CHAPTER 460. PUBLIC UTILITIES

****** Act 3 of 1939 THIS TITLE, BEGINNING WITH THE FIRST INSTANCE OF "AN ACT", IS AMENDED EFFECTIVE APRIL 20, 2017; THIS AMENDED TITLE, BEGINNING WITH THE SECOND INSTANCE OF "AN ACT", IS EFFECTIVE APRIL 20, 2017 ******

MICHIGAN PUBLIC SERVICE COMMISSION
Act 3 of 1939

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. 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 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.

History: 1939, Act 3, Imd. Eff. Feb. 15, 1939;—Am. 1978, Act 211, Imd. Eff. June 5, 1978;—Am. 1980, Act 139, Imd. Eff. May 29, 1980;—Am. 1982, Act 304, Imd. Eff. Oct. 13, 1982;—Am. 1982, Initiated Law, Eff. Dec. 2, 1982;—Am. 1982, Act 212, Eff. Nov. 22, 1982;—Am. 1989, Act 2, Imd. Eff. Apr. 3, 1989;—Am. 2000, Act 141, Imd. Eff. June 5, 2000;—Am. 2005, Act 190, Imd. Eff. Nov. 7, 2005;—Am. 2016, Act 341, Eff. Apr. 20, 2017.

The People of the State of Michigan enact:

460.1 Public service commission; creation; members, appointment, qualifications, terms, vacancies.

Sec. 1. A commission to be known and designated as the “Michigan public service commission” is hereby created, which shall consist of 3 members, not more than 2 of whom shall be members of the same political party, appointed by the governor with the advice and consent of the senate. Each member shall be a citizen of the United States, and of the state of Michigan, and no member of said commission shall be pecuniarily interested in any public utility or public service subject to the jurisdiction and control of the commission. During his term no member shall serve as an officer or committee member of any political party organization or hold any office or be employed by any other commission, board, department or institution in this state. No commission member shall be retained or employed by any public utility or public service subject to the jurisdiction and control of the commission during the time he is acting as such commissioner, and for 6 months thereafter, and no member of the commission, who is a member of the bar of the state of Michigan, shall practice his profession or act as counselor or attorney in any court of this state during the time he is a member of said commission: Provided, however, This shall not require any commissioner to retire from, or dissolve any partnership, of which he is a member, but said partnership, while he is a member of the commission, shall not engage in public utility practice. Immediately upon the taking effect of this act, the offices of the present members of the Michigan public service commission are hereby abolished, and the members of the Michigan public service commission as herein created shall be appointed by the governor

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with the advice and consent of the senate, for terms of 6 years each: Provided, That of the members first appointed, 1 shall be appointed for a term of 2 years, 1 for a term of 4 years, and 1 for a term of 6 years. Upon the expiration of said terms successors shall be appointed with like qualifications and in like manner for terms of 6 years each, and until their successors are appointed and qualified. Vacancies shall be filled in the same manner as is provided for appointment in the first instance.

History: 1939, Act 3, Imd. Eff. Feb. 15, 1939;—Am. 1947, Act 337, Imd. Eff. July 3, 1947;—CL 1948, 460.1;—Am. 1951, Act 275, Eff. Sept. 28, 1951.

Transfer of powers: See MCL 16.331.

460.2 Public service commission; oath, chairman, removal, quorum, seal, offices.

Sec. 2. Members of said commission shall qualify by taking and subscribing to the constitutional oath of office, and shall hold office until the appointment and qualification of their successor. The governor shall designate 1 member to serve as chairman of the commission. Any member of the commission may be removed by the governor for misfeasance, malfeasance or nonfeasance in office after hearing. A vacancy in the commission shall not impair the right of the 2 remaining members to exercise all the powers of the commission. Two members of the commission shall at all times constitute a quorum. The commission shall adopt an official seal, of which all the courts shall take judicial notice and proceedings, orders and decrees may be authenticated thereby. It shall be the duty of the board of state auditors to provide suitable offices, supplies and equipment for said commission in the city of Lansing, the expenses thereof to be audited, allowed and paid in such manner and out of such funds as may be provided by law.

History: 1939, Act 3, Imd. Eff. Feb. 15, 1939;—CL 1948, 460.2;—Am. 1951, Act 228, Eff. Sept. 28, 1951.

460.3 Public service commission; salary and expenses of members; appointment of secretary, deputies, clerks, assistants, inspectors, heads of divisions, and employees; payment of salaries and expenses; employment and compensation of engineers and experts; actual and necessary expenses; duties.

Sec. 3. The salary of the chairman of the commission and of each of the other members and the schedule for reimbursement of expenses shall be established annually by the legislature. The commission may appoint a secretary and the deputies, clerks, assistants, inspectors, heads of divisions, and employees necessary for the proper exercise of the powers and duties of the commission. All salaries and other expenses incurred by the commission shall be paid out of funds appropriated by the legislature. All fees and other moneys received by the commission shall be paid over at the end of each month to the state treasurer, taking a receipt therefor. The commission may employ engineers and experts in public utilities and public service matters and fix their compensation for services, which may be paid out of the appropriation provided by the legislature. The engineers, inspectors, and employees shall be entitled to their actual and necessary expenses incurred in the performance of the work of the commission pursuant to the schedule established by the legislature. Each deputy, clerk, assistant, engineer, inspector, or expert shall perform the duties required by the commission. Each member of the commission shall devote his entire time to the performance of the duties of his office.

History: 1939, Act 3, Imd. Eff. Feb. 15, 1939;—Am. 1947, Act 337, Imd. Eff. July 3, 1947;—CL 1948, 460.3;—Am. 1951, Act 229, Eff. Sept. 28, 1951;—Am. 1957, Act 208, Imd. Eff. June 6, 1957;—Am. 1959, Act 162, Imd. Eff. July 16, 1959;—Am. 1961, Act 74, Eff. Sept. 8, 1961;—Am. 1975, Act 81, Imd. Eff. May 20, 1975.

460.4 Michigan public service commission; rights, privileges, and jurisdiction; meaning of certain references; review of order or decree.

Sec. 4. The Michigan public service commission shall have and exercise all rights, privileges, and the jurisdiction in all respects as has been conferred by law and exercised by the Michigan public utilities commission. Where reference is or has been made in any law to the “commission”, the “Michigan public utilities commission”, the “Michigan railroad commission”, that reference shall be construed to mean the Michigan public service commission except that with respect to railroad, bridge, and tunnel companies, that reference shall be construed to mean the state transportation department. Any order or decree of the Michigan public service commission shall be subject to review in the manner provided for in section 26 of Act No. 300 of the Public Acts of 1909, being section 462.26 of the Michigan Compiled Laws.

History: 1939, Act 3, Imd. Eff. Feb. 15, 1939;—CL 1948, 460.4;—Am. 1972, Act 300, Imd. Eff. Dec. 19, 1972;—Am. 1987, Act 4, Eff. Apr. 1, 1987;—Am. 1993, Act 355, Imd. Eff. Jan. 14, 1994.

Administrative rules: R 460.851 et seq.; R 460.1451 et seq.; R 460.1951 et seq.; R 460.2101 et seq.; R 460.2212 et seq.; R 460.2501 et seq.; R 460.2601 et seq.; and R 460.3101 et seq. of the Michigan Administrative Code.

460.4a Effect of executive reorganization orders; funding; commission as autonomous

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entity; appointment of chairperson; transfers of authority.

Sec. 4a. (1) Except as otherwise provided under this act, the commission is subject to Executive Reorganization Order No. 2003-1, MCL 445.2011.

(2) Funding for the commission shall be as provided under 1972 PA 299, MCL 460.111 to 460.120, and as otherwise provided by law.

(3) The commission shall be an autonomous entity within the department of labor and economic growth. The statutory authority, powers, duties, and functions, including personnel, property, budgeting, records, procurement, and other management related functions, shall be retained by the commission. The department of labor and economic growth shall provide support and coordinated services as requested by the commission and shall be reimbursed for that service as provided under subsection (2).

(4) The chairperson of the commission shall be appointed as provided under section 2.

(5) Nothing in this section shall be construed to supersede the transfers of authority made under the following executive orders:

(a) Executive Reorganization Order No. 2001-1, MCL 18.41.

(b) Executive Reorganization Order No. 2002-13, MCL 18.321.

(c) Executive Reorganization Order No. 2005-1, MCL 445.2021.

(d) Executive Reorganization Order No. 2007-21, MCL 18.45.

(e) Executive Reorganization Order No. 2007-22, MCL 18.46.

(f) Executive Reorganization Order No. 2007-23, MCL 18.47.

History: Add. 2008, Act 286, Imd. Eff. Oct. 6, 2008.

460.5 Public service commission; books, records, files.

Sec. 5. All books, records, files, papers, documents, and other property belonging to the Michigan public utilities commission shall be forthwith turned over to the Michigan public service commission and shall be continued as a part of the records, files, and other property of said commission. The Michigan public service commission shall in all respects be considered to be the successor in office of the Michigan public utilities commission in respect to all of the powers or duties now vested in or imposed upon said public utilities commission. Any unexpended balance of moneys in the state treasury and any fees or other moneys now owing to said public utilities commission shall be and the same are hereby transferred and assigned over to the Michigan public service commission hereby created, to be used and disposed of as provided by law.

History: 1939, Act 3, Imd. Eff. Feb. 15, 1939;—CL 1948, 460.5.

460.5a Annual report.

Sec. 5a. The Michigan public service commission shall make an annual report, summarizing the activities of the commission, to the governor and the legislature on or before the first Monday of March of each year. The annual report shall be a summary of commission activities and may include rules, opinions, and orders promulgated or entered by the commission during the calendar year covered by the annual report. The report shall also contain any other information which the commission considers to be of value.

History: Add. 1989, Act 33, Imd. Eff. May 26, 1989.

460.6 Public service commission; power and jurisdiction; "private, investor-owned wastewater utilities" defined.

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

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

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History: 1939, Act 3, Imd. Eff. Feb. 15, 1939;—CL 1948, 460.6;—Am. 1952, Act 240, Eff. Sept. 18, 1952;—Am. 1960, Act 44, Imd. Eff. Apr. 19, 1960;—Am. 1967, Act 125, Imd. Eff. June 27, 1967;—Am. 1969, Act 223, Imd. Eff. Aug. 6, 1969;—Am. 1980, Act 50, Imd. Eff. Mar. 25, 1980;—Am. 1992, Act 37, Imd. Eff. Apr. 21, 1992;—Am. 1993, Act 355, Imd. Eff. Jan. 14, 1994;—Am. 2005, Act 190, Imd. Eff. Nov. 7, 2005.

Administrative rules: R 460.11 et seq.; R 460.511 et seq.; R 460.915 et seq.; R 460.1451 et seq.; R 460.1951 et seq.; R 460.2011 et seq.; R 460.2051 et seq.; R 460.2101 et seq.; R 460.2211 et seq.; R 460.2601 et seq.; and R 460.3101 et seq. of the Michigan Administrative Code.

****** 460.6a THIS SECTION IS AMENDED EFFECTIVE APRIL 20, 2017: See 460.6a.amended ******

460.6a Gas or electric utility; completed petition or application to increase rates and charges or to amend rate or rate schedules; notice and hearing; issuance of temporary order; refund; interest; automatic fuel or purchased gas adjustment clause; rules and procedures; adjustment clauses operating without notice and hearing abolished; separate hearing to determine cost of fuel, purchased gas, or purchased power; recovery of cost; definitions; final decision; filing time extension; approval of transportation rate schedules or transportation contracts; forms and instructions; recovery of amount by merchant plant; limitation; adjustment; "United States consumer price index" defined; orders to permit recovery under subsections (7) and (8).

Sec. 6a. (1) A gas or electric utility shall not increase its rates and charges or alter, change, or amend any rate or rate schedules, the effect of which will be to increase the cost of services to its customers, without first receiving commission approval as provided in this section. The utility shall place in evidence facts relied upon to support the utility's petition or application to increase its rates and charges, or to alter, change, or amend any rate or rate schedules. The commission shall require notice to be given to all interested parties within the service area to be affected, and all interested parties shall have a reasonable opportunity for a full and complete hearing. A utility may use projected costs and revenues for a future consecutive 12-month period in developing its requested rates and charges. The commission shall notify the utility within 30 days of filing, whether the utility's petition or application is complete. A petition or application is considered complete if it complies with the rate application filing forms and instructions adopted under subsection (6). A petition or application pending before the commission prior to the adoption of filing forms and instructions pursuant to subsection (6) shall be evaluated based upon the filing requirements in effect at the time the petition or application was filed. If the application is not complete, the commission shall notify the utility of all information necessary to make that filing complete. If the commission has not notified the utility within 30 days of whether the utility's petition or application is complete, the application is considered complete. If the commission has not issued an order within 180 days of the filing of a complete application, the utility may implement up to the amount of the proposed annual rate request through equal percentage increases or decreases applied to all base rates. For a petition or application pending before the commission prior to the effective date of the amendatory act that added this sentence, the 180-day period commences on the effective date of the amendatory act that added this sentence. If the utility uses projected costs and revenues for a future period in developing its requested rates and charges, the utility may not implement the equal percentage increases or decreases prior to the calendar date corresponding to the start of the projected 12-month period. For good cause, the commission may issue a temporary order preventing or delaying a utility from implementing its proposed rates or charges. If a utility implements increased rates or charges under this subsection before the commission issues a final order, that utility shall refund to customers, with interest, any portion of the total revenues collected through application of the equal percentage increase that exceed the total that would have been produced by the rates or charges subsequently ordered by the commission in its final order. The commission shall allocate any refund required by this section among primary customers based upon their pro rata share of the total revenue collected through the applicable increase, and among secondary and residential customers in a manner to be determined by the commission. The rate of interest for refunds shall equal 5% plus the London interbank offered rate (LIBOR) for the appropriate time period. For any portion of the refund which, exclusive of interest, exceeds 25% of the annual revenue increase awarded by the commission in its final order, the rate of interest shall be the authorized rate of return on the common stock of the utility during the appropriate period. Any refund or interest awarded under this subsection shall not be included, in whole or in part, in any application for a rate increase by a utility. Nothing in this section impairs the commission's ability to issue a show cause order as part of its rate-making authority. An alteration or amendment in rates or rate schedules applied for by a public utility that will not result in an increase in the cost of service to its customers may be authorized and approved without notice or hearing. There shall be no increase in rates based upon changes in cost of fuel or purchased gas unless notice has been given within the

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service area to be affected, and there has been an opportunity for a full and complete hearing on the cost of fuel or purchased gas. The rates charged by any utility pursuant to an automatic fuel or purchased gas adjustment clause shall not be altered, changed, or amended unless notice has been given within the service area to be affected, and there has been an opportunity for a full and complete hearing on the cost of the fuel or purchased gas.

(2) The commission shall adopt rules and procedures for the filing, investigation, and hearing of petitions or applications to increase or decrease utility rates and charges as the commission finds necessary or appropriate to enable it to reach a final decision with respect to petitions or applications within a period of 12 months from the filing of the complete petitions or applications. The commission shall not authorize or approve adjustment clauses that operate without notice and an opportunity for a full and complete hearing, and all such clauses shall be abolished. The commission may hold a full and complete hearing to determine the cost of fuel, purchased gas, or purchased power separately from a full and complete hearing on a general rate case and may be held concurrently with the general rate case. The commission shall authorize a utility to recover the cost of fuel, purchased gas, or purchased power only to the extent that the purchases are reasonable and prudent. As used in this section:

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

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

(3) Except as otherwise provided in this subsection, if the commission fails to reach a final decision with respect to a completed petition or application to increase or decrease utility rates within the 12-month period following the filing of the completed petition or application, the petition or application is considered approved. If a utility makes any significant amendment to its filing, the commission has an additional 12 months from the date of the amendment to reach a final decision on the petition or application. If the utility files for an extension of time, the commission shall extend the 12-month period by the amount of additional time requested by the utility.

(4) A utility shall not file a general rate case application for an increase in rates earlier than 12 months after the date of the filing of a complete prior general rate case application. A utility may not file a new general rate case application until the commission has issued a final order on a prior general rate case or until the rates are approved under subsection (3).

(5) The commission shall, if requested by a gas utility, establish load retention transportation rate schedules or approve gas transportation contracts as required for the purpose of retaining industrial or commercial customers whose individual annual transportation volumes exceed 500,000 decatherms on the gas utility's system. The commission shall approve these rate schedules or approve transportation contracts entered into by the utility in good faith if the industrial or commercial customer has the installed capability to use an alternative fuel or otherwise has a viable alternative to receiving natural gas transportation service from the utility, the customer can obtain the alternative fuel or gas transportation from an alternative source at a price which would cause them to cease using the gas utility's system, and the customer, as a result of their use of the system and receipt of transportation service, makes a significant contribution to the utility's fixed costs. The commission shall adopt accounting and rate-making policies to ensure that the discounts associated with the transportation rate schedules and contracts are recovered by the gas utility through charges applicable to other customers if the incremental costs related to the discounts are no greater than the costs that would be passed on to those customers as the result of a loss of the industrial or commercial customer's contribution to a utility's fixed costs.

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

(7) If, on or before January 1, 2008, a merchant plant entered into a contract with an initial term of 20 years or more to sell electricity to an electric utility whose rates are regulated by the commission with 1,000,000 or more retail customers in this state and if, prior to January 1, 2008, the merchant plant generated electricity under that contract, in whole or in part, from wood or solid wood wastes, then the merchant plant shall, upon petition by the merchant plant, and subject to the limitation set forth in subsection (8), recover the amount, if any, by which the merchant plant's reasonably and prudently incurred actual fuel and variable operation and

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maintenance costs exceed the amount that the merchant plant is paid under the contract for those costs. This subsection does not apply to landfill gas plants, hydro plants, municipal solid waste plants, or to merchant plants engaged in litigation against an electric utility seeking higher payments for power delivered pursuant to contract.

(8) The total aggregate additional amounts recoverable by merchant plants pursuant to subsection (7) in excess of the amounts paid under the contracts shall not exceed $1,000,000.00 per month for each affected electric utility. The $1,000,000.00 per month limit specified in this subsection shall be reviewed by the commission upon petition of the merchant plant filed no more than once per year and may be adjusted if the commission finds that the eligible merchant plants reasonably and prudently incurred actual fuel and variable operation and maintenance costs exceed the amount that those merchant plants are paid under the contract by more than $1,000,000.00 per month. The annual amount of the adjustments shall not exceed a rate equal to the United States consumer price index. An adjustment shall not be made by the commission unless each affected merchant plant files a petition with the commission. As used in this subsection, "United States consumer price index" means the United States consumer price index for all urban consumers as defined and reported by the United States department of labor, bureau of labor statistics. If the total aggregate amount by which the eligible merchant plants reasonably and prudently incurred actual fuel and variable operation and maintenance costs determined by the commission exceed the amount that the merchant plants are paid under the contract by more than $1,000,000.00 per month, the commission shall allocate the additional $1,000,000.00 per month payment among the eligible merchant plants based upon the relationship of excess costs among the eligible merchant plants. The $1,000,000.00 limit specified in this subsection, as adjusted, shall not apply with respect to actual fuel and variable operation and maintenance costs that are incurred due to changes in federal or state environmental laws or regulations that are implemented after the effective date of the amendatory act that added this subsection. The $1,000,000.00 per month payment limit under this subsection shall not apply to merchant plants eligible under subsection (7) whose electricity is purchased by a utility that is using wood or wood waste or fuels derived from those materials for fuel in their power plants.

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

History: Add. 1952, Act 243, Eff. Sept. 18, 1952;—Am. 1955, Act 172, Imd. Eff. June 13, 1955;—Am. 1972, Act 300, Imd. Eff. Dec. 19, 1972;—Am. 1982, Act 304, Imd. Eff. Oct. 13, 1982;—Am. 1982, Initiated Law, Eff. Dec. 2, 1982;—Am. 1982, Act 212, Eff. Nov. 22, 1982;—Am. 1992, Act 37, Imd. Eff. Apr. 21, 1992;—Am. 2008, Act 286, Imd. Eff. Oct. 6, 2008.

Constitutionality: In In re Proposals D & H (Michigan State Chamber of Commerce v. State of Michigan), 417 Mich 409 (1983), the Michigan Supreme Court held that Proposal H (Act 212 of 1982) prevails in its entirety over Proposal D. The Court declared further that Proposal H was not repealed by the enactment of Act 304 of 1982.

****** 460.6a.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

460.6a.amended Gas, electric, or steam utility; commission approval to increase rates and charges or to amend rate or rate schedules; petition or application; notice and hearing; partial and immediate relief; issuance of temporary order; refund; interest; automatic fuel, purchased gas, or purchased steam adjustment clause; rules and procedures; adjustment clauses operating without notice and hearing abolished; separate hearing; recovery of cost; final decision; filing time extension; approval of transportation rate schedules or transportation contracts; forms and instructions; recovery of amount by merchant plant; limitation; adjustment; orders to permit recovery under subsections (9) and (10); revenue decoupling mechanism; tariff; definitions.

Sec. 6a. (1) A gas utility, electric utility, or steam utility shall not increase its rates and charges or alter, change, or amend any rate or rate schedules, the effect of which will be to increase the cost of services to its customers, without first receiving commission approval as provided in this section. A utility shall coordinate with the commission staff in advance of filing its general rate case application under this section to avoid resource challenges with applications being filed at the same time as applications filed under this section by other utilities. In the case of electric utilities serving more than 1,000,000 customers in this state, the commission may, if necessary, order a delay in filing an application to establish a 21-day spacing between filings of electric utilities serving more than 1,000,000 customers in this state. The utility shall place in evidence facts relied upon to support the utility's petition or application to increase its rates and charges, or to

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alter, change, or amend any rate or rate schedules. The commission shall require notice to be given to all interested parties within the service area to be affected, and all interested parties shall have a reasonable opportunity for a full and complete hearing. A utility may use projected costs and revenues for a future consecutive 12-month period in developing its requested rates and charges. The commission shall notify the utility within 30 days after filing, whether the utility's petition or application is complete. A petition or application is considered complete if it complies with the rate application filing forms and instructions adopted under subsection (8). If the application is not complete, the commission shall notify the utility of all information necessary to make that filing complete. If the commission has not notified the utility within 30 days of whether the utility's petition or application is complete, the application is considered complete. Concurrently with filing a complete application, or at any time after filing a complete application, a gas utility serving fewer than 1,000,000 customers in this state may file a motion seeking partial and immediate rate relief. After providing notice to the interested parties within the service area to be affected and affording interested parties a reasonable opportunity to present written evidence and written arguments relevant to the motion seeking partial and immediate rate relief, the commission shall make a finding and enter an order granting or denying partial and immediate relief within 180 days after the motion seeking partial and immediate rate relief was submitted. The commission has 12 months to issue a final order in a case in which a gas utility has filed a motion seeking partial and immediate rate relief.

(2) If the commission has not issued an order within 180 days of the filing of a complete application, the utility may implement up to the amount of the proposed annual rate request through equal percentage increases or decreases applied to all base rates. If the utility uses projected costs and revenues for a future period in developing its requested rates and charges, the utility may not implement the equal percentage increases or decreases before the calendar date corresponding to the start of the projected 12-month period. For good cause, the commission may issue a temporary order preventing or delaying a utility from implementing its proposed rates or charges. If a utility implements increased rates or charges under this subsection before the commission issues a final order, that utility shall refund to customers, with interest, any portion of the total revenues collected through application of the equal percentage increase that exceed the total that would have been produced by the rates or charges subsequently ordered by the commission in its final order. The commission shall allocate any refund required by this subsection among primary customers based upon their pro rata share of the total revenue collected through the applicable increase, and among secondary and residential customers in a manner to be determined by the commission. The rate of interest for refunds shall equal 5% plus the London interbank offered rate (LIBOR) for the appropriate time period. For any portion of the refund that, exclusive of interest, exceeds 25% of the annual revenue increase awarded by the commission in its final order, the rate of interest shall be the authorized rate of return on the common stock of the utility during the appropriate period. Any refund or interest awarded under this subsection shall not be included, in whole or in part, in any application for a rate increase by a utility. This subsection only applies to completed applications filed with the commission before the effective date of the amendatory act that added section 6t.

(3) This section does not impair the commission's ability to issue a show cause order as part of its rate-making authority. An alteration or amendment in rates or rate schedules applied for by a public utility that will not result in an increase in the cost of service to its customers may be authorized and approved without notice or hearing. There shall be no increase in rates based upon changes in cost of fuel, purchased gas, or purchased steam unless notice has been given within the service area to be affected, and there has been an opportunity for a full and complete hearing on the cost of fuel, purchased gas, or purchased steam. The rates charged by any utility under an automatic fuel, purchased gas, or purchased steam adjustment clause shall not be altered, changed, or amended unless notice has been given within the service area to be affected, and there has been an opportunity for a full and complete hearing on the cost of the fuel, purchased gas, or purchased steam.

(4) The commission shall adopt rules and procedures for the filing, investigation, and hearing of petitions or applications to increase or decrease utility rates and charges as the commission finds necessary or appropriate to enable it to reach a final decision with respect to petitions or applications within a period of time allotted by law to issue a final order after the filing of the complete petitions or applications. The commission shall not authorize or approve adjustment clauses that operate without notice and an opportunity for a full and complete hearing, and all such clauses are abolished. The commission may hold a full and complete hearing to determine the cost of fuel, purchased gas, purchased steam, or purchased power separately from a full and complete hearing on a general rate case and may hold that hearing concurrently with the general rate case. The commission shall authorize a utility to recover the cost of fuel, purchased gas, purchased steam, or purchased power only to the extent that the purchases are reasonable and prudent.

(5) Except as otherwise provided in this subsection and subsection (1), if the commission fails to reach a

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final decision with respect to a completed petition or application to increase or decrease utility rates within the 10-month period following the filing of the completed petition or application, the petition or application is considered approved. If a utility makes any significant amendment to its filing, the commission has an additional 10 months after the date of the amendment to reach a final decision on the petition or application. If the utility files for an extension of time, the commission shall extend the 10-month period by the amount of additional time requested by the utility.

(6) A utility shall not file a general rate case application for an increase in rates earlier than 12 months after the date of the filing of a complete prior general rate case application. A utility may not file a new general rate case application until the commission has issued a final order on a prior general rate case or until the rates are approved under subsection (5).

(7) The commission shall, if requested by a gas utility, establish load retention transportation rate schedules or approve gas transportation contracts as required for the purpose of serving industrial or commercial customers whose individual annual transportation volumes exceed 500,000 decatherms on the gas utility's system. The commission shall approve these rate schedules or approve transportation contracts entered into by the utility in good faith if the industrial or commercial customer has the installed capability to use an alternative fuel or otherwise has a viable alternative to receiving natural gas transportation service from the utility, the customer can obtain the alternative fuel or gas transportation from an alternative source at a price that would cause them not to use the gas utility's system, and the customer, as a result of their use of the system and receipt of transportation service, makes a significant contribution to the utility's fixed costs. The commission shall adopt accounting and rate-making policies to ensure that the discounts associated with the transportation rate schedules and contracts are recovered by the gas utility through charges applicable to other customers if the incremental costs related to the discounts are no greater than the costs that would be passed on to those customers as the result of a loss of the industrial or commercial customer's contribution to a utility's fixed costs.

(8) The commission shall adopt standard rate application filing forms and instructions for use in all general rate cases filed by utilities whose rates are regulated by the commission. For cooperative electric utilities whose rates are regulated by the commission, in addition to rate applications filed under this section, the commission shall continue to allow for rate filings based on the cooperative's times interest earned ratio. The commission may modify the standard rate application forms and instructions adopted under this subsection.

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

(10) The total aggregate additional amounts recoverable by merchant plants under subsection (9) in excess of the amounts paid under the contracts shall not exceed $1,000,000.00 per month for each affected electric utility. The $1,000,000.00 per month limit specified in this subsection shall be reviewed by the commission upon petition of the merchant plant filed no more than once per year and may be adjusted if the commission finds that the eligible merchant plants reasonably and prudently incurred actual fuel and variable operation and maintenance costs exceed the amount that those merchant plants are paid under the contract by more than $1,000,000.00 per month. The annual amount of the adjustments shall not exceed a rate equal to the United States consumer price index. The commission shall not make an adjustment unless each affected merchant plant files a petition with the commission. If the total aggregate amount by which the eligible merchant plants reasonably and prudently incurred actual fuel and variable operation and maintenance costs determined by the commission exceed the amount that the merchant plants are paid under the contract by more than $1,000,000.00 per month, the commission shall allocate the additional $1,000,000.00 per month payment among the eligible merchant plants based upon the relationship of excess costs among the eligible merchant plants. The $1,000,000.00 limit specified in this subsection, as adjusted, does not apply to actual fuel and variable operation and maintenance costs that are incurred due to changes in federal or state environmental laws or regulations that are implemented after October 6, 2008. The $1,000,000.00 per month payment limit under this subsection does not apply to merchant plants eligible under subsection (9) whose electricity is purchased by a utility that is using wood or wood waste or fuels derived from those materials for fuel in their power plants. As used in this subsection, "United States consumer price index" means the United States

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consumer price index for all urban consumers as defined and reported by the United States Department of Labor, Bureau of Labor Statistics.

