ~~customers who continue to choose supply from incumbent electric~~
11 ~~utilities.~~

12 ~~(c) To encourage the development and construction of merchant~~
13 ~~plants which will diversify the ownership of electric generation in~~
14 ~~this state.~~

15 (A) ~~(d)~~ To ensure that all persons in this state are afforded
16 safe, reliable electric power at a reasonable **COMPETITIVE** rate.

17 (B) ~~(e)~~ To improve the opportunities for economic development
18 in this state and to promote financially healthy and competitive
19 utilities in this state.

20 (C) ~~(f)~~ To maintain, foster, and encourage robust, reliable,
21 and economic generation, distribution, and transmission systems to
22 provide this state's electric suppliers and generators an
23 opportunity to access regional sources of generation and wholesale
24 power markets and to ensure a reliable supply of electricity in
25 this state.

26 Sec. 10a. (1) The commission shall issue orders establishing
27 the rates, terms, and conditions of service that allow all retail

1 customers of an electric utility or provider to choose **TO TAKE**
2 **SERVICE FROM** an alternative electric supplier. The orders shall do
3 all of the following:

4 (a) ~~Provide~~ **EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION,**
5 **PROVIDE** that no more than 10% of an electric utility's average
6 weather-adjusted retail sales for the preceding calendar year may
7 take service from an alternative electric supplier at any time.

8 (b) Set forth procedures necessary to ~~administer and allocate~~
9 the amount of load that will be allowed to be served by alternative
10 electric suppliers, through the use of annual energy allotments
11 awarded on a calendar year basis. ~~, and shall provide, among other~~
12 ~~things, that existing customers who are taking electric service~~
13 ~~from an alternative electric supplier at a facility on the~~
14 ~~effective date of the amendatory act that added this subdivision~~
15 ~~shall be given an allocated annual energy allotment for that~~
16 ~~service at that facility, that customers seeking to expand usage at~~
17 ~~a facility served through an alternative electric supplier will be~~
18 ~~given next priority, with the remaining available load, if any,~~
19 ~~allocated on a first come first served basis. The procedures shall~~
20 ~~also provide how customer facilities will be defined for the~~
21 ~~purpose of assigning the annual energy allotments to be allocated~~
22 ~~under this section. The commission shall not allocate additional~~
23 ~~annual energy allotments at any time when the total annual energy~~
24 ~~allotments for the utility's distribution service territory is~~
25 ~~greater than 10% of the utility's weather adjusted retail sales in~~
26 ~~the calendar year preceding the date of allocation. If the sales of~~
27 a utility are less in a subsequent year or if the energy usage of a

1 customer receiving electric service from an alternative electric
2 supplier exceeds its annual energy allotment for that facility,
3 that customer shall not be forced to purchase electricity from a
4 utility, but may purchase electricity from an alternative electric
5 supplier for that facility during that calendar year.

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

15 (D) PROVIDE THAT FOR AN EXISTING FACILITY THAT IS RECEIVING
16 100% OF ITS ELECTRIC SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER
17 ON OR AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
18 SECTION 6T, THE OWNER OF THAT FACILITY MAY PURCHASE ELECTRICITY
19 FROM AN ALTERNATIVE ELECTRIC SUPPLIER, REGARDLESS OF WHETHER THE
20 SALES EXCEED 10% OF THE SERVICING ELECTRIC UTILITY'S AVERAGE
21 WEATHER-ADJUSTED RETAIL SALES, FOR BOTH THE EXISTING ELECTRIC
22 CHOICE LOAD AT THAT FACILITY AND ANY EXPANDED LOAD ARISING AFTER
23 THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED SECTION 6T AT
24 THAT FACILITY AS WELL AS ANY NEW FACILITY THAT IS SIMILAR IN NATURE
25 TO THE EXISTING FACILITY, THAT IS CONSTRUCTED OR ACQUIRED BY THE
26 CUSTOMER ON A SITE CONTIGUOUS TO THE EXISTING SITE OR ON A SITE
27 THAT WOULD BE CONTIGUOUS TO AN EXISTING SITE IN THE ABSENCE OF AN

1 EXISTING PUBLIC RIGHT-OF-WAY, AND THE CUSTOMER OWNS MORE THAN 50%
2 OF THAT FACILITY. THIS SUBDIVISION DOES NOT AUTHORIZE OR PERMIT AN
3 EXISTING FACILITY BEING SERVED BY AN ELECTRIC UTILITY ON STANDARD
4 TARIFF SERVICE ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT
5 ADDED SECTION 6T TO BE SERVED BY AN ALTERNATIVE ELECTRIC SUPPLIER.

6 (E) ~~(d)~~—Notwithstanding any other provision of this section,
7 any customer operating an iron ore mining facility, iron ore
8 processing facility, or both, located in the Upper Peninsula of
9 this state, ~~shall be permitted to~~ **MAY** purchase all or any portion
10 of its electricity from an alternative electric supplier,
11 regardless of whether the sales exceed 10% of the serving electric
12 utility's average weather-adjusted retail sales, **IF THAT CUSTOMER**
13 **IS IN COMPLIANCE WITH THE TERMS OF A SETTLEMENT AGREEMENT REQUIRING**
14 **IT TO FACILITATE CONSTRUCTION OF A NEW POWER PLANT LOCATED IN THE**
15 **UPPER PENINSULA OF THIS STATE. A CUSTOMER DESCRIBED IN THIS**
16 **SUBDIVISION AND THE ALTERNATIVE ELECTRIC SUPPLIER THAT PROVIDES**
17 **ELECTRIC SERVICE TO THAT CUSTOMER ARE NOT SUBJECT TO THE**
18 **REQUIREMENTS CONTAINED IN THE AMENDATORY ACT THAT ADDED SECTION 6T**
19 **AND ANY ADMINISTRATIVE REGULATIONS ADOPTED UNDER THAT AMENDATORY**
20 **ACT. THE COMMISSION'S ORDERS ESTABLISHING RATES, TERMS, AND**
21 **CONDITIONS OF RETAIL ACCESS SERVICE ISSUED BEFORE THE EFFECTIVE**
22 **DATE OF THE AMENDATORY ACT THAT ADDED SECTION 6T REMAIN IN EFFECT**
23 **WITH REGARD TO RETAIL OPEN ACCESS PROVIDED UNDER THIS SUBDIVISION.**

24 (F) PROVIDE THAT A CUSTOMER ON AN ENROLLMENT QUEUE WAITING TO
25 TAKE RETAIL OPEN ACCESS SERVICE AS OF DECEMBER 31, 2015 SHALL
26 CONTINUE ON THE QUEUE AND AN ELECTRIC UTILITY SHALL ADD A NEW
27 CUSTOMER TO THE QUEUE IF THE CUSTOMER'S PROSPECTIVE ALTERNATIVE

1 ELECTRIC SUPPLIER SUBMITS AN ENROLLMENT REQUEST TO THE ELECTRIC
2 UTILITY. A CUSTOMER SHALL BE REMOVED FROM THE QUEUE BY NOTIFYING
3 THE ELECTRIC UTILITY ELECTRONICALLY OR IN WRITING.

4 (G) REQUIRE EACH ELECTRIC UTILITY TO FILE WITH THE COMMISSION
5 NOT LATER THAN JANUARY 15 OF EACH YEAR A RANK-ORDERED QUEUE OF ALL
6 CUSTOMERS AWAITING RETAIL OPEN ACCESS SERVICE UNDER SUBDIVISION
7 (F). THE FILING MUST INCLUDE THE ESTIMATED AMOUNT OF ELECTRICITY
8 USED BY EACH CUSTOMER AWAITING RETAIL OPEN ACCESS SERVICE UNDER
9 SUBDIVISION (F). ALL CUSTOMER-SPECIFIC INFORMATION CONTAINED IN THE
10 FILING UNDER THIS SUBDIVISION IS EXEMPT FROM RELEASE UNDER THE
11 FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246, AND
12 SHALL BE TREATED AS CONFIDENTIAL INFORMATION BY THE COMMISSION. THE
13 COMMISSION MAY RELEASE AGGREGATED INFORMATION AS PART OF ITS ANNUAL
14 REPORT AS LONG AS INDIVIDUAL CUSTOMER INFORMATION OR DATA ARE NOT
15 RELEASED.

16 (H) PROVIDE THAT IF THE PROSPECTIVE ALTERNATIVE ELECTRIC
17 SUPPLIER OF A CUSTOMER NEXT ON THE QUEUE AWAITING RETAIL OPEN
18 ACCESS SERVICE IS NOTIFIED AFTER THE EFFECTIVE DATE OF THE
19 AMENDATORY ACT THAT ADDED SECTION 6T THAT LESS THAN 10% OF AN
20 ELECTRIC UTILITY'S AVERAGE WEATHER-ADJUSTED RETAIL SALES FOR THE
21 PRECEDING CALENDAR YEAR ARE TAKING SERVICE FROM AN ALTERNATIVE
22 ELECTRIC SUPPLIER AND THAT THE AMOUNT OF ELECTRICITY NEEDED TO
23 SERVE THE CUSTOMER'S ELECTRIC LOAD IS AVAILABLE UNDER THE 10%
24 ALLOCATION, THE CUSTOMER MAY TAKE SERVICE FROM AN ALTERNATIVE
25 ELECTRIC SUPPLIER. THE CUSTOMER IS SUBJECT TO ANY GENERATION
26 CAPACITY SERVICE COSTS ASSESSED UNDER SUBDIVISION (I). THE
27 CUSTOMER'S PROSPECTIVE ALTERNATIVE ELECTRIC SUPPLIER SHALL NOTIFY

1 THE ELECTRIC UTILITY WITHIN 5 BUSINESS DAYS AFTER BEING NOTIFIED
2 WHETHER THE CUSTOMER WILL TAKE SERVICE FROM AN ALTERNATIVE ELECTRIC
3 SUPPLIER. IF THE CUSTOMER'S PROSPECTIVE ALTERNATIVE ELECTRIC
4 SUPPLIER FAILS TO NOTIFY THE UTILITY WITHIN 5 BUSINESS DAYS OR IF
5 THE CUSTOMER CHOOSES NOT TO TAKE RETAIL OPEN ACCESS SERVICE, THE
6 CUSTOMER SHALL BE REMOVED FROM THE QUEUE OF THOSE AWAITING RETAIL
7 OPEN ACCESS SERVICE. THE CUSTOMER MAY SUBSEQUENTLY BE ADDED TO THE
8 QUEUE AS A NEW CUSTOMER UNDER THE PROVISIONS OF SUBDIVISION (F). A
9 CUSTOMER THAT ELECTS TO TAKE SERVICE FROM AN ALTERNATIVE ELECTRIC
10 SUPPLIER UNDER THIS SUBDIVISION SHALL BECOME SERVICE-READY UNDER
11 RULES ESTABLISHED BY THE COMMISSION AND THE UTILITY'S APPROVED
12 RETAIL OPEN ACCESS SERVICE TARIFFS.