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

(12) Subject to subsection (13), if requested by an electric utility with less than 200,000 customers in this state, the commission shall approve an appropriate revenue decoupling mechanism that adjusts for decreases in actual sales compared to the projected levels used in that utility's most recent rate case that are the result of implemented energy waste reduction, conservation, demand-side programs, and other waste reduction measures, if the utility first demonstrates the following to the commission:

(a) That the projected sales forecast in the utility's most recent rate case is reasonable.

(b) That the electric utility has achieved annual incremental energy savings at least equal to the lesser of the following:

(*i*) One percent of its total annual retail electricity sales in the previous year.

(*ii*) The amount of any incremental savings yielded by energy waste reduction, conservation, demand-side programs, and other waste reduction measures approved by the commission in that utility's most recent integrated resource plan.

(13) The commission shall consider the aggregate revenues attributable to revenue decoupling mechanisms, financial incentives, and shared savings mechanisms the commission has approved for an electric utility relative to energy waste reduction, conservation, demand-side programs, peak load reduction, and other waste reduction measures. The commission may approve an alternative methodology for a revenue decoupling mechanism authorized under subsection (12), a financial incentive authorized under section 75 of the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1075, or a shared savings mechanism authorized under section 6x if the commission determines that the resulting aggregate revenues from those mechanisms would not result in a reasonable and cost-effective method to ensure that investments in energy waste reduction, demand-side programs, peak load reduction, and other waste reduction measures are not disfavored when compared to utility supply-side investments. The commission's consideration of an alternative methodology under this subsection shall be conducted as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287.

(14) Within 1 year after the effective date of the amendatory act that added this subsection, the commission shall conduct a study on an appropriate tariff reflecting equitable cost of service for utility revenue requirements for customers who participate in a net metering program or distributed generation program under the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1001 to 460.1211. In any rate case filed after June 1, 2018, the commission shall approve such a tariff for inclusion in the rates of all customers participating in a net metering or distributed generation program under the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1001 to 460.1211. A tariff established under this subsection does not apply to customers participating in a net metering program under the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1001 to 460.1211, before the date that the commission establishes a tariff under this subsection, who continues to participate in the program at their current site or facility.

(15) Except as otherwise provided in this act, "utility" and "electric utility" do not include a municipally owned electric utility.

(16) As used in this section:

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

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

(c) "Steam utility" means a steam distribution company regulated by the commission.

History: Add. 1952, Act 243, Eff. Sept. 18, 1952;—Am. 1955, Act 172, Imd. Eff. June 13, 1955;—Am. 1972, Act 300, Imd. Eff. Dec. 19, 1972;—Am. 1982, Act 304, Imd. Eff. Oct. 13, 1982;—Am. 1982, Initiated Law, Eff. Dec. 2, 1982;—Am. 1982, Act 212, Eff. Nov. 22, 1982;—Am. 1992, Act 37, Imd. Eff. Apr. 21, 1992;—Am. 2008, Act 286, Imd. Eff. Oct. 6, 2008;—Am. 2016, Act 341, Eff. Apr. 20, 2017.

Constitutionality: In In re Proposals D & H (Michigan State Chamber of Commerce v. State of Michigan), 417 Mich 409 (1983), the

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Michigan Supreme Court held that Proposal H (Act 212 of 1982) prevails in its entirety over Proposal D. The Court declared further that Proposal H was not repealed by the enactment of Act 304 of 1982.

460.6b Gas utility rates based upon cost of purchased natural gas; authority of commission; acceptance of employment with utility by member of legislature.

Sec. 6b. If the rates of any gas utility shall be based, among other considerations, upon the cost of natural gas purchased by said gas utility which is in turn distributed by said gas utility to the public served by it, and the cost for such gas is regulated by the federal energy regulatory commission, the Michigan public service commission shall have the authority set forth in this section. In any proceeding to increase the rates and charges or to alter, change or amend any rate or rate schedule of a gas utility, the Michigan public service commission shall be permitted to and shall receive in evidence the rates, charges, classifications and schedules on file with the federal energy regulatory commission whereby the cost of gas purchased or received by such gas utility is fixed and determined. If, while such proceeding is pending before the Michigan public service commission, a proceeding shall be instituted or be pending before said federal energy regulatory commission, or on appeal therefrom in a court having jurisdiction, with respect to or affecting the cost of gas payable by such gas utility, said Michigan public service commission shall consider as an item of operating expense to said gas utility the cost of gas set forth in said rates, charges, classifications and schedules on file with the federal energy regulatory commission. If the cost of gas payable by said gas utility shall be reduced by the final order of the federal energy regulatory commission or the final decree of the court, if appealed thereto, and the Michigan public service commission shall have entered an order approving rates to said gas utility as aforesaid based upon the cost of gas set forth in the rates, charges, classifications and schedules on file with the federal energy regulatory commission which were later reduced as above set forth, the Michigan public service commission upon its own motion or upon complaint and after notice and hearing may proceed to order refund to the gas utility's customers of any sums refunded to the said gas utility for the period subsequent to the effective date of the Michigan public service commission order approving rates for the gas utility as above set forth. No member of this 81st Legislature shall accept an employment position with any utility in this state within 2 years after vacating his or her legislative office.

History: Add. 1952, Act 272, Imd. Eff. June 16, 1952;—Am. 1982, Act 304, Imd. Eff. Oct. 13, 1982;—Am. 1982, Initiated Law, Eff. Dec. 2, 1982;—Am. 1982, Act 212, Eff. Nov. 22, 1982.

Constitutionality: In In re Proposals D & H (Michigan State Chamber of Commerce v. State of Michigan), 417 Mich 409 (1983), the Michigan Supreme Court held that Proposal H (Act 212 of 1982) prevails in its entirety over Proposal D. The Court declared further that Proposal H was not repealed by the enactment of Act 304 of 1982.

****** 460.6c THIS SECTION IS REPEALED BY ACT 341 OF 2016 EFFECTIVE APRIL 20, 2017 ******

460.6c Energy conservation programs, including energy conservation loan programs, for residential customers of electric and gas utilities; approval; costs; conservation devices, services, and materials; cost benefit information; cost of personally installing insulation; rules; public utility as licensed contractor; accepting application for loan or making loan after certain date prohibited.

Sec. 6c. (1) The Michigan public service commission may approve energy conservation programs, including energy conservation loan programs, for residential customers of electric and gas utilities.

(2) The costs of money, bad debt expense, administrative costs, and the cost of residential energy audits associated with an energy conservation program authorized by this section, other than an energy conservation loan program, shall be included only in general utility rates. The cost of money, bad debt expense, and administrative costs associated with an energy conservation loan program shall be included only in residential utility rates. The inclusion of costs in utility rates as provided in this subsection shall not continue after the costs arising from an approved energy conservation program have been recovered.

(3) The conservation programs subject to this section shall provide conservation devices, services, and materials and may include ceiling and wall insulation, flue dampers, caulking, and weather stripping in compliance with state laws and rules. A residential energy audit or preinspection shall be completed by the utility prior to the installation of any device or material or approval of a loan pursuant to this section. A residential customer participating in an energy conservation program shall be provided with cost benefit information regarding those conservation devices, services, and materials as they apply to the customer's residence.

(4) If a residential customer participating in an energy conservation program personally installs insulation in the customer's place of residence, the cost of installation shall not be included as part of the customer's participation in the program.

(5) The Michigan public service commission shall promulgate rules pursuant to the administrative

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procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws, to establish standards for energy conservation loan programs implemented under this section. The rules shall include provisions to insure that the conservation devices and materials installed under the program comply with federal and state product safety guidelines and, unless personally installed by the customer, are contracted out to, and installed by, licensed contractors who meet the requirements of the commission's rules and are chosen by the customer from a list of contractors provided by the utility, and that the contracts are awarded on a competitive basis. A public utility shall not be considered a licensed contractor for purposes of this subsection. This subsection shall not preclude a public utility from participating in the installation of conservation devices as part of a demonstration or testing program under this act.

(6) A utility company maintaining an energy conservation program permitted under this section shall not accept an application for a loan under that program after December 31, 1986. A utility company maintaining an energy conservation program shall not make a loan as a part of that program after June 30, 1987.

History: Add. 1978, Act 211, Imd. Eff. June 5, 1978;—Am. 1983, Act 80, Imd. Eff. June 14, 1983;—Am. 1984, Act 378, Eff. Mar. 29, 1985.

Administrative rules: R 460.2401 et seq. of the Michigan Administrative Code.

460.6d Owner of renewable resource power production facility; exemption from regulation and control of public service commission; definition.

Sec. 6d. (1) Notwithstanding any other provision of this act, the owner of a renewable resource power production facility shall not be subject to the regulation or control of the public service commission, if all of the following conditions are met:

(a) The owner of the renewable resource power production facility, before the construction of the renewable resource power production facility, was not a public utility subject to the jurisdiction of the public service commission.

(b) The ownership of the renewable resource power production facility is ancillary to the financing of the facility.

(2) As used in this act, “renewable resource power production facility” means a facility having a rated power production capacity of 30 megawatts or less which produces electric energy by the use of biomass, waste, wood, hydroelectric, wind, and other renewable resources, or any combination of renewable resources, as the primary energy source.

History: Add. 1980, Act 50, Imd. Eff. Mar. 25, 1980.

***** *460.6e THIS SECTION IS REPEALED BY ACT 341 OF 2016 EFFECTIVE APRIL 20, 2017* *****

460.6e Impact of MCL 460.6d; review and evaluation; public hearing; notice; report.

Sec. 6e. (1) By March 25, 1983, the standing committees of the legislature responsible for energy issues shall undertake a review and evaluation of the impact of section 6d and report to the legislature.

(2) The legislative committees shall hold a public hearing. Notice of the public hearing shall be given to interested parties who shall be given an opportunity to testify. Following the public hearing, the legislative committees shall prepare a report.

(3) The report shall be submitted to the clerk of the house and secretary of the senate and made available to all members of the legislature.

History: Add. 1980, Act 50, Imd. Eff. Mar. 25, 1980;—Am. 2011, Act 274, Imd. Eff. Dec. 20, 2011.

460.6f Repealed. 1984, Act 49, Imd. Eff. Apr. 12, 1984.

Compiler's note: The repealed section pertained to electric utility rates.

460.6g Definitions; regulation of rates, terms, and conditions of attachments by attaching parties; hearing; authorization; applicable procedures.

Sec. 6g. (1) As used in this section:

(a) “Attaching party” means any person, firm, corporation, partnership, or cooperatively organized association, other than a utility or a municipality, which seeks to construct attachments upon, along, under, or across public ways or private rights of way.

(b) “Attachment” means any wire, cable, facility, or apparatus for the transmission of writing, signs, signals, pictures, sounds, or other forms of intelligence or for the transmission of electricity for light, heat, or power, installed by an attaching party upon any pole or in any duct or conduit owned or controlled, in whole or in part, by 1 or more utilities.

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(c) “Commission” means the Michigan public service commission created in section 1.

(d) “Utility” means any public utility subject to the regulation and control of the commission that owns or controls, or shares ownership or control of poles, ducts, or conduits used or useful, in whole or in part, for supporting or enclosing wires, cables, or other facilities or apparatus for the transmission of writing, signs, signals, pictures, sounds, or other forms of intelligence, or for the transmission of electricity for light, heat, or power.

(2) The commission shall regulate the rates, terms, and conditions of attachments by attaching parties. The commission, in regulating the rates, terms, and conditions of attachments by attaching parties, shall not require a hearing when approving the rates, terms, and conditions unless the attaching party or utility petitions the commission for a hearing. The commission shall ensure that the rates, terms, and conditions are just and reasonable and shall consider the interests of the attaching parties' customers as well as the utility and its customers.

(3) An attaching party shall obtain any necessary authorization before occupying public ways or private rights of way with its attachment.

(4) Procedures under this section shall be those applicable to any utility whose rates charged its customers are regulated by the commission, including the right to appeal a final decision of the commission to the courts.

History: Add. 1980, Act 470, Eff. Mar. 31, 1981.

460.6h Incorporation of gas cost recovery clause in rate or rate schedule of gas utility; definitions; order and hearing; filing gas cost recovery plan and 5-year forecast; gas supply and cost review; final or temporary order; incorporating gas cost recovery factors in rates; filing revised gas cost recovery plan; reopening gas supply and cost review; monthly statement of revenues; gas cost reconciliation; commission order; refunds, credits, or additional charges to include interest; apportionment; exemption; setting gas cost recovery factors in general rate case order.

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

(a) “Commission” or “public service commission” means the Michigan public service commission created in section 1.

(b) “Gas cost recovery clause” means an adjustment clause in the rates or rate schedule of a gas utility which permits the monthly adjustment of rates for gas in order to allow the utility to recover the booked costs of gas sold by the utility if incurred under reasonable and prudent policies and practices.

(c) “Gas cost recovery factor” means that element of the rates to be charged for gas service to reflect gas costs incurred by a gas utility and made pursuant to a gas cost recovery clause incorporated in the rates or rate schedules of a gas utility.

(d) “General rate case” means a proceeding before the commission in which interested parties are given notice and a reasonable opportunity for a full and complete hearing on a utility's total cost of service and all other lawful elements properly to be considered in determining just and reasonable rates.

(e) “Interested persons” means the attorney general, the technical staff of the commission, any intervenor admitted to 1 of the utility's 2 previous general rate cases, any intervenor admitted to 1 of the utility's 2 previous reconciliation hearings, or any association of utility customers which meets the requirements to intervene in a reconciliation hearing under the rules of practice and procedure of the commission as applicable.

(2) Pursuant to its authority under this act, the public service commission may incorporate a gas cost recovery clause in the rates or rate schedule of a gas utility, but is not required to do so. Any order incorporating a gas cost recovery clause shall be as a result of a hearing solely on the question of the inclusion of the clause in the rates or rate schedule, which hearing shall be conducted as a contested case pursuant to chapter 4 of Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 of the Michigan Compiled Laws, or, pursuant to subsection (17), as a result of a general rate case. Any order incorporating a gas cost recovery clause shall replace and rescind any previous purchased gas adjustment clause incorporated in the rates of the utility upon the effective date of the first gas cost recovery factor authorized for the utility under its gas cost recovery clause.

(3) In order to implement the gas cost recovery clause established pursuant to subsection (2), a utility annually shall file, pursuant to procedures established by the commission, if any, a complete gas cost recovery plan describing the expected sources and volumes of its gas supply and changes in the cost of gas anticipated over a future 12-month period specified by the commission and requesting for each of those 12 months a specific gas cost recovery factor. The plan shall be filed not less than 3 months before the beginning of the

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12-month period covered by the plan. The plan shall describe all major contracts and gas supply arrangements entered into by the utility for obtaining gas during the specified 12-month period. The description of the major contracts and arrangements shall include the price of the gas, the duration of the contract or arrangement, and an explanation or description of any other term or provision as required by the commission. The plan shall also include the gas utility's evaluation of the reasonableness and prudence of its decisions to obtain gas in the manner described in the plan, in light of the major alternative gas supplies available to the utility, and an explanation of the legal and regulatory actions taken by the utility to minimize the cost of gas purchased by the utility.

(4) In order to implement the gas cost recovery clause established pursuant to subsection (2), a gas utility shall file, contemporaneously with the gas cost recovery plan described in subsection (3), a 5-year forecast of the gas requirements of its customers, its anticipated sources of supply, and projections of gas costs. The forecast shall include a description of all relevant major contracts and gas supply arrangements entered into or contemplated between the gas utility and its suppliers, a description of all major gas supply arrangements which the gas utility knows have been, or expects will be, entered into between the gas utility's principal pipeline suppliers and their major sources of gas, and such other information as the commission may require.

(5) If a utility files a gas cost recovery plan and a 5-year forecast as provided in subsections (3) and (4), the commission shall conduct a proceeding, to be known as a gas supply and cost review, for the purpose of evaluating the reasonableness and prudence of the plan, and establishing the gas cost recovery factors to implement a gas cost recovery clause incorporated in the rates or rate schedule of the gas utility. The gas supply and cost review shall be conducted as a contested case pursuant to chapter 4 of Act No. 306 of the Public Acts of 1969.

(6) In its final order in a gas supply and cost review, the commission shall evaluate the reasonableness and prudence of the decisions underlying the gas cost recovery plan filed by the gas utility pursuant to subsection (3), and shall approve, disapprove, or amend the gas cost recovery plan accordingly. In evaluating the decisions underlying the gas cost recovery plan, the commission shall consider the volume, cost, and reliability of the major alternative gas supplies available to the utility; the cost of alternative fuels available to some or all of the utility's customers; the availability of gas in storage; the ability of the utility to reduce or to eliminate any sales to out-of-state customers; whether the utility has taken all appropriate legal and regulatory actions to minimize the cost of purchased gas; and other relevant factors. The commission shall approve, reject, or amend the 12 monthly gas cost recovery factors requested by the utility in its gas cost recovery plan. The factors ordered shall be described in fixed dollar amounts per unit of gas, but may include specific amounts contingent on future events, including proceedings of the federal energy regulatory commission or its successor agency.

(7) In its final order in a gas supply and cost review, the commission shall evaluate the decisions underlying the 5-year forecast filed by a gas utility pursuant to subsection (4). The commission may also indicate any cost items in the 5-year forecast that on the basis of present evidence, the commission would be unlikely to permit the gas utility to recover from its customers in rates, rate schedules, or gas cost recovery factors established in the future.

(8) The commission, on its own motion or the motion of any party, may make a finding and enter a temporary order granting approval or partial approval of a gas cost recovery plan in a gas supply and cost recovery review, after first having given notice to the parties to the review, and after having afforded to the parties to the review a reasonable opportunity for a full and complete hearing. A temporary order made pursuant to this subsection shall be considered a final order for purposes of judicial review.

(9) If the commission has made a final or temporary order in a gas supply and cost review, the utility may each month incorporate in its rates for the period covered by the order any amounts up to the gas cost recovery factors permitted in that order. If the commission has not made a final or temporary order within 3 months of the submission of a complete gas cost recovery plan, or by the beginning of the period covered in the plan, whichever comes later, or if a temporary order has expired without being extended or replaced, then pending an order which determines the gas cost recovery factors, a gas utility may each month adjust its rates to incorporate all or a part of the gas cost recovery factors requested in its plan. Any amounts collected under the gas cost recovery factors before the commission makes its final order shall be subject to prompt refund with interest to the extent that the total amounts collected exceed the total amounts determined in the commission's final order to be reasonable and prudent for the same period of time.

(10) Not less than 3 months before the beginning of the third quarter of the 12-month period, the utility may file a revised gas cost recovery plan which shall cover the remainder of the 12-month period. Upon receipt of the revised gas cost recovery plan, the commission shall reopen the gas supply and cost review. In addition, the commission may reopen the gas supply and cost review on its own motion or on the showing of good cause by any party if at least 6 months have elapsed since the utility submitted its complete filing and if

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there are at least 60 days remaining in the 12-month period under consideration. A reopened gas supply and cost review shall be conducted as a contested case pursuant to chapter 4 of Act No. 306 of the Public Acts of 1969, and in accordance with subsections (3), (6), (8), and (9).

(11) Not more than 45 days following the last day of each billing month in which a gas cost recovery factor has been applied to customers' bills, the gas utility shall file with the commission a detailed statement for that month of the revenues recorded pursuant to the gas cost recovery factor and the allowance for cost of gas included in the base rates established in the latest commission order for the gas utility, and the cost of gas sold. The detailed statement shall be in the manner and form prescribed by the commission. The commission shall establish procedures for insuring that the detailed statement is promptly verified and corrected if necessary.

(12) Not less than once a year, and not later than 3 months after the end of the 12-month period covered by a gas utility's gas cost recovery plan, the commission shall commence a proceeding, to be known as a gas cost reconciliation, as a contested case pursuant to chapter 4 of Act No. 306 of the Public Acts of 1969. Reasonable discovery shall be permitted before and during the reconciliation proceeding in order to assist parties and interested persons in obtaining evidence concerning reconciliation issues including, but not limited to, the reasonableness and prudence of expenditures and the amounts collected pursuant to the clause. At the gas cost reconciliation the commission shall reconcile the revenues recorded pursuant to the gas cost recovery factor and the allowance for cost of gas included in the base rates established in the latest commission order for the gas utility with the amounts actually expensed and included in the cost of gas sold by the gas utility. The commission shall consider any issue regarding the reasonableness and prudence of expenses for which customers were charged if the issue could not have been considered adequately at a previously conducted gas supply and cost review.

(13) In its order in a gas cost reconciliation, the commission shall require a gas utility to refund to customers or credit to customers' bills any net amount determined to have been recovered over the period covered in excess of the amounts determined to have been actually expensed by the utility for gas sold, and to have been incurred through reasonable and prudent actions not precluded by the commission order in the gas supply and cost review. Such refunds or credits shall be apportioned among the customers of the utility utilizing procedures that the commission determines to be reasonable. The commission may adopt different procedures with respect to customers served under the various rate schedules of the utility and may, in appropriate circumstances, order refunds or credits in proportion to the excess amounts actually collected from each such customer during the period covered.

(14) In its order in a gas cost reconciliation, the commission shall authorize a gas utility to recover from customers any net amount by which the amount determined to have been recovered over the period covered was less than the amount determined to have been actually expensed by the utility for gas sold, and to have been incurred through reasonable and prudent actions not precluded by the commission order in the gas supply and cost review. For excess costs incurred through actions contrary to the commission's gas supply and cost review order, the commission shall authorize a utility to recover costs incurred for gas sold in the 12-month period in excess of the amount recovered over the period only if the utility demonstrates by clear and convincing evidence that the excess expenses were beyond the ability of the utility to control through reasonable and prudent actions. For excess costs incurred through actions consistent with commission's gas supply and cost review order, the commission shall authorize a utility to recover costs incurred for gas sold in the 12-month period in excess of the amount recovered over the period only if the utility demonstrates that the excess expenses were reasonable and prudent. Such amounts in excess of the amounts actually recovered by the utility for gas sold shall be apportioned among and charged to the customers of the utility utilizing procedures that the commission determines to be reasonable. The commission may adopt different procedures with respect to customers served under the various rate schedules of the utility and may, in appropriate circumstances, order charges to be made in proportion to the amounts which would have been paid by such customers if the amounts in excess of the amounts actually recovered by the utility for gas sold had been included in the gas cost recovery factors with respect to such customers during the period covered. Charges for such excess amounts shall be spread over a period that the commission determines to be appropriate.

(15) If the commission orders refunds or credits pursuant to subsection (13), or additional charges to customers pursuant to subsection (14), in its final order in a gas cost reconciliation, the refunds, credits, or additional charges shall include interest and shall be apportioned among the utility's customer classes in proportion to their respective usage during the reconciliation period. In determining the interest included in a refund, credit, or additional charge pursuant to this subsection, the commission shall consider, to the extent material and practicable, the time at which the excess recoveries or insufficient recoveries, or both, occurred. The commission shall determine a rate of interest for excess recoveries, refunds, and credits equal to the greater of the average short-term borrowing rate available to the gas utility during the appropriate period, or

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the authorized rate of return on the common stock of the gas utility during that same period. The commission shall determine a rate of interest for insufficient recoveries and additional charges equal to the average short-term borrowing rate available to the gas utility during the appropriate period.

(16) To avoid undue hardship or unduly burdensome or excessive cost, the commission may exempt a gas utility with fewer than 200,000 customers in the state of Michigan from 1 or more of the procedural provisions of this section or may modify the filing requirements of this section.

(17) Notwithstanding any other provision of this act, the commission may, upon application by a gas utility, set gas cost recovery factors, in a manner otherwise consistent with this act, in an order resulting from a general rate case. Within 120 days following the effective date of this section, for the purpose of setting gas cost recovery factors, the commission shall permit a gas utility to reopen a general rate case in which a final order was issued within 120 days before or after the effective date of this section or to amend an application or reopen the evidentiary record in a pending general rate case. If the commission sets gas cost recovery factors in an order resulting from a general rate case:

(a) The gas cost recovery factors shall cover a future period of 48 months or the number of months which elapse until the commission orders new gas cost recovery factors in a general rate case, whichever is the shorter period.

(b) Annual reconciliation proceedings shall be conducted pursuant to subsection (12) and if an annual reconciliation proceeding shows a recoverable amount pursuant to subsection (14), the commission shall authorize the gas utility to defer the amount and to accumulate interest on the amount pursuant to subsection (15), and in the next order resulting from a general rate case authorize the utility to recover the amount and interest from its customers in the manner provided in subsection (14).

(c) The gas cost recovery factors shall not be subject to revision pursuant to subsection (10).

History: Add. 1982, Act 304, Imd. Eff. Oct. 13, 1982.

460.6i Initial gas cost recovery plan; filing; alteration of rate schedule in accordance with existing purchased gas adjustment clause; charges in excess of base rates; revenues subject to existing reconciliation proceedings; purchased gas revenues subject to annual reconciliation; procedures; adjustment of rates pending approval or disapproval of gas cost recovery clause in final commission order.

Sec. 6i. (1) This section shall govern the initial filing and implementation of a gas cost recovery plan under section 6h(3).

(2) The initial gas cost recovery plan may be for a period of less than 12 months and shall be filed:

(a) By a gas utility with at least 1,000,000 residential customers in the state of Michigan, within 75 days after the effective date of this section.

(b) By a gas utility with more than 500,000 but fewer than 1,000,000 residential customers in the state of Michigan, within 90 days after the effective date of this section.

(c) By all other gas utilities subject to commission rate jurisdiction, within 30 months after the effective date of this section.

(3) Notwithstanding section 6a(3), until the expiration of 3 months plus the remainder of the then current billing month following the last day on which a gas utility is required to file its first gas cost recovery plan pursuant to subsection (2) of this section, the utility may alter its rate schedule in accordance with an existing purchased gas adjustment clause. Thereafter, the utility may make charges in excess of base rates for the cost of gas sold pursuant only to subsections (2) and (4) of this section. After the effective date of this section, any revenues resulting from an existing purchased gas adjustment clause and recorded for an annual reconciliation period ending prior to January 1, 1983 by a gas utility shall be subject to the existing reconciliation proceeding established by the commission for the utility. In this proceeding, the commission shall consider the reasonableness and prudence of expenditures charged pursuant to an existing purchased gas adjustment clause after the effective date of this section. On and after January 1, 1983, all purchased gas revenues received by a gas utility, whether included in base rates or collected pursuant to a purchased gas adjustment clause or a gas cost recovery clause, shall be subject to annual reconciliation with the cost of purchased gas. Such annual reconciliations shall be conducted in accordance with the reconciliation procedures described in section 6h(12) to (17), including the provisions for refunds, additional charges, deferral and recovery, and shall include consideration by the commission of the reasonableness and prudence of expenditures charged pursuant to any purchased gas adjustment clause in existence during the period being reconciled.

(4) Until the commission approves or disapproves a gas cost recovery clause in a final commission order in a contested case required by section 6h(2), a gas utility which had a purchased gas adjustment clause on the effective date of this section and which has applied for a gas cost recovery clause under section 6h may adjust its rates pursuant to section 6h(3) to (17), to include gas cost recovery factors.

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History: Add. 1982, Act 304, Imd. Eff. Oct. 13, 1982.

****** 460.6j THIS SECTION IS AMENDED EFFECTIVE APRIL 20, 2017: See 460.6j.amended ******

460.6j Incorporation of power supply cost recovery clause in electric rates or rate schedule of utility; definitions; order and hearing; filing power supply cost recovery plan and 5-year forecast; power supply and cost review; final or temporary order; incorporating power supply cost recovery factors in rates; filing revised power supply cost recovery plan; reopening power supply and cost review; monthly statement of revenues; power supply cost reconciliation; commission order; refunds or credits or additional charges to customers; apportionment; interest; exemption; setting power supply cost recovery factors in general rate case order.

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

(a) "Power supply cost recovery clause" means a clause in the electric rates or rate schedule of a utility which permits the monthly adjustment of rates for power supply to allow the utility to recover the booked costs, including transportation costs, reclamation costs, and disposal and reprocessing costs, of fuel burned by the utility for electric generation and the booked costs of purchased and net interchanged power transactions by the utility incurred under reasonable and prudent policies and practices.

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

(2) Pursuant to its authority under this act, the public service commission may incorporate a power supply cost recovery clause in the electric rates or rate schedule of a utility, but is not required to do so. Any order incorporating a power supply cost recovery clause shall be as a result of a hearing solely on the question of the inclusion of the clause in the rates or rate schedule, which hearing shall be conducted as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 of the Michigan Compiled Laws, or, pursuant to subsection (18), as a result of a general rate case. Any order incorporating a power supply cost recovery clause shall replace and rescind any previous fuel cost adjustment clause or purchased and net interchanged power adjustment clause incorporated in the electric rates of the utility upon the effective date of the first power supply cost recovery factor authorized for the utility under its power supply cost recovery clause.