13 (I) EXCEPT AS OTHERWISE PROVIDED UNDER SUBDIVISION (J),
14 PROVIDE THAT BY 1 YEAR AFTER THE EFFECTIVE DATE OF THE AMENDATORY
15 ACT THAT ADDED SECTION 6T, THE COMMISSION SHALL DETERMINE THE
16 APPROPRIATE GENERATION CAPACITY SERVICE COSTS FOR EACH ELECTRIC
17 UTILITY THAT SHALL BE ASSESSED AS A NONBYPASSABLE CHARGE TO ANY
18 FULL SERVICE ELECTRIC UTILITY CUSTOMER FOR THE SUBSEQUENT 10
19 PLANNING YEARS AFTER THAT CUSTOMER EITHER ELECTS TO RECEIVE SERVICE
20 FROM AN ALTERNATIVE ELECTRIC SUPPLIER UNDER SUBDIVISION (H) OR, FOR
21 AN ELECTRIC UTILITY THAT DOES NOT MAINTAIN A QUEUE, ELECTS TO
22 RECEIVE SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER AFTER
23 DECEMBER 1, 2016, FOR ANY OF ITS CURRENT FULL SERVICE ELECTRIC
24 LOAD. A GENERATION CAPACITY CHARGE UNDER SECTION 6W(2)(B), (C),
25 (D), AND (F) SHALL BE DETERMINED AND ASSESSED IN THE SAME MANNER AS
26 PROVIDED UNDER THIS SUBDIVISION. IF THE APPROPRIATE INDEPENDENT
27 SYSTEM OPERATOR DOES NOT IMPLEMENT A RESOURCE ADEQUACY TARIFF THAT

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1 MEETS THE REQUIREMENTS OF SECTION 6W(1), A GENERATION CAPACITY
2 CHARGE ASSESSED UNDER SECTION 6W(2) (B), (C), (D), AND (F) SHALL BE
3 APPLIED TO RETAIL CUSTOMERS FOR 10 YEARS IF, AS A RESULT OF THE
4 ADDITIONAL REQUIRED CAPACITY, THE UTILITY HAS TO MAKE A SIGNIFICANT
5 ACQUISITION OR INVESTMENT IN INCREMENTAL GENERATION CAPACITY
6 RESOURCES. IF, AS A RESULT OF THE ADDITIONAL REQUIRED CAPACITY, THE
7 UTILITY DOES NOT NEED TO ACQUIRE OR INVEST IN INCREMENTAL
8 GENERATION CAPACITY RESOURCES THE GENERATION CAPACITY CHARGE
9 ASSESSED UNDER SECTION 6W(2) (B), (C), (D), AND (F) SHALL BE APPLIED
10 TO RETAIL CUSTOMERS FOR 4 YEARS. THE COMMISSION MAY MAKE A
11 DETERMINATION UNDER THIS SUBSECTION IN AN ELECTRIC UTILITY'S
12 PENDING RATE CASE OR POWER SUPPLY COST RECOVERY PROCEEDING. THE
13 GENERATION CAPACITY COSTS SHALL BE THE CUSTOMER'S PRO RATA SHARE OF
14 THE COST OF GENERATION CAPACITY SERVICES THAT THE CUSTOMER
15 CONTINUES TO RECEIVE FROM THE ELECTRIC UTILITY FOR THE SUBSEQUENT
16 10 PLANNING YEARS AS DETERMINED BY THE COMMISSION UNDER THIS
17 SUBDIVISION. THE ELECTRIC UTILITY, AND NOT THE CUSTOMER'S
18 ALTERNATIVE ELECTRIC SUPPLIER, WILL BE RESPONSIBLE FOR THAT
19 CUSTOMER'S SHARE OF THE GENERATION CAPACITY REQUIREMENTS UNDER
20 SECTION 6W(2) (A), (B), AND (C) FOR THE 10-YEAR PERIOD THAT THE
21 GENERATION CAPACITY CHARGE IS ASSESSED.<< THE GENERATION CAPACITY CHARGE
22 ESTABLISHED UNDER THIS SUBDIVISION SHALL BE THE SAME FOR ALTERNATIVE
23 ELECTRIC SUPPLIER SERVICE CUSTOMERS AS THE GENERATION CAPACITY CHARGE FOR
24 CUSTOMERS ON STANDARD TARIFF SERVICE.
25 >> THE INITIAL DETERMINATION BY THE COMMISSION UNDER
26 THIS SUBDIVISION SHALL BE CONDUCTED AS A CONTESTED CASE PURSUANT TO
27 CHAPTER 4 OF THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA

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1 306, MCL 24.271 TO 24.287. THIS SECTION DOES NOT AUTHORIZE THE
2 COMMISSION TO DISALLOW COST RECOVERY FOR GENERATION COSTS THAT HAVE
3 BEEN APPROVED IN A PREVIOUS COMMISSION ORDER. AFTER THE INITIAL
4 DETERMINATION OF GENERATION CAPACITY SERVICE COSTS TO BE ASSESSED
5 UNDER THIS SUBDIVISION, THE COMMISSION SHALL REVIEW AND AMEND THE
6 GENERATION CAPACITY SERVICE COSTS IN ALL SUBSEQUENT GENERATION RATE
7 CASES AND POWER SUPPLY COST RECOVERY PROCEEDINGS. IN DETERMINING<< THE
8 GENERATION CAPACITY CHARGE UNDER THIS SUBDIVISION

9 >>, THE COMMISSION SHALL CONSIDER, BUT IS NOT LIMITED
10 TO, BOTH OF THE FOLLOWING:

11 (i) THE UTILITY'S FIXED GENERATION COSTS INCLUDED IN THE
12 UTILITY'S BASE RATES, SURCHARGES, AND POWER SUPPLY COST RECOVERY
13 FACTORS, REGARDLESS OF WHETHER THOSE COSTS RESULT FROM UTILITY
14 OWNERSHIP OF GENERATION CAPACITY RESOURCES OR THE PURCHASE OR LEASE
15 OF GENERATION CAPACITY RESOURCES FROM A THIRD PARTY OR MARKETS.

16 (ii) ANY NET PROCEEDS ACCRUED TO THE UTILITY FROM OFF-SYSTEM
17 ENERGY SALES ON AN ANNUAL BASIS OVER THE APPLICABLE PLANNING YEAR,
18 INCLUDING, BUT NOT LIMITED TO, ANY PROJECTED REVENUES NET OF
19 PROJECTED FUEL COSTS FROM THE APPROPRIATE ENERGY MARKET SALES, OFF-
20 SYSTEM ENERGY SALES, ANCILLARY SERVICES SALES, AND ENERGY SALES
21 UNDER UNIT-SPECIFIC BILATERAL CONTRACTS.

22 (J) PROVIDE THAT A GENERATION CAPACITY CHARGE IMPLEMENTED BY
23 AN ELECTRIC UTILITY AS AUTHORIZED BY COMMISSION ORDER OF SEPTEMBER
24 25, 2012, CASE NO. U-17032, REMAINS IN EFFECT UNTIL THE COMMISSION
25 AUTHORIZES THAT ELECTRIC UTILITY TO COLLECT A GENERATION CAPACITY
26 SERVICE COSTS CHARGE UNDER THIS SECTION AND THAT CHARGE GOES INTO
27 EFFECT. THE COMMISSION SHALL ESTABLISH THAT ELECTRIC UTILITY'S

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1 GENERATION CAPACITY SERVICE COSTS CHARGE IN THAT UTILITY'S NEXT
 2 GENERAL RATE CASE, AS LONG AS THAT UTILITY FILES ITS NEXT GENERAL
 3 RATE CASE BY DECEMBER 31, 2019. IF THE UTILITY DOES NOT FILE ITS
 4 NEXT GENERAL RATE CASE BY DECEMBER 31, 2019, THE COMMISSION SHALL
 5 ADOPT AN ORDER INITIATING A CASE IN WHICH THE GENERATION CAPACITY
 6 SERVICE COSTS CHARGE SHALL BE DETERMINED UNDER THIS SECTION. WHEN
 7 THE ELECTRIC UTILITY FINALLY IMPOSES A NEW GENERATION CAPACITY
 8 SERVICE COSTS CHARGE, THE AUTHORITY TO IMPOSE THE GENERATION
 9 CAPACITY CHARGE UNDER CASE NO. U-17032 IS TERMINATED. FOR PURPOSES
 10 OF THIS ACT, THE RELIABILITY ASSURANCE AGREEMENT, RATE SCHEDULE
 11 FERC NO. 44 OF THE INDEPENDENT SYSTEM OPERATOR KNOWN AS PJM
 12 INTERCONNECTION, LLC, AS APPROVED BY THE FEDERAL ENERGY REGULATORY
 13 COMMISSION IN DOCKET NO. ER10-2710 OR A SIMILAR SUCCESSOR TARIFF,
 14 SHALL BE TREATED AS A RESOURCE ADEQUACY TARIFF THAT INCLUDES A
 15 PREVAILING STATE COMPENSATION MECHANISM UNDER SECTION 6W(1).

16 (K) PROVIDE THAT A CUSTOMER SUBJECT TO A CAPACITY CHARGE UNDER
 17 THIS SECTION IS NOT ALSO SUBJECT TO A CHARGE BASED ON A PREVAILING
 18 STATE COMPENSATION MECHANISM IMPLEMENTED UNDER SECTION 6W(1).

<<(I) PROVIDE THAT THE COMMISSION SHALL ENSURE IF A CUSTOMER IS
 NOTIFIED THAT THE CUSTOMER'S SERVICE FROM AN ALTERNATIVE ELECTRIC
 SUPPLIER WILL BE TERMINATED OR RESTRICTED EITHER UNDER SECTION 6W(2)(F)
 OR OTHERWISE AS A RESULT OF THE ALTERNATIVE ELECTRIC SUPPLIER LIMITING
 SERVICE IN THIS STATE, THE CUSTOMER HAS 60 DAYS TO ACQUIRE SERVICE FROM A
 DIFFERENT ALTERNATIVE ELECTRIC SUPPLIER. IF THE CUSTOMER IS A PUBLIC
 ENTITY, THE TIME TO ACQUIRE SERVICES FROM A DIFFERENT ALTERNATIVE
 ELECTRIC SUPPLIER SHALL NOT BE LESS THAN 180 DAYS.

19 (M) ~~(A)~~>> PROVIDE THAT AS A CONDITION OF LICENSURE, AN ALTERNATIVE
 20 ELECTRIC SUPPLIER MEETS ALL OF THE REQUIREMENTS OF THIS ACT.

21 (2) The commission shall issue orders establishing a licensing
 22 procedure for all alternative electric suppliers. To ensure
 23 adequate service to customers in this state, the commission shall
 24 require that an alternative electric supplier maintain an office
 25 within this state, shall assure that an alternative electric
 26 supplier has the necessary financial, managerial, and technical
 27 capabilities, shall require that an alternative electric supplier

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

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

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

23 ~~—— (5) An electric utility may offer its customers an appliance~~
24 ~~service program. Except as otherwise provided by this section, the~~
25 ~~utility shall comply with the code of conduct established by the~~
26 ~~commission under subsection (4). As used in this section,~~
27 ~~"appliance service program" or "program" means a subscription~~

1 ~~program for the repair and servicing of heating and cooling systems~~
2 ~~or other appliances.~~

3 ~~—— (6) A utility offering a program under subsection (5) shall do~~
4 ~~all of the following:~~

5 ~~—— (a) Locate within a separate department of the utility or~~
6 ~~affiliate within the utility's corporate structure the personnel~~
7 ~~responsible for the day to day management of the program.~~

8 ~~—— (b) Maintain separate books and records for the program,~~
9 ~~access to which shall be made available to the commission upon~~
10 ~~request.~~

11 ~~—— (c) Not promote or market the program through the use of~~
12 ~~utility billing inserts, printed messages on the utility's billing~~
13 ~~materials, or other promotional materials included with customers'~~
14 ~~utility bills.~~

15 ~~—— (7) All costs directly attributable to an appliance service~~
16 ~~program allowed under subsection (5) shall be allocated to the~~
17 ~~program as required by this subsection. The direct and indirect~~
18 ~~costs of employees, vehicles, equipment, office space, and other~~
19 ~~facilities used in the appliance service program shall be allocated~~
20 ~~to the program based upon the amount of use by the program as~~
21 ~~compared to the total use of the employees, vehicles, equipment,~~
22 ~~office space, and other facilities. The cost of the program shall~~
23 ~~include administrative and general expense loading to be determined~~
24 ~~in the same manner as the utility determines administrative and~~
25 ~~general expense loading for all of the utility's regulated and~~
26 ~~unregulated activities. A subsidy by a utility does not exist if~~
27 ~~costs allocated as required by this subsection do not exceed the~~

1 ~~revenue of the program.~~

2 ~~—— (8) A utility may include charges for its appliance service~~
3 ~~program on its monthly billings to its customers if the utility~~
4 ~~complies with all of the following requirements:~~

5 ~~—— (a) All costs associated with the billing process, including~~
6 ~~the postage, envelopes, paper, and printing expenses, are allocated~~
7 ~~as required under subsection (7).~~

8 ~~—— (b) A customer's regulated utility service is not terminated~~
9 ~~for nonpayment of the appliance service program portion of the~~
10 ~~bill.~~

11 ~~—— (c) Unless the customer directs otherwise in writing, a~~
12 ~~partial payment by a customer is applied first to the bill for~~
13 ~~regulated service.~~

14 ~~—— (9) In marketing its appliance service program to the public,~~
15 ~~a utility shall do all of the following:~~

16 ~~—— (a) The list of customers receiving regulated service from the~~
17 ~~utility shall be available to a provider of appliance repair~~
18 ~~service upon request within 2 business days. The customer list~~
19 ~~shall be provided in the same electronic format as such information~~
20 ~~is provided to the appliance service program. A new customer shall~~
21 ~~be added to the customer list within 1 business day of the date the~~
22 ~~customer requested to turn on service.~~

23 ~~—— (b) Appropriately allocate costs as required under subsection~~
24 ~~(7) when personnel employed at a utility's call center provide~~
25 ~~appliance service program marketing information to a prospective~~
26 ~~customer.~~

27 ~~—— (c) Prior to enrolling a customer into the program, the~~

1 utility shall inform the potential customer of all of the
2 following:

3 ~~—— (i) That appliance service programs may be available from
4 another provider.~~

5 ~~—— (ii) That the appliance service program is not regulated by
6 the commission.~~

7 ~~—— (iii) That a new customer shall have 10 days after enrollment
8 to cancel his or her appliance service program contract without
9 penalty.~~

10 ~~—— (iv) That the customer's regulated rates and conditions of
11 service provided by the utility are not affected by enrollment in
12 the program or by the decision of the customer to use the services
13 of another provider of appliance repair service.~~

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

22 ~~—— (10) This section does not prohibit the commission from
23 requiring a utility to include revenues from an appliance service
24 program in establishing base rates. If the commission includes the
25 revenues of an appliance service program in determining a utility's
26 base rates, the commission shall also include all of the costs of
27 the program as determined under this section.~~

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

9 (4) ~~(12)~~—This act does not prohibit or limit the right of a
10 person to obtain self-service power and does not impose a
11 transition, implementation, exit fee, or any other similar charge
12 on self-service power. A person using self-service power is not an
13 electric supplier, electric utility, or a person conducting an
14 electric utility business. As used in this subsection, "self-
15 service power" means any of the following:

16 (a) Electricity generated and consumed at an industrial site
17 or contiguous industrial site or single commercial establishment or
18 single residence without the use of an electric utility's
19 transmission and distribution system.

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

26 (c) A site or facility with load existing on June 5, 2000 that
27 is divided by an inland body of water or by a public highway, road,

1 or street but that otherwise meets this definition meets the
2 contiguous requirement of this subdivision regardless of whether
3 self-service power was being generated on June 5, 2000.

4 (d) A commercial or industrial facility or single residence
5 that meets the requirements of subdivision (a) or (b) meets this
6 definition whether or not the generation facility is owned by an
7 entity different from the owner of the commercial or industrial
8 site or single residence.

9 (5) ~~(13)~~—This act does not prohibit or limit the right of a
10 person to engage in affiliate wheeling and does not impose a
11 transition, implementation, exit fee, or any other similar charge
12 on a person engaged in affiliate wheeling. ~~As used in this section:~~

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

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

27 ~~—— (i) For at least 90 days during the period from January 1,~~

1 ~~1996 to October 1, 1999, supplied by self-service power, but only~~
2 ~~to the extent of the capacity reserved or load served by self-~~
3 ~~service power during the period.~~

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

11 (6) ~~(14)~~The rights of parties to existing contracts and
12 agreements in effect as of January 1, 2000 between electric
13 utilities and qualifying facilities, including the right to have
14 the charges recovered from the customers of an electric utility, or
15 its successor, ~~shall~~**ARE** not ~~be~~abrogated, increased, or diminished
16 by this act, nor shall the receipt of any proceeds of the
17 securitization bonds by an electric utility be a basis for any
18 regulatory disallowance. Further, any securitization or financing
19 order issued by the commission that relates to a qualifying
20 facility's power purchase contract shall fully consider that
21 qualifying facility's legal and financial interests.

22 (7) ~~(15)~~A customer ~~who~~**THAT** elects to receive service from an
23 alternative electric supplier may subsequently provide notice to
24 the electric utility of the customer's desire to receive standard
25 tariff service from the electric utility **UNDER PROCEDURES APPROVED**
26 **BY THE COMMISSION.** ~~The procedures in place for each electric~~
27 ~~utility as of January 1, 2008 that set forth the terms pursuant to~~

1 ~~which a customer receiving service from an alternative electric~~
2 ~~supplier may return to full service from the electric utility are~~
3 ~~ratified and shall remain in effect and may be amended by the~~
4 ~~commission as needed. If an electric utility did not have the~~
5 ~~procedures in place as of January 1, 2008, the commission shall~~
6 ~~adopt those procedures.~~

7 (8) ~~(16)~~The commission shall authorize rates that will ensure
8 that an electric utility that offered retail open access service
9 from 2002 through ~~the effective date of the amendatory act that~~
10 ~~added this subsection~~**OCTOBER 6, 2008** fully recovers its
11 restructuring costs and any associated accrued regulatory assets.
12 This includes, but is not limited to, implementation costs,
13 stranded costs, and costs authorized ~~pursuant to~~**UNDER** section
14 10d(4) as it existed ~~prior to the effective date of the amendatory~~
15 ~~act that added this subsection,~~**BEFORE OCTOBER 6, 2008**, that have
16 been authorized for recovery by the commission in orders issued
17 ~~prior to the effective date of the amendatory act that added this~~
18 ~~subsection.~~**BEFORE OCTOBER 6, 2008**. The commission shall approve
19 surcharges that will ensure full recovery of all such costs ~~within~~
20 ~~5 years of the effective date of the amendatory act that added this~~
21 ~~subsection.~~**BY OCTOBER 6, 2013**.

22 (9) ~~(17)~~As used in subsections (1) and ~~(15)~~**(7)**:

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

1 (b) "Standard tariff service" means, for each regulated
2 electric utility, the retail rates, terms, and conditions of
3 service approved by the commission for service to customers who do
4 not elect to receive generation service from alternative electric
5 suppliers.

6 (10) AS USED IN THIS SECTION:

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

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

21 (i) FOR AT LEAST 90 DAYS DURING THE PERIOD FROM JANUARY 1,
22 1996 TO OCTOBER 1, 1999, SUPPLIED BY SELF-SERVICE POWER, BUT ONLY
23 TO THE EXTENT OF THE CAPACITY RESERVED OR LOAD SERVED BY SELF-
24 SERVICE POWER DURING THE PERIOD.

25 (ii) CAPABLE OF BEING SUPPLIED BY A PERSON'S COGENERATION
26 CAPACITY WITHIN THIS STATE THAT HAS HAD SINCE JANUARY 1, 1996 A
27 RATED CAPACITY OF 15 MEGAWATTS OR LESS, WAS PLACED IN SERVICE

1 BEFORE DECEMBER 31, 1975, AND HAS BEEN IN CONTINUOUS SERVICE SINCE
2 THAT DATE. A PERSON ENGAGING IN AFFILIATE WHEELING IS NOT AN
3 ELECTRIC SUPPLIER, AN ELECTRIC UTILITY, OR CONDUCTING AN ELECTRIC
4 UTILITY BUSINESS WHEN A PERSON ENGAGES IN AFFILIATE WHEELING.

5 Sec. 10c. (1) Except for a violation under section 10a(3) and
6 as otherwise provided under this section, upon a complaint or on
7 the commission's own motion, if the commission finds, after notice
8 and hearing, that an electric utility or an alternative electric
9 supplier has not complied with a provision or order issued under
10 sections 10 through ~~10bb~~, 10EE, OR THAT A NATURAL GAS UTILITY HAS
11 NOT COMPLIED WITH A PROVISION OR ORDER ISSUED UNDER SECTION 10EE,
12 the commission shall order such remedies and penalties as necessary
13 to make whole a customer or other person ~~who~~ THAT has suffered
14 damages as a result of the violation, including, but not limited
15 to, 1 or more of the following:

16 (a) Order the electric utility, NATURAL GAS UTILITY, or
17 alternative electric supplier to pay a fine for the first offense
18 of not less than \$1,000.00 or more than \$20,000.00. For a second
19 offense, the commission shall order the person to pay a fine of not
20 less than \$2,000.00 or more than \$40,000.00. For a third and any
21 subsequent offense, the commission shall order the person to pay a
22 fine of not less than \$5,000.00 or more than \$50,000.00.

23 (b) Order a refund to the customer of any excess charges.

24 (c) Order any other remedies that would make whole a person
25 harmed, including, but not limited to, payment of reasonable
26 attorney fees.

27 (d) Revoke the license of the alternative electric supplier if

1 the commission finds a pattern of violations.

2 (e) Issue cease and desist orders.