(3) In order to implement the power supply cost recovery clause established pursuant to subsection (2), a utility annually shall file, pursuant to procedures established by the commission, if any, a complete power supply cost recovery plan describing the expected sources of electric power supply and changes in the cost of power supply anticipated over a future 12-month period specified by the commission and requesting for each of those 12 months a specific power supply cost recovery factor. The plan shall be filed not less than 3 months before the beginning of the 12-month period covered by the plan. The plan shall describe all major contracts and power supply arrangements entered into by the utility for providing power supply during the specified 12-month period. The description of the major contracts and arrangements shall include the price of fuel, the duration of the contract or arrangement, and an explanation or description of any other term or provision as required by the commission. The plan shall also include the utility's evaluation of the reasonableness and prudence of its decisions to provide power supply in the manner described in the plan, in light of its existing sources of electrical generation, and an explanation of the actions taken by the utility to minimize the cost of fuel to the utility.

(4) In order to implement the power supply cost recovery clause established pursuant to subsection (2), a utility shall file, contemporaneously with the power supply cost recovery plan required by subsection (3), a 5-year forecast of the power supply requirements of its customers, its anticipated sources of supply, and projections of power supply costs, in light of its existing sources of electrical generation and sources of electrical generation under construction. The forecast shall include a description of all relevant major contracts and power supply arrangements entered into or contemplated by the utility, and such other information as the commission may require.

(5) If a utility files a power supply cost recovery plan and a 5-year forecast as provided in subsections (3) and (4), the commission shall conduct a proceeding, to be known as a power supply and cost review, for the purpose of evaluating the reasonableness and prudence of the power supply cost recovery plan filed by a utility pursuant to subsection (3), and establishing the power supply cost recovery factors to implement a power supply cost recovery clause incorporated in the electric rates or rate schedule of the utility. The power supply and cost review shall be conducted as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969.

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(6) In its final order in a power supply and cost review, the commission shall evaluate the reasonableness and prudence of the decisions underlying the power supply cost recovery plan filed by the utility pursuant to subsection (3), and shall approve, disapprove, or amend the power supply cost recovery plan accordingly. In evaluating the decisions underlying the power supply cost recovery plan, the commission shall consider the cost and availability of the electrical generation available to the utility; the cost of short-term firm purchases available to the utility; the availability of interruptible service; the ability of the utility to reduce or to eliminate any firm sales to out-of-state customers if the utility is not a multi-state utility whose firm sales are subject to other regulatory authority; whether the utility has taken all appropriate actions to minimize the cost of fuel; and other relevant factors. The commission shall approve, reject, or amend the 12 monthly power supply cost recovery factors requested by the utility in its power supply cost recovery plan. The factors shall not reflect items the commission could reasonably anticipate would be disallowed under subsection (13). The factors ordered shall be described in fixed dollar amounts per unit of electricity, but may include specific amounts contingent on future events.

(7) In its final order in a power supply and cost review, the commission shall evaluate the decisions underlying the 5-year forecast filed by a utility pursuant to subsection (4). The commission may also indicate any cost items in the 5-year forecast that, on the basis of present evidence, the commission would be unlikely to permit the utility to recover from its customers in rates, rate schedules, or power supply cost recovery factors established in the future.

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

(9) If the commission has made a final or temporary order in a power supply and cost review, the utility may each month incorporate in its rates for the period covered by the order any amounts up to the power supply cost recovery factors permitted in that order. If the commission has not made a final or temporary order within 3 months of the submission of a complete power supply cost recovery plan, or by the beginning of the period covered in the plan, whichever comes later, or if a temporary order has expired without being extended or replaced, then pending an order which determines the power supply cost recovery factors, a utility may each month adjust its rates to incorporate all or a part of the power supply cost recovery factors requested in its plan. Any amounts collected under the power supply cost recovery factors before the commission makes its final order shall be subject to prompt refund with interest to the extent that the total amounts collected exceed the total amounts determined in the commission's final order to be reasonable and prudent for the same period of time.

(10) Not less than 3 months before the beginning of the third quarter of the 12-month period, the utility may file a revised power supply cost recovery plan which shall cover the remainder of the 12-month period. Upon receipt of the revised power supply cost recovery plan, the commission shall reopen the power supply and cost review. In addition, the commission may reopen the power supply and cost review on its own motion or on the showing of good cause by any party if at least 6 months have elapsed since the utility submitted its complete filing and if there are at least 60 days remaining in the 12-month period under consideration. A reopened power supply and cost review shall be conducted as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, and in accordance with subsections (3), (6), (8), and (9).

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

(12) Not less than once a year, and not later than 3 months after the end of the 12-month period covered by a utility's power supply cost recovery plan, the commission shall commence a proceeding, to be known as a power supply cost reconciliation, as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969. Reasonable discovery shall be permitted before and during the reconciliation proceeding in order to assist parties and interested persons in obtaining evidence concerning reconciliation issues including, but not limited to, the reasonableness and prudence of expenditures and the amounts collected pursuant to the clause. At the power supply cost reconciliation the commission shall reconcile the revenues recorded pursuant to the power supply cost recovery factors and the

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allowance for cost of power supply included in the base rates established in the latest commission order for the utility with the amounts actually expensed and included in the cost of power supply by the utility. The commission shall consider any issue regarding the reasonableness and prudence of expenses for which customers were charged if the issue was not considered adequately at a previously conducted power supply and cost review.

(13) In its order in a power supply cost reconciliation, the commission shall:

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

(b) Disallow any capacity charges associated with power purchased for periods in excess of 6 months unless the utility has obtained the prior approval of the commission. If the commission has approved capacity charges in a contract with a qualifying facility, as defined by the federal energy regulatory commission pursuant to the public utilities regulatory policies act of 1978, Public Law 95-617, 92 Stat. 3117, the commission shall not disallow the capacity charges for the facility in the power supply cost reconciliation unless the commission has ordered revised capacity charges upon reconsideration pursuant to this subsection. A contract shall be valid and binding in accordance with its terms and capacity charges paid pursuant to such a contract shall be recoverable costs of the utility for rate-making purposes notwithstanding that the order approving such a contract is later vacated, modified, or otherwise held to be invalid in whole or in part if the order approving the contract has not been stayed or suspended by a competent court within 30 days after the date of the order, or within 30 days of the effective date of the 1987 amendatory act that added subsection (19) if the order was issued after September 1, 1986, and before the effective date of the 1987 amendatory act that added subsection (19). The scope and manner of the review of capacity charges for a qualifying facility shall be determined by the commission. Except as to approvals for qualifying facilities granted by the commission prior to June 1, 1987, proceedings before the commission seeking such approvals shall be conducted as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969. The commission, upon its own motion or upon application of any person, may reconsider its approval of capacity charges in a contested case hearing after passage of a period necessary for financing the qualifying facility, provided that:

(*i*) The commission has first issued an order making a finding based on evidence presented in a contested case that there has been a substantial change in circumstances since the commission's initial approval; and

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

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

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

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

(e) Disallow the cost of fuel purchased from an affiliated company to the extent that such fuel is more costly than fuel of requisite quality available at or about the same time from other suppliers with whom it would be comparably cost beneficial to deal.

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

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

(h) Disallow penalty charges unreasonably or imprudently incurred.

(i) Disallow demurrage charges.

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

(14) In its order in a power supply cost reconciliation, the commission shall require a utility to refund to customers or credit to customers' bills any net amount determined to have been recovered over the period covered in excess of the amounts determined to have been actually expensed by the utility for power supply, and to have been incurred through reasonable and prudent actions not precluded by the commission order in

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the power supply and cost review. Such refunds or credits shall be apportioned among the customers of the utility utilizing procedures that the commission determines to be reasonable. The commission may adopt different procedures with respect to customers served under the various rate schedules of the utility and may, in appropriate circumstances, order refunds or credits in proportion to the excess amounts actually collected from each such customer during the period covered.

(15) In its order in a power supply cost reconciliation, the commission shall authorize a utility to recover from customers any net amount by which the amount determined to have been recovered over the period covered was less than the amount determined to have been actually expensed by the utility for power supply, and to have been incurred through reasonable and prudent actions not precluded by the commission order in the power supply and cost review. For excess costs incurred through management actions contrary to the commission's power supply and cost review order, the commission shall authorize a utility to recover costs incurred for power supply in the reconciliation period in excess of the amount recovered over the period only if the utility demonstrates by clear and convincing evidence that the excess expenses were beyond the ability of the utility to control through reasonable and prudent actions. For excess costs incurred through management actions consistent with the commission's power supply and cost review order, the commission shall authorize a utility to recover costs incurred for power supply in the reconciliation period in excess of the amount recovered over the period only if the utility demonstrates that the level of such expenses resulted from reasonable and prudent management actions. Such amounts in excess of the amounts actually recovered by the utility for power supply shall be apportioned among and charged to the customers of the utility utilizing procedures that the commission determines to be reasonable. The commission may adopt different procedures with respect to customers served under the various rate schedules of the utility and may, in appropriate circumstances, order charges to be made in proportion to the amounts which would have been paid by such customers if the amounts in excess of the amounts actually recovered by the utility for cost of power supply had been included in the power supply cost recovery factors with respect to such customers during the period covered. Charges for such excess amounts shall be spread over a period that the commission determines to be appropriate.

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

(17) To avoid undue hardship or unduly burdensome or excessive cost, the commission may:

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

(b) Exempt an energy utility organized as a cooperative corporation pursuant to sections 98 to 109 of Act No. 327 of the Public Acts of 1931, being sections 450.98 to 450.109 of the Michigan Compiled Laws, from 1 or more of the provisions of this section.

(18) Notwithstanding any other provision of this act, the commission may, upon application by an electric utility, set power supply cost recovery factors, in a manner otherwise consistent with this act, in an order resulting from a general rate case. Within 120 days following the effective date of this section, for the purpose of setting power supply cost recovery factors, the commission shall permit an electric utility to reopen a general rate case in which a final order was issued within 120 days before or after the effective date of this section or to amend an application or reopen the evidentiary record in a pending general rate case. If the commission sets power supply cost recovery factors in an order resulting from a general rate case:

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

(b) Annual reconciliation proceedings shall be conducted pursuant to subsection (12) and if an annual reconciliation proceeding shows a recoverable amount pursuant to subsection (15), the commission shall authorize the electric utility to defer the amount and to accumulate interest on the amount pursuant to subsection (16), and in the next order resulting from a general rate case authorize the utility to recover the amount and interest from its customers in the manner provided in subsection (15).

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(c) The power supply cost recovery factors shall not be subject to revision pursuant to subsection (10).

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

History: Add. 1982, Act 304, Imd. Eff. Oct. 13, 1982;—Am. 1987, Act 81, Imd. Eff. June 29, 1987.

****** 460.6j.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

460.6j.amended Definitions; incorporation of power supply cost recovery clause in electric rates or rate schedule of electric utility; order and hearing; filing power supply cost recovery plan and 5-year forecast; power supply and cost review; final or temporary order; incorporating power supply cost recovery factors in rates; filing revised power supply cost recovery plan; reopening power supply and cost review; monthly statement of revenues; power supply cost reconciliation; commission order; refunds or credits or additional charges to customers; apportionment; interest; exemption; setting power supply cost recovery factors in general rate case order.

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

(a) "Long-term firm gas transportation" means a binding agreement entered into between the electric utility and a natural gas transmission provider for a set period of time to provide firm delivery of natural gas to an electric generation facility.

(b) "Power supply cost recovery clause" means a clause in the electric rates or rate schedule of an electric utility that permits the monthly adjustment of rates for power supply to allow the utility to recover the booked costs, including transportation costs, reclamation costs, and disposal and reprocessing costs, of fuel burned by the utility for electric generation and the booked costs of purchased and net interchanged power transactions by the utility incurred under reasonable and prudent policies and practices.

(c) "Power supply cost recovery factor" means that element of the rates to be charged for electric service to reflect power supply costs incurred by an electric utility and made pursuant to a power supply cost recovery clause incorporated in the rates or rate schedule of an electric utility.

(2) The public service commission may incorporate a power supply cost recovery clause in the electric rates or rate schedule of an electric utility. Any order incorporating a power supply cost recovery clause shall be as a result of a hearing solely on the question of the inclusion of the clause in the rates or rate schedule. A hearing under this subsection shall be conducted as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287, or, pursuant to subsection (18), as a result of a general rate case. Any order incorporating a power supply cost recovery clause shall replace and rescind any previous fuel cost adjustment clause or purchased and net interchanged power adjustment clause incorporated in the electric rates of the utility upon the effective date of the first power supply cost recovery factor authorized for the utility under its power supply cost recovery clause.

(3) In order to implement the power supply cost recovery clause established under subsection (2), an electric utility annually shall file, pursuant to procedures established by the commission, if any, a complete power supply cost recovery plan describing the expected sources of electric power supply and changes in the cost of power supply anticipated over a future 12-month period specified by the commission and requesting for each of those 12 months a specific power supply cost recovery factor. The utility shall file the plan not later than 3 months before the beginning of the 12-month period covered by the plan. The plan shall describe all major contracts and power supply arrangements entered into by the utility for providing power supply during the specified 12-month period. The description of the major contracts and arrangements shall include the price of fuel, the duration of the contract or arrangement, and an explanation or description of any other term or provision as required by the commission. For gas fuel supply contracts or arrangements, the description shall include whether the supply contracts or arrangements include long-term firm gas transportation and, if not, an explanation of how the utility proposes to ensure reliable and reasonably priced gas fuel supply to its generation facilities during the specified 12-month period. The plan shall also include the utility's evaluation of the reasonableness and prudence of its decisions to provide power supply in the manner described in the plan, in light of its existing sources of electrical generation, and an explanation of the actions taken by the utility to minimize the cost of fuel to the utility.

(4) In order to implement the power supply cost recovery clause established under subsection (2), a utility shall file, contemporaneously with the power supply cost recovery plan required by subsection (3), a 5-year forecast of the power supply requirements of its customers, its anticipated sources of supply, and projections of power supply costs, in light of its existing sources of electrical generation and sources of electrical

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generation under construction. The forecast shall include a description of all relevant major contracts and power supply arrangements entered into or contemplated by the utility, and any other information the commission may require.

(5) If an electric utility files a power supply cost recovery plan under subsection (3) and a 5-year forecast under subsection (4), the commission shall conduct a proceeding, to be known as a power supply and cost review, for the purpose of evaluating the reasonableness and prudence of the power supply cost recovery plan filed by a utility under subsection (3), and establishing the power supply cost recovery factors to implement a power supply cost recovery clause incorporated in the electric rates or rate schedule of the utility. The power supply and cost review shall be conducted as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287.

(6) In its final order in a power supply and cost review, the commission shall evaluate the reasonableness and prudence of the decisions underlying the power supply cost recovery plan filed by an electric utility under subsection (3), and shall approve, disapprove, or amend the power supply cost recovery plan accordingly. In evaluating the decisions underlying the power supply cost recovery plan, the commission shall consider the cost and availability of the electrical generation available to the utility; the cost of short-term firm purchases available to the utility; the availability of interruptible service; the ability of the utility to reduce or to eliminate any firm sales to out-of-state customers if the utility is not a multi-state utility whose firm sales are subject to other regulatory authority; whether the utility has taken all appropriate actions to minimize the cost of fuel; and other relevant factors. The commission shall approve, reject, or amend the 12 monthly power supply cost recovery factors requested by the utility in its power supply cost recovery plan. The factors shall not reflect items the commission could reasonably anticipate would be disallowed under subsection (13). The factors ordered shall be described in fixed dollar amounts per unit of electricity, but may include specific amounts contingent on future events.

(7) In its final order in a power supply and cost review, the commission shall evaluate the decisions underlying the 5-year forecast filed by a utility under subsection (4). The commission may also indicate any cost items in the 5-year forecast that, on the basis of present evidence, the commission would be unlikely to permit the utility to recover from its customers in rates, rate schedules, or power supply cost recovery factors established in the future.

(8) The commission, on its own motion or the motion of any party, may make a finding and enter a temporary order granting approval or partial approval of a power supply cost recovery plan in a power supply and cost recovery review, after first giving notice to the parties to the review, and after giving the parties to the review a reasonable opportunity for a full and complete hearing. A temporary order made under this subsection is considered a final order for purposes of judicial review.

(9) If the commission has made a final or temporary order in a power supply and cost review, an electric utility may each month incorporate in its rates for the period covered by the order any amounts up to the power supply cost recovery factors permitted in that order. If the commission has not made a final or temporary order within 3 months after the submission of a complete power supply cost recovery plan, or by the beginning of the period covered in the plan, whichever comes later, or if a temporary order has expired without being extended or replaced, then pending an order that determines the power supply cost recovery factors, a utility may each month adjust its rates to incorporate all or a part of the power supply cost recovery factors requested in its plan. Any amounts collected under the power supply cost recovery factors before the commission makes its final order is subject to prompt refund with interest to the extent that the total amounts collected exceed the total amounts determined in the commission's final order to be reasonable and prudent for the same period of time.

(10) Not later than 3 months before the beginning of the third quarter of the 12-month period described in subsection (3), an electric utility may file a revised power supply cost recovery plan that covers the remainder of the 12-month period. Upon receipt of the revised power supply cost recovery plan, the commission shall reopen the power supply and cost review. In addition, the commission may reopen the power supply and cost review on its own motion or on the showing of good cause by any party if at least 6 months have elapsed since the utility submitted its complete filing and if there are at least 60 days remaining in the 12-month period under consideration. A reopened power supply and cost review shall be conducted as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287, and in accordance with subsections (3), (6), (8), and (9).

(11) Not later than 45 days after the last day of each billing month in which a power supply cost recovery factor has been applied to customers' bills, an electric utility shall file with the commission a detailed statement for that month of the revenues recorded pursuant to the power supply cost recovery factor and the allowance for cost of power supply included in the base rates established in the latest commission order for the utility, and the cost of power supply. The detailed statement shall be in the manner and form prescribed by

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the commission. The commission shall establish procedures for insuring that the detailed statement is promptly verified and corrected if necessary.

(12) Not less than once a year, and not later than 3 months after the end of the 12-month period covered by an electric utility's power supply cost recovery plan, the commission shall commence a proceeding, to be known as a power supply cost reconciliation, as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. The commission shall permit reasonable discovery before and during the reconciliation proceeding in order to assist parties and interested persons in obtaining evidence concerning reconciliation issues including, but not limited to, the reasonableness and prudence of expenditures and the amounts collected pursuant to the clause. At the power supply cost reconciliation the commission shall reconcile the revenues recorded pursuant to the power supply cost recovery factors and the allowance for cost of power supply included in the base rates established in the latest commission order for the utility with the amounts actually expensed and included in the cost of power supply by the utility. The commission shall consider any issue regarding the reasonableness and prudence of expenses for which customers were charged if the issue was not considered adequately at a previously conducted power supply and cost review.

(13) In its order in a power supply cost reconciliation, the commission shall do all of the following:

(a) Disallow cost increases resulting from changes in accounting or rate-making expense treatment not previously approved by the commission. The commission may order the utility to pay a penalty of not more than 25% of the amount improperly collected. Costs incurred by the utility for penalty payments shall not be charged to customers.

(b) Not disallow the capacity charges for any facilities for which the electric utility would otherwise have a purchase obligation if the commission has approved capacity charges in a contract with a qualifying facility, as that term is defined by the Federal Energy Regulatory Commission pursuant to the public utilities regulatory policies act of 1978, Public Law 95-617, 92 Stat 3117, unless the commission has ordered revised capacity charges upon reconsideration under this subsection. A contract is valid and binding in accordance with its terms, and capacity charges paid pursuant to that contract are recoverable costs of the utility for rate-making purposes notwithstanding that the order approving that contract is later vacated, modified, or otherwise held to be invalid in whole or in part if the order approving the contract has not been stayed or suspended by a competent court within 30 days after the date of the order, or by July 29, 1987 if the order was issued after September 1, 1986 and before June 29, 1987. The commission shall determine the scope and manner of the review of capacity charges for a qualifying facility. Except as to approvals for qualifying facilities granted by the commission before June 1, 1987, proceedings before the commission seeking those approvals shall be conducted as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. The commission, upon its own motion or upon application of any person, may reconsider its approval of capacity charges for a qualifying facility in a contested case hearing after passage of a period necessary for financing the qualifying facility, if both of the following apply:

(*i*) The commission has first issued an order making a finding based on evidence presented in a contested case that there has been a substantial change in circumstances since the commission's initial approval.

(*ii*) The commission finding is set forth in a commission order subject to immediate judicial review.

The financing period for a qualifying facility during which previously approved capacity charges are not subject to commission reconsideration is 17.5 years, beginning with the date of commercial operation, for all qualifying facilities, except that the minimum financing period before reconsideration of the previously approved capacity charges is for the duration of the financing for a qualifying facility that produces electric energy by the use of biomass, waste, wood, hydroelectric, wind, and other renewable resources, or any combination of renewable resources, as the primary energy source.

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

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

(e) Disallow the cost of fuel purchased from an affiliated company to the extent that the fuel is more costly than fuel of requisite quality available at or about the same time from other suppliers with whom it would be comparably cost beneficial to deal.

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

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

(h) Disallow penalty charges unreasonably or imprudently incurred.

(i) Disallow demurrage charges.

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

(14) In its order in a power supply cost reconciliation, the commission shall require an electric utility to refund to customers or credit to customers' bills any net amount determined to have been recovered over the period covered in excess of the amounts determined to have been actually expensed by the utility for power supply, and to have been incurred through reasonable and prudent actions not precluded by the commission order in the power supply and cost review. The commission shall apportion the refunds or credits among the customers of the utility utilizing procedures that the commission determines to be reasonable. The commission may adopt different procedures with respect to customers served under the various rate schedules of the utility and may, in appropriate circumstances, order refunds or credits in proportion to the excess amounts actually collected from each such customer during the period covered.

(15) In its order in a power supply cost reconciliation, the commission shall authorize an electric utility to recover from customers any net amount by which the amount determined to have been recovered over the period covered was less than the amount determined to have been actually expensed by the utility for power supply, and to have been incurred through reasonable and prudent actions not precluded by the commission order in the power supply and cost review. For excess costs incurred through management actions contrary to the commission's power supply and cost review order, the commission shall authorize a utility to recover costs incurred for power supply in the reconciliation period in excess of the amount recovered over the period only if the utility demonstrates by clear and convincing evidence that the excess expenses were beyond the ability of the utility to control through reasonable and prudent actions. For excess costs incurred through management actions consistent with the commission's power supply and cost review order, the commission shall authorize a utility to recover costs incurred for power supply in the reconciliation period in excess of the amount recovered over the period only if the utility demonstrates that the level of those expenses resulted from reasonable and prudent management actions. The amounts in excess of the amounts actually recovered by the utility for power supply shall be apportioned among and charged to the customers of the utility utilizing procedures that the commission determines to be reasonable. The commission may adopt different procedures with respect to customers served under the various rate schedules of the utility and may, in appropriate circumstances, order charges to be made in proportion to the amounts that would have been paid by those customers if the amounts in excess of the amounts actually recovered by the utility for cost of power supply had been included in the power supply cost recovery factors with respect to those customers during the period covered. Charges for the excess amounts shall be spread over a period that the commission determines to be appropriate.

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

(17) To avoid undue hardship or unduly burdensome or excessive cost, the commission may do both of the following:

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

(b) Exempt an energy utility organized as a cooperative corporation under sections 98 to 109 of 1931 PA 327, MCL 450.98 to 450.109, from 1 or more of the provisions of this section.

(18) Notwithstanding any other provision of this act, the commission may, upon application by an electric utility, set power supply cost recovery factors, in a manner otherwise consistent with this act, in an order resulting from a general rate case. By October 27, 1987, for the purpose of setting power supply cost recovery factors, the commission shall permit an electric utility to reopen a general rate case in which a final order was issued within 120 days before or after June 29, 1987 or to amend an application or reopen the evidentiary record in a pending general rate case. If the commission sets power supply cost recovery factors in an order resulting from a general rate case, all of the following apply:

(a) The power supply cost recovery factors shall cover a future period of 48 months or the number of months that elapse until the commission orders new power supply cost recovery factors in a general rate case,

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whichever is the shorter period.

(b) The commission shall conduct annual reconciliation proceedings under subsection (12) and if an annual reconciliation proceeding shows a recoverable amount under subsection (15), the commission shall authorize the electric utility to defer the amount and to accumulate interest on the amount under subsection (16), and in the next order resulting from a general rate case authorize the utility to recover the amount and interest from its customers in the manner provided in subsection (15).

(c) The power supply cost recovery factors are not subject to revision under subsection (10).

History: Add. 1982, Act 304, Imd. Eff. Oct. 13, 1982;—Am. 1987, Act 81, Imd. Eff. June 29, 1987;—Am. 2016, Act 341, Eff. Apr. 20, 2017.

****** 460.6k THIS SECTION IS AMENDED EFFECTIVE APRIL 20, 2017: See 460.6k.amended ******

460.6k Initial power supply cost recovery plan; filing; alteration of rate schedule in accordance with adjustment clause; charges in excess of base rate; revenues subject to existing reconciliation proceedings; revenues resulting from certain adjustment clauses subject to existing reconciliation proceedings; revenues subject to annual reconciliation; procedures; lag correction provision; adjustment of rates pending approval or disapproval of power supply cost recovery clause.

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

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

(a) By an electric utility subject to commission rate jurisdiction with at least 200,000 residential customers in the state of Michigan, within 4 months after the effective date of this section.

(b) By all other electric utilities subject to commission rate jurisdiction, within 15 months after the effective date of this section in accordance with the provisions of this act which the commission determines to be appropriate for the individual utility.

(3) Notwithstanding section 6a(3), until the expiration of 3 months plus the remainder of the then current billing month following the last day on which a utility is required to file its first power supply cost recovery plan pursuant to subsection (2) of this section, the utility may alter its rate schedule in accordance with an existing fuel cost adjustment clause or purchased and net interchanged power adjustment clause. Thereafter, the utility may make charges in excess of base rates for the cost of power supply pursuant only to subsections (2) and (4) of this section. After the effective date of this section, any revenues resulting from an existing fuel cost adjustment clause or purchased and net interchanged power adjustment clause and recorded for an annual reconciliation period ending prior to January 1, 1983, by an electric utility shall be subject to the existing reconciliation proceeding established by the commission for the utility. In this proceeding, the commission shall consider the reasonableness and prudence of expenditures charged pursuant to an existing fuel cost adjustment clause or purchased and net interchanged power adjustment clause after the effective date of this section. On and after January 1, 1983, all fuel cost and purchased and net interchanged power revenues received by an electric utility, whether included in base rates or collected pursuant to a fuel or purchased and net interchanged power adjustment clause or a power supply cost recovery clause, shall be subject to annual reconciliation with the cost of fuel and purchased and net interchanged power. Such annual reconciliations shall be conducted in accordance with the reconciliation procedures described in section 6j(12) to (18), including the provisions for refunds, additional charges, deferral and recovery, and shall include consideration by the commission of the reasonableness and prudence of expenditures charged pursuant to any fuel or purchased and net interchanged power adjustment clause in existence during the period being reconciled. If the utility has a lag correction provision included in its existing adjustment clauses, the commission shall allow any adjustment to rates attributable to such lag correction provision to be implemented for the 3 billing months immediately succeeding the final billing month in which the existing adjustment clauses as operative.

(4) Until the commission approves or disapproves a power supply cost recovery clause in a final commission order in a contested case required by section 6j(2), a utility which had a fuel cost adjustment clause or purchased and net interchanged power adjustment clause on the effective date of this section and which has applied for a power supply cost recovery clause under section 6j may adjust its rates pursuant to section 6j(3) to (18), to include power supply cost recovery factors.

History: Add. 1982, Act 304, Imd. Eff. Oct. 13, 1982.

****** 460.6k.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

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460.6k.amended Initial power supply cost recovery plan; filing; alteration of rate schedule in accordance with adjustment clause; charges in excess of base rate; revenues subject to existing reconciliation proceedings; revenues resulting from certain adjustment clauses subject to existing reconciliation proceedings; revenues subject to annual reconciliation; procedures; lag correction provision; adjustment of rates pending approval or disapproval of power supply cost recovery clause.

Sec. 6k. (1) This section governs the initial filing and implementation of a power supply cost recovery plan under section 6j(3).

(2) The initial power supply cost recovery plan may be for a period of less than 12 months and shall be filed as follows:

(a) By an electric utility subject to commission rate jurisdiction with at least 200,000 residential customers in the state of Michigan, by February 13, 1983.

(b) By all other electric utilities subject to commission rate jurisdiction, by January 13, 1984 in accordance with the provisions of this act which the commission determines to be appropriate for the individual utility.

(3) Notwithstanding section 6a(5), until the expiration of 3 months plus the remainder of the then current billing month following the last day on which a utility is required to file its first power supply cost recovery plan under subsection (2), the utility may alter its rate schedule in accordance with an existing fuel cost adjustment clause or purchased and net interchanged power adjustment clause. Thereafter, the utility may make charges in excess of base rates for the cost of power supply pursuant only to subsections (2) and (4). After October 13, 1982, any revenues resulting from an existing fuel cost adjustment clause or purchased and net interchanged power adjustment clause and recorded for an annual reconciliation period ending before January 1, 1983, by an electric utility are subject to the existing reconciliation proceeding established by the commission for the utility. In this proceeding, the commission shall consider the reasonableness and prudence of expenditures charged pursuant to an existing fuel cost adjustment clause or purchased and net interchanged power adjustment clause after October 13, 1982. On and after January 1, 1983, all fuel cost and purchased and net interchanged power revenues received by an electric utility, whether included in base rates or collected pursuant to a fuel or purchased and net interchanged power adjustment clause or a power supply cost recovery clause, are subject to annual reconciliation with the cost of fuel and purchased and net interchanged power. The annual reconciliations shall be conducted in accordance with the reconciliation procedures described in section 6j(12) to (18), including the provisions for refunds, additional charges, deferral and recovery, and shall include consideration by the commission of the reasonableness and prudence of expenditures charged pursuant to any fuel or purchased and net interchanged power adjustment clause in existence during the period being reconciled. If the utility has a lag correction provision included in its existing adjustment clauses, the commission shall allow any adjustment to rates attributable to that lag correction provision to be implemented for the 3 billing months immediately succeeding the final billing month in which the existing adjustment clauses as operative.

(4) Until the commission approves or disapproves a power supply cost recovery clause in a final commission order in a contested case required by section 6j(2), a utility that had a fuel cost adjustment clause or purchased and net interchanged power adjustment clause on October 13, 1982 and which has applied for a power supply cost recovery clause under section 6j may adjust its rates under section 6j(3) to (18), to include power supply cost recovery factors.

History: Add. 1982, Act 304, Imd. Eff. Oct. 13, 1982;—Am. 2016, Act 341, Eff. Apr. 20, 2017.

Compiler's note: In subsection (3), the phrase "adjustment clauses as operative", evidently should read "adjustment clauses is operative".

****** 460.6l THIS SECTION IS AMENDED EFFECTIVE APRIL 20, 2017: See 460.6l.amended ******

460.6*l* Insuring equitable representation of interests of energy utility customers; definitions; utility consumer participation board; creation; powers and duties; number and appointment of members; "utility" defined; member requirements; terms; vacancy; removal of member; meetings; quorum; election of chairperson and vice-chairperson; conducting business of board at public meeting; public notice; availability of writings to public; expense reimbursement and remuneration; limits; temporary administrator of fund.

Sec. 6*l*. (1) For purposes of implementing sections 6h, 6i, 6j, and 6k, this section and section 6m shall provide means of insuring equitable representation of the interests of energy utility customers.

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

(a) "Annual receipts" means the payments received by the fund under section 6m(2)(a) and (b) during a

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calendar year.

(b) “Board” means the utility consumer participation board created under subsection (3).

(c) “Department” means the department of management and budget.

(d) “Energy cost recovery proceeding” means any proceeding to establish or implement a gas cost recovery clause or a power supply cost recovery clause as provided in sections 6h, 6i, 6j, or 6k, to set gas cost recovery factors pursuant to section 6h(17), or to set power supply cost recovery factors pursuant to section 6j(18).

(e) “Energy utility” means each electric or gas company regulated by the public service commission.

(f) “Fund” means the utility consumer representation fund created in section 6m.

(g) “Household” means a single-family home, duplex, mobile home, seasonal dwelling, farm home, cooperative, condominium, or apartment which has normal household facilities such as a bathroom, individual cooking facilities, and kitchen sink facilities. Household does not include a penal or corrective institution, or a motel, hotel, or other similar structure if used as a transient dwelling.

(h) “Jurisdictional” means subject to rate regulation by the Michigan public service commission.

(i) “Net grant proceeds” means the annual receipts of the fund less the amounts reserved for the attorney general's use and the amounts expended for board expenses and operation.

(j) “Residential energy utility consumer” or “consumer” means a customer of an energy utility who receives utility service for use within an individual household or an improvement reasonably appurtenant to and normally associated with an individual household.

(k) “Residential tariff sales” means those sales by an energy utility which are subject to residential tariffs on file with the commission.

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

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

(4) For the purposes of subsection (5) only, “utility” means an electric or gas company located in or outside of this state.

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

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

(b) Shall not be, or shall not have been within the 5 years preceding appointment, a member of a governing body of, or employed in a managerial or professional or consulting capacity by a utility or an association representing utilities; an enterprise or professional practice which received over $1,500.00 in the year preceding the appointment as a supplier of goods or services to a utility or association representing utilities; or an organization representing employees of such a utility, association, enterprise, or professional practice, or an association which represents such an organization.

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

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

(e) Shall not be a member of the immediate family of a person who would be ineligible under subdivisions (a), (b), (c), or (d).

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

(7) The governor shall remove a member of the board if that member is absent for any reason from either 3 consecutive board meetings or more than 50% of the meetings held by the board in a calendar year. However, a person who is removed due to absenteeism is eligible for reappointment to fill a vacancy which occurs in the

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board membership. The governor also shall remove a member of the board if the member is subsequently determined to be ineligible under subsection (5).

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

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

(10) The business which the board may perform shall be conducted at a public meeting of the board held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976.

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

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

(13) Until the board certifies that it is operating and ready to perform all duties under this act, the director of the energy administration created by executive directives 1976-2 and 1976-5 shall serve as temporary administrator of the fund and exercise all duties and powers of the board.

History: Add. 1982, Act 304, Imd. Eff. Oct. 13, 1982;—Am. 2000, Act 141, Imd. Eff. June 5, 2000.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Utility Consumer Participation Board from the Department of Management and Budget to the Department of Commerce, but not within the Public Service Commission, see E.R.O. No. 1993-9, compiled at MCL 460.20 of the Michigan Compiled Laws.

****** 460.6l.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

460.6*l*.amended Insuring equitable representation of interests of energy utility customers; definitions; utility consumer participation board; creation; powers and duties; number and appointment of members; "utility" defined; member requirements; terms; vacancy; removal of member; meetings; quorum; election of chairperson and vice-chairperson; conducting business of board at public meeting; public notice; availability of writings to public; expense reimbursement and remuneration.

Sec. 6*l*. (1) For purposes of implementing sections 6a, 6h, 6j, 6s, and 6t, this section and section 6m provide a means of insuring equitable representation of the interests of energy utility customers.

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

(a) "Annual receipts" means the payments received by the fund under section 6m(2)(a), (b), (c), and (d) during a calendar year.

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

(c) "Commission" means the Michigan public service commission.

(d) "Department" means the department of licensing and regulatory affairs.

(e) "Energy cost recovery proceeding" means any proceeding to establish or implement a gas cost recovery clause or a power supply cost recovery clause as provided in section 6h or 6j, to set gas cost recovery factors under section 6h(17), or to set power supply cost recovery factors under section 6j(18).

(f) "Energy utility" means each electric or gas company regulated by the commission.

(g) "Fund" means the utility consumer representation fund created in section 6m.

(h) "Household" means a single-family home, duplex, mobile home, seasonal dwelling, farm home, cooperative, condominium, or apartment that has normal household facilities such as a bathroom, individual cooking facilities, and kitchen sink facilities. Household does not include a penal or corrective institution, or a motel, hotel, or other similar structure if used as a transient dwelling.

(i) "Jurisdictional" means subject to rate regulation by the commission.

(j) "Net grant proceeds" means the annual receipts of the fund less the amounts reserved for the attorney general's use and the amounts expended for board expenses and operation.

(k) "Residential energy utility consumer" or "consumer" means a customer of an energy utility who

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receives utility service for use within an individual household or an improvement reasonably appurtenant to and normally associated with an individual household.

(*l*) "Residential tariff sales" means those sales by an energy utility that are subject to residential tariffs on file with the commission.

(m) "Utility consuming industry" means a person, sole proprietorship, partnership, association, corporation, or other entity that receives utility service ordinarily and primarily for use in connection with the manufacture, sale, or distribution of goods or the provision of services, but does not include a nonprofit organization representing residential utility customers.

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

(4) For the purposes of subsection (5) only, "utility" means an electric or gas company located in or outside of this state.

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

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

(b) Shall not be, or shall not have been within the 5 years preceding appointment, a member of a governing body of, or employed in a managerial or professional or consulting capacity by a utility or an association representing utilities; an enterprise or professional practice that received over $1,500.00 in the year preceding the appointment as a supplier of goods or services to a utility or association representing utilities; or an organization representing employees of such a utility, association, enterprise, or professional practice, or an association that represents such an organization.

(c) Shall not have, or shall not have had within 1 year preceding appointment, a financial interest exceeding $1,500.00 in a utility, an association representing utilities, or an enterprise or professional practice that received over $1,500.00 in the year preceding the appointment as a supplier of goods or services to a utility or association representing utilities.

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

(e) Shall not be a member of the immediate family of an individual who would be ineligible under subdivision (a), (b), (c), or (d).

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

(7) The governor shall remove a member of the board if that member is absent for any reason from either 3 consecutive board meetings or more than 50% of the meetings held by the board in a calendar year. However, an individual who is removed due to absenteeism is eligible for reappointment to fill a vacancy that occurs in the board membership. The governor also shall remove a member of the board if the member is subsequently determined to be ineligible under subsection (5).

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

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

(10) The business that the board may perform shall be conducted at a public meeting of the board held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of the meeting shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(11) A writing prepared, owned, used, in the possession of, or retained by the board in the performance of an official function shall be made available to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(12) A member of the board may be reimbursed for actual and necessary expenses, including travel

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expenses to and from each meeting held by the board, incurred in discharging the member's duties under this section and section 6m. In addition to expense reimbursement, a board member may receive remuneration from the board of $100.00 per meeting attended, not to exceed $1,000.00 in a calendar year. These limits shall be adjusted proportionately to an adjustment in the remittance amounts under section 6m(4) to allow for changes in the cost of living.

History: Add. 1982, Act 304, Imd. Eff. Oct. 13, 1982;—Am. 2000, Act 141, Imd. Eff. June 5, 2000;—Am. 2016, Act 341, Eff. Apr. 20, 2017.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Utility Consumer Participation Board from the Department of Management and Budget to the Department of Commerce, but not within the Public Service Commission, see E.R.O. No. 1993-9, compiled at MCL 460.20 of the Michigan Compiled Laws.

****** 460.6m THIS SECTION IS AMENDED EFFECTIVE APRIL 20, 2017: See 460.6m.amended ******

460.6m Utility consumer representation fund; creation as special fund; investment and release of money; remittance by energy utility; factor; action for recovery of disputed amount; action on application for energy cost recovery proceedings; conditions; acceptance of gift or grant; payment of operating costs and expenses; net grant proceeds to finance grant program; application form; consideration; encouraging representation of different consumer interests; criteria; joint filing; disbursements; notice of availability of fund; use of annual receipts and interest; retention of certain amounts; conditions applicable to grants; reports; reviewing relationship between costs and benefits.

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

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

(a) In the case of an energy utility company serving at least 100,000 customers in this state, an amount that bears to $300,000.00, multiplied by a factor as provided in subsection (4), the same proportion as the company's jurisdictional 1981 total operating revenues, as stated in its annual report, bear to the jurisdictional 1981 total operating revenues of all energy utility companies serving at least 100,000 customers in this state. This amount shall be made available by the board for use by the attorney general for the purposes described in subsection (17).

(b) In the case of an energy utility company serving at least 100,000 residential customers in this state, an amount that bears to $300,000.00, multiplied by a factor as provided in subsection (4), the same proportion as the company's jurisdictional 1981 gross revenues from residential tariff sales bear to the jurisdictional 1981 gross revenues from residential tariff sales of all energy utility companies serving at least 100,000 residential customers in this state. This amount shall be used for grants under subsection (11).

(3) Payments made by an energy utility under subsection (2)(a) are operating expenses of the utility that the public service commission shall permit the utility to charge to its customers. Payments made by a utility under subsection (2)(b) are operating expenses of the utility that the public service commission shall permit the utility to charge to its residential customers.

(4) For purposes of subsection (2), the factor shall be set by the board at a level not to exceed the percentage increase in the index known as the consumer price index for urban wage earners and clerical workers, select areas, all items indexed, for the Detroit standard metropolitan statistical area, compiled by the bureau of labor statistics of the United States department of labor, or any successor agency, that has occurred between January 1981 and January of the year in which the payment is required to be made. In the event that more than 1 such index is compiled, the index yielding the largest payment shall be the maximum allowable factor. The board shall advise utilities of the factor.

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

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

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(7) In the event of a dispute between the board and an energy utility about the amount of payment due, the utility shall pay the undisputed amount and, if the utility and the board cannot agree, the board may initiate civil action in the circuit court for Ingham county for recovery of the disputed amount. The commission shall not accept or take action on an application for an energy cost recovery proceeding from an energy utility subject to this section that has not fully paid undisputed remittances required by this section.

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

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

(10) The costs of operation and expenses incurred by the board in performing its duties under this section and section 6*l*, including remuneration to board members, shall be paid from the fund. A maximum of 5% of the annual receipts of the fund may be budgeted and used to pay expenses other than grants made under subsection (11).

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

(12) The board shall create and make available to applicants an application form. Each applicant shall indicate on the application how the applicant meets the eligibility requirements provided for in this section and how the applicant proposes to use a grant from the fund to participate in 1 or more proceedings as authorized in subsection (17) that have been or are expected to be filed. The board shall receive an application requesting a grant from the fund only from a nonprofit organization or a unit of local government in this state. The board shall consider only applications for grants containing proposals that are consistent with subsections (17) and (18) and that serve the interests of residential utility consumers. For purposes of making grants, the board may consider protection of the environment, energy conservation, the creation of employment and a healthy economy in the state, and the maintenance of adequate energy resources. The board shall not consider an application that primarily benefits the applicant or a service provided or administered by the applicant. The board shall not consider an application from a nonprofit organization if 1 of the organization's principal interests or unifying principles is the welfare of a utility or its investors or employees, or the welfare of 1 or more businesses or industries, other than farms not owned or operated by a corporation, that receive utility service ordinarily and primarily for use in connection with the profit-seeking manufacture, sale, or distribution of goods or services. Mere ownership of securities by a nonprofit organization or its members does not disqualify an application submitted by that organization.

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

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

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

(c) The anticipated effect of the proposal contained in the application on residential utility consumers, including the immediate and long-term impacts of the proposal.

(d) Evidence demonstrating the potential for continuity of effort and the development of expertise in relation to the proposal contained in the application.

(e) The uniqueness or innovativeness of an applicant's position or point of view, and the probability and desirability of that position or point of view prevailing.

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

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

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

(17) The annual receipts and interest earned, less administrative costs, may be used only for participation

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in administrative and judicial proceedings under sections 6h, 6i, 6j, and 6k, in federal administrative and judicial proceedings that directly affect the energy costs paid by Michigan energy utilities, and in cost allocation and rate design proceedings initiated under section 11(3). Amounts that have been in the fund more than 12 months may be retained in the fund for future grants, or may be returned to energy utility companies or used to offset their future remittances in proportion to their previous remittances to the fund, as the board determines will best serve the interests of consumers.

(18) The following conditions shall apply to all grants from the fund:

(a) Disbursements from the fund may be used only to advocate the interests of energy utility customers or classes of energy utility customers, and not for representation of merely individual interests.

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

(c) The board shall coordinate the funded activities of grant recipients with those of the attorney general to avoid duplication of effort, to promote supplementation of effort, and to maximize the number of hearings and proceedings with intervenor participation.

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

(20) A recipient of a grant under subsection (11) shall file a report with the board within 90 days following the end of the year or a shorter period for which the grant is made. The report shall be made in a form prescribed by the board and is subject to audit by the board. The report shall include the following information:

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

(*i*) Employee and contract for services costs.

(*ii*) Costs of materials and supplies.

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

(b) Any additional information concerning uses of the grant required by the board.

(21) The attorney general shall file a report with the house and senate committees on appropriations within 90 days following the end of each fiscal year. The report shall include the following information:

(a) An account of all expenditures made by the attorney general of funds received under this section. Expenditures shall be reported within the following categories:

(*i*) Employee and contract for services costs.

(*ii*) Costs of materials and supplies.

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

(b) Any additional information concerning uses of the funds received under this section required by the committees.

(22) On or before July 1 of each calendar year, the board shall submit a detailed report to the legislature regarding the discharge of duties and responsibilities under this section and section 6*l* during the preceding calendar year.

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

History: Add. 1982, Act 304, Imd. Eff. Oct. 13, 1982;—Am. 2014, Act 170, Imd. Eff. June 17, 2014.

****** 460.6m.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

460.6m.amended Utility consumer representation fund; creation as special fund; investment and release of money; remittance by energy utility; factor; action for recovery of disputed amount; action on application for energy cost recovery proceedings; conditions; acceptance of gift or grant; payment of operating costs and expenses; net grant proceeds to finance grant program; application form; consideration; encouraging representation of different consumer interests; criteria; joint filing; disbursements; notice of availability of fund; use of annual receipts and interest; retention of certain amounts; conditions applicable to grants; reports.

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

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

(a) In the case of an energy utility company serving at least 100,000 customers in this state, its proportional share of $900,000.00 adjusted annually by a factor as provided in subsection (4). This adjusted amount shall become the new base amount to which the factor provided in subsection (4) is applied in the succeeding year. A utility's proportional share shall be calculated by dividing the company's jurisdictional total operating revenues for the preceding year, as stated in its annual report, by the total operating revenues for the preceding year of all energy utility companies serving at least 100,000 customers in this state. This amount shall be made available by the board for use by the attorney general for the purposes described in subsection (16).

(b) In the case of an energy utility company serving at least 100,000 residential customers in this state, its proportional share of $650,000.00 adjusted annually by a factor as provided in subsection (4). This adjusted amount shall become the new base amount to which the factor provided in subsection (4) is applied in the succeeding year. A utility's proportional share shall be calculated by dividing the company's jurisdictional gross revenues from residential tariff sales for the preceding year by the gross revenues from residential tariff sales for the preceding year of all energy utility companies serving at least 100,000 residential customers in this state. This amount shall be used for grants under subsection (10).

(c) In the case of an energy utility company serving fewer than 100,000 customers in this state, its proportional share of $100,000.00 adjusted annually by a factor as provided in subsection (4). This adjusted amount shall become the new base amount to which the factor provided in subsection (4) is applied in the succeeding year. A utility's proportional share shall be calculated by dividing the company's jurisdictional total operating revenues for the preceding year, as stated in its annual report, by the total operating revenues for the preceding year of all energy utility companies serving fewer than 100,000 customers in this state. This amount shall be made available by the board for use by the attorney general for the purposes described in subsection (16).

(d) In the case of an energy utility company serving fewer than 100,000 residential customers in this state, its proportional share of $100,000.00 adjusted annually by a factor as provided in subsection (4). This adjusted amount shall become the new base amount to which the factor provided in subsection (4) is applied in the succeeding year. A utility's proportional share shall be calculated by dividing the company's jurisdictional gross revenues from residential tariff sales for the preceding year by the gross revenues from residential tariff sales for the preceding year of all energy utility companies serving fewer than 100,000 residential customers in this state. This amount shall be used for grants under subsection (10).

(3) Payments made by an energy utility under subsection (2)(a) or (c) are operating expenses of the utility that the commission shall permit the utility to charge to its customers. Payments made by a utility under subsection (2)(b) or (d) are operating expenses of the utility that the commission shall permit the utility to charge to its residential customers.

(4) For purposes of subsection (2), the board shall set the factor at a level not to exceed the percentage increase in the index known as the consumer price index for urban wage earners and clerical workers, select areas, all items indexed, for the Detroit standard metropolitan statistical area, compiled by the Bureau of Labor Statistics of the United States Department of Labor, or any successor agency, that has occurred between January of the preceding year and January of the year in which the payment is required to be made. In the event that more than 1 such index is compiled, the index yielding the largest payment shall be the maximum allowable factor. The board shall advise utilities of the factor.

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

(6) In the event of a dispute between the board and an energy utility about the amount of payment due, the utility shall pay the undisputed amount and, if the utility and the board cannot agree, the board may initiate civil action in the circuit court for Ingham County for recovery of the disputed amount. The commission shall not accept or take action on an application for an energy cost recovery proceeding from an energy utility subject to this section that has not fully paid undisputed remittances required by this section.

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(7) The commission shall not accept or take action on an application for an energy cost recovery proceeding from an energy utility subject to this section until 30 days after it has been notified by the board that the board is ready to process grant applications, will transfer funds payable to the attorney general immediately upon the receipt of those funds, and will within 30 days approve grants and remit funds to qualified grant applicants.

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

(9) The costs of operation and expenses incurred by the board in performing its duties under this section and section 6*l*, including remuneration to board members, shall be paid from the fund. A maximum of 5% of the annual receipts of the fund may be budgeted and used to pay expenses other than grants made under subsection (10).

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

(11) The board shall create and make available to applicants an application form. Each applicant shall indicate on the application how the applicant meets the eligibility requirements provided for in this section and how the applicant proposes to use a grant from the fund to participate in 1 or more proceedings as authorized in subsection (16) that have been or are expected to be filed. Each applicant shall also identify on the application any additional funds or resources, other than the grant funds being requested, that are to be used to participate in the proceeding for which the grant is being requested and how those funds or resources will be utilized. The board shall receive an application requesting a grant from the fund only from a nonprofit organization or a unit of local government in this state. The board shall consider only applications for grants containing proposals that are consistent with subsections (16) and (17) and that serve the interests of residential utility consumers. For purposes of making grants, the board may consider energy conservation, energy waste reduction, demand response, and rate design options to encourage energy conservation, energy waste reduction, and demand response, as well as the maintenance of adequate energy resources. The board shall not consider an application that primarily benefits the applicant or a service provided or administered by the applicant. The board shall not consider an application from a nonprofit organization if 1 of the organization's principal interests or unifying principles is the welfare of a utility or its investors or employees, or the welfare of 1 or more businesses or industries, other than farms not owned or operated by a corporation, that receive utility service ordinarily and primarily for use in connection with the profit-seeking manufacture, sale, or distribution of goods or services. Mere ownership of securities by a nonprofit organization or its members does not disqualify an application submitted by that organization.

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

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

(b) The anticipated involvement of the attorney general in a proceeding and whether activities of the applicant will be duplicative or supplemental to those of the attorney general.

(c) In the case of a nongovernmental applicant, the extent to which the applicant is representative of or has a previous history of advocating the interests of citizens, especially residential utility consumers.

(d) The anticipated effect of the proposal contained in the application on residential utility consumers, including the immediate and long-term impacts of the proposal.

(e) Evidence demonstrating the potential for continuity of effort and the development of expertise in relation to the proposal contained in the application.

(f) The uniqueness or innovativeness of an applicant's position or point of view as it relates to advocating for residential utility consumers concerning energy costs or rates, and the probability and desirability of that position or point of view prevailing.

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

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

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

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(16) The annual receipts and interest earned, less administrative costs, may be used only for participation in administrative and judicial proceedings under sections 6a, 6h, 6j, 6s, and 6t, and in federal administrative and judicial proceedings that directly affect the energy costs or rates paid by energy utility customers in this state. Amounts that have been in the fund more than 12 months may be retained in the fund for future proceedings and any unexpended money in the fund shall be reserved to fulfill the purposes for which it was appropriated or may be returned to energy utility companies or used to offset their future remittances in proportion to their previous remittances to the fund, as the board and attorney general determine will best serve the interests of consumers.

(17) The following conditions apply to all grants from the fund:

(a) Disbursements from the fund may be used only to advocate the interests of residential energy utility customers concerning energy costs or rates and not for representation of merely individual interests.

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

(c) The board shall coordinate the funded activities of grant recipients with those of the attorney general to avoid duplication of effort, particularly as it relates to the hiring of expert witnesses, to promote supplementation of effort, and to maximize the number of hearings and proceedings with intervenor participation.

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

(19) A recipient of a grant under subsection (10) shall prepare for and participate in all discussions among the parties designed to facilitate settlement or narrowing of the contested issues before a hearing in order to minimize litigation costs for all parties.

(20) A recipient of a grant under subsection (10) shall file a report with the board within 90 days following the end of the year or a shorter period for which the grant is made. The report shall be made in a form prescribed by the board and is subject to audit by the board. The board shall include each report received under this subsection as part of the board's annual report required under subsection (22). The report under this subsection shall include the following information:

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

(*i*) Employee and contract for services costs.

(*ii*) Costs of materials and supplies.

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

(b) A detailed list of the regulatory issues raised by the grant recipient and how each issue was determined by the commission, court, or other tribunal.

(c) Any additional information concerning uses of the grant required by the board.

(21) On or before July 1 of each year, the attorney general shall file a report with the house and senate committees on appropriations and the house and senate committees with jurisdiction over energy and utility policy issues. The report shall include the following information:

(a) An account of all expenditures made by the attorney general of money received under this section. Expenditures shall be reported within the following categories:

(*i*) Employee and contract for services costs.

(*ii*) Costs of materials and supplies.

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

(b) Any additional information concerning uses of the money received under this section required by the committees.

(22) On or before July 1 of each calendar year, the board shall submit a detailed report to the house and senate committees with jurisdiction over energy and utility policy issues regarding the discharge of duties and responsibilities under this section and section 6*l* during the preceding calendar year.

History: Add. 1982, Act 304, Imd. Eff. Oct. 13, 1982;—Am. 2014, Act 170, Imd. Eff. June 17, 2014;—Am. 2016, Act 341, Eff. Apr. 20, 2017.

460.6n Restructuring of residential electric rates; hearings; revenue impact; purpose and basis of restructured rates; penalizing residential customers prohibited; informing public of conservation advantages; contents of customer's bill; costs; applicability of section.

Sec. 6n. (1) Not later than 4 months after the effective date of this section, the commission shall commence

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hearings to restructure residential electric rates established pursuant to former section 6f of this act. The restructuring may be independent of any pending case for rate reductions or increases or may be included within any general rate case proceeding. The revenue impact of the restructured rates shall be included and recognized solely within the residential class of customers.

(2) Rates restructured pursuant to this section shall encourage residential energy conservation and shall be based upon cost of service and other relevant factors.

(3) The commission shall ensure that electric utilities do not penalize residential customers for billings which are for more than 31 days of service in any monthly billing period.

(4) The commission shall take steps necessary to inform the public of the advantages of conservation. In addition to requiring the total charges for service to be reflected on a residential customer's bill, the commission shall require electric utilities to print on each residential customer's bill the total amount of electricity used, the rate for each block used by the customer, and the total charge for each block of electrical usage by the customer. All costs incurred by the electric utilities in carrying out the requirements of this subsection shall be included in the cost to serve the residential customer.

(5) This section shall apply only to electric utilities serving more than 200,000 residential customers in this state.

History: Add. 1984, Act 49, Imd. Eff. Apr. 12, 1984.

460.6o Definitions; power purchase agreements for purchase of capacity and energy from resource recovery facilities; rates, charges, terms, and conditions of service; scrap tire; applicability of section; dispute provisions; filing agreement; commencement of contested case proceeding; approval of agreement; energy rate component; capacity rate component; determination of reserve margin, reserve capacity, or other resource capability measurement; annual accounting.

Sec. 6o. (1) As used in this section:

(a) “Resource recovery facility” means a facility that meets all of the following requirements:

(*i*) Has machinery, equipment, and structures installed for the primary purpose of recovering energy through the incineration of qualified solid waste, qualified landfill gas, or scrap tires.

(*ii*) Utilizes at least 80% of its total annual fuel input in the form of qualified solid waste, at least 90% of its total annual fuel input in the form of qualified landfill gas, or 90% of its total annual fuel input in the form of scrap tires, exclusive of fuel used for normal start-up and shutdown.

(*iii*) Is a qualifying facility as defined by the federal energy regulatory commission pursuant to the public utility regulatory policies act of 1978, Public Law 95-617, 92 Stat. 3117.

(b) “Qualified landfill gas” means gas reclaimed from a type II landfill as defined in R 299.4105 of the Michigan administrative code.

(c) “Qualified solid waste” means solid waste that may be lawfully disposed of in a type II landfill as defined in R 299.4105 of the Michigan administrative code, and which is generated within this state.

(d) “Scrap tire”, “scrap tire hauler”, and “scrap tire processor” mean those terms as they are defined in part 169 (scrap tires) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being sections 324.16901 to 324.16909 of the Michigan Compiled Laws.