3 (2) Upon a complaint or the commission's own motion, the
4 commission may conduct a contested case to review allegations of a
5 violation under section 10a(3).

6 (3) If the commission finds that a person has violated section
7 10a(3), the commission shall order remedies and penalties to
8 protect customers and other persons ~~who~~**THAT** have suffered damages
9 as a result of the violation, including, but not limited to, 1 or
10 more of the following:

11 (a) Order the person to pay a fine for the first offense of
12 not less than \$20,000.00 or more than \$30,000.00. For a second and
13 any subsequent offense, the commission shall order the person to
14 pay a fine of not less than \$30,000.00 or more than \$50,000.00. If
15 the commission finds that the second or any of the subsequent
16 offenses were knowingly made in violation of section 10a(3), the
17 commission shall order the person to pay a fine of not more than
18 \$70,000.00. Each unauthorized action made in violation of section
19 10a(3) shall be a separate offense under this subdivision.

20 (b) Order an unauthorized supplier to refund to the customer
21 any amount greater than the customer would have paid to an
22 authorized supplier.

23 (c) Order an unauthorized supplier to reimburse an authorized
24 supplier an amount equal to the amount paid by the customer that
25 should have been paid to the authorized supplier.

26 (d) Order the refund of any amounts paid by the customer for
27 unauthorized services.

1 (e) Order a portion between 10% to 50% of the fine ordered
2 under subdivision (a) be paid directly to the customer ~~who~~**THAT**
3 suffered the violation under section 10a(3).

4 (f) If the person is licensed under this act, revoke the
5 license if the commission finds a pattern of violations of section
6 10a(3).

7 (g) Issue cease and desist orders.

8 (4) Notwithstanding subsection (3), a fine shall not be
9 imposed for a violation of section 10a(3) if the supplier has
10 otherwise fully complied with section 10a(3) and shows that the
11 violation was an unintentional and bona fide error which occurred
12 notwithstanding the maintenance of procedures reasonably adopted to
13 avoid the error. Examples of a bona fide error include clerical,
14 calculation, computer malfunction, programming, or printing errors.
15 An error in legal judgment with respect to a supplier's obligations
16 under section 10a(3) is not a bona fide error. The burden of
17 proving that a violation was an unintentional and bona fide error
18 is on the supplier.

19 (5) If the commission finds that a party's position in a
20 complaint filed under subsection (2) is frivolous, the commission
21 shall award to the prevailing party their costs, including
22 reasonable attorney fees, against the nonprevailing party and their
23 attorney.

24 Sec. 10f. (1) If, ~~After~~**AFTER** subtracting the average demand
25 for each retail customer under contract that exceeds 15% of the
26 utility's retail load in the relevant market, an electric utility
27 has commercial control over more than 30% of the generating

1 capacity available to serve a relevant market, the utility shall do
2 1 or more of the following with respect to any generation in excess
3 of that required to serve its firm retail sales load, including a
4 reasonable reserve margin:

5 (a) Divest a portion of its generating capacity.

6 (b) Sell generating capacity under a contract with a nonretail
7 purchaser for a term of at least 5 years.

8 (c) Transfer generating capacity to an independent brokering
9 trustee for a term of at least 5 years in blocks of at least 500
10 megawatts, 24 hours per day.

11 (2) The total generating capacity available to serve the
12 relevant market shall be determined by the commission and shall
13 equal the sum of the firm available transmission capability into
14 the relevant market and the aggregate generating capacity located
15 within the relevant market, less 1 or more of the following:

16 (a) If a municipal utility does not permit its retail
17 customers to select alternative electric suppliers, the generating
18 capacity owned by a municipal utility necessary to serve the retail
19 native load.

20 (b) Generating capacity dedicated to serving on-site load.

21 (c) The generating capacity of any multistate electric
22 supplier jurisdictionally assigned to customers of other states.

23 (3) Within 30 days after a commission determination of the
24 total generating capacity under subsection (2) in a relevant
25 market, an electric utility that exceeds the 30% limit shall file
26 an application with the commission for approval of a market power
27 mitigation plan. The commission shall approve the plan if it is

1 consistent with this act or require modifications to the plan to
2 make it consistent with this act. The utility ~~shall retain~~ **RETAINS**
3 the right to determine what specific actions to take to achieve
4 compliance with this section.

5 (4) An independent brokering trustee shall be completely
6 independent from and have no affiliation with the utility. The
7 terms of any transfer of generating capacity shall ensure that the
8 trustee has complete control over the marketing, pricing, and terms
9 of the transferred capacity for at least 5 years and shall provide
10 appropriate performance incentives to the trustee for marketing the
11 transferred capacity.

12 (5) Upon application to the commission by the utility, the
13 commission may issue an order approving a change in trustees during
14 the 5-year term upon a showing that a trustee has failed to market
15 the transferred generating capacity in a prudent and experienced
16 manner.

17 ~~—— (6) Within 1 year of the effective date of the amendatory act~~
18 ~~that added this section, the commission shall issue a report to the~~
19 ~~governor and the legislature that analyzes all aspects relating to~~
20 ~~market power in the Upper Peninsula of this state. The report shall~~
21 ~~include, but not be limited to, concentration of generating~~
22 ~~capacity, control of the transmission system, restrictions on the~~
23 ~~delivery of power, ability of new suppliers to enter the market,~~
24 ~~and identification of any market power problems under the existing~~
25 ~~market power test. Prior to issuing its report, the commission~~
26 ~~shall receive written comments and hold hearings to solicit public~~
27 ~~input.~~

1 Sec. 10p. (1) Each electric utility operating in this state
2 shall establish an industry worker transition program that shall,
3 in consultation with employees or applicable collective bargaining
4 representatives, provide skills upgrades, apprenticeship and
5 training programs, voluntary separation packages consistent with
6 reasonable business practices, and job banks to coordinate and
7 assist placement of employees into comparable employment at no less
8 than the wage rates and substantially equivalent fringe benefits
9 received before the transition.

10 (2) The costs resulting from subsection (1) ~~shall include~~
11 audited and verified employee-related restructuring costs that are
12 incurred as a result of ~~the amendatory act that added this section~~
13 **2000 PA 141** or as a result of prior commission restructuring
14 orders, including employee severance costs, employee retraining
15 programs, early retirement programs, outplacement programs, and
16 similar costs and programs, that have been approved and found to be
17 prudently incurred by the commission.

18 (3) In the event of a sale, purchase, or any other transfer of
19 ownership of 1 or more Michigan divisions or business units, or
20 generating stations or generating units, of an electric utility, to
21 either a third party or a utility subsidiary, the electric
22 utility's contract and agreements with the acquiring entity or
23 persons shall require all of the following for a period of at least
24 30 months:

25 (a) That the acquiring entity or persons hire a sufficient
26 number of nonsupervisory employees to safely and reliably operate
27 and maintain the station, division, or unit by making offers of

1 employment to the nonsupervisory workforce of the electric
2 utility's division, business unit, generating station, or
3 generating unit.

4 (b) That the acquiring entity or persons not employ
5 nonsupervisory employees from outside the electric utility's
6 workforce unless offers of employment have been made to all
7 qualified nonsupervisory employees of the acquired business unit or
8 facility.

9 (c) That the acquiring entity or persons have a dispute
10 resolution mechanism culminating in a final and binding decision by
11 a neutral third party for resolving employee complaints or disputes
12 over wages, fringe benefits, and working conditions.

13 (d) That the acquiring entity or persons offer employment at
14 no less than the wage rates and substantially equivalent fringe
15 benefits and terms and conditions of employment that are in effect
16 at the time of transfer of ownership of the division, business
17 unit, generating station, or generating unit. The wage rates and
18 substantially equivalent fringe benefits and terms and conditions
19 of employment shall continue for at least 30 months from the time
20 of the transfer of ownership unless the employees, or where
21 applicable collective bargaining representative, and the new
22 employer mutually agree to different terms and conditions of
23 employment within that 30-month period.

24 (4) The electric utility shall offer a transition plan to
25 those employees who are not offered jobs by the entity because the
26 entity has a need for fewer workers. If there is litigation
27 concerning the sale, or other transfer of ownership of the electric

1 utility's divisions, business units, generating stations, or
2 generating units, the 30-month period under subsection (3) begins
3 on the date the acquiring entity or persons take control or
4 management of the divisions, business units, generating stations,
5 or generating units of the electric utility.

6 (5) The commission shall adopt generally applicable service
7 quality and reliability standards for the transmission, generation,
8 and distribution systems of electric utilities and other entities
9 subject to its jurisdiction, including, but not limited to,
10 standards for service outages, distribution facility upgrades,
11 repairs and maintenance, telephone service, billing service,
12 operational reliability, and public and worker safety. In setting
13 service quality and reliability standards, the commission shall
14 consider safety, costs, local geography and weather, applicable
15 codes, national electric industry practices, sound engineering
16 judgment, and experience. The commission shall also include
17 provisions to upgrade the service quality of distribution circuits
18 that historically have experienced significantly below-average
19 performance in relationship to similar distribution circuits.

20 (6) Annually, each jurisdictional utility or entity shall file
21 its report with the commission detailing actions to be taken to
22 comply with the service quality and reliability standards during
23 the next calendar year and its performance in relation to the
24 service quality and reliability standards during the prior calendar
25 year. The annual reports shall contain that data as required by the
26 commission, including the estimated cost of achieving improvements
27 in the jurisdictional utility's or entity's performance with

1 respect to the service quality and reliability standards.

2 (7) The commission shall analyze the data to determine whether
3 the jurisdictional entities are properly operating and maintaining
4 their systems and take corrective action if needed.

5 ~~—— (8) The commission shall submit a report to the governor and
6 the legislature by September 1, 2009. In preparing the report, the
7 commission should review and consider relevant existing customer
8 surveys and examine what other states have done. This report shall
9 include all of the following:~~

10 ~~—— (a) An assessment of the major types of end use customer power
11 quality disturbances, including, but not limited to, voltage sags,
12 overvoltages, oscillatory transients, voltage swells, distortion,
13 power frequency variations, and interruptions, caused by both the
14 distribution and transmission systems within this state.~~

15 ~~—— (b) An assessment of utility power plant generating cost
16 efficiency, including, but not limited to, operational efficiency,
17 economic generating cost efficiency, and schedules for planned and
18 unplanned outages.~~

19 ~~—— (c) Current efforts employed by the commission to monitor or
20 enforce standards pertaining to end use customer power quality
21 disturbances and utility power plant generating cost efficiency
22 either through current practice, statute, policy, or rule.~~

23 ~~—— (d) Recommendations for use of common characteristics,
24 measures, and indices to monitor power quality disturbances and
25 power plant generating cost efficiency, such as expert customer
26 service assessments, frequency of disturbance occurrence, duration
27 of disturbance, and voltage magnitude.~~

1 ~~— (c) Recommendations for statutory changes that would be~~
2 ~~necessary to enable the commission to properly monitor and enforce~~
3 ~~standards to optimize power plant generating cost efficiency and~~
4 ~~minimize power quality disturbances. These recommendations shall~~
5 ~~include recommendations to provide methods to ensure that this~~
6 ~~state can obtain optimal and cost effective end use customer power~~
7 ~~quality to attract economic development and investment into the~~
8 ~~state.~~

9 (8) ~~(9)~~ By December 31, 2009, the commission shall ~~, based on~~
10 ~~its findings in subsection (8),~~ review its existing rules under
11 this section and amend the rules, if needed, under the
12 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
13 24.328, to implement performance standards for generation
14 facilities and for distribution facilities to protect end-use
15 customers from power quality disturbances.

16 (9) ~~(10)~~ Any standards or rules developed under this section
17 shall be designed to do the following, as applicable:

18 (a) Establish different requirements for each customer class,
19 whenever those different requirements are appropriate to carry out
20 the provisions of this section, and to reflect different load and
21 service characteristics of each customer class.

22 (b) Consider the availability and associated cost of necessary
23 equipment and labor required to maintain or upgrade distribution
24 and generating facilities.

25 (c) Ensure that the most cost-effective means of addressing
26 power quality disturbances are promoted for each utility, including
27 consideration of the installation of equipment or adoption of

1 operating practices at the end-user's location.

2 (d) Take into account the extent to which the benefits
3 associated with achieving a specified standard or improvement are
4 offset by the incremental capital, fuel, and operation and
5 maintenance expenses associated with meeting the specified standard
6 or improvement.

7 (e) Carefully consider the time frame for achieving a
8 specified standard, taking into account the time required to
9 implement needed investments or modify operating practices.

10 (10) ~~(11)~~—The commission shall also create benchmarks for
11 individual jurisdictional entities within their rate-making process
12 in order to accomplish the goals of this section to alleviate end-
13 use customer power quality disturbances and promote power plant
14 generating cost efficiency.

15 (11) ~~(12)~~—The commission shall establish a method for
16 gathering data from the industrial customer class to assist in
17 monitoring power quality and reliability standards related to
18 service characteristics of the industrial customer class.

19 (12) ~~(13)~~—The commission ~~is authorized to~~ **MAY** levy financial
20 incentives and penalties upon any jurisdictional entity which
21 exceeds or fails to meet the service quality and reliability
22 standards.

23 (13) ~~(14)~~—As used in this section, "jurisdictional utility" or
24 "jurisdictional entity" means **A** jurisdictional regulated utility as
25 that term is defined in section 6q.

26 Sec. 10r. (1) The commission shall establish minimum standards
27 for the form and content of all disclosures, explanations, or sales

1 information disseminated by a person selling electric service to
2 ensure that the person provides adequate, accurate, and
3 understandable information about the service that enables a
4 customer to make an informed decision relating to the source and
5 type of electric service purchased. The standards shall be
6 developed to do all of the following:

7 (a) Not be unduly burdensome.

8 (b) Not unnecessarily delay or inhibit the initiation and
9 development of competition for electric generation service in any
10 market.

11 (c) Establish different requirements for disclosures,
12 explanations, or sales information relating to different services
13 or similar services to different classes of customers, whenever the
14 different requirements are appropriate to carry out the purposes of
15 this section.

16 (2) The commission shall require that ~~, starting January 1,~~
17 ~~2002,~~ all electric suppliers disclose in standardized, uniform
18 format on the customer's bill with a bill insert, on customer
19 contracts, or, for cooperatives, in periodicals issued by an
20 association of rural electric cooperatives, information about the
21 environmental characteristics of electricity products purchased by
22 the customer, including all of the following:

23 (a) The average fuel mix, including categories for oil, gas,
24 coal, solar, hydroelectric, wind, biofuel, nuclear, solid waste
25 incineration, biomass, and other fuel sources. If a source fits
26 into the other category, the specific source must be disclosed. A
27 regional average, determined by the commission, may be used only

1 for that portion of the electricity purchased by the customer for
2 which the fuel mix cannot be discerned. ~~For the purposes of~~ **AS USED**
3 **IN** this subdivision, "biomass" means dedicated crops grown for
4 energy production and organic waste.

5 (b) The average emissions, in pounds per megawatt hour, sulfur
6 dioxide, carbon dioxide, and oxides of nitrogen. An emissions
7 default, determined by the commission, may be used if the regional
8 average fuel mix is being disclosed.

9 (c) The average of the high-level nuclear waste generated in
10 pounds per megawatt hour.

11 (d) The regional average fuel mix and emissions profile as
12 referenced in subdivisions (a), (b), and (c).

13 (3) The information required by subsection (2) shall be
14 provided no more than twice annually, and be based on a rolling
15 annual average. Emissions factors will be based on annual publicly
16 available data by generation source.

17 (4) All of the information required to be provided under
18 subsection (1) shall also be provided to the commission to be
19 included on the commission's internet site.

20 (5) The ~~commission~~ **MICHIGAN AGENCY FOR ENERGY** shall establish
21 the Michigan renewables energy program. The program shall be
22 designed to inform customers in this state of the availability and
23 value of using renewable energy generation and the potential of
24 reduced pollution. The program shall also be designed to promote
25 the use of existing renewable energy sources and encourage the
26 development of new facilities.

27 ~~— (6) Within 2 years of the effective date of the amendatory act~~

1 ~~that added this subsection, the commission shall conduct a study~~
2 ~~and report to the governor and the house and senate standing~~
3 ~~committees with oversight of public utilities issues on the~~
4 ~~advisability of separating electric distribution and generation~~
5 ~~within electric utilities, taking into account the costs, benefits,~~
6 ~~efficiencies to be gained or lost, effects on customers, effects on~~
7 ~~reliability or quality of service, and other factors which the~~
8 ~~commission determines are appropriate. The report shall include,~~
9 ~~but is not limited to, the advisability of locating within separate~~
10 ~~departments of the utility the personnel responsible for the day-~~
11 ~~to-day management of electric distribution and generation and~~
12 ~~maintaining separate books and records for electric distribution~~
13 ~~and generation.~~

14 ~~—— (7) Two years after the effective date of the amendatory act~~
15 ~~that added this subsection, the commission shall conduct a study~~
16 ~~and report to the governor and the house and senate standing~~
17 ~~committees with oversight of public utilities issues on whether the~~
18 ~~state would benefit from the creation of a purchasing pool in which~~
19 ~~electric generation in this state is purchased and then resold. The~~
20 ~~report shall include, but is not limited to, whether the purchasing~~
21 ~~pool shall be a separate entity from electric utilities, the impact~~
22 ~~of such a pool on electric utilities' management of their~~
23 ~~electrical generating assets, and whether ratepayers would benefit~~
24 ~~from spreading the cost of new electric generation across all or a~~
25 ~~portion of this state.~~

26 (6) ~~(8) Within 270 days of the effective date of the~~
27 ~~amendatory act that added this subsection, **BY JULY 3, 2009**, each~~

1 electric utility regulated by the commission shall file with the
2 commission a plan for utilizing dispatchable customer-owned
3 distributed generation within the context of its integrated
4 resource planning process. Included in the utility's filing shall
5 be proposals for enrolling and compensating customers for the
6 utility's right to dispatch at-will the distributed generation
7 assets owned by those customers and provisions requiring the
8 customer to maintain these assets in a dispatchable condition. If
9 an electric utility already has programs addressing the subject of
10 the filing required under this subsection, the utility may refer to
11 and take credit for those existing programs in its proposed plan.

12 Sec. 10t. (1) An electric utility or alternative electric
13 supplier shall not shut off service to an eligible customer during
14 the heating season for nonpayment of a delinquent account if the
15 customer is an eligible senior citizen customer or if the customer
16 pays to the utility or supplier a monthly amount equal to 7% of the
17 estimated annual bill for the eligible customer and the eligible
18 customer demonstrates, within 14 days of requesting shutoff
19 protection, that he or she has applied for state or federal heating
20 assistance. If an arrearage exists at the time an eligible customer
21 applies for protection from shutoff of service during the heating
22 season, the utility or supplier shall permit the customer to pay
23 the arrearage in equal monthly installments between the date of
24 application and the start of the subsequent heating season.

25 (2) An electric utility or alternative electric supplier may
26 shut off service to **A CUSTOMER AS PROVIDED IN PART 7 OF THE CLEAN**
27 **AND RENEWABLE ENERGY AND ENERGY WASTE REDUCTION ACT, 2008 PA 295,**

1 **MCL 460.1201 TO 460.1211, OR TO** an eligible low-income customer who
2 does not pay the monthly amounts required under subsection (1)
3 after giving notice in the manner required by rules. The utility or
4 supplier is not required to offer a settlement agreement to an
5 eligible low-income customer who fails to make the monthly payments
6 required under subsection (1).

7 (3) If a customer fails to comply with the terms and
8 conditions of this section, an electric utility may shut off
9 service on its own behalf or on behalf of an alternative electric
10 supplier after giving the customer a notice, by personal service or
11 first-class mail, that contains all of the following information:

12 (a) That the customer has **NOT PAID THE PER-METER CHARGE**
13 **DESCRIBED IN SECTION 205 OF THE CLEAN AND RENEWABLE ENERGY AND**
14 **ENERGY WASTE REDUCTION ACT, 2008 PA 295, MCL 460.1205, OR THE**
15 **CUSTOMER HAS** defaulted on the winter protection plan.

16 (b) The nature of the default.

17 (c) That unless the customer makes the payments that are past
18 due within 10 days of the date of mailing, the utility or supplier
19 may shut off service.

20 (d) The date on or after which the utility or supplier may
21 shut off service, unless the customer takes appropriate action.

22 (e) That the customer has the right to file a complaint
23 disputing the claim of the utility or supplier before the date of
24 the proposed shutoff of service.

25 (f) That the customer has the right to request a hearing
26 before a hearing officer if the complaint cannot be otherwise
27 resolved and that the customer shall pay to the utility or supplier

1 that portion of the bill that is not in dispute within 3 days of
2 the date that the customer requests a hearing.

3 (g) That the customer has the right to represent himself or
4 herself, to be represented by an attorney, or to be assisted by any
5 other person of his or her choice in the complaint process.

6 (h) That the utility or supplier will not shut off service
7 pending the resolution of a complaint that is filed with the
8 utility in accordance with this section.

9 (i) The telephone number and address of the utility or
10 supplier where the customer may make inquiry, enter into a
11 settlement agreement, or file a complaint.

12 (j) That the customer should contact a social services agency
13 immediately if the customer believes he or she might be eligible
14 for emergency economic assistance.

15 (k) That the utility or supplier will postpone shutoff of
16 service if a medical emergency exists at the customer's residence.

17 (l) That the utility or supplier may require a deposit and
18 restoration charge if the supplier shuts off service for nonpayment
19 of a delinquent account.

20 (4) An electric utility is not required to shut off service
21 under this section to an eligible customer for nonpayment to an
22 alternative electric supplier.

23 (5) The commission shall establish an educational program to
24 ensure that eligible customers are informed of the requirements and
25 benefits of this section.

26 (6) As used in this section:

27 (a) "Eligible customer" means either an eligible low-income

1 customer or an eligible senior citizen customer.