(2) Public utilities with more than 500,000 customers in this state shall enter into power purchase agreements for the purchase of capacity and energy from resource recovery facilities that incinerate qualified landfill gas; that incinerate qualified solid waste, at least 50.1% of which is generated within the service areas of the public utility; or, subject to the provisions of this section, that incinerate scrap tires, under rates, charges, terms, and conditions of service that, for these facilities, may differ from those negotiated, authorized, or prescribed for purchases from qualifying facilities that are not resource recovery facilities. If a resource recovery facility incinerates scrap tires, or any other tires that are obtained from outside the state, or if more than 50.1% of the scrap tires or other tires are obtained outside the public utility service area, the public utility may in partial satisfaction of its obligation under this subsection purchase capacity and energy from the facility but is not obligated by this act to purchase the facility's capacity and energy. A resource recovery facility that incinerates at least 90% of its total annual fuel input in the form of scrap tires shall accept all scrap tires that first became scrap tires in the state and that are delivered to the facility by a scrap tire processor or a scrap tire hauler. The first 6,000,000 of these scrap tires delivered to the resource recovery facility each year shall be charged a rate not greater than an amount equal to $34.50 per ton, increased each calendar quarter beginning July 1, 1990, by an amount equal to the increase in the all items version of the consumer price index for urban wage earners and clerical workers during the prior calendar quarter. Including power purchase agreements executed prior to June 30, 1989, this section does not apply after 120 megawatts

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of electric resource recovery facility capacity in a utility's service territory have been contracted and entered in commercial operation. Additionally, this section does not apply to more than the first 30 megawatts of scrap tire fueled resource recovery facility capacity in the state that has been contracted and entered in commercial operation. Excluding rate provisions, if 1 or more provisions of a purchase agreement remain in dispute, each party shall submit to the commission all of the purchase agreement provisions of their last best offer and a supporting brief. On each disputed provision, the commission shall within 60 days either select or reject with recommendation the offers submitted by either party.

(3) A power purchase agreement entered into by a public utility for the purchase of capacity and energy from a resource recovery facility shall be filed with the commission and a contested case proceeding shall commence immediately pursuant to chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 of the Michigan Compiled Laws. Notwithstanding section 6j, a power purchase agreement shall be considered approved if the commission does not approve or disapprove the agreement within 6 months of the date of the filing of the agreement. Approval pursuant to this subsection constitutes prior approval under section 6j(13)(b).

(4) The energy rate component of all power sales contracts for resource recovery facilities shall be equal to the avoided energy cost of the purchasing utility.

(5) When averaged over the term of the contract, the capacity rate component of all power sales contracts for resource recovery facilities may be equal to but not less than the full avoided cost of the utility as determined by the commission. In determining the capacity rate, the commission may assume that the utility needs capacity.

(6) Capacity purchased by a utility prior to January 1, 2000 under a power sales contract with a resource recovery facility shall not be considered directly or indirectly in determining the utility's reserve margin, reserve capacity, or other resource capability measurement. To insure compliance with this act, a resource recovery facility that incinerates scrap tires shall provide an annual accounting to the legislature and the commission. The annual accounting shall include the total amount of scrap tires incinerated at the resource recovery facility and the percentage of those scrap tires that prior to incineration were used within this state for their original intended purpose.

History: Add. 1989, Act 2, Imd. Eff. Apr. 3, 1989;—Am. 1990, Act 323, Imd. Eff. Dec. 21, 1990;—Am. 1994, Act 10, Imd. Eff. Feb. 24, 1994;—Am. 1996, Act 75, Imd. Eff. Feb. 26, 1996.

460.6p Rates subject to electric transmission line certification act.

Sec. 6p. The rates of an electric utility are subject to the electric transmission line certification act.

History: Add. 1995, Act 32, Imd. Eff. May 17, 1995.

460.6q Acquisition, control, or merger with jurisdictional regulated utility; approval of commission; notice and hearing; issuance of order; rules; filing comments; access to data and information; evaluation factors; terms and conditions; confidential information; definitions.

Sec. 6q. (1) A person shall not acquire, control, or merge, directly or indirectly, in whole or in part, with a jurisdictional regulated utility nor shall a jurisdictional regulated utility sell, assign, transfer, or encumber its assets to another person without first applying to and receiving the approval of the commission.

(2) After notice and hearing, the commission shall issue an order stating what constitutes acquisition, transfer of control, merger activities, or encumbrance of assets that are subject to this section. This section does not apply to the encumbrance, assignment, acquisition, or transfer of assets that are encumbered, assigned, acquired, transferred, or sold in the normal course of business or to the issuance of securities or other financing transactions not directly or indirectly involved in an acquisition, merger, encumbrance, or transfer of control that is governed by this section.

(3) The commission shall promulgate rules creating procedures for the application process required under this section. The application shall include, but is not limited to, all of the following information:

(a) A concise summary of the terms and conditions of the proposed acquisition, transfer, merger, or encumbrance.

(b) Copies of the material acquisition, transfer, merger, or encumbrance documents if available.

(c) A summary of the projected impacts of the acquisition, transfer, merger, or encumbrance on rates and electric service in this state.

(d) Pro forma financial statements that are relevant to the acquisition, transfer, merger, or encumbrance.

(e) Copies of the parties' public filings with other state or federal regulatory agencies regarding the same acquisition, transfer, merger, or encumbrance, including any regulatory orders issued by the agencies regarding the acquisition, transfer, merger, or encumbrance.

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(4) Within 60 days from the date an application is filed under this section, interested parties, including the attorney general, may file comments with the commission on the proposed acquisition, transfer, merger, or encumbrance.

(5) After notice and hearing and within 180 days from the date an application is filed under this section, the commission shall issue an order approving or rejecting the proposed acquisition, transfer of control, merger, or encumbrance.

(6) All parties to an acquisition, transfer, merger, or encumbrance subject to this section shall provide the commission and the attorney general access to all books, records, accounts, documents, and any other data and information the commission considers necessary to effectively assess the impact of the proposed acquisition, transfer, merger, or encumbrance.

(7) The commission shall consider among other factors all of the following in its evaluation of whether or not to approve a proposed acquisition, transfer, merger, or encumbrance:

(a) Whether the proposed action would have an adverse impact on the rates of the customers affected by the acquisition, transfer, merger, or encumbrance.

(b) Whether the proposed action would have an adverse impact on the provision of safe, reliable, and adequate energy service in this state.

(c) Whether the action will result in the subsidization of a nonregulated activity of the new entity through the rates paid by the customers of the jurisdictional regulated utility.

(d) Whether the action will significantly impair the jurisdictional regulated utility's ability to raise necessary capital or to maintain a reasonable capital structure.

(e) Whether the action is otherwise inconsistent with public policy and interest.

(8) In approving an acquisition, transfer, merger, or encumbrance under this section, the commission may impose reasonable terms and conditions on the acquisition, transfer, merger, or encumbrance to protect the jurisdictional regulated utility, including the division and allocation of the utility's assets. A jurisdictional regulated utility may reject the terms and conditions imposed by the commission and not proceed with the transaction.

(9) In approving an acquisition, transfer, merger, or encumbrance under this section, the commission may impose reasonable terms and conditions on the acquisition, transfer, merger, or encumbrance to protect the customers of the jurisdictional regulated utility. A jurisdictional regulated utility may reject the terms and conditions imposed by the commission and not proceed with the transaction.

(10) Nonpublic information and materials submitted by a jurisdictional regulated utility under this section clearly designated by that utility as confidential are exempt from the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. The commission shall issue protective orders as necessary to protect information designated by that utility as confidential.

(11) Nothing in this section alters the authority of the attorney general to enforce federal and state antitrust laws.

(12) As used in this section:

(a) "Commission" means the Michigan public service commission.

(b) "Jurisdictional regulated utility" means a utility whose rates are regulated by the commission. Jurisdictional regulated utility does not include a telecommunication provider as defined in the Michigan telecommunications act, 1991 PA 179, MCL 484.2101 to 484.2604, or a motor carrier as defined in the motor carrier act, 1933 PA 254, MCL 475.1 to 479.43.

(c) "Person" means an individual, corporation, association, partnership, utility, or any other legal private or public entity.

History: Add. 2008, Act 286, Imd. Eff. Oct. 6, 2008.

460.6r Definitions; steam supply cost recovery clause; filing steam supply cost recovery plan and 3-year forecast; requirements; steam supply and cost review; temporary or final order; filing detailed statement; commencement of steam supply cost reconciliation; order of refunds or credits; rate of interest; filing report with governor and legislature.

Sec. 6r. (1) As used in this section:

(a) "Booked cost of steam" includes all of the following:

(*i*) Retail gas purchases consisting of all costs for gas service including customer charges, distribution charges, and any gas cost recovery factor.

(*ii*) Wholesale gas purchases, consisting of the contract cost of gas, transportation fuel, pipeline transportation fees, and any local transportation or distribution fees.

(*iii*) Storage gas charges, including the cost of gas, fuel, gas injection fees, withdrawal fees, and associated transportation fees.

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(*iv*) The cost of financial hedging instruments approved by the commission such as futures and options, including premiums, settlement gains and losses, and commodity exchange and administration fees.

(*v*) Steam purchases, consisting of all costs for steam purchased including customer charges, distribution charges, and associated transportation fees.

(*vi*) Costs for other fuel purchases including, but not limited to, any coal, wood, garbage, tires, waste oil, fuel oil or other materials used as a fuel for the production of steam, and all customer charges, distribution charges, and associated transportation and storage fees.

(b) "Steam supply cost recovery clause" means a clause in the rates or rate schedule of a utility which permits the monthly adjustment of rates for steam supply to allow the utility to recover the booked costs of fuel burned by the utility for steam generation and the booked costs of purchased steam transactions by the utility incurred under reasonable and prudent policies and practices.

(c) "Steam supply cost recovery factor" means that element of the rates to be charged for steam service to reflect steam supply costs incurred by a utility and made pursuant to a steam supply cost recovery clause incorporated in the rates or rate schedule of a utility.

(d) "Utility" means a steam distribution company regulated by the commission.

(2) Pursuant to its authority under this act, the commission may incorporate a steam supply cost recovery clause in the steam rates or rate schedule of a utility. An order incorporating a steam supply cost recovery clause shall be the result of a hearing solely on the question of the inclusion of the clause in the rates or rate schedule. The hearing shall be conducted as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287.

(3) In order to implement the steam supply cost recovery clause established pursuant to subsection (2), a utility annually shall file a complete steam supply cost recovery plan describing the expected sources of steam supply and changes in the cost of steam supply anticipated over a future 12-month period specified by the commission and requesting for each of those 12 months a specific steam supply cost recovery factor. The utility shall file the steam supply cost recovery plan at least 3 months before the beginning of the 12-month period covered by the plan. The plan shall describe all major contracts and steam supply arrangements entered into by the utility for providing steam supply during the specified 12-month period including the price of fuel, the duration of the contract or arrangement, and an explanation or description of any other term or provision of the contract or arrangement as required by the commission. The plan shall also include the utility's evaluation of the reasonableness and prudence of its decisions to provide steam supply in the manner described in the plan, in light of its existing sources of steam generation, and an explanation of the actions taken by the utility to minimize the cost of fuel to the utility.

(4) In order to implement the steam supply cost recovery clause established pursuant to subsection (2), a utility shall file, contemporaneously with the steam supply cost recovery plan required by subsection (3), a 3-year forecast of the steam supply requirements of its customers, its anticipated sources of supply, and projections of steam supply costs, in light of its existing sources of steam generation and sources of steam generation under construction. The forecast shall include a description of all relevant major contracts and steam supply arrangements entered into or contemplated by the utility, and any other information the commission may require.

(5) If a utility files a steam supply cost recovery plan and a 3-year forecast as provided in subsections (3) and (4), the commission shall conduct a proceeding, to be known as a steam supply and cost review, to evaluate the reasonableness and prudence of the steam supply cost recovery plan filed by a utility pursuant to subsection (3), and establish the steam supply cost recovery factors to implement a steam supply cost recovery clause incorporated in the rates or rate schedule of the utility. The steam supply and cost review shall be conducted as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287.

(6) In its final order in a steam supply and cost review, the commission shall evaluate the reasonableness and prudence of the decisions underlying the steam supply cost recovery plan filed by the utility pursuant to subsection (3), and shall approve, disapprove, or amend the steam supply cost recovery plan accordingly. In evaluating the decisions underlying the steam supply cost recovery plan, the commission shall consider the cost and availability of the steam generation available to the utility, the cost of short-term firm purchases available to the utility, whether the utility has taken all appropriate actions to minimize the cost of fuel, and other relevant factors. The commission shall approve, reject, or amend the 12 monthly steam supply cost recovery factors requested by the utility in its steam supply cost recovery plan. The factors ordered shall be described in fixed dollar amounts per unit of steam, but may include specific amounts contingent on future events.

(7) In its final order in a steam supply and cost review, the commission shall evaluate the decisions underlying the 3-year forecast filed by a utility pursuant to subsection (4). The commission may also indicate

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any cost items in the 3-year forecast that, on the basis of present evidence, the commission would be unlikely to permit the utility to recover from its customers in rates, rate schedules, or steam supply cost recovery factors established in the future.

(8) The commission, on its own motion or the motion of any party, may make a finding and enter a temporary order granting approval or partial approval of a steam supply cost recovery plan in a steam supply and cost recovery review after first having given notice to the parties to the review and giving those parties a reasonable opportunity for a full and complete hearing. A temporary order made pursuant to this subsection is considered a final order for purposes of judicial review.

(9) If the commission has made a final or temporary order in a steam supply and cost review, the utility may each month incorporate in its rates for the period covered by the order any amount up to the steam supply cost recovery factors permitted in that order. If the commission has not made a final or temporary order within 3 months of the submission of a complete steam supply cost recovery plan, or by the beginning of the period covered in the plan, whichever comes later, or if a temporary order has expired without being extended or replaced, then, pending an order which determines the steam supply cost recovery factors, a utility may each month adjust its rates to incorporate all or a part of the steam supply cost recovery factors requested in its plan. Any amount collected under the steam supply cost recovery factors before the commission makes its final order shall be subject to prompt refund with interest to the extent that the total amount collected exceeds the total amount determined in the commission's final order to be reasonable and prudent for the same period of time.

(10) Not less than 3 months before the beginning of the third quarter of the 12-month period, a utility may file a revised steam supply cost recovery plan which shall cover the remainder of the 12-month period. Upon receipt of a revised steam supply cost recovery plan, the commission shall reopen the steam supply and cost review. In addition, the commission may reopen the steam supply and cost review on its own motion or on the showing of good cause by any party if at least 6 months have elapsed since the utility submitted its complete filing and if there are at least 60 days remaining in the 12-month period under consideration. A reopened steam supply and cost review shall be conducted as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287, and in accordance with subsections (3), (6), (8), and (9).

(11) Not more than 45 days following the last day of each billing month in which a steam supply cost recovery factor has been applied to customers' bills, a utility shall file with the commission a detailed statement for that month of the revenues recorded pursuant to the steam supply cost recovery factor and the allowance for cost of steam supply included in the base rates established in the latest commission order for the utility, and the cost of steam supply. The detailed statement shall be in the manner and form prescribed by the commission. The commission shall establish procedures for insuring that the detailed statement is promptly verified and corrected if necessary.

(12) Not less than once a year, and not later than 3 months after the end of the 12-month period covered by a utility's steam supply cost recovery plan, the commission shall commence a proceeding, to be known as a steam supply cost reconciliation, as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. Reasonable discovery shall be permitted before and during the reconciliation proceeding in order to assist parties and interested persons in obtaining evidence concerning reconciliation issues, including, but not limited to, the reasonableness and prudence of expenditures and the amounts collected pursuant to the clause. At the steam supply cost reconciliation, the commission shall reconcile the revenues recorded pursuant to the steam supply cost recovery factors and the allowance for cost of steam supply included in the base rates established in the latest commission order for the utility with the amounts actually expensed and included in the cost of steam supply by the utility. The commission shall consider any issue regarding the reasonableness and prudence of expenses for which customers were charged if the issue was not considered adequately at a previously conducted steam supply and cost review.

(13) In its order in a steam supply cost reconciliation, the commission shall require a utility to refund to customers or credit to customers' bills any net amount determined to have been recovered over the period covered in excess of the amounts determined to have been actually expensed by the utility for steam supply, and to have been incurred through reasonable and prudent actions not precluded by the commission order in the steam supply and cost review. The refunds or credits shall be apportioned among the customers of the utility utilizing procedures that the commission determines are reasonable. The commission may adopt different procedures with respect to customers served under the various rate schedules of the utility and may, in appropriate circumstances, order refunds or credits in proportion to the excess amounts actually collected from each customer during the period covered.

(14) In its order in a steam supply cost reconciliation, the commission shall authorize a utility to recover from customers any net amount by which the amount determined to have been recovered over the period

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covered was less than the amount determined to have been actually expensed by the utility for steam supply, and to have been incurred through reasonable and prudent actions not precluded by the commission order in the steam supply and cost review. For excess costs incurred through management actions contrary to the commission's steam supply and cost review order, the commission shall authorize a utility to recover costs incurred for steam supply in the reconciliation period in excess of the amount recovered over the period only if the utility demonstrates by clear and convincing evidence that the excess expenses were beyond the ability of the utility to control through reasonable and prudent actions. For excess costs incurred through management actions consistent with the commission's steam supply and cost review order, the commission shall authorize a utility to recover costs incurred for steam supply in the reconciliation period in excess of the amount recovered over the period only if the utility demonstrates that the level of the expenses resulted from reasonable and prudent management actions. The amounts in excess of the amounts actually recovered by the utility for steam supply shall be apportioned among and charged to the customers of the utility utilizing procedures that the commission determines are reasonable. The commission may adopt different procedures with respect to customers served under the various rate schedules of the utility and may, in appropriate circumstances, order charges to be made in proportion to the amounts which would have been paid by those customers if the amounts in excess of the amounts actually recovered by the utility for cost of steam supply had been included in the steam supply cost recovery factors with respect to those customers during the period covered. Charges for the excess amounts shall be spread over a period that the commission determines is appropriate.

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

(16) The commission shall file a report with the governor and legislature 5 years after the effective date of the amendatory act that added this section, and every 5 years thereafter, that shall include recommendations for any needed legislation regarding this section.

History: Add. 2008, Act 132, Imd. Eff. May 21, 2008.

****** 460.6s THIS SECTION IS AMENDED EFFECTIVE APRIL 20, 2017: See 460.6s.amended ******

460.6s Electric generation facility; application; review criteria and approval standards; order granting or denying certificate of necessity; hearing; reports; inclusion of costs in utility's retail rates; filing forms and instructions; integrated resource plan; financing interest cost recovery in utility's base rates.

Sec. 6s. (1) An electric utility that proposes to construct an electric generation facility, make a significant investment in an existing electric generation facility, purchase an existing electric generation facility, or enter into a power purchase agreement for the purchase of electric capacity for a period of 6 years or longer may submit an application to the commission seeking a certificate of necessity for that construction, investment, or purchase if that construction, investment, or purchase costs $500,000,000.00 or more and a portion of the costs would be allocable to retail customers in this state. A significant investment in an electric generation facility includes a group of investments reasonably planned to be made over a multiple year period not to exceed 6 years for a singular purpose such as increasing the capacity of an existing electric generation plant. The commission shall not issue a certificate of necessity under this section for any environmental upgrades to existing electric generation facilities or for a renewable energy system.

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

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

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

(b) A certificate of necessity that the size, fuel type, and other design characteristics of the existing or

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proposed electric generation facility or the terms of the power purchase agreement represent the most reasonable and prudent means of meeting that power need.

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

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

(4) Within 270 days of the filing of an application under this section, the commission shall issue an order granting or denying the requested certificate of necessity. The commission shall hold a hearing on the application. The hearing shall be conducted as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. The commission shall allow intervention by interested persons. Reasonable discovery shall be permitted before and during the hearing in order to assist parties and interested persons in obtaining evidence concerning the application, including, but not limited to, the reasonableness and prudence of the construction, investment, or purchase for which the certificate of necessity has been requested. The commission shall grant the request if it determines all of the following:

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

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

(c) The estimated cost of power from the existing or proposed electric generation facility or the price of power specified in the proposed power purchase agreement is reasonable. The commission shall find that the cost is reasonable if, in the construction or investment in a new or existing facility, to the extent it is commercially practicable, the estimated costs are the result of competitively bid engineering, procurement, and construction contracts, or in a power purchase agreement, the cost is the result of a competitive solicitation. Up to 150 days after an electric utility makes its initial filing, it may file to update its cost estimates if they have materially changed. No other aspect of the initial filing may be modified unless the application is withdrawn and refiled. A utility's filing updating its cost estimates does not extend the period for the commission to issue an order granting or denying a certificate of necessity. An affiliate of an electric utility that serves customers in this state and at least 1 other state may participate in the competitive bidding to provide engineering, procurement, and construction services to that electric utility for a project covered by this section.

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

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

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

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

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

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

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

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

(10) Within 90 days of the effective date of the amendatory act that added this section, the commission shall adopt standard application filing forms and instructions for use in all requests for a certificate of necessity under this section. The commission may, in its discretion, modify the standard application filing forms and instructions adopted under this section.

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

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

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

(c) Projected energy and capacity purchased or produced by the electric utility pursuant to any renewable portfolio standard.

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

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

(f) An analysis of the availability and costs of other electric resources that could defer, displace, or partially displace the proposed generation facility or purchased power agreement, including additional renewable energy, energy efficiency programs, load management, and demand response, beyond those amounts contained in subdivisions (c) to (e).

(g) Electric transmission options for the electric utility.

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

(13) As used in this section, "renewable energy system" means that term as defined in the clean, renewable, and efficient energy act.

History: Add. 2008, Act 286, Imd. Eff. Oct. 6, 2008.

****** 460.6s.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

460.6s.amended Electric generation facility; application; review criteria and approval standards; order granting or denying certificate of necessity; hearing; reports; inclusion of costs in utility's retail rates; refunds; interest; modifying or canceling approval of certificate of necessity; filing forms and instructions; integrated resource plan; financing interest cost recovery in utility's base rates; submission of alternative proposal; order subject to judicial review.

Sec. 6s. (1) An electric utility that proposes to construct an electric generation facility, make a significant investment in an existing electric generation facility, purchase an existing electric generation facility, or enter into a power purchase agreement for the purchase of electric capacity for a period of 6 years or longer may submit an application to the commission seeking a certificate of necessity for that construction, investment, or purchase if that construction, investment, or purchase costs $100,000,000.00 or more and a portion of the costs would be allocable to retail customers in this state. A significant investment in an electric generation facility includes a group of investments reasonably planned to be made over a multiple year period not to exceed 6 years for a singular purpose such as increasing the capacity of an existing electric generation plant. The commission shall not issue a certificate of necessity under this section for any environmental upgrades to

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existing electric generation facilities. If the application is for the construction of an electric generation facility of 225 megawatts or more or for the construction of an additional generating unit or units totaling 225 megawatts or more at an existing electric generation facility submitted as required under section 6t(13), the commission shall consolidate its proceedings under section 6t and this section. If the commission approves or denies an application for an electric generation facility under this section that has been submitted as required under section 6t(13), the provisions of this section prevail in a conflict with section 6t.

(2) The commission may implement separate review criteria and approval standards for electric utilities with less than 1,000,000 retail customers that seek a certificate of necessity for projects costing less than $100,000,000.00.

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

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

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

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

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

(4) Within 270 days after the filing of an application under this section, or, for an application for an electric generation facility submitted as required under section 6t(13), concurrently with a final order issued under section 6t, the commission shall issue an order granting or denying the requested certificate of necessity. The commission shall hold a hearing on the application. The hearing shall be conducted as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. The commission may allow intervention by persons under the rules of practice and procedure of the commission and shall allow intervention by existing suppliers of electric generation capacity under subsection (13), persons allowed to intervene in the contested case under section 6t, and interested persons. The commission shall permit reasonable discovery before and during the hearing in order to assist parties and interested persons in obtaining evidence concerning the application, including, but not limited to, the reasonableness and prudence of the construction, investment, or purchase for which the certificate of necessity has been requested. The commission shall grant the request if it determines all of the following:

(a) That the electric utility has demonstrated a need for the power that would be supplied by the existing or proposed electric generation facility or pursuant to the proposed power purchase agreement through its approved integrated resource plan under section 6t or subsection (11).

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

(c) The estimated cost of power from the existing or proposed electric generation facility or the price of power specified in the proposed power purchase agreement is reasonable. The commission shall find that the cost is reasonable if, in the construction or investment in a new or existing facility, to the extent it is commercially practicable, the estimated costs are the result of competitively bid engineering, procurement, and construction contracts, or in a power purchase agreement, the cost is the result of a competitive solicitation. Up to 150 days after an electric utility makes its initial filing, it may file to update its cost estimates if they have materially changed. No other aspect of the initial filing may be modified unless the application is withdrawn and refiled. A utility's filing updating its cost estimates does not extend the period for the commission to issue an order granting or denying a certificate of necessity. An affiliate of an electric utility that serves customers in this state and at least 1 other state may participate in the competitive bidding to provide engineering, procurement, and construction services to that electric utility for a project covered by this section.

(d) The existing or proposed electric generation facility or proposed power purchase agreement represents the most reasonable and prudent means of meeting the power need relative to other resource options for meeting power demand, including energy efficiency programs, electric transmission efficiencies, and any alternative proposals submitted under this section by existing suppliers of electric generation capacity under subsection (13) or other intervenors.

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

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

(6) In a certificate of necessity under this section, the commission shall specify the costs approved for the construction of or significant investment in the electric generation facility, the price approved for the purchase of the existing electric generation facility, or the price approved for the purchase of power pursuant to the terms of the power purchase agreement. For power purchase agreements that an electric utility enters into with an entity that is not affiliated with that electric utility after the effective date of the amendatory act that added section 6t, the commission shall consider and may authorize a financial incentive for that utility that does not exceed the electric utility's weighted average cost of capital.

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

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

(9) Once the electric generation facility or power purchase agreement is considered used and useful or as otherwise provided in subsection (12), the commission shall include in an electric utility's retail rates all reasonable and prudent costs for an electric generation facility or power purchase agreement for which a certificate of necessity has been granted. The commission shall not disallow recovery of costs an electric utility incurs in constructing, investing in, or purchasing an electric generation facility or in purchasing power pursuant to a power purchase agreement for which a certificate of necessity has been granted, if the costs do not exceed the costs approved by the commission in the certificate. The portion of the cost of a plant, facility, or power purchase agreement that exceeds the cost approved by the commission is presumed to have been incurred due to a lack of prudence. Once the electric generation facility or power purchase agreement is considered used and useful or as otherwise provided in subsection (12), the commission shall include in the electric utility's retail rates costs actually incurred by the electric utility that exceed the costs approved by the commission only if the commission finds by a preponderance of the evidence that the additional costs were prudently incurred. The commission shall disallow costs the commission finds have been incurred as the result of fraud, concealment, gross mismanagement, or lack of quality controls amounting to gross mismanagement. The commission shall also require refunds with interest to ratepayers of any of these costs already recovered through the electric utility's rates and charges. If the assumptions underlying an approved certificate of necessity, other than a certificate of necessity approved for a power purchase agreement for the purchase of electric capacity, materially change, an electric utility may request, or the commission on its own motion may initiate, a proceeding to review whether it is reasonable and prudent to complete an unfinished project for which a certificate of necessity has been granted. If the commission finds that completion of the project is no longer reasonable and prudent, the commission may modify or cancel approval of the certificate of necessity. Except for costs the commission finds an electric utility has incurred as the result of fraud, concealment, gross mismanagement, or lack of quality controls amounting to gross mismanagement, if commission approval is modified or canceled, the commission shall not disallow reasonable and prudent costs already incurred or committed to by contract by an electric utility. Once the commission finds that completion of the project is no longer reasonable and prudent, the commission may limit future cost recovery to those costs that could not be reasonably avoided.

(10) The commission shall adopt standard application filing forms and instructions for use in all requests for a certificate of necessity under this section. The commission may modify the standard application filing forms and instructions adopted under this section.

(11) The commission shall establish standards for an integrated resource plan that shall be filed by an electric utility requesting a certificate of necessity under this section. This subsection does not apply to an electric utility that has an approved integrated resource plan under section 6t. An integrated resource plan shall include all of the following:

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

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

(c) Projected energy and capacity purchased or produced by the electric utility under any renewable portfolio standard.

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

(e) Projected load management and demand response savings for the electric utility and the projected costs

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for those programs.

(f) An analysis of the availability and costs of other electric resources that could defer, displace, or partially displace the proposed generation facility or purchased power agreement, including additional renewable energy, energy efficiency programs, load management, and demand response, beyond those amounts contained in subdivisions (c) to (e).

(g) Electric transmission options for the electric utility.