2 (b) "Eligible low-income customer" means a customer whose
3 household income does not exceed 150% of the poverty level, as
4 published by the United States ~~department of health and human~~
5 ~~services,~~ **DEPARTMENT OF HEALTH AND HUMAN SERVICES**, or who receives
6 any of the following:

7 (i) Assistance from a state emergency relief program.

8 (ii) Food stamps.

9 (iii) Medicaid.

10 (c) "Eligible senior citizen customer" means a utility or
11 supplier customer who is 65 years of age or older and who advises
12 the utility of his or her eligibility.

13 Sec. 10dd. (1) For the fiscal year ending September 30, ~~2009,~~
14 **2017**, there is appropriated to the commission from the assessments
15 imposed under 1972 PA 299, MCL 460.111 to 460.120, the amount of
16 ~~\$2,500,000.00~~ **\$1,950,000.00** to hire ~~25.0~~ **13** full-time equated
17 positions to implement the provisions of the amendatory act that
18 added ~~this~~ section **6T**.

19 (2) **FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2017, THERE IS**
20 **APPROPRIATED TO THE ATTORNEY GENERAL FROM THE ASSESSMENTS IMPOSED**
21 **UNDER 1972 PA 299, MCL 460.111 TO 460.120, THE AMOUNT OF**
22 **\$150,000.00 TO HIRE 1.0 FULL-TIME EQUATED POSITION TO IMPLEMENT THE**
23 **PROVISIONS OF THE AMENDATORY ACT THAT ADDED SECTION 6T.**

24 (3) **FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2017, THERE IS**
25 **APPROPRIATED TO THE MICHIGAN ADMINISTRATIVE HEARING SYSTEM FROM THE**
26 **ASSESSMENTS IMPOSED UNDER 1972 PA 299, MCL 460.111 TO 460.120, THE**
27 **AMOUNT OF \$600,000.00 TO HIRE 4.0 FULL-TIME EQUATED POSITIONS TO**

1 IMPLEMENT THE PROVISIONS OF THE AMENDATORY ACT THAT ADDED SECTION
2 6T.

3 (4) FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2017, THERE IS
4 APPROPRIATED TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY FROM THE
5 ASSESSMENTS IMPOSED UNDER 1972 PA 299, MCL 460.111 TO 460.120, THE
6 AMOUNT OF \$150,000.00 TO HIRE 1.0 FULL-TIME EQUATED POSITION TO
7 IMPLEMENT THE PROVISIONS OF THE AMENDATORY ACT THAT ADDED SECTION
8 6T.

9 (5) FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2017, THERE IS
10 APPROPRIATED TO THE MICHIGAN AGENCY FOR ENERGY FROM THE ASSESSMENTS
11 IMPOSED UNDER 1972 PA 299, MCL 460.111 TO 460.120, THE AMOUNT OF
12 \$260,000.00 TO HIRE 2.0 FULL-TIME EQUATED POSITIONS TO IMPLEMENT
13 THE PROVISIONS OF THE AMENDATORY ACT THAT ADDED SECTION 6T.

14 SEC. 10EE. (1) THE COMMISSION SHALL ESTABLISH A CODE OF
15 CONDUCT THAT APPLIES TO ALL UTILITIES. THE CODE OF CONDUCT SHALL
16 INCLUDE, BUT IS NOT LIMITED TO, MEASURES TO PREVENT CROSS-
17 SUBSIDIZATION, PREFERENTIAL TREATMENT, AND, EXCEPT AS OTHERWISE
18 PROVIDED UNDER THIS SECTION, INFORMATION SHARING, BETWEEN A
19 UTILITY'S REGULATED ELECTRIC OR NATURAL GAS SERVICES AND
20 UNREGULATED PROGRAMS AND SERVICES, WHETHER THOSE SERVICES ARE
21 PROVIDED BY THE UTILITY OR THE UTILITY'S AFFILIATED ENTITIES. THE
22 CODE OF CONDUCT ESTABLISHED UNDER THIS SECTION SHALL ALSO BE
23 APPLICABLE TO ELECTRIC UTILITIES AND ALTERNATIVE ELECTRIC SUPPLIERS
24 CONSISTENT WITH SECTIONS 10 THROUGH 10CC.

25 (2) A UTILITY MAY OFFER ITS CUSTOMERS VALUE-ADDED PROGRAMS AND
26 SERVICES IF THOSE PROGRAMS OR SERVICES DO NOT HARM THE PUBLIC
27 INTEREST BY UNDULY RESTRAINING TRADE OR COMPETITION IN AN

1 UNREGULATED MARKET.

2 (3) ASSETS OF A UTILITY MAY BE USED IN THE OPERATION OF AN
3 UNREGULATED VALUE-ADDED PROGRAM OR SERVICE IF THE UNREGULATED
4 VALUE-ADDED PROGRAM OR SERVICE COMPENSATES THE UTILITY AS PROVIDED
5 UNDER THIS SECTION FOR THE PROPORTIONAL USE OF THE ASSETS OF THE
6 UTILITY. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (11), ASSETS
7 INCLUDE THE USE OF THE UTILITY'S NAME AND LOGO.

8 (4) A UTILITY SHALL NOTIFY THE COMMISSION OF ITS INTENT TO
9 OFFER ITS CUSTOMERS VALUE-ADDED PROGRAMS AND SERVICES BEFORE
10 OFFERING THOSE PROGRAMS TO ITS CUSTOMERS.

11 (5) THE COMMISSION MAY INITIATE INFORMAL PROCEEDINGS TO
12 DETERMINE IF ANY PROGRAM OR SERVICE OFFERED UNDER THIS SECTION
13 POTENTIALLY VIOLATES SUBSECTION (2) OR (3). IF THE COMMISSION
14 DETERMINES THAT A POTENTIAL VIOLATION EXISTS, THE COMMISSION SHALL
15 CONDUCT FORMAL PROCEEDINGS TO DETERMINE WHETHER A VIOLATION HAS
16 OCCURRED AND ORDER CORRECTIVE ACTIONS UNDER THIS ACT. AN INFORMAL
17 PROCEEDING ALLOWED UNDER THIS SUBSECTION IS NOT REQUIRED AS A
18 PREREQUISITE TO A FORMAL COMPLAINT.

19 (6) A UTILITY OFFERING A VALUE-ADDED PROGRAM OR SERVICE UNDER
20 THIS SECTION SHALL DO ALL OF THE FOLLOWING:

21 (A) PROVIDE THE COMMISSION WITH WRITTEN NOTICE AND A
22 DESCRIPTION OF ANY NEWLY OFFERED VALUE-ADDED PROGRAM OR SERVICE.

23 (B) LOCATE WITHIN A SEPARATE DEPARTMENT OF THE UTILITY OR
24 AFFILIATE WITHIN THE UTILITY'S CORPORATE STRUCTURE THE PERSONNEL
25 RESPONSIBLE FOR THE DAY-TO-DAY MANAGEMENT OF THE PROGRAM OR
26 SERVICE.

27 (C) MAINTAIN SEPARATE BOOKS AND RECORDS FOR THE PROGRAM OR

1 SERVICE AND PROVIDE AN ANNUAL REPORT TO THE COMMISSION SHOWING HOW
2 ALL OF THE UTILITY'S COSTS ASSOCIATED WITH THE UNREGULATED VALUE-
3 ADDED PROGRAM OR SERVICE WERE ALLOCATED TO THE UNREGULATED PROGRAM
4 OR SERVICE. THE ANNUAL REPORT SHALL SHOW TO WHAT EXTENT THE
5 UTILITY'S RATES WERE AFFECTED BY THE ALLOCATIONS. THE UTILITY MAY
6 INCLUDE THIS REPORT AS PART OF A REQUEST FOR RATE RELIEF.

7 (7) A UTILITY OFFERING AN UNREGULATED VALUE-ADDED PROGRAM OR
8 SERVICE UNDER THIS SECTION SHALL NOT PROMOTE OR MARKET THE PROGRAM
9 OR SERVICE THROUGH THE USE OF UTILITY BILLING INSERTS, PRINTED
10 MESSAGES ON THE UTILITY'S BILLING MATERIALS, OR OTHER PROMOTIONAL
11 MATERIALS INCLUDED WITH CUSTOMERS' UTILITY BILLS.

12 (8) ALL UTILITY COSTS DIRECTLY ATTRIBUTABLE TO A VALUE-ADDED
13 PROGRAM OR SERVICE ALLOWED UNDER THIS SECTION SHALL BE ALLOCATED TO
14 THE PROGRAM OR SERVICE AS REQUIRED BY THIS SECTION. THE DIRECT AND
15 INDIRECT COSTS OF ALL UTILITY ASSETS USED IN THE OPERATION OF THE
16 PROGRAM OR SERVICE SHALL BE ALLOCATED TO THE PROGRAM OR SERVICE
17 BASED ON THE PROPORTIONAL USE BY THE PROGRAM OR SERVICE AS COMPARED
18 TO THE TOTAL USE OF THOSE ASSETS BY THE UTILITY. THE COST OF THE
19 PROGRAM OR SERVICE INCLUDES ADMINISTRATIVE AND GENERAL EXPENSE
20 LOADING TO BE DETERMINED IN THE SAME MANNER AS THE UTILITY
21 DETERMINES ADMINISTRATIVE AND GENERAL EXPENSE LOADING FOR ALL OF
22 THE UTILITY'S REGULATED AND UNREGULATED ACTIVITIES.

23 (9) A UTILITY MAY INCLUDE CHARGES FOR ITS VALUE-ADDED PROGRAMS
24 AND SERVICES OFFERED UNDER THIS SECTION ON ITS MONTHLY BILLINGS TO
25 ITS CUSTOMERS IF THE UTILITY COMPLIES WITH ALL OF THE FOLLOWING:

26 (A) THE PROPORTIONAL SHARE OF ALL COSTS ASSOCIATED WITH THE
27 BILLING PROCESS, INCLUDING THE POSTAGE, ENVELOPES, PAPER, AND

1 PRINTING EXPENSES, ARE ALLOCATED AS REQUIRED UNDER SUBSECTION (8).

2 (B) A CUSTOMER'S REGULATED UTILITY SERVICE IS NOT TERMINATED
3 FOR NONPAYMENT OF THE VALUE-ADDED PROGRAM OR SERVICE PORTIONS OF
4 THE BILL.

5 (C) UNLESS THE CUSTOMER DIRECTS OTHERWISE IN WRITING, A
6 PARTIAL PAYMENT BY A CUSTOMER IS APPLIED FIRST TO THE BILL FOR
7 REGULATED SERVICE.