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

(13) An existing supplier of electric generation capacity currently producing at least 200 megawatts of firm electric generation capacity resources located in the independent system operator's zone in which the utility's load is served that seeks to provide electric generation capacity resources to the utility may submit a written proposal directly to the commission as an alternative to the construction, investment, or purchase for which the certificate of necessity is sought under this section. The entity submitting an alternative proposal under this subsection has standing to intervene and the commission shall allow reasonable discovery in the contested case proceeding conducted under this section. In evaluating an alternative proposal, the commission shall consider the cost of the alternative proposal and the submitting entity's qualifications, technical competence, capability, reliability, creditworthiness, and past performance. In reviewing an application, the commission may consider any alternative proposals submitted under this subsection. This subsection does not limit the ability of any other person to submit to the commission an alternative proposal to the construction, investment, or purchase for which a certificate of necessity is sought under this section and to petition for and be granted leave to intervene in the contested case proceeding conducted under this section under the rules of practice and procedure of the commission. This subsection does not authorize the commission to order or otherwise require an electric utility to adopt any alternative proposal submitted under this subsection.

(14) An order of the commission following a hearing under this section is subject to judicial review as provided under section 28 of article VI of the state constitution of 1963 and chapter 6 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.301 to 24.306, except that the filing of a petition for review must be filed in the court of appeals within 30 days after the order of the commission is issued and the court shall conduct the review as expeditiously as possible with lawful precedence over other matters.

History: Add. 2008, Act 286, Imd. Eff. Oct. 6, 2008;—Am. 2016, Act 341, Eff. Apr. 20, 2017.

***** *460.6t.added THIS ADDED SECTION IS EFFECTIVE APRIL 20, 2017* *****

460.6t.added Integrated resource plan.

Sec. 6t. (1) The commission shall, within 120 days of the effective date of the amendatory act that added this section and every 5 years thereafter, commence a proceeding and, in consultation with the Michigan agency for energy, the department of environmental quality, and other interested parties, do all of the following as part of the proceeding:

(a) Conduct an assessment of the potential for energy waste reduction in this state, based on what is economically and technologically feasible, as well as what is reasonably achievable.

(b) Conduct an assessment for the use of demand response programs in this state, based on what is economically and technologically feasible, as well as what is reasonably achievable. The assessment shall expressly account for advanced metering infrastructure that has already been installed in this state and seek to fully maximize potential benefits to ratepayers in lowering utility bills.

(c) Identify significant state or federal environmental regulations, laws, or rules and how each regulation, law, or rule would affect electric utilities in this state.

(d) Identify any formally proposed state or federal environmental regulation, law, or rule that has been published in the Michigan Register or the Federal Register and how the proposed regulation, law, or rule would affect electric utilities in this state.

(e) Identify any required planning reserve margins and local clearing requirements in areas of this state.

(f) Establish the modeling scenarios and assumptions each electric utility should include in addition to its own scenarios and assumptions in developing its integrated resource plan filed under subsection (3), including, but not limited to, all of the following:

(*i*) Any required planning reserve margins and local clearing requirements.

(*ii*) All applicable state and federal environmental regulations, laws, and rules identified in this subsection.

(*iii*) Any supply-side and demand-side resources that reasonably could address any need for additional

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generation capacity, including, but not limited to, the type of generation technology for any proposed generation facility, projected energy waste reduction savings, and projected load management and demand response savings.

(*iv*) Any regional infrastructure limitations in this state.

(*v*) The projected costs of different types of fuel used for electric generation.

(g) Allow other state agencies to provide input regarding any other regulatory requirements that should be included in modeling scenarios or assumptions.

(h) Publish a copy of the proposed modeling scenarios and assumptions to be used in integrated resource plans on the commission's website.

(i) Before issuing the final modeling scenarios and assumptions each electric utility should include in developing its integrated resource plan, receive written comments and hold hearings to solicit public input regarding the proposed modeling scenarios and assumptions.

(2) A proceeding commenced under subsection (1) shall be completed within 120 days, and shall not be a contested case under chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. The determination of the modeling assumptions for integrated resource plans made under subsection (1) is not considered a final order for purposes of judicial review. The determinations made under subsection (1) are only subject to judicial review as part of the final commission order approving an integrated resource plan under this section.

(3) Not later than 2 years after the effective date of the amendatory act that added this section, each electric utility whose rates are regulated by the commission shall file with the commission an integrated resource plan that provides a 5-year, 10-year, and 15-year projection of the utility's load obligations and a plan to meet those obligations, to meet the utility's requirements to provide generation reliability, including meeting planning reserve margin and local clearing requirements determined by the commission or the appropriate independent system operator, and to meet all applicable state and federal reliability and environmental regulations over the ensuing term of the plan. The commission shall issue an order establishing filing requirements, including application forms and instructions, and filing deadlines for an integrated resource plan filed by an electric utility whose rates are regulated by the commission. The electric utility's plan may include alternative modeling scenarios and assumptions in addition to those identified under subsection (1).

(4) For an electric utility with fewer than 1,000,000 customers in this state whose rates are regulated by the commission, the commission may issue an order implementing separate filing requirements, review criteria, and approval standards that differ from those established under subsection (3). An electric utility providing electric tariff service to customers both in this state and in at least 1 other state may design its integrated resource plan to cover all its customers on that multistate basis. If an electric utility has filed a multistate integrated resource plan that includes its service area in this state with the relevant utility regulatory commission in another state in which it provides tariff service to retail customers, the commission shall accept that integrated resource plan filing for filing purposes in this state. However, the commission may require supplemental information if necessary as part of its evaluation and determination of whether to approve the plan. Upon request of an electric utility, the commission may adjust the filing dates for a multistate integrated resource plan filing in this state to place its review on the same timeline as other relevant state reviews.

(5) An integrated resource plan shall include all of the following:

(a) A long-term forecast of the electric utility's sales and peak demand under various reasonable scenarios.

(b) The type of generation technology proposed for a generation facility contained in the plan and the proposed capacity of the generation facility, including projected fuel costs under various reasonable scenarios.

(c) Projected energy purchased or produced by the electric utility from a renewable energy resource. If the level of renewable energy purchased or produced is projected to drop over the planning periods set forth in subsection (3), the electric utility must demonstrate why the reduction is in the best interest of ratepayers.

(d) Details regarding the utility's plan to eliminate energy waste, including the total amount of energy waste reduction expected to be achieved annually, the cost of the plan, and the expected savings for its retail customers.

(e) An analysis of how the combined amounts of renewable energy and energy waste reduction achieved under the plan compare to the renewable energy resources and energy waste reduction goal provided in section 1 of the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1001. This analysis and comparison may include renewable energy and capacity in any form, including generating electricity from renewable energy systems for sale to retail customers or purchasing or otherwise acquiring renewable energy credits with or without associated renewable energy, allowed under section 27 of the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1027, as it existed before the effective date of the amendatory act that added this section.

(f) Projected load management and demand response savings for the electric utility and the projected costs

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for those programs.

(g) Projected energy and capacity purchased or produced by the electric utility from a cogeneration resource.

(h) An analysis of potential new or upgraded electric transmission options for the electric utility.

(i) Data regarding the utility's current generation portfolio, including the age, capacity factor, licensing status, and remaining estimated time of operation for each facility in the portfolio.

(j) Plans for meeting current and future capacity needs with the cost estimates for all proposed construction and major investments, including any transmission or distribution infrastructure that would be required to support the proposed construction or investment, and power purchase agreements.

(k) An analysis of the cost, capacity factor, and viability of all reasonable options available to meet projected energy and capacity needs, including, but not limited to, existing electric generation facilities in this state.

(*l*) Projected rate impact for the periods covered by the plan.

(m) How the utility will comply with all applicable state and federal environmental regulations, laws, and rules, and the projected costs of complying with those regulations, laws, and rules.

(n) A forecast of the utility's peak demand and details regarding the amount of peak demand reduction the utility expects to achieve and the actions the utility proposes to take in order to achieve that peak demand reduction.

(o) The projected long-term firm gas transportation contracts or natural gas storage the electric utility will hold to provide an adequate supply of natural gas to any new generation facility.

(6) Before filing an integrated resource plan under this section, each electric utility whose rates are regulated by the commission shall issue a request for proposals to provide any new supply-side generation capacity resources needed to serve the utility's reasonably projected electric load, applicable planning reserve margin, and local clearing requirement for its customers in this state and customers the utility serves in other states during the initial 3-year planning period to be considered in each integrated resource plan to be filed under this section. An electric utility shall define qualifying performance standards, contract terms, technical competence, capability, reliability, creditworthiness, past performance, and other criteria that responses and respondents to the request for proposals must meet in order to be considered by the utility in its integrated resource plan to be filed under this section. Respondents to a request for proposals may request that certain proprietary information be exempt from public disclosure as allowed by the commission. A utility that issues a request for proposals under this subsection shall use the resulting proposals to inform its integrated resource plan filed under this section and include all of the submitted proposals as attachments to its integrated resource plan filing regardless of whether the proposals met the qualifying performance standards, contract terms, technical competence, capability, reliability, creditworthiness, past performance, or other criteria specified for the utility's request for proposals under this section. An existing supplier of electric generation capacity currently producing at least 200 megawatts of firm electric generation capacity resources located in the independent system operator's zone in which the utility's load is served that seeks to provide electric generation capacity resources to the utility may submit a written proposal directly to the commission as an alternative to any supply-side generation capacity resource included in the electric utility's integrated resource plan submitted under this section, and has standing to intervene in the contested case proceeding conducted under this section. This subsection does not require an entity that submits an alternative under this subsection to submit an integrated resource plan. This subsection does not limit the ability of any other person to submit to the commission an alternative proposal to any supply-side generation capacity resource included in the electric utility's integrated resource plan submitted under this section and to petition for and be granted leave to intervene in the contested case proceeding conducted under this section under the rules of practice and procedure of the commission. The commission shall only consider an alternative proposal submitted under this subsection as part of its approval process under subsection (8). The electric utility submitting an integrated resource plan under this section is not required to adopt any proposals submitted under this subsection. To the extent practicable, each electric utility is encouraged, but not required, to partner with other electric providers in the same local resource zone as the utility's load is served in the development of any new supply-side generation capacity resources included as part of its integrated resource plan.

(7) Not later than 300 days after an electric utility files an integrated resource plan under this section, the commission shall state if the commission has any recommended changes, and if so, describe them in sufficient detail to allow their incorporation in the integrated resource plan. If the commission does not recommend changes, it shall issue a final, appealable order approving or denying the plan filed by the electric utility. If the commission recommends changes, the commission shall set a schedule allowing parties at least 15 days after that recommendation to file comments regarding those recommendations, and allowing the electric utility at least 30 days to consider the recommended changes and submit a revised integrated resource

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plan that incorporates 1 or more of the recommended changes. If the electric utility submits a revised integrated resource plan under this section, the commission shall issue a final, appealable order approving the plan as revised by the electric utility or denying the plan. The commission shall issue a final, appealable order no later than 360 days after an electric utility files an integrated resource plan under this section. Up to 150 days after an electric utility makes its initial filing, the electric utility may file to update its cost estimates if those cost estimates have materially changed. A utility shall not modify any other aspect of the initial filing unless the utility withdraws and refiles the application. A utility's filing updating its cost estimates does not extend the period for the commission to issue an order approving or denying the integrated resource plan. The commission shall review the integrated resource plan in a contested case proceeding conducted pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. The commission shall allow intervention by interested persons including electric customers of the utility, respondents to the utility's request for proposals under this section, or other parties approved by the commission. The commission shall request an advisory opinion from the department of environmental quality regarding whether any potential decrease in emissions of sulfur dioxide, oxides of nitrogen, mercury, and particulate matter would reasonably be expected to result if the integrated resource plan proposed by the electric utility under subsection (3) was approved and whether the integrated resource plan can reasonably be expected to achieve compliance with the regulations, laws, or rules identified in subsection (1). The commission may take official notice of the opinion issued by the department of environmental quality under this subsection pursuant to R 792.10428 of the Michigan Administrative Code. Information submitted by the department of environmental quality under this subsection is advisory and is not binding on future determinations by the department of environmental quality or the commission in any proceeding or permitting process. This section does not prevent an electric utility from applying for, or receiving, any necessary permits from the department of environmental quality. The commission may invite other state agencies to provide testimony regarding other relevant regulatory requirements related to the integrated resource plan. The commission shall permit reasonable discovery after an integrated resource plan is filed and during the hearing in order to assist parties and interested persons in obtaining evidence concerning the integrated resource plan, including, but not limited to, the reasonableness and prudence of the plan and alternatives to the plan raised by intervening parties.

(8) The commission shall approve the integrated resource plan under subsection (7) if the commission determines all of the following:

(a) The proposed integrated resource plan represents the most reasonable and prudent means of meeting the electric utility's energy and capacity needs. To determine whether the integrated resource plan is the most reasonable and prudent means of meeting energy and capacity needs, the commission shall consider whether the plan appropriately balances all of the following factors:

(*i*) Resource adequacy and capacity to serve anticipated peak electric load, applicable planning reserve margin, and local clearing requirement.

(*ii*) Compliance with applicable state and federal environmental regulations.

(*iii*) Competitive pricing.

(*iv*) Reliability.

(*v*) Commodity price risks.

(*vi*) Diversity of generation supply.

(*vii*) Whether the proposed levels of peak load reduction and energy waste reduction are reasonable and cost effective. Exceeding the renewable energy resources and energy waste reduction goal in section 1 of the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1001, by a utility shall not, in and of itself, be grounds for determining that the proposed levels of peak load reduction, renewable energy, and energy waste reduction are not reasonable and cost effective.

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

(c) The plan meets the requirements of subsection (5).

(9) If the commission denies a utility's integrated resource plan, the utility, within 60 days after the date of the final order denying the integrated resource plan, may submit revisions to the integrated resource plan to the commission for approval. The commission shall commence a new contested case hearing under chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. Not later than 90 days after the date that the utility submits the revised integrated resource plan to the commission under this subsection, the commission shall issue an order approving or denying, with recommendations, the revised integrated resource plan if the revisions are not substantial or inconsistent with the original integrated resource

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plan filed under this section. If the revisions are substantial or inconsistent with the original integrated resource plan, the commission has up to 150 days to issue an order approving or denying, with recommendations, the revised integrated resource plan.

(10) If the commission denies an electric utility's integrated resource plan, the electric utility may proceed with a proposed construction, purchase, investment, or power purchase agreement contained in the integrated resource plan without the assurances granted under this section.

(11) In approving an integrated resource plan under this section, the commission shall specify the costs approved for the construction of or significant investment in an electric generation facility, the purchase of an existing electric generation facility, the purchase of power under the terms of the power purchase agreement, or other investments or resources used to meet energy and capacity needs that are included in the approved integrated resource plan. The costs for specifically identified investments, including the costs for facilities under subsection (12), included in an approved integrated resource plan that are commenced within 3 years after the commission's order approving the initial plan, amended plan, or plan review are considered reasonable and prudent for cost recovery purposes.

(12) Except as otherwise provided in subsection (13), for a new electric generation facility approved in an integrated resource plan that is to be owned by the electric utility and that is commenced within 3 years after the commission's order approving the plan, the commission shall finalize the approved costs for the facility only after the utility has done all of the following and filed the results, analysis, and recommendations with the commission:

(a) Implemented a competitive bidding process for all major engineering, procurement, and construction contracts associated with the construction of the facility.

(b) Implemented a competitive bidding process that allows third parties to submit firm and binding bids for the construction of an electric generation facility on behalf of the utility that would meet all of the technical, commercial, and other specifications required by the utility for the generation facility, such that ownership of the electric generation facility vests with the utility no later than the date the electric generation facility becomes commercially available.

(c) Demonstrated to the commission that the finalized costs for the new electric generation facility are not significantly higher than the initially approved costs under subsection (11). If the finalized costs are found to be significantly higher than the initially approved costs, the commission shall review and approve the proposed costs if the commission determines those costs are reasonable and prudent.

(13) If the capacity resource under subsection (12) is for the construction of an electric generation facility of 225 megawatts or more or for the construction of an additional generating unit or units totaling 225 megawatts or more at an existing electric generation facility, the utility shall submit an application to the commission seeking a certificate of necessity under section 6s.

(14) An electric utility shall annually, or more frequently if required by the commission, file reports to the commission regarding the status of any projects included in the initial 3-year period of an integrated resource plan approved under subsection (7).

(15) For power purchase agreements that a utility enters into after the effective date of the amendatory act that added this section with an entity that is not affiliated with that utility, the commission shall consider and may authorize a financial incentive for that utility that does not exceed the utility's weighted average cost of capital.

(16) Notwithstanding any other provision of law, an order by the commission approving an integrated resource plan may be reviewed by the court of appeals upon a filing by a party to the commission proceeding within 30 days after the order is issued. All appeals of the order shall be heard and determined as expeditiously as possible with lawful precedence over other matters. Review on appeal shall be based solely on the record before the commission and briefs to the court and is limited to whether the order conforms to the constitution and laws of this state and the United States and is within the authority of the commission under this act.

(17) The commission shall include in an electric utility's retail rates all reasonable and prudent costs specified under subsections (11) and (12) that have been incurred to implement an integrated resource plan approved by the commission. The commission shall not disallow recovery of costs an electric utility incurs in implementing an approved integrated resource plan, if the costs do not exceed the costs approved by the commission under subsections (11) and (12). If the actual costs incurred by the electric utility exceed the costs approved by the commission, the electric utility has the burden of proving by a preponderance of the evidence that the costs are reasonable and prudent. The portion of the cost of a plant, facility, power purchase agreement, or other investment in a resource that meets a demonstrated need for capacity that exceeds the cost approved by the commission is presumed to have been incurred due to a lack of prudence. The commission may include any or all of the portion of the cost in excess of the cost approved by the commission if the

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commission finds by a preponderance of the evidence that the costs are reasonable and prudent. The commission shall disallow costs the commission finds have been incurred as the result of fraud, concealment, gross mismanagement, or lack of quality controls amounting to gross mismanagement. The commission shall also require refunds with interest to ratepayers of any of these costs already recovered through the electric utility's rates and charges. If the assumptions underlying an approved integrated resource plan materially change, or if the commission believes it is unlikely that a project or program will become commercially operational, an electric utility may request, or the commission on its own motion may initiate, a proceeding to review whether it is reasonable and prudent to complete an unfinished project or program included in an approved integrated resource plan. If the commission finds that completion of the project or program is no longer reasonable and prudent, the commission may modify or cancel approval of the project or program and unincurred costs in the electric utility's integrated resource plan. Except for costs the commission finds an electric utility has incurred as the result of fraud, concealment, gross mismanagement, or lack of quality controls amounting to gross mismanagement, if commission approval is modified or canceled, the commission shall not disallow reasonable and prudent costs already incurred or committed to by contract by an electric utility. Once the commission finds that completion of the project or program is no longer reasonable and prudent, the commission may limit future cost recovery to those costs that could not be reasonably avoided.

(18) The commission may allow financing interest cost recovery in an electric utility's base rates on construction work in progress for capital improvements approved under this section prior to the assets' being considered used and useful. Regardless of whether or not the commission authorizes base rate treatment for construction work in progress financing interest expense, an electric utility may recognize, accrue, and defer the allowance for funds used during construction.

(19) An electric utility may seek to amend an approved integrated resource plan. Except as otherwise provided under this subsection, the commission shall consider the amendments under the same process and standards that govern the review and approval of a revised integrated resource plan under subsection (9). The commission may order an electric utility that seeks to amend an approved integrated resource plan under this subsection to file a plan review under subsection (21).

(20) An electric utility shall file an application for review of its integrated resource plan not later than 5 years after the effective date of the most recent commission order approving a plan, a plan amendment, or a plan review. The commission shall consider a plan review under the same process and standards established in this section for review and approval of an integrated resource plan. A commission order approving a plan review has the same effect as an order approving an integrated resource plan.

(21) The commission may, on its own motion or at the request of the electric utility, order an electric utility to file a plan review. The department of environmental quality may request the commission to order a plan review to address material changes in environmental regulations and requirements that occur after the commission's approval of an integrated resource plan. An electric utility must file a plan review within 270 days after the commission orders the utility to file a plan review.

(22) As used in this section, "long-term firm gas transportation" means a binding agreement entered into between the electric utility and a natural gas transmission provider for a set period of time to provide firm delivery of natural gas to an electric generation facility.

History: Add. 2016, Act 341, Eff. Apr. 20, 2017.

****** 460.6u.added THIS ADDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

460.6u.added Study; review of performance-based regulation systems; report; authority of commission.

Sec. 6u. (1) Not later than 90 days after the effective date of the amendatory act that added this section, the commission shall commence a study in collaboration with representatives of each customer class, utilities whose rates are regulated by the commission, and other interested parties regarding performance-based regulation, under which a utility's authorized rate of return would depend on the utility achieving targeted policy outcomes.

(2) In the study required under this section, the commission shall review performance-based regulation systems that have been implemented in another state or country, including, but not limited to, the RIIO (revenue = incentives + innovation + outputs) model utilized in the United Kingdom.

(3) In reviewing various performance-based regulation systems, the commission shall evaluate, but not be limited to, all of the following factors:

(a) Methods for estimating the revenue needed by a utility during a multiyear pricing period, and a fair return, that uses forecasts of efficient total expenditures by the utility instead of distinguishing between

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operating and capital costs.

(b) Methods to increase the length of time between rate cases, to provide utilities with more opportunity to retain cost savings without the threat of imminent rate adjustments, and to encourage utilities to make investments that have extended payback periods.

(c) Options for establishing incentives and penalties that pertain to issues such as customer satisfaction, safety, reliability, environmental impact, and social obligations.

(d) Profit-sharing provisions that can spread efficiency gains among consumers and utility shareholders and can reduce the degree of downside risk associated with attempts at innovation.

(4) Not later than 1 year after the effective date of the amendatory act that added this section, the commission shall report and make recommendations in writing to the legislature and governor based on the result of the study conducted under this section.

(5) This section does not limit the commission's authority to authorize performance-based regulation.

History: Add. 2016, Act 341, Eff. Apr. 20, 2017.

****** 460.6v.added THIS ADDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

460.6v.added Proceeding to reevaluate procedures and rates schedules; report; definitions.

Sec. 6v. (1) Notwithstanding any existing power purchase agreement, the commission shall, at least every 5 years, conduct a proceeding, as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287, to reevaluate the procedures and rates schedules including avoided cost rates, as originally established by the commission in an order dated March 17, 1981 in case no. U-6798, to implement title II, section 210, of the public utility regulatory policies act of 1978, as it relates to qualifying facilities from which utilities in this state have an obligation to purchase energy and capacity. Nothing in this section supersedes the provisions of PURPA or the Federal Energy Regulatory Commission's regulations and orders implementing PURPA.

(2) In setting rates for avoided costs, the commission shall take into consideration the factors regarding avoided costs set forth in PURPA and the Federal Energy Regulatory Commission's regulations and orders implementing PURPA.

(3) After an initial contested case under subsection (1), for a utility serving less than 1,000,000 electric customers in this state, the commission may conduct any periodic reevaluations of the procedures, rate schedules, and avoided cost rates for that utility using notice and comment procedures instead of a full contested case. The commission shall conduct the periodic reevaluation in a contested case under chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287, if a qualifying facility files a comment disputing the utility filing and requesting a contested case.

(4) An order issued by the commission under subsection (1) shall do all of the following:

(a) Ensure that the rates for purchases by an electric utility from, and rates for sales to, a qualifying facility shall, over the term of a contract, be just and reasonable and in the public interest, as defined by PURPA.

(b) Ensure that an electric utility does not discriminate against a qualifying facility with respect to the conditions or price for provision of maintenance power, backup power, interruptible power, and supplementary power or for any other service.

(c) Require that any prices charged by an electric utility for maintenance power, backup power, interruptible power, and supplementary power and all other such services are cost-based and just and reasonable.

(d) Establish a schedule of avoided cost price updates for each electric utility.

(e) Require electric utilities to publish on their websites template contracts for power purchase agreements for qualifying facilities of less than 3 megawatts that need not include terms for either price or duration of the contract. The terms of a template contract published under this subsection are not binding on either an electric utility or a qualifying facility and may be negotiated and altered upon agreement between an electric utility and a qualifying facility.

(5) Within 1 year after the effective date of the amendatory act that added this section, and every 2 years thereafter, the commission shall issue a report to the Michigan agency for energy and the standing committees of the senate and house of representatives with primary responsibility for energy and environmental issues. The report shall provide a description and status of qualifying facilities in this state, the current status of power purchase agreements of each qualifying facility, and the commission's efforts to comply with the requirements of PURPA.

(6) As used in this section:

(a) "Avoided costs" means that term as defined in 18 CFR 292.101.

(b) "Backup power" means electric energy or capacity supplied by an electric utility to replace electric

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energy ordinarily generated by a qualifying facility's own electric generation equipment during an unscheduled outage of the qualifying facility.

(c) "Maintenance power" means electric energy or capacity supplied by an electric utility during scheduled outages of the qualifying facility.

(d) "PURPA" means title II, section 210, of the public utility regulatory policies act of 1978.

(e) "Qualifying facility" or "facilities" means qualifying cogeneration facilities or qualifying small power production facilities from which an electric utility within this state has an obligation to purchase energy and capacity within the meaning of sections 201 and 210 of PURPA, 16 USC 796 and 824a-3, and associated federal regulations and orders.

(f) "Supplementary power" means electric energy or capacity supplied by an electric utility, regularly used by a qualifying facility in addition to the electric energy or capacity that the qualifying facility generates.

History: Add. 2016, Act 341, Eff. Apr. 20, 2017.

****** 460.6w.added THIS ADDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

460.6w.added Resource adequacy tariff that provides for capacity forward auction; option for state to implement prevailing state compensation mechanism for capacity; order to implement prevailing state compensation mechanism; contested case proceeding; finding; order to implement state reliability mechanism; capacity charge; establishment; determination; failure to meet requirements in subsection (8)(b); civil action for injunctive relief; definitions.

Sec. 6w. (1) If the appropriate independent system operator receives approval from the Federal Energy Regulatory Commission to implement a resource adequacy tariff that provides for a capacity forward auction, and includes the option for a state to implement a prevailing state compensation mechanism for capacity, then the commission shall examine whether the prevailing state compensation mechanism would be more cost-effective, reasonable, and prudent than the capacity forward auction for this state before the commission may order the prevailing state compensation mechanism to be implemented in any utility service territory in which the prevailing state compensation mechanism is not yet effective. Before the commission orders the implementation of the prevailing state compensation mechanism in 1 or more utility service territories, the commission shall hold a contested case hearing pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. The commission shall allow intervention by interested persons, alternative electric suppliers, and customers of alternative electric suppliers and the utility under consideration. At the conclusion of the proceeding, the commission shall make a finding for each utility service territory under consideration, based on clear and convincing evidence, as to whether or not the prevailing state compensation mechanism would be more cost-effective, reasonable, and prudent than the use of the capacity forward auction for this state in meeting the local clearing requirement and the planning reserve margin requirement. The contested case must be scheduled for completion by December 1 before the independent system operator's capacity forward auction for this state, and the commission's decision shall identify which utility service territories will be subject to the prevailing state compensation mechanism. If the commission implements the prevailing state compensation mechanism, it shall implement the prevailing state compensation mechanism for a minimum of 4 consecutive planning years unless such period conflicts with the federal tariff. The commission shall establish the charge as a capacity charge under subsection (3) and determine that charge consistent with the approved resource adequacy tariff of the appropriate independent system operator.

(2) If the appropriate independent system operator receives approval from the Federal Energy Regulatory Commission to implement a resource adequacy tariff that provides for a capacity forward auction, and does not include the option for a state to implement a prevailing state compensation mechanism for capacity, then the commission shall examine whether a state reliability mechanism established under subsection (8) would be more cost-effective, reasonable, and prudent than the capacity forward auction for this state before the commission may order the state reliability mechanism to be implemented in any utility service territory. Before the commission orders the implementation of the state reliability mechanism in 1 or more utility service territories, the commission shall hold a contested case hearing pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. The commission shall allow intervention by interested persons, alternative electric suppliers, and customers of alternative electric suppliers and the utility under consideration. At the conclusion of the proceeding, the commission shall make a finding for each utility service territory under consideration, based on clear and convincing evidence, as to whether or not the state reliability mechanism would be more cost-effective, reasonable, and prudent than the use of the capacity forward auction for this state in meeting the local clearing requirement and the planning reserve

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margin requirement. The contested case must be scheduled for completion by December 1 before the independent system operator's capacity forward auction for this state, and the commission's decision shall identify which utility service territories will be subject to the state reliability mechanism. If, by September 30, 2017, the Federal Energy Regulatory Commission does not put into effect a resource adequacy tariff that includes a capacity forward auction or a prevailing state compensation mechanism, then the commission shall establish a state reliability mechanism under subsection (8). The commission may commence a proceeding before October 1 if the commission believes orderly administration would be enabled by doing so. If the commission implements a state reliability mechanism, it shall be for a minimum of 4 consecutive planning years beginning in the upcoming planning year. A state reliability charge must be established in the same manner as a capacity charge under subsection (3) and be determined consistent with subsection (8).

(3) After the effective date of the amendatory act that added section 6t, the commission shall establish a capacity charge as provided in this section. A determination of a capacity charge must be conducted as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287, after providing interested persons with notice and a reasonable opportunity for a full and complete hearing and conclude by December 1 of each year. The commission shall allow intervention by interested persons, alternative electric suppliers, and customers of alternative electric suppliers and the utility under consideration. The commission shall provide notice to the public of the single capacity charge as determined for each territory. No new capacity charge is required to be paid before June 1, 2018. The capacity charge must be applied to alternative electric load that is not exempt as set forth under subsections (6) and (7). If the commission elects to implement a capacity forward auction for this state as set forth in subsection (1) or (2), then a capacity charge shall not apply beginning in the first year that the capacity forward auction for this state is effective. In order to ensure that noncapacity electric generation services are not included in the capacity charge, in determining the capacity charge, the commission shall do both of the following and ensure that the resulting capacity charge does not differ for full service load and alternative electric supplier load:

(a) For the applicable term of the capacity charge, include the capacity-related generation costs included in the utility's base rates, surcharges, and power supply cost recovery factors, regardless of whether those costs result from utility ownership of the capacity resources or the purchase or lease of the capacity resource from a third party.

(b) For the applicable term of the capacity charge, subtract all non-capacity-related electric generation costs, including, but not limited to, costs previously set for recovery through net stranded cost recovery and securitization and the projected revenues, net of projected fuel costs, from all of the following:

(*i*) All energy market sales.

(*ii*) Off-system energy sales.

(*iii*) Ancillary services sales.

(*iv*) Energy sales under unit-specific bilateral contracts.

(4) The commission shall provide for a true-up mechanism that results in a utility charge or credit for the difference between the projected net revenues described in subsection (3) and the actual net revenues reflected in the capacity charge. The true-up shall be reflected in the capacity charge in the subsequent year. The methodology used to set the capacity charge shall be the same methodology used in the true-up for the applicable planning year.

(5) Not less than once every year, the commission shall review or amend the capacity charge in all subsequent rate cases, power supply cost recovery cases, or separate proceedings established for that purpose.

(6) A capacity charge shall not be assessed for any portion of capacity obligations for each planning year for which an alternative electric supplier can demonstrate that it can meet its capacity obligations through owned or contractual rights to any resource that the appropriate independent system operator allows to meet the capacity obligation of the electric provider. The preceding sentence shall not be applied in any way that conflicts with a fedral resource adequacy tariff, when applicable. Any electric provider that has previously demonstrated that it can meet all or a portion of its capacity obligations shall give notice to the commission by September 1 of the year 4 years before the beginning of the applicable planning year if it does not expect to meet that capacity obligation and instead expects to pay a capacity charge. The capacity charge in the utility service territory must be paid for the portion of its load taking service from the alternative electric supplier not covered by capacity as set forth in this subsection during the period that any such capacity charge is effective.

(7) An electric provider shall provide capacity to meet the capacity obligation for the portion of that load taking service from an alternative electric supplier in the electric provider's service territory that is covered by the capacity charge during the period that any such capacity charge is effective. The alternative electric supplier has the obligation to provide capacity for the portion of the load for which the alternative electric supplier has demonstrated an ability to meet its capacity obligations. If an alternative electric supplier ceases to provide service for a portion or all of its load, it shall allow, at a cost no higher than the determined

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capacity charge, the assignment of any right to that capacity in the applicable planning year to whatever electric provider accepts that load.

(8) If a state reliability mechanism is required to be established under subsection (2), the commission shall do all of the following:

(a) Require, by December 1 of each year, that each electric utility demonstrate to the commission, in a format determined by the commission, that for the planning year beginning 4 years after the beginning of the current planning year, the electric utility owns or has contractual rights to sufficient capacity to meet its capacity obligations as set by the appropriate independent system operator, or commission, as applicable.

(b) Require, by the seventh business day of February each year, that each alternative electric supplier, cooperative electric utility, or municipally owned electric utility demonstrate to the commission, in a format determined by the commission, that for the planning year beginning 4 years after the beginning of the current planning year, the alternative electric supplier, cooperative electric utility, or municipally owned electric utility owns or has contractual rights to sufficient capacity to meet its capacity obligations as set by the appropriate independent system operator, or commission, as applicable. One or more municipally owned electric utilities may aggregate their capacity resources that are located in the same local resource zone to meet the requirements of this subdivision. One or more cooperative electric utilities may aggregate their capacity resources that are located in the same local resource zone to meet the requirements of this subdivision. A cooperative or municipally owned electric utility may meet the requirements of this subdivision through any resource, including a resource acquired through a capacity forward auction, that the appropriate independent system operator allows to qualify for meeting the local clearing requirement. A cooperative or municipally owned electric utility's payment of an auction price related to a capacity deficiency as part of a capacity forward auction conducted by the appropriate independent system operator does not by itself satisfy the resource adequacy requirements of this section unless the appropriate independent system operator can directly tie that provider's payment to a capacity resource that meets the requirements of this subsection. By the seventh business day of February in 2018, an alternative electric supplier shall demonstrate to the commission, in a format determined by the commission, that for the planning year beginning June 1, 2018, and the subsequent 3 planning years, the alternative electric supplier owns or has contractual rights to sufficient capacity to meet its capacity obligations as set by the appropriate independent system operator, or commission, as applicable. If the commission finds an electric provider has failed to demonstrate it can meet a portion or all of its capacity obligation, the commission shall do all of the following:

(*i*) For alternative electric load, require the payment of a capacity charge that is determined, assessed, and applied in the same manner as under subsection (3) for that portion of the load not covered as set forth in subsections (6) and (7). If a capacity charge is required to be paid under this subdivision in the planning year beginning June 1, 2018 or any of the 3 subsequent planning years, the capacity charge is applicable for each of those planning years.

(*ii*) For a cooperative or municipally owned electric utility, recommend to the attorney general that suit be brought consistent with the provisions of subsection (9) to require that procurement.

(*iii*) For an electric utility, require any audits and reporting as the commission considers necessary to determine if sufficient capacity is procured. If an electric utility fails to meet its capacity obligations, the commission may assess appropriate and reasonable fines, penalties, and customer refunds under this act.

(c) In order to determine the capacity obligations, request that the appropriate independent system operator provide technical assistance in determining the local clearing requirement and planning reserve margin requirement. If the appropriate independent system operator declines, or has not made a determination by October 1 of that year, the commission shall set any required local clearing requirement and planning reserve margin requirement, consistent with federal reliability requirements.

(d) In order to determine if resources put forward will meet such federal reliability requirements, request technical assistance from the appropriate independent system operator to assist with assessing resources to ensure that any resources will meet federal reliability requirements. If the technical assistance is rendered, the commission shall accept the appropriate independent system operator's determinations unless it finds adequate justification to deviate from the determinations related to the qualification of resources. If the appropriate independent system operator declines, or has not made a determination by February 28, the commission shall make those determinations.

(9) The attorney general or any customer of a municipally owned electric utility or cooperative electric utility may commence a civil action for injunctive relief against that municipally owned electric utility or cooperative electric utility if the municipally owned electric utility or cooperative electric utility fails to meet the applicable requirements of subsection (8)(b). The attorney general or customer shall commence an action under this subsection in the circuit court for the county in which the principal office of the municipally owned electric utility or cooperative electric utility is located. The attorney general or customer shall not file an

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action under this subsection unless the attorney general or customer gives the municipally owned electric utility or cooperative electric utility at least 60 days' written notice of the intent to sue, the basis for the suit, and the relief sought. Within 30 days after the municipally owned electric utility or cooperative electric utility receives written notice of the intent to sue, the municipally owned electric utility or cooperative electric utility and the attorney general or customer shall meet and make a good-faith attempt to determine if there is a credible basis for the action. The municipally owned electric utility or cooperative electric utility shall take all reasonable and prudent steps necessary to comply with the applicable requirements of subsection (8)(b) within 90 days after the meeting if there is a credible basis for the action. If the parties do not agree as to whether there is a credible basis for the action, the attorney general or customer may proceed to file the suit.

(10) The commission shall adjust the dates under this section if needed to ensure proper alignment with the appropriate independent system operator's procedures and requirements. However, any changes to the dates in this section must ensure that providers still meet applicable reliability requirements. The commission shall not permit a capacity charge to be assessed under this section for any year in which it has elected the capacity forward auction instead of the prevailing state compensation mechanism or the state reliability mechanism.

(11) Nothing in this act shall prevent the commission from determining a generation capacity charge under the reliability assurance agreement, rate schedule FERC No. 44 of the independent system operator known as PJM Interconnection, LLC, as approved by the Federal Energy Regulatory Commission in docket no. ER10-2710 or similar successor tariff.

(12) As used in this section:

(a) "Appropriate independent system operator" means the Midcontinent Independent System Operator.

(b) "Capacity forward auction" means an auction-based resource adequacy construct and the associated tariffs developed by the appropriate independent system operator for at least a portion of this state for 3 years forward or more.

(c) "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.

(d) "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 (8).

(e) "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 the appropriate independent system operator under subsection (8).

(f) "Planning year" means June 1 through the following May 31 of each year.

(g) "Prevailing state compensation mechanism" means an option for a state to elect a prevailing compensation rate for capacity consistent with the requirements of the appropriate independent system operator's resource adequacy tariff.

(h) "State reliability mechanism" means a plan adopted by the commission in the absence of a prevailing state compensation mechanism to ensure reliability of the electric grid in this state consistent with subsection (8).

History: Add. 2016, Act 341, Eff. Apr. 20, 2017.

****** 460.6x.added THIS ADDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

460.6x.added Shared saving mechanism.

Sec. 6x. (1) Subject to section 6a(13), in order to ensure equivalent consideration of energy waste reduction resources within the integrated resource planning process, the commission shall by January 1, 2021 authorize a shared savings mechanism for an electric utility to the extent that the electric utility has not otherwise capitalized the costs of the energy waste reduction, conservation, demand reduction, and other waste reduction measures.

(2) For an electric utility that achieves annual electric energy savings of at least 1% but not greater than 1.25% of its total annual weather-adjusted retail sales in megawatt hours in the previous calendar year, the shared savings incentive shall be 25% of the net benefits validated as a result of the programs implemented by the electric utility related to energy waste reduction, conservation, demand reduction, and other waste

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reduction. A shared savings mechanism authorized under this subsection shall not exceed 15% of the electric utility's expenditures associated with implementing energy waste reduction programs for the calendar year in which the shared savings mechanism was authorized. The commission shall determine net benefits by calculating the net present value of the lifetime avoided utility costs that are projected from the utility's energy waste reduction programs implemented in a calendar year less the utility expenditures associated with implementing the energy waste reduction program in that calendar year, including all overhead and administrative costs. The commission shall calculate net present value by using a discount rate of the utility's weighted average cost of capital in that calendar year.

(3) For an electric utility that achieves annual electric energy savings of greater than 1.25% but not greater than 1.5% of the total annual weather-adjusted retail sales in megawatt hours in the previous calendar year, the shared savings incentive shall be 27.5% of the net benefits validated as a result of the programs implemented by the electric utility related to energy waste reduction, conservation, demand reduction, and other waste reduction. A shared savings mechanism authorized under this subsection shall not exceed 17.5% of the electric utility's expenditures associated with implementing energy waste reduction programs for the calendar year in which the shared savings mechanism was authorized. The commission shall determine net benefits by calculating the net present value of the lifetime avoided utility costs that are projected from the utility's energy waste reduction programs implemented in a calendar year less the utility expenditures associated with implementing the energy waste reduction program in that calendar year, including all overhead and administrative costs. The commission shall calculate net present value by using a discount rate of the utility's weighted average cost of capital in that calendar year.

(4) For an electric utility that achieves annual electric energy savings greater than 1.5% of the total annual weather-adjusted retail sales in megawatt hours in the previous calendar year, the shared savings incentive shall be 30% of the net benefits validated as a result of the programs implemented by the electric utility related to energy waste reduction, conservation, demand reduction, and other waste reduction. A shared savings mechanism authorized under this subsection shall not exceed 20% of the electric utility's expenditures associated with implementing energy waste reduction programs for the calendar year in which the shared savings mechanism was authorized. The commission shall determine net benefits by calculating the net present value of the lifetime avoided utility costs that are projected from the utility's energy waste reduction programs implemented in a calendar year less the utility expenditures associated with implementing the energy waste reduction program in that calendar year, including all overhead and administrative costs. The commission shall calculate net present value by using a discount rate of the utility's weighted average cost of capital in that calendar year.

History: Add. 2016, Act 341, Eff. Apr. 20, 2017.

****** 460.6z.added THIS ADDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

460.6z.added Discontinuing utility service to geographic area; abandonment application; proposal to retire electric generating plant; proposal to revise existing load balancing authority.

Sec. 6z. (1) A covered utility shall not discontinue utility service to a geographic area that the covered utility serves without first filing an abandonment application with the commission and obtaining approval from the commission to discontinue that service after notice and a contested case proceeding. The commission shall not approve any abandonment application filed under this section unless the commission determines that there is clear and convincing evidence that all affected customers would have access to affordable, reliable, and safe utility service from an alternative source. A covered utility does not have to file an abandonment application under this section if utility service is being discontinued to a specific parcel or parcels to enable another covered utility to provide service that the other covered utility is legally permitted to provide. As used in this subsection, "covered utility" means any of the following:

(a) A cooperative electric utility subject to the commission's jurisdiction for its service area, distribution performance standards, and quality of service.

(b) A rural gas cooperative.

(c) An electric utility, natural gas utility, or steam utility subject to the commission's rate-making jurisdiction.

(2) Not less than 30 days after an electric utility files a proposal to retire an electric generating plant with a regional transmission organization, the utility shall provide that proposal in its entirety to the commission.

(3) Not less than 60 days before an electric utility applies to the operating reliability subcommittee of the North American Electric Reliability Corporation for approval of a proposal to revise an existing load balancing authority, the electric utility shall do both of the following:

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(a) File with the commission a full and complete report of the proposed revision.

(b) Serve a copy of the report required to be filed with the commission under subdivision (a) on all other electric utilities in this state.

History: Add. 2016, Act 341, Eff. Apr. 20, 2017.

460.7 Railroad labor unions; representatives; right to participate in hearings.

Sec. 7. Any elected or designated representatives of a recognized labor organization in the railroad industry which has a fiduciary relationship with its members and the health or safety of whose members in the course of their employment is affected by any action or inaction of the public service commission (including any rule, practice or order of said commission) or is affected by the violation of any statute whose enforcement is within the jurisdiction of the public service commission, shall have the right to file complaints or petition and appeal and be heard and participate fully as a party in interest in any hearings or investigations conducted by the public service commission in connection therewith: Provided, That the services rendered by such elected or designated representative shall be part of his regular duties and responsibilities, and he shall receive for such services no special compensation or fee from such organization or any individual member or members thereof, and such representation is limited to matters pertaining to the health or safety of such members in the course of their employment. This provision shall in no way affect representation authorized by Act No. 162 of the Public Acts of 1966.

History: Add. 1967, Act 89, Eff. Nov. 2, 1967.

Former law: See section 7 of Act 3 of 1939, which was repealed by Act 267 of 1945.

460.8 Voluntary associations; hearings; persons entitled to appear; industrial representative.

Sec. 8. Any elected or designated representative of a voluntary association in the industry whose members have an economic interest in any matters covered by Act No. 254 of the Public Acts of 1933, as amended, being sections 475.1 to 479.49 of the Compiled Laws of 1948, shall have the right to appear and be fully heard and fully participate as a party of interest on behalf of his association only in any public hearing conducted by the public service commission relating to matters covered by Act No. 254 of the Public Acts of 1933, as amended, being sections 475.1 to 479.49 of the Compiled Laws of 1948. The same privilege shall be extended to an industrial representative; this section shall not be construed to affect in any way section 7 of this act as added by Act No. 89 of the Public Acts of 1967.

History: Add. 1968, Act 140, Imd. Eff. June 11, 1968.

Former law: See section 8 of Act 3 of 1939, which was repealed by Act 267 of 1945.

460.9 Definitions; customer switched to alternative gas supplier or natural gas utility; prohibitions; standards; rules; violation; remedies and penalties.

Sec. 9. (1) As used in this section:

(a) “Alternative gas supplier” or “supplier” means a person who sells natural gas at unregulated retail rates to customers located in this state, where the gas is delivered to customers by a natural gas utility that has a customer choice program. Retail sales in a customer choice program by an alternative gas supplier do not constitute public utility service.

(b) “Commission” means the Michigan public service commission in the department of consumer and industry services.

(c) “Customer” means an end-user of natural gas.

(d) “Customer choice program” means a program approved by the commission on application by a natural gas utility that allows retail customers to choose an alternative gas supplier.

(e) “Natural gas utility” means an investor-owned business engaged in the sale and distribution of natural gas within this state whose rates are regulated by the commission.

(2) An alternative gas supplier or natural gas utility shall not switch a customer to its gas supply without authorization of the customer. A natural gas utility shall not be found in violation of this subsection or a commission order issued under subsection (3), if the customer's service was switched by the natural gas utility under the applicable terms and conditions of a commission approved gas customer choice program or as the result of the default of an alternative gas supplier.

(3) The commission may issue orders to ensure that an alternative gas supplier or natural gas utility does not switch a customer to another supplier without the customer's written confirmation, confirmation through an independent third party, or other verification procedures subject to commission approval, confirming the customer's intent to make a switch and that the customer has approved the specific details of the switch.

(4) An alternative gas supplier or natural gas utility shall not include or add optional services in a customer's service package without the authorization of the customer.

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(5) The commission may issue orders to ensure that an alternative gas supplier or natural gas utility does not include or add optional services in a customer's service package without the customer's written confirmation, confirmation through an independent third party, or other verification procedures approved by the commission confirming the customer's intent to receive the optional services.

(6) An alternative gas supplier or natural gas utility shall not solicit or enter into contracts subject to this section with customers in this state in a misleading, fraudulent, or deceptive manner.

(7) The commission may by order establish minimum standards for the form and content of all disclosures, explanations, or sales information relating to the sale of a natural gas commodity in a customer choice program and disseminated by an alternative gas supplier or natural gas utility to ensure that the disclosures, explanations, and sales information contain accurate and understandable information and enable a customer to make an informed decision relating to the purchase of a natural gas commodity. Any standards established under this subsection shall be developed to do all of the following:

(a) Not be unduly burdensome.

(b) Not unnecessarily delay or inhibit the initiation and development of competition among alternative gas suppliers or natural gas utilities in any market.

(c) Establish different requirements for disclosures, explanations, or sales information relating to different services or similar services to different natural gas supply classes of customers, whenever such different requirements are appropriate to carry out the provisions of this section.

(8) The commission may adopt rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to implement this section.

(9) If after notice and hearing the commission finds a person has violated this section, the commission may order remedies and penalties to protect and make whole another person who has suffered an economic loss as a result of the violation, including, but not limited to, 1 or more of the following:

(a) Order the person to pay a fine for the first offense of not less than $20,000.00 or more than $30,000.00. For a second and any subsequent offense, the commission shall order the person to pay a fine of not less than $30,000.00 or more than $50,000.00. If the commission finds that the second or any of the subsequent offenses were knowingly made in violation of subsection (2) or (4), the commission shall order the person to pay a fine of not more than $70,000.00. Each switch made in violation of subsection (2) or service added in violation of subsection (4) shall be a separate offense under this subdivision.

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

(c) Order a portion between 10% to 50% of the fine assessed under subdivision (a) be paid directly to the customer who suffered the violation of subsection (2) or (4).

(d) Order the person to reimburse an authorized supplier an amount equal to the amount paid by the customer that should have been paid to the authorized supplier.

(e) If the person is licensed under this act, revoke the license if the commission finds a pattern of violations of subsection (2) or (4).

(f) Issue cease and desist orders.

(10) Notwithstanding subsection (9), a fine shall not be imposed for a violation if the person shows that the violation was an unintentional and bona fide error which occurred notwithstanding the maintenance of procedures reasonably adopted to avoid the error.

(11) A natural gas utility shall not be found in violation of this section for switching a customer's supplier or adding optional services to a customer's account if the switch or addition was made pursuant to the request or notice of an alternative gas supplier that is responsible under a customer choice program for obtaining the customer's approval.

History: Add. 2002, Act 634, Imd. Eff. Dec. 23, 2002.

460.9b Alternative gas suppliers; licensing procedure; maintenance of office; capabilities; records; tax remittance.

Sec. 9b. (1) The commission shall issue orders establishing a licensing procedure for all alternative gas suppliers participating in any natural gas customer choice program approved by the commission. An alternative gas supplier shall not do business in this state without first receiving a license under this act.

(2) An alternative gas supplier shall maintain an office within this state.

(3) The commission shall assure that an alternative gas supplier doing business in this state has the necessary financial, managerial, and technical capabilities and require the supplier to maintain records that the commission considers necessary.

(4) The commission shall require an alternative gas supplier to collect and remit to state and local units of government all applicable users, sales, and use taxes if the natural gas utility is not doing so on behalf of the

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supplier.

History: Add. 2002, Act 634, Imd. Eff. Dec. 23, 2002.

460.9c Customer on active duty in military; shut-off protection.

Sec. 9c. (1) Except as otherwise provided by this section, a provider of electric or gas service shall not discontinue the service to the residence of a qualifying customer who has made a filing under this section.

(2) In addition to protection provided under the Michigan military act, 1967 PA 150, MCL 32.501 to 32.851, a qualifying customer may apply for shut-off protection for electric or gas service by notifying the provider that he or she is in need of assistance because of a reduction in household income as the result of a call to active duty status in the military.

(3) A provider of service may request verification of the call to active duty status from the qualifying customer.

(4) A qualifying customer may receive shut-off protection from the provider of service under this section for up to 90 days. Upon application to the provider, the provider may grant the qualifying customer 1 or more extensions.

(5) A qualifying customer receiving assistance under this section shall notify the provider of the end of the call to active duty status as soon as that status is known.

(6) Unless waived by the provider, the shut-off protection provided under this section does not void or limit the obligation of the qualifying customer to pay for electric or gas services received during the time of assistance.

(7) A provider shall do all of the following:

(a) Establish a repayment plan requiring minimum monthly payments that allows the qualifying customer to pay any past due amounts over a reasonable time period not to exceed 1 year.

(b) Provide a qualifying customer with information regarding any governmental, provider, or other assistance programs.

(c) Provide qualifying customers with access to existing information on ways to minimize or conserve their service usage.

(8) This section does not affect or amend any commission rules or orders pertaining to billing standards. If the terms and conditions under subsection (7)(a) are not followed by the qualifying customer, the provider may follow the procedures in the commission's rules on consumer standards and billing practices for electric and gas residential service.

(9) As used in this section, a “qualifying customer” means all of the following:

(a) A residential household where the income is reduced because the customer of record, or the spouse of the customer of record, is called to full-time active military service by the president of the United States or the governor of this state during a time of declared national or state emergency or war.

(b) Assistance is needed by the residential household to maintain electric and gas service.

(c) The residential household has notified the provider of the need for assistance and, if required, has provided verification of the call to active duty status.

History: Add. 2003, Act 204, Imd. Eff. Nov. 26, 2003.

460.9d Unauthorized use of electric or natural gas service causing unsafe connection; action to be taken by utility; reestablishment of service; abandonment or surrender of property; scope of section; definitions.

Sec. 9d. (1) If a utility observes an unsafe electric or natural gas service connection at a customer's location caused by unauthorized use of electric or natural gas service, the utility shall implement measures consistent with good utility practices intended to cure or to otherwise address the unsafe connection and may take appropriate action to deter future unauthorized use of electric or natural gas service at that location, including, but not limited to, installation of additional utility facilities.

(2) At any customer location where a utility has shut off electric or natural gas service 2 or more times during the prior 24 months because of unauthorized use of electric or natural gas service, a utility may refuse to provide electric or natural gas service to that location notwithstanding any other administrative rules or statutes if the utility determines that denying electric or natural gas service at that location will prevent the reoccurrence of the unauthorized use.

(3) A utility shall reestablish electric or natural gas service at a customer location if the person requesting service does 1 of the following:

(a) Proves that the person is the legal owner of the property by providing property ownership information and, prior to reconnection of service, pays for the actual cost to repair the utility's equipment and facilities located on the owner's property, all fees and deposits required under the utility's approved schedule of rates

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and tariffs, and all charges due to the utility for the prior unauthorized use that occurred during his or her ownership.

(b) Proves that the person is the legal owner of the property by providing property ownership information and provides a signed lease agreement that has been certified by the landlord that establishes the identity of the tenant responsible for the prior unauthorized use.

(4) If the legal owner cannot provide documentation establishing the identity of the tenant responsible for the prior unauthorized use and the owner does not agree to pay for the charges due to the utility for the prior unauthorized use, a utility may still reestablish electric or natural gas service if the owner proves that the owner is the legal owner of the property by providing property ownership information and agrees to payment of the additional fee for reestablishing electric or natural gas service at the location with multiple prior occurrences of unauthorized use as specified in the utility's approved schedule of rates and tariffs.

(5) If a person requesting electric or natural gas service cannot provide property ownership information, a utility may reestablish service if the person can provide all of the following:

(a) Residency information.

(b) All documentation, fees, and deposits required by R 460.106, R 460.109, R 460.110, and R 460.144 of the Michigan administrative code.

(c) Payment of any additional fee for reestablishing electric or natural gas service at a location with multiple prior occurrences of unauthorized use as specified in the utility's approved schedule of rates and tariffs.

(6) A property owner shall provide notice to a utility within 30 days after the owner abandons or surrenders a property. If a property owner does not provide notice to the utility within 30 days after the property owner's abandonment or surrender of a property, that property owner is liable, jointly and severally, for any unauthorized use that occurs at the property after the owner's abandonment or surrender of the property.

(7) Within 150 days of the effective date of the amendatory act that added this section, electric and natural gas utilities serving 1,000,000 or more customers shall establish and maintain a service in which landlords of rental properties in the utility's service territory who have registered with the utility for shut-off notifications are notified of locations where electric and natural gas services have been shut off because of unauthorized use.

(8) This section only applies to the unauthorized use of electric or natural gas service and does not apply to the providing of a telecommunication service or cable service or the attachment of facilities by a telecommunication or cable service provider to the utility poles, ducts, conduits, or trenches owned or controlled by an electric or natural gas utility. This section does not supersede, modify, or affect the validity of any statutes, administrative rules, utility tariffs, contracts, commission orders, or common law governing the rates, terms, and conditions of the use of electric or natural gas utility poles, ducts, conduits, and trenches.

(9) As used in this section:

(a) "Bypassing" means unmetered service that flows through a device connected between a service line and customer-owned facilities.

(b) "Meter tampering" means any act that affects the proper registration of service through a meter and affects the flow of energy.

(c) "Positive identification information" means a driver's license or identification card issued by this or another state, a military identification card, a passport, or other government-issued identification containing a photograph.

(d) "Property ownership information" means a recorded warranty deed, notarized closing papers, tax records, mortgage payment book, or copy of an insurance policy for the address identifying an individual or entity as the owner.

(e) "Residency information" means all of the following:

(*i*) Positive identification information.

(*ii*) A signed lease agreement that has been certified by the landlord for the location where electric or natural gas service is being requested.

(*iii*) Any first-class mail sent to the person requesting electric or natural gas service within the last 3 months at that person's previous residence.

(f) "Unauthorized use of electric or natural gas service" or "unauthorized use" means theft, fraud, interference, or diversion of electric or natural gas service, including, but not limited to, meter tampering, bypassing, and service restoration by anyone other than the utility or its representative.

(g) "Utility" means an electric or natural gas utility regulated by the public service commission.

History: Add. 2010, Act 128, Imd. Eff. July 21, 2010.

460.9m Service shutoff resulting in death or serious injury; notice to commission;

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investigation; civil action; "provider" defined.

Sec. 9m. (1) A provider shall notify the commission of any shutoff of service that results in death or serious injury. A provider shall supply to the commission any relevant information regarding the death or serious injury, including, but not limited to, the procedures followed during the shutoff.

(2) Upon notification or the commission's own motion, the commission may investigate any shutoff of service by a provider that results in death or serious injury. After completing its investigation, the commission may refer the matter to the attorney general for commencement of a civil action under section 9p.

(3) As used in this section, "provider" means a municipally owned electric or natural gas utility.

History: Add. 2009, Act 154, Imd. Eff. Nov. 23, 2009.

460.9o Identification of senior citizen customers; methods; compliance within certain time period; extension; definitions.

Sec. 9o. (1) A provider shall, in the ordinary course of business, make efforts to identify senior citizen customers by at least 1 of the following methods:

(a) Conducting customer interviews.

(b) Obtaining information from a consumer reporting agency or consumer reporting service.

(c) A personal or automated telephone call where direct contact is made with a member of the customer's household or a message is recorded on an answering machine or voice mail.

(d) First-class mail.

(e) A personal visit to the customer.

(f) A written notice left at or on the customer's door.

(g) A bill insert.

(h) Any other method approved by the commission for regulated utilities.

(2) A provider shall comply with the requirements imposed in subsection (1) within 30 days after the effective date of the amendatory act that added this section. The provider's governing body may for good cause grant an extension to a provider for compliance with subsection (1).