8 (10) IN MARKETING A VALUE-ADDED PROGRAM OR SERVICE OFFERED
9 UNDER THIS SECTION TO THE PUBLIC, A UTILITY SHALL DO ALL OF THE
10 FOLLOWING:

11 (A) IN THE MANNER AND TO THE EXTENT ALLOWED BY COMMISSION RULE
12 OR ORDER, PROVIDE UPON REQUEST TO A PROVIDER OF A SIMILAR PROGRAM
13 OR SERVICE ANY LISTS OF CUSTOMERS RECEIVING REGULATED SERVICE THAT
14 THE UTILITY PROVIDES TO ITS VALUE-ADDED PROGRAMS OR SERVICES. THE
15 CUSTOMER LIST SHALL BE PROVIDED WITHIN 5 BUSINESS DAYS OF THE
16 REQUEST ON A NONDISCRIMINATORY BASIS. A NEW CUSTOMER SHALL BE ADDED
17 TO THE CUSTOMER LIST WITHIN 1 BUSINESS DAY OF THE DATE THE CUSTOMER
18 REQUESTS TO ENROLL IN THE PROGRAM OR SERVICE.

19 (B) APPROPRIATELY ALLOCATE UTILITY COSTS AS REQUIRED UNDER
20 SUBSECTION (8) WHEN PERSONNEL EMPLOYED AT A UTILITY'S CALL CENTER
21 PROVIDE PROGRAM MARKETING INFORMATION TO A PROSPECTIVE CUSTOMER OR
22 CUSTOMER SERVICE SUPPORT FOR PROGRAM PAYMENT ISSUES TO CUSTOMERS
23 PARTICIPATING IN A PROGRAM OR SERVICE OFFERED UNDER THIS SECTION.

24 (C) BEFORE ENROLLING A CUSTOMER INTO THE PROGRAM OR SERVICE
25 OFFERED UNDER THIS SECTION, THE UTILITY SHALL INFORM THE POTENTIAL
26 CUSTOMER OF ALL OF THE FOLLOWING:

27 (i) THAT THE PROGRAM OR SERVICE MAY BE AVAILABLE FROM ANOTHER

1 PROVIDER.

2 (ii) THAT THE PROGRAM OR SERVICE IS NOT REGULATED BY THE
3 COMMISSION.

4 (iii) THAT A NEW RESIDENTIAL CUSTOMER HAS 10 DAYS AFTER
5 ENROLLMENT TO CANCEL HIS OR HER PROGRAM OR SERVICE CONTRACT WITHOUT
6 PENALTY.

7 (iv) THAT THE CUSTOMER'S REGULATED RATES AND CONDITIONS OF
8 SERVICE PROVIDED BY THE UTILITY ARE NOT AFFECTED BY ENROLLMENT IN
9 THE PROGRAM OR SERVICE OR BY THE DECISION OF THE CUSTOMER TO OBTAIN
10 THE PROGRAM OR SERVICE FROM ANOTHER PROVIDER.

11 (D) THE UTILITY NAME AND LOGO MAY BE USED TO MARKET PROGRAMS
12 AND SERVICES OFFERED UNDER THIS SECTION IF THE UTILITY COMPLIES
13 WITH BOTH OF THE FOLLOWING:

14 (i) DOES NOT MARKET THE PROGRAM OR SERVICE IN CONJUNCTION WITH
15 A REGULATED SERVICE.

16 (ii) CLEARLY INDICATES ON ALL MARKETING MATERIALS THAT THE
17 PROGRAM OR SERVICE IS NOT REGULATED BY THE COMMISSION.

18 (11) FOR PROGRAMS OR SERVICES DIRECTLY OPERATED BY A UTILITY,
19 COSTS SHALL NOT BE ALLOCATED TO THE PROGRAM OR SERVICE FOR THE USE
20 OF THE UTILITY'S NAME OR LOGO.

21 (12) THE COMMISSION SHALL INCLUDE ONLY THE REVENUES RECEIVED
22 BY A UTILITY UNDER SUBSECTION (8) IN DETERMINING A UTILITY'S BASE
23 RATES. THE UTILITY SHALL FILE WITH THE COMMISSION THE PERCENTAGE OF
24 ADDITIONAL REVENUES OVER THOSE THAT ARE ALLOCATED TO RECOVER COSTS
25 DIRECTLY ATTRIBUTABLE TO A VALUE-ADDED PROGRAM OR SERVICE UNDER
26 SUBSECTION (8) THAT THE UTILITY WISHES TO INCLUDE AS AN OFFSET TO
27 THE UTILITY'S BASE RATES. FOLLOWING A NOTICE AND HEARING, THE

1 COMMISSION SHALL APPROVE OR MODIFY THE AMOUNT TO BE INCLUDED AS AN
2 OFFSET TO THE UTILITY'S BASE RATES.

3 (13) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE CODE OF
4 CONDUCT SHALL NOT REQUIRE A UTILITY OPERATING OR OFFERING A VALUE-
5 ADDED PROGRAM OR SERVICE UNDER THIS SECTION AS PART OF ITS
6 REGULATED SERVICE TO FORM A SEPARATE AFFILIATE OR DIVISION, IMPOSE
7 FURTHER RESTRICTIONS ON THE SHARING OF EMPLOYEES, VEHICLES,
8 EQUIPMENT, OFFICE SPACE, AND OTHER FACILITIES, OR REQUIRE THE
9 UTILITY TO PROVIDE OTHER PROVIDERS OF APPLIANCE REPAIR SERVICE OR
10 VALUE-ADDED PROGRAMS OR SERVICES WITH ACCESS TO UTILITY EMPLOYEES,
11 VEHICLES, EQUIPMENT, OFFICE SPACE, OR OTHER FACILITIES.

12 (14) IN ADDITION TO ANY PENALTIES ALLOWED UNDER SECTION 10C,
13 FOR VIOLATIONS OF THIS SECTION A UTILITY SHALL PAY ALL REASONABLE
14 COSTS INCURRED BY THE PREVAILING PARTY.

15 (15) A UTILITY THAT OFFERS VALUE-ADDED PROGRAMS OR SERVICES
16 UNDER THIS SECTION SHALL FILE AN ANNUAL REPORT WITH THE COMMISSION
17 THAT PROVIDES A LIST OF ITS OFFERED VALUE-ADDED PROGRAMS AND
18 SERVICES, THE ESTIMATED MARKET SHARE OCCUPIED BY EACH VALUE-ADDED
19 PROGRAM AND SERVICE OFFERED BY THE UTILITY, AND A DETAILED
20 ACCOUNTING OF HOW THE COSTS FOR THE VALUE-ADDED PROGRAMS AND
21 SERVICES WERE APPORTIONED BETWEEN THE UTILITY AND THE VALUE-ADDED
22 PROGRAMS AND SERVICES. THE UTILITY SHALL CERTIFY TO THE COMMISSION
23 THAT IT IS COMPLYING WITH THE REQUIREMENTS OF THIS SECTION. THE
24 COMMISSION MAY CONDUCT AN AUDIT OF THE BOOKS AND RECORDS OF THE
25 UTILITY AND THE VALUE-ADDED PROGRAMS AND SERVICES TO ENSURE
26 COMPLIANCE WITH THIS SECTION.

27 (16) AS USED IN THIS SECTION:

1 (A) "UTILITY" MEANS AN ELECTRIC OR NATURAL GAS UTILITY
2 REGULATED BY THE COMMISSION.

3 (B) "VALUE-ADDED PROGRAMS AND SERVICES" MEANS PROGRAMS AND
4 SERVICES THAT ARE UTILITY OR ENERGY RELATED, INCLUDING, BUT NOT
5 LIMITED TO, HOME COMFORT AND PROTECTION, APPLIANCE SERVICE,
6 BUILDING ENERGY PERFORMANCE, ALTERNATIVE ENERGY OPTIONS, OR
7 ENGINEERING AND CONSTRUCTION SERVICES. VALUE-ADDED PROGRAMS AND
8 SERVICES DO NOT INCLUDE ENERGY OPTIMIZATION OR ENERGY WASTE
9 REDUCTION PROGRAMS PAID FOR BY UTILITY CUSTOMERS AS PART OF THEIR
10 REGULATED RATES.

11 SEC. 10FF. (1) EFFECTIVE JANUARY 1, 2017, THE ENERGY OMBUDSMAN
12 IS ESTABLISHED IN THE MICHIGAN AGENCY FOR ENERGY. THE INDIVIDUAL
13 SERVING AS ENERGY OMBUDSMAN SHALL MEET BOTH OF THE FOLLOWING
14 REQUIREMENTS:

15 (A) UNDERSTAND THE RATE-MAKING PROCESS AND INSTRUMENTS TO
16 ENABLE THE ENERGY OMBUDSMAN TO PROVIDE RATE INFORMATION AND TRACK
17 TRENDS RELATED TO ENERGY COSTS FOR BUSINESSES AND INDIVIDUALS IN
18 THIS STATE.

19 (B) POSSESS THE KNOWLEDGE NECESSARY TO MEASURE HISTORIC,
20 ONGOING, AND FUTURE ENERGY COSTS FOR BUSINESSES AND INDIVIDUALS IN
21 THIS STATE BASED ON THE ACTIONS OF THE EXECUTIVE, LEGISLATIVE, AND
22 JUDICIAL BRANCHES OF STATE GOVERNMENT.

23 (2) THE ENERGY OMBUDSMAN SHALL DO ALL OF THE FOLLOWING:

24 (A) SERVE AS A LIAISON FOR BUSINESSES AND INDIVIDUALS IN THE
25 STATE BY GUIDING ENERGY ISSUES, PROBLEMS, AND DISPUTES FROM
26 BUSINESSES AND INDIVIDUALS TO THE APPROPRIATE ENTITY, AGENCY, OR
27 VENUE FOR RESOLUTION.

1 (B) MONITOR THE ACTIVITIES OF THE COMMISSION, THE MICHIGAN
2 AGENCY FOR ENERGY, AND OTHER REGULATORY ENTITIES OF THIS STATE
3 WHOSE DECISIONS AFFECT BUSINESSES AND INDIVIDUALS WITH RESPECT TO
4 ENERGY AND COMMUNICATE THOSE ENTITIES' DECISIONS, POLICY CHANGES,
5 AND DEVELOPMENTS TO BUSINESSES AND INDIVIDUALS IN THIS STATE. THE
6 ISSUES THE ENERGY OMBUDSMAN SHALL MONITOR INCLUDE, BUT ARE NOT
7 LIMITED TO, ALL OF THE FOLLOWING:

8 (i) RENEWABLE SOURCES OF ENERGY.

9 (ii) ENERGY EFFICIENCY.

10 (iii) NET METERING.

11 (iv) COMBINED HEAT AND POWER.

12 (v) DISTRIBUTED GENERATION.

13 (vi) ON-BILL FINANCING.

14 (C) CONVENE REGULAR MEETINGS IN THIS STATE TO SHARE
15 INFORMATION AND DEVELOPMENTS PERTAINING TO ENERGY ISSUES, POLICIES,
16 AND ADMINISTRATIVE PROCESSES AFFECTING BUSINESSES AND INDIVIDUALS
17 IN THIS STATE.

18 (D) MONITOR THE IMPLEMENTATION OF THE CODE OF CONDUCT
19 ESTABLISHED BY THE COMMISSION UNDER SECTION 10EE AND COMPILE AND
20 ANNUALLY PUBLISH STATISTICS ON UNREGULATED SERVICES THAT ARE
21 PROVIDED BY UTILITIES AND THEIR AFFILIATES.

22 Sec. 11. (1) Except as otherwise provided in this subsection,
23 the commission shall ~~phase in~~ ENSURE THE ESTABLISHMENT OF electric
24 rates equal to the cost of providing service to each customer
25 class. ~~over a period of 5 years from October 6, 2008. If the~~
26 ~~commission determines that the rate impact on industrial metal~~
27 ~~melting customers will exceed the 2.5% limit in subsection (2), the~~

1 ~~commission may phase in cost based rates for that class over a~~
2 ~~longer period.~~ **IN ESTABLISHING COST OF SERVICE RATES, THE**
3 **COMMISSION SHALL ENSURE THAT EACH CLASS, OR SUB-CLASS, IS ASSESSED**
4 **FOR ITS FAIR AND EQUITABLE USE OF THE ELECTRIC GRID. IF THE**
5 **COMMISSION DETERMINES THAT THE IMPACT OF IMPOSING COST OF SERVICE**
6 **RATES ON CUSTOMERS OF AN ELECTRIC UTILITY WOULD HAVE A MATERIAL**
7 **IMPACT ON CUSTOMER RATES, THE COMMISSION MAY APPROVE AN ORDER THAT**
8 **IMPLEMENTS THOSE RATES OVER A SUITABLE NUMBER OF YEARS.** The
9 **COMMISSION SHALL ENSURE THAT THE** cost of providing service to each
10 customer class ~~shall be~~ **IS** based on the allocation of production-
11 related **COSTS BASED ON USING THE 75-0-25 METHOD OF COST ALLOCATION**
12 and transmission costs based on using the ~~50-25-25~~ **100% DEMAND**
13 method of cost allocation. The commission may modify this method ~~to~~
14 ~~better~~ **IF IT DETERMINES THAT THIS METHOD OF COST ALLOCATION DOES**
15 **NOT** ensure **THAT** rates are equal to the cost of service.

16 ~~—— (2) The commission shall ensure that the impact on residential~~
17 ~~and industrial metal melting rates due to the cost of service~~
18 ~~requirement in subsection (1) is no more than 2.5% per year.~~

19 ~~—— (3) Within 60 days of the effective date of the amendatory act~~
20 ~~that added this subsection, the commission shall commence a~~
21 ~~proceeding for each affected electric utility to examine cost~~
22 ~~allocation methods and rate design methods used to set rates. In~~
23 ~~each proceeding, each affected utility shall file within 60 days of~~
24 ~~the commencement of that proceeding a proposal to modify the~~
25 ~~existing cost allocation methods and rate design methods that have~~
26 ~~been used to set existing rates and shall provide notice to all of~~
27 ~~that utility's customers outlining the proposed cost allocation~~

1 ~~methods and rate design methods. A proposal filed by an affected~~
2 ~~electric utility must meet both of the following conditions:~~

3 ~~—— (a) Be consistent with subsection (1), which authorizes the~~
4 ~~commission to modify the 50-25-25 method of allocating production-~~
5 ~~related and transmission costs to better ensure rates are equal to~~
6 ~~the cost of service.~~

7 ~~—— (b) Explore different methods for allocation of production,~~
8 ~~transmission, distribution, and customer-related costs and overall~~
9 ~~rate design, based on cost of service, that support affordable and~~
10 ~~competitive electric rates for all customer classes.~~

11 ~~—— (4) The scope of a proceeding under subsection (3) is limited~~
12 ~~to examining cost allocation and rate design methods proposed to~~
13 ~~set rates for each affected electric utility that filed a proposal~~
14 ~~under subsection (3). The commission shall allow any interested~~
15 ~~person to intervene in a proceeding under subsection (3), including~~
16 ~~on behalf of residential utility customers. The commission shall~~
17 ~~not schedule a prehearing conference for the purposes of~~
18 ~~considering interventions until an electric utility files a~~
19 ~~proposal under subsection (3). Within 270 days after a proposal is~~
20 ~~filed under subsection (3), the commission shall issue a final~~
21 ~~order adopting the cost allocation methods and rate design methods~~
22 ~~considered appropriate by the commission and doing either of the~~
23 ~~following:~~

24 ~~—— (a) Implementing rates consistent with those cost allocation~~
25 ~~methods and rate design methods.~~

26 ~~—— (b) Fixing a date for the establishment of rates consistent~~
27 ~~with those cost allocation methods and rate design methods, which~~

1 ~~date shall not be later than December 1, 2015.~~

2 ~~—— (5) A utility may file other rate applications during the~~
3 ~~pendency of a proceeding initiated under subsection (3). If an~~
4 ~~affected electric utility files a rate application before December~~
5 ~~1, 2014, the commission may close and consolidate the proceedings~~
6 ~~initiated under subsection (3) with the case so long as a final~~
7 ~~order addressing the proceedings initiated under subsection (3) can~~
8 ~~be implemented by December 1, 2015.~~

9 ~~—— (6) The commission shall order the administrative law judge~~
10 ~~presiding over a proceeding under subsection (3) or (5) to prepare~~
11 ~~an interim report that the commission shall submit to the~~
12 ~~legislature within 150 days after proposals are filed under~~
13 ~~subsection (3) or in a consolidated case under subsection (5)~~
14 ~~describing the actions that have been taken to comply with~~
15 ~~subsection (3), including a summary of the record evidence and~~
16 ~~positions of the parties submitted to date regarding all of the~~
17 ~~following:~~

18 ~~—— (a) A summary of proceedings that have been initiated.~~

19 ~~—— (b) The schedules adopted for those proceedings.~~

20 ~~—— (c) The cost allocation and rate design proposals made by~~
21 ~~parties to each of those proceedings.~~

22 ~~—— (d) The estimated impacts on the various customer classes of~~
23 ~~each of the proposals, in aggregate and for an average customer in~~
24 ~~each customer class.~~

25 ~~—— (e) A description of qualifications for any proposed new rate~~
26 ~~and estimation of the number of customers impacted by that new~~
27 ~~rate.~~

1 ~~—— (f) A description of proposed definitions or methods that~~
2 ~~support affordable and competitive electric rates for all customer~~
3 ~~classes.~~

4 ~~—— (7) Not later than 60 days before a final order is required to~~
5 ~~be issued under subsection (4) or in a consolidated case under~~
6 ~~subsection (5), the commission shall forward to the legislature the~~
7 ~~proposal for decision in each of the proceedings initiated under~~
8 ~~subsection (3) issued by the administrative law judge presiding~~
9 ~~over those proceedings including a summary of the evidence~~
10 ~~presented by the parties in the proceeding on which the~~
11 ~~commission's final decision must be made.~~

12 (2) ~~(8)~~ Notwithstanding any other provision of this act, the
13 commission may establish eligible low-income customer or eligible
14 senior citizen customer rates. Upon filing of a rate increase
15 request, a utility shall include proposed eligible low-income
16 customer and eligible senior citizen customer rates and a method to
17 allocate the revenue shortfall attributed to the implementation of
18 those rates upon all customer classes. As used in this subsection,
19 "eligible low-income customer" and "eligible senior citizen
20 customer" mean those terms as defined in section 10t.

21 (3) ~~(9)~~ Notwithstanding any other provision of this section,
22 the commission shall establish rate schedules ~~which~~ **THAT** ensure
23 that public and private schools, universities, and community
24 colleges are charged retail electric rates that reflect the actual
25 cost of providing service to those customers. Electric utilities
26 regulated under this section shall file with the commission tariffs
27 to ensure that public and private schools, universities, and

1 community colleges are charged electric rates as provided in this
2 subsection.

3 ~~—— (10) Subsections (1) to (9) apply only to electric utilities
4 with 1,000,000 or more retail customers in this state.~~

5 ~~—— (11) Within 2 years of the effective date of the amendatory
6 act that added this subsection, an electric utility serving fewer
7 than 120,000 retail customers in this state may file an application
8 with the commission to modify the cost allocation methods and rate
9 design methods used to set that utility's existing rates. Within
10 180 days of the effective date of the amendatory act that added
11 this subsection, an electric utility serving 120,000 or more but
12 fewer than 1,000,000 retail customers in this state shall file an
13 application with the commission to modify the cost allocation
14 methods and rate design methods used to set that utility's existing
15 rates. This subsection does not apply to a cooperative electric
16 utility that has elected to become member regulated under the
17 electric cooperative member regulation act, 2008 PA 167, MCL 460.31
18 to 460.39. Upon receipt of an application under this subsection,
19 the commission shall commence a proceeding for that electric
20 utility, limited to examining and implementing any modifications to
21 the cost allocation methods and rate design methods used by that
22 utility. An electric utility's application must meet both of the
23 following conditions:~~

24 ~~—— (a) Be consistent with the cost of providing service
25 provisions of subsection (12).~~

26 ~~—— (b) Explore different methods for allocation of production,
27 transmission, distribution, and customer related costs and overall~~

1 ~~rate design, based on cost of service, that support affordable and~~
2 ~~competitive electric rates for all customer classes.~~

3 ~~—— (12) The commission shall approve rates equal to the cost of~~
4 ~~providing service to customers of electric utilities serving less~~
5 ~~than 1,000,000 retail customers in this state. The rates shall be~~
6 ~~approved by the commission in each utility's first general rate~~
7 ~~ease filed after passage of 2008 PA 286. If, in the judgment of the~~
8 ~~commission, the impact of imposing cost of service rates on~~
9 ~~customers of a utility would have a material impact, the commission~~
10 ~~may approve an order that implements those rates over a suitable~~
11 ~~number of years. The commission shall ensure that any impact on~~
12 ~~rates due to the cost of service requirement in this subsection is~~
13 ~~not more than 2.5% per year.~~

14 ~~—— (13) The commission shall annually retain an independent~~
15 ~~consultant to verify that the requirements of this section are~~
16 ~~being satisfied for each electric utility. The costs of this~~
17 ~~service shall be recoverable in the utility's electric rates. This~~
18 ~~subsection does not apply after December 31, 2015.~~

19 ~~—— (14) An analysis of affordable rates under this section shall~~
20 ~~include both of the following:~~

21 ~~—— (a) An analysis of rate impacts directly attributable to~~
22 ~~proposed cost allocation methods, not including expiring costs~~
23 ~~associated with non base energy and non base energy delivery that~~
24 ~~have, except for an expiring contract described in section 5 of the~~
25 ~~energy for economic development act of 2010, 2010 PA 297, MCL~~
26 ~~460.995, specific statutory time durations.~~

27 ~~—— (b) An analysis of the expected impact overall on customer~~

1 ~~bills.~~

2 Enacting section 1. Sections 6c and 6e of 1939 PA 3, MCL
3 460.6c and 460.6e, are repealed.

4 Enacting section 2. This amendatory act takes effect 90 days
5 after the date it is enacted into law.

6 Enacting section 3. This amendatory act does not take effect
7 unless Senate Bill No. 438 of the 98th Legislature is enacted into
8 law.