(3) As used in this section:

(a) "Consumer reporting agency" means that term as defined in section 603 of the fair credit reporting act, 15 USC 1681a.

(b) "Provider" means a municipally owned electric or natural gas utility.

(c) "Senior citizen" means a provider customer who is 65 years of age or older.

History: Add. 2009, Act 173, Imd. Eff. Dec. 15, 2009.

460.9p Failure of utility to meet requirements of act; commencement of civil action; notice; compliance agreement; final order; costs of litigation; fines; construction and limitation of act.

Sec. 9p. (1) The attorney general, on his or her own motion or upon a referral from the commission in a case of serious injury or death, or any customer of a municipally owned electric or natural gas utility may commence a civil action for injunctive relief or imposition of a civil fine as provided in subsection (3) against that municipally owned electric or natural gas utility if the utility fails to meet the applicable requirements of this act. A municipally owned electric utility shall establish a complaint resolution process for its customers to resolve any allegations of violations of this act that have not resulted in a death or serious injury.

(2) An action under this section shall be commenced in the circuit court for the circuit in which the principal office of the municipally owned electric or natural gas utility is located. An action shall not be filed under this section unless the prospective plaintiff has given the prospective defendant at least 60 days' written notice of the prospective plaintiff's intent to sue, the basis for the suit, and the relief sought. Within 30 days after the prospective defendant receives written notice of the prospective plaintiff's intent to sue, the prospective defendant and plaintiff shall meet and make a good faith attempt to determine if there is a credible basis for the action. If both parties agree that there is a credible basis for the action, the prospective defendant shall take all reasonable and prudent steps necessary to comply with the applicable requirements of this act within 10 days of the meeting and may enter into a compliance agreement which may include the payment of a civil fine.

(3) In issuing a final order in an action brought under this section, a court may award costs of litigation, including reasonable attorney and expert witness fees, to the prevailing or substantially prevailing party. A court may order a municipally owned electric or natural gas utility to pay a civil fine for the first offense of not less than $1,000.00 or more than $20,000.00. For a second offense, the court may order the person to pay a fine of not less than $2,000.00 or more than $40,000.00. For a third and any subsequent offense, the court may order the person to pay a fine of not less than $5,000.00 or more than $50,000.00. A civil fine ordered

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under this section shall be deposited in the low income and energy efficiency fund.

(4) A municipally owned electric or natural gas utility or a customer of a municipally owned electric or natural gas utility is subject to this act only as expressly provided in this act. Nothing in this act shall give the commission the power to regulate a municipally owned electric or natural gas utility. Nothing in this section shall be construed to prevent a party from pursuing any other legal or equitable remedy that may be available to them.

History: Add. 2009, Act 172, Imd. Eff. Dec. 15, 2009.

460.9q Shut off or termination of service; conditions; reasons; notice requirements; prohibitions; attempts to contact customer; documentation; restoration of service; vulnerable household warmth fund; creation; use of funds; payments; distribution; priority; definitions.

Sec. 9q. (1) A provider may shut off service temporarily for reasons of health or safety or in a state or national emergency. When a provider shuts off service for reasons of health or safety, the provider shall leave a notice at the premises.

(2) Subject to the requirements of this act, a provider may shut off or terminate service to a residential customer for any of the following reasons:

(a) The customer has not paid a delinquent account that accrued within the last 6 years.

(b) The customer has failed to provide a deposit or guarantee as required by the provider.

(c) The customer has engaged in unauthorized use of a provider's service.

(d) The customer has failed to comply with the terms and conditions of a payment plan entered into with the provider in accordance with the provider's rules.

(e) The customer has refused to arrange access at reasonable times for the purpose of inspection, meter reading, maintenance, or replacement of equipment that is installed upon the premises or for the removal of a meter.

(f) The customer misrepresented his or her identity for the purpose of obtaining a provider service or put service in another person's name without permission of the other person.

(g) The customer has violated any rules of the provider so as to adversely affect the safety of the customer or other individuals or the integrity of the provider's system.

(h) An individual living in the customer's residence meets both of the following:

(*i*) Has a delinquent account for service with the provider within the past 3 years that remains unpaid.

(*ii*) The individual lived in the customer's residence when all or part of the debt was incurred. The provider may transfer a prorated amount of the debt to the customer's account, based upon the length of time that the individual resided at the customer's residence. This subdivision does not apply if the individual was a minor while living in the customer's residence.

(3) A provider shall not shut off service unless it sends a notice to the customer by first-class mail or personally serves the notice not less than 10 days before the date of the proposed shutoff. A provider shall maintain a record of the date the notice was sent.

(4) Subject to the requirements of sections 9r and 9s, a provider's governing body shall establish a policy to allow a customer the opportunity to enter into a payment plan for an amount owed to the provider that is not in dispute, if a customer claims an inability to pay in full. A provider is not required to enter into a subsequent payment plan with a customer until the customer has complied fully with the terms of an existing or previous payment plan unless the customer demonstrates a significant change in economic circumstances and requests a modification of the payment plan. A provider is not required to enter into a subsequent payment plan with a customer who defaulted on the terms and conditions of a payment plan within the last 12 months.

(5) A notice of shutoff under subsection (3) shall contain all of the following information:

(a) The name and address of the customer, and the address at which service is provided, if different.

(b) A clear and concise statement of the reason for the proposed shutoff of service.

(c) The date on or after which the provider may shut off service, unless the customer takes appropriate action.

(d) That the customer has the right to enter into a payment plan with the provider for an amount owed to the provider that is not in dispute and that the customer is presently unable to pay in full.

(e) The telephone number and address of the provider where the customer may make inquiry, enter into a payment plan, or file a complaint.

(f) That the provider will postpone the shutoff of service if a certified medical emergency exists at the customer's residence and the customer informs and provides documentation to the provider of that medical emergency.

(g) That during the heating season the provider will postpone shutoff of service if a customer is an eligible

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low-income customer that enters into a winter protection payment plan with the provider and the customer provides documentation that the customer is actively seeking emergency assistance from an energy assistance program.

(h) The energy assistance telephone line number at the department of human services or an operating 2-1-1 system telephone number.

(6) Subject to the requirements of this act, a provider may shut off service to a customer on the date specified in the notice of shutoff or at a reasonable time following that date. If a provider does not shut off service and mails a subsequent notice, then the provider shall not shut off service before the date specified in the subsequent notice. Shutoff shall occur only between the hours of 8 a.m. and 4 p.m.

(7) A provider shall not shut off service on a day, or a day immediately preceding a day, when the services of the provider are not available to the general public for the purpose of restoring service.

(8) For an involuntary shutoff, at least 1 day before shutoff of service, the provider shall make at least 2 attempts to contact the customer by 1 or more of the following methods:

(a) A personal or automated telephone call where direct contact is made with a member of the customer's household or a message is recorded on an answering machine or voice mail.

(b) First-class mail.

(c) A personal visit to the customer.

(d) A written notice left at or on the customer's door.

(e) Any other method approved by the commission for regulated utilities.

(9) A notice of shutoff sent under subsection (3) shall be considered as 1 attempt under subsection (8).

(10) The provider shall document all attempts to contact the customer under subsection (8).

(11) Immediately before the shutoff of service, an employee of the provider who is designated to perform that function may identify himself or herself to the customer or another responsible individual at the premises and may announce the purpose of his or her presence.

(12) When a provider employee shuts off service, the employee shall leave a notice. The notice shall state that service has been shut off and shall contain the address and telephone number of the provider where the customer may arrange to have service restored.

(13) For an involuntary shutoff using meters with remote shutoff and restoration ability, at least 1 day before shutoff of service, the provider shall make at least 2 attempts to contact the customer by 1 of the methods listed in subsection (8). Any notice shall state that the disconnection of service will be done remotely and that a provider representative will not return to the premises before disconnection. The provider shall document all attempts to contact the customer. If the provider contacts the customer or other responsible individual in the customer's household by telephone on the day service is to be shut off, the provider shall inform the customer or other responsible individual that shutoff of service is imminent and of the steps necessary to avoid shutoff. Unless the customer presents evidence that reasonably demonstrates that the claim is satisfied or is in dispute, or the customer makes payment, the employee may shut off service. If the provider complies with the notice requirements of this subsection, no further customer contact is required on the day service is to be shut off and the provider may shut off service.

(14) A provider shall not shut off service for any of the following reasons:

(a) The customer has not paid for concurrent service received at a separate metering point, residence, or location.

(b) The customer has not paid for service at a premises occupied by another person. A provider may shut off service in any of the following circumstances where proper notice has been given:

(*i*) If the customer supplies a written, notarized statement that the premises are unoccupied.

(*ii*) If the premises are occupied and the occupant agrees, in writing, to the shutoff of service.

(*iii*) If it is not feasible to provide service to the occupant as a customer without a major revision of existing distribution facilities.

(*iv*) If it is feasible to provide service to the occupant as a customer without a major revision of existing distribution facilities and the occupant refuses to put the account in their name.

(15) After a provider has shut off service, it shall restore service upon the customer's request when the cause has been cured or credit arrangements satisfactory to the provider have been made.

(16) When a provider is required to restore service at the customer's meter manually, the provider shall make reasonable efforts to restore service on the day the customer requests restoration. Except for reasons beyond its control, the provider shall restore service not later than the first working day after the customer's request.

(17) For providers using meter technology with remote shutoff and restoration capability, service shall be restored on the first working day after the customer requests restoration, except in the case of documented equipment failure.

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(18) The provider may assess the customer a charge for restoring service or relocating the customer's meter.

(19) The vulnerable household warmth fund is created within the state treasury. The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments. Money in the fund at the close of the fiscal year shall be refunded among each rate schedule, based on the rate schedules in effect when the money was collected, proportional to the amount paid by each rate schedule. The commission shall ensure that each utility refunds those amounts to its customers. The commission shall be the administrator of the fund for auditing purposes.

(20) Money from the fund, upon appropriation, shall be used to provide payment or partial payment of bills for electricity, natural gas, propane, heating oil, or any other type of fuel used to heat the primary residence of a vulnerable customer during the 2011-2012 heating season. A payment under this subsection shall be in the form of a voucher or direct payment to the utility, provider, cooperative, or distributor of fuel. The amount accumulated in the fund shall not exceed $48,000,000.00.

(21) The department of human services and the commission shall ensure that, in distributing money from the fund, first priority is given to households that contain at least 1 of the following:

(a) A minor child.

(b) An eligible senior citizen.

(c) A paraplegic, hemiplegic, quadriplegic, or totally and permanently disabled individual.

(22) Amounts that were, before the amendatory act that added this subsection, authorized by the commission to be collected in retail rates from the customers of an electric utility or natural gas utility with more than 1,000,000 customers in this state for contribution by the electric utility or natural gas utility to fund grants authorized by the commission in the June 28, 2011 order awarding low-income energy assistance grants in docket No. U-13129 are authorized for a period commencing with the effective date of the amendatory act that added this subsection, and continuing through September 30, 2012, or until $48,000,000.00 is accumulated in the fund from retail rates or appropriated funds, whichever occurs first. An electric utility or natural gas utility that collects money under this subsection shall remit that money to the state treasurer for deposit in the fund on a monthly basis no later than 30 days after the last day in each calendar month. The commission shall issue orders no later than September 30, 2012 reducing the retail rates of an electric utility or natural gas utility that collects money under this subsection by the annualized amount authorized for collection by this subsection and included in the retail rates of each electric utility or natural gas utility as established by the most recently completed rate case of the electric utility or natural gas utility before the effective date of the amendatory act that added this subsection.

(23) As used in this section:

(a) "Eligible senior citizen" means an individual who is 65 years of age or older.

(b) "Fund" means the vulnerable household warmth fund created in subsection (19).

(c) "Heating season" means that term as defined in section 9r.

(d) "Provider" means a municipally owned electric or natural gas utility.

(e) "Totally and permanently disabled" means a disability as defined in 42 USC 416.

(f) "Vulnerable customer" means either of the following:

(*i*) For an electric utility, provider, cooperative, or natural gas utility customer, a customer who meets both of the following:

(A) Has a household income that does not exceed 60% of the state median income, or receives any of the following:

(I) Assistance from a state emergency relief program.

(II) Food stamps.

(III) Medicaid.

(B) Has received a shut-off notice from the energy provider.

(*ii*) For a customer who uses a fuel other than electricity or natural gas to heat his or her residence, a customer who meets both of the following:

(A) Has a household income that does not exceed 60% of the state median income, or receives any of the following:

(I) Assistance from a state emergency relief program.

(II) Food stamps.

(III) Medicaid.

(B) Has received notice from their distributor of fuel that no further deliveries will be made to his or her residence due to nonpayment of prior bills.

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History: Add. 2009, Act 171, Eff. Jan. 14, 2010;—Am. 2011, Act 274, Imd. Eff. Dec. 20, 2011.

460.9r Shut off of service by municipally owned electric utility; prohibitions; requirements; definitions.

Sec. 9r. (1) A municipally owned electric utility shall not shut off service to an eligible customer during the heating season for nonpayment of a delinquent account if the customer is an eligible senior citizen customer or if the eligible customer enters into a winter protection payment plan to pay to the utility a monthly amount equal to 7% of the estimated annual bill for the eligible customer or the eligible customer and the utility mutually agree upon a winter protection payment plan with different terms and the eligible customer demonstrates, within 14 days of requesting shut-off protection, that he or she has applied for state or federal heating assistance. If an arrearage exists at the time an eligible customer applies for protection from shutoff of service during the heating season, the utility shall permit the customer to pay the arrearage in equal monthly installments between the date of application and the start of the subsequent heating season.

(2) If a customer fails to comply with the terms and conditions of a winter protection payment plan, a municipally owned electric utility may shut off service after giving the customer a notice, by personal service or first-class mail, that contains all of the following information:

(a) That the customer has defaulted on the winter protection payment plan.

(b) The nature of the default.

(c) That unless the customer makes the payments that are past due within 10 days of the date of mailing, the municipally owned electric utility may shut off service.

(d) The date on or after which the municipally owned electric utility may shut off service, unless the customer takes appropriate action.

(e) That the customer may petition the municipally owned electric utility in accordance with the utility's rules disputing the claim before the date of the proposed shutoff of service, or bring an action pursuant to section 9p.

(f) That the utility will not shut off service pending the resolution of a dispute that is filed with the utility in accordance with this section.

(g) The telephone number and address of the utility where the customer may make inquiry, enter into a payment plan, or file a complaint.

(h) The energy assistance telephone line number at the department of human services or an operating 2-1-1 system telephone number.

(i) That the utility will postpone shutoff of service if a medical emergency exists at the customer's residence.

(j) That the utility may require a deposit and restoration charge if the supplier shuts off service for nonpayment of a delinquent account.

(3) As used in this section:

(a) "Eligible customer" means either an eligible low-income customer or an eligible senior citizen customer who demonstrates to the utility his or her eligibility.

(b) "Eligible low-income customer" means a customer whose household income does not exceed 150% of the poverty level, as published by the United States department of health and human services, or who receives any of the following:

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

(*ii*) Food stamps.

(*iii*) Medicaid.

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

(d) "Heating season" means November 1 through March 31.

History: Add. 2009, Act 174, Eff. Jan. 14, 2010.

460.9s Postponement of service shutoff; conditions; definitions.

Sec. 9s. (1) A provider shall postpone a shutoff of service for not more than 21 days if the customer or a member of the customer's household is a critical care customer or has a certified medical emergency. The customer's certification shall identify the medical condition, any medical or life-supporting equipment being used, and the specific time period during which the shutoff of service will aggravate the medical emergency. The provider shall extend the postponement for further periods of not more than 21 days, not to exceed a total postponement of shutoff of service of 63 days, only if the customer provides additional certification that the customer or a member of the customer's household is a critical care customer or has a certified medical emergency. If shutoff of service has occurred without any postponement being obtained, the provider shall

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restore service for not more than 21 days, and shall continue the restoration for further periods of not more than 21 days, not to exceed a total restoration of service of 63 days in any 12-month period per household member. Annually, a provider is not required to grant shutoff extensions totaling more than 126 days per household.

(2) As used in this section:

(a) "Critical care customer" means a customer who requires, or has a household member who requires, home medical equipment or a life-support system, and who has provided appropriate documentation from a physician or medical facility to the provider identifying the medical equipment or life-support system and certifying that an interruption of service would be immediately life-threatening.

(b) "Medical emergency" means an existing medical condition of the customer or a member of the customer's household, as defined and certified by a physician or public health official on official stationery or company-provided form, that will be aggravated by the lack of utility service.

(c) "Provider" means a municipally owned electric or natural gas utility.

History: Add. 2009, Act 152, Imd. Eff. Nov. 23, 2009.

460.9t Low-income energy assistance fund.

Sec. 9t. (1) The low-income energy assistance fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The department of licensing and regulatory affairs shall be the administrator of the fund for auditing purposes.

(5) Subject to the limitations imposed in this section, the department of human services shall expend money from the fund, upon appropriation, as provided in the Michigan energy assistance act, 2012 PA 615, MCL 400.1231 to 400.1236. The department of human services, in consultation with the public service commission, shall ensure that all money collected for the fund from a geographic area is returned, to the extent possible, to that geographic area.

(6) Subject to the limitations imposed in this subsection, the public service commission may, after an opportunity to comment, annually approve a low-income energy assistance funding factor no later than July 31 of each year for the subsequent fiscal year. The low-income energy assistance funding factor shall be the same across all customer classes and shall not exceed $1.00. The amount used by the public service commission to calculate a low-income energy assistance funding factor during each fiscal year shall not exceed $50,000,000.00 minus both the amount appropriated from the general fund in that fiscal year for home energy assistance and the amount remaining in the fund from the prior fiscal year. An electric utility, municipally owned electric utility, or cooperative electric utility that collects money under this subsection shall remit that money to the state treasurer for deposit in the fund on a monthly basis no later than 30 days after the last day in each calendar month. The electric utility, municipally owned electric utility, or cooperative electric utility shall list the low-income energy assistance funding factor as a separate line item on each customer's bill.

(7) An electric utility, municipally owned electric utility, or cooperative electric utility may elect to not collect a low-income energy assistance funding factor under this section by annually filing a notice with the public service commission by July 1. Notwithstanding any other provision of this act, an electric utility, municipally owned electric utility, or cooperative electric utility that elects to not collect a low-income energy assistance funding factor under this section shall not shut off service to any residential customer from November 1 to April 15 for nonpayment of a delinquent account.

(8) An electric utility, municipally owned electric utility, or cooperative electric utility that does not opt out under subsection (7), or an association representing a municipally owned electric utility or cooperative electric utility that does not opt out under subsection (7), shall annually provide to the public service commission by July 1 the number of retail billing meters it serves in this state that are subject to the low-income energy assistance funding factor.

(9) Nothing in this act gives the public service commission the power to regulate a municipally owned electric utility.

(10) As used in this section:

(a) "Fund" means the low-income energy assistance fund created in subsection (1).

(b) "Low-income energy assistance funding factor" means a nonbypassable surcharge on each retail billing meter payable monthly by every customer receiving a retail distribution service from an electric utility,

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municipally owned electric utility, or cooperative electric utility that does not opt out under subsection (7), regardless of the identity of the customer's electric generation supplier. The low-income energy assistance funding factor shall not be charged on more than 1 residential meter per residential site.

History: Add. 2013, Act 95, Imd. Eff. July 1, 2013.

****** 460.10 THIS SECTION IS AMENDED EFFECTIVE APRIL 20, 2017: See 460.10.amended ******

460.10 MCL 460.10 to 460.10bb; title of sections; purpose.

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

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

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

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

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

(d) To ensure that all persons in this state are afforded safe, reliable electric power at a reasonable rate.

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

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

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000;—Am. 2008, Act 286, Imd. Eff. Oct. 6, 2008.

Popular name: Customer Choice and Electricity Reliability Act

****** 460.10.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

460.10.amended MCL 460.10a to 460.10bb; purpose.

Sec. 10. The purpose of sections 10a through 10bb is to do all of the following:

(a) To ensure that all persons in this state are afforded safe, reliable electric power at a competitive rate.

(b) To improve the opportunities for economic development in this state and to promote financially healthy and competitive utilities in this state.

(c) To maintain, foster, and encourage robust, reliable, and economic generation, distribution, and transmission systems to provide this state's electric suppliers and generators an opportunity to access regional sources of generation and wholesale power markets and to ensure a reliable supply of electricity in this state.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000;—Am. 2008, Act 286, Imd. Eff. Oct. 6, 2008;—Am. 2016, Act 341, Eff. Apr. 20, 2017.

Popular name: Customer Choice and Electricity Reliability Act

****** 460.10a THIS SECTION IS AMENDED EFFECTIVE APRIL 20, 2017: See 460.10a.amended ******

460.10a Alternative electric suppliers; orders establishing rates, terms, and conditions of service; licensing procedure; switching or billing for services without consent; code of conduct; appliance service program; self-service power; affiliate wheeling; rights of parties to existing contracts and agreements; receipt of standard tariff service; recovery of costs by electric utility offering retail open access service; definitions.

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

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

(b) Set forth procedures necessary to administer and allocate the amount of load that will be allowed to be served by alternative electric suppliers, through the use of annual energy allotments awarded on a calendar year basis, and shall provide, among other things, that existing customers who are taking electric service from an alternative electric supplier at a facility on the effective date of the amendatory act that added this subdivision shall be given an allocated annual energy allotment for that service at that facility, that customers seeking to expand usage at a facility served through an alternative electric supplier will be given next priority,

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with the remaining available load, if any, allocated on a first-come first-served basis. The procedures shall also provide how customer facilities will be defined for the purpose of assigning the annual energy allotments to be allocated under this section. The commission shall not allocate additional annual energy allotments at any time when the total annual energy allotments for the utility's distribution service territory is greater than 10% of the utility's weather-adjusted retail sales in the calendar year preceding the date of allocation. If the sales of a utility are less in a subsequent year or if the energy usage of a customer receiving electric service from an alternative electric supplier exceeds its annual energy allotment for that facility, that customer shall not be forced to purchase electricity from a utility, but may purchase electricity from an alternative electric supplier for that facility during that calendar year.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Prior to enrolling a customer into the program, the utility shall inform the potential customer of all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) "Affiliate" means a person or entity that directly, or indirectly through 1 or more intermediates, controls, is controlled by, or is under common control with another specified entity. As used in this subdivision, "control" means, whether through an ownership, beneficial, contractual, or equitable interest, the possession, directly or indirectly, of the power to direct or to cause the direction of the management or

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policies of a person or entity or the ownership of at least 7% of an entity either directly or indirectly.

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

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

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

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

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

(16) The commission shall authorize rates that will ensure that an electric utility that offered retail open access service from 2002 through the effective date of the amendatory act that added this subsection fully recovers its restructuring costs and any associated accrued regulatory assets. This includes, but is not limited to, implementation costs, stranded costs, and costs authorized pursuant to section 10d(4) as it existed prior to the effective date of the amendatory act that added this subsection, that have been authorized for recovery by the commission in orders issued prior to the effective date of the amendatory act that added this subsection. The commission shall approve surcharges that will ensure full recovery of all such costs within 5 years of the effective date of the amendatory act that added this subsection.

(17) As used in subsections (1) and (15):

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

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

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000;—Am. 2003, Act 214, Imd. Eff. Dec. 2, 2003;—Am. 2004, Act 88, Imd. Eff. Apr. 22, 2004;—Am. 2008, Act 286, Imd. Eff. Oct. 6, 2008.

Popular name: Customer Choice and Electricity Reliability Act

***** *460.10a.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 20, 2017* *****

460.10a.amended Alternative electric suppliers; orders establishing rates, terms, and conditions of service; licensing procedure; switching or billing for services without consent; self-service power; affiliate wheeling; rights of parties to existing contracts and agreements; receipt of standard tariff service; recovery of costs by electric utility offering retail open access service; definitions.

Sec. 10a. (1) The commission shall issue orders establishing the rates, terms, and conditions of service that allow retail customers to take service from an alternative electric supplier. The orders shall do all of the following:

(a) Except as otherwise provided in this section, provide that no more than 10% of an electric utility's average weather-adjusted retail sales for the preceding calendar year may take service from an alternative electric supplier at any time.

(b) Set forth procedures necessary to allocate the amount of load that will be allowed to be served by

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alternative electric suppliers, through the use of annual energy allotments awarded on a calendar year basis. If the sales of a utility are less in a subsequent year or if the energy usage of a customer receiving electric service from an alternative electric supplier exceeds its annual energy allotment for that facility, that customer shall not be forced to purchase electricity from a utility, but may purchase electricity from an alternative electric supplier for that facility during that calendar year.

(c) Notwithstanding any other provision of this section, provide that, if the commission determines that less than 10% of an electric utility's average weather-adjusted retail sales for the preceding calendar year is taking service from alternative electric suppliers, the commission shall set as a cap on the weather-adjusted retail sales that may take service from an alternative electric supplier, for the current calendar year and 5 subsequent calendar years, the percentage amount of weather-adjusted retail sales for the preceding calendar year rounded up to the nearest whole percentage. If the cap is not adjusted for 6 consecutive calendar years, the cap shall return to 10% in the calendar year following that sixth consecutive calendar year. If a utility that serves less than 200,000 customers in this state has not had any load served by an alternative electric supplier in the preceding 4 years, the commission shall adjust the cap in accordance with this provision for no more than 2 consecutive calendar years.

(d) Notwithstanding any other provision of this section, customers seeking to expand usage at a facility that has been continuously served through an alternative electric supplier since April 1, 2008 shall be permitted to purchase electricity from an alternative electric supplier for both the existing and any expanded load at that facility as well as any new facility constructed or acquired after October 6, 2008 that is similar in nature if the customer owns more than 50% of the new facility.

(e) Provide that for an existing facility that is receiving 100% of its electric service from an alternative electric supplier on or after the effective date of the amendatory act that added section 6t, the owner of that facility may purchase electricity from an alternative electric supplier, regardless of whether the sales exceed 10% of the servicing electric utility's average weather-adjusted retail sales, for both the existing electric choice load at that facility and any expanded load arising after the effective date of the amendatory act that added section 6t at that facility as well as any new facility that is similar in nature to the existing facility, that is constructed or acquired by the customer on a site contiguous to the existing site or on a site that would be contiguous to an existing site in the absence of an existing public right-of-way, and the customer owns more than 50% of that facility. This subdivision does not authorize or permit an existing facility being served by an electric utility on standard tariff service on the effective date of the amendatory act that added section 6t to be served by an alternative electric supplier.

(f) Notwithstanding any other provision of this section, any customer operating an iron ore mining facility, iron ore processing facility, or both, located in the Upper Peninsula of this state, may purchase all or any portion of its electricity from an alternative electric supplier, regardless of whether the sales exceed 10% of the serving electric utility's average weather-adjusted retail sales, if that customer is in compliance with the terms of a settlement agreement requiring it to facilitate construction of a new power plant located in the Upper Peninsula of this state. A customer described in this subdivision and the alternative electric supplier that provides electric service to that customer are not subject to the requirements contained in the amendatory act that added section 6t and any administrative regulations adopted under that amendatory act. The commission's orders establishing rates, terms, and conditions of retail access service issued before the effective date of the amendatory act that added section 6t remain in effect with regard to retail open access provided under this subdivision.

(g) Provide that a customer on an enrollment queue waiting to take retail open access service as of December 31, 2015 shall continue on the queue and an electric utility shall add a new customer to the queue if the customer's prospective alternative electric supplier submits an enrollment request to the electric utility. A customer shall be removed from the queue by notifying the electric utility electronically or in writing.

(h) Require each electric utility to file with the commission not later than January 15 of each year a rank-ordered queue of all customers awaiting retail open access service under subdivision (g). The filing must include the estimated amount of electricity used by each customer awaiting retail open access service under subdivision (g). All customer-specific information contained in the filing under this subdivision is exempt from release under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and the commission shall treat that information as confidential information. The commission may release aggregated information as part of its annual report as long as individual customer information or data are not released.

(i) Provide that if the prospective alternative electric supplier of a customer next on the queue awaiting retail open access service is notified after the effective date of the amendatory act that added section 6t that less than 10% of an electric utility's average weather-adjusted retail sales for the preceding calendar year are taking service from an alternative electric supplier and that the amount of electricity needed to serve the customer's electric load is available under the 10% allocation, the customer may take service from an

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alternative electric supplier. The customer's prospective alternative electric supplier shall notify the electric utility within 5 business days after being notified whether the customer will take service from an alternative electric supplier. If the customer's prospective alternative electric supplier fails to notify the utility within 5 business days or if the customer chooses not to take retail open access service, the customer shall be removed from the queue of those awaiting retail open access service. The customer may subsequently be added to the queue as a new customer under the provisions of subdivision (g). A customer that elects to take service from an alternative electric supplier under this subdivision shall become service-ready under rules established by the commission and the utility's approved retail open access service tariffs.

(j) 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 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.

(k) Provide that as a condition of licensure, an alternative electric supplier meets all of the requirements of this act.

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

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

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

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

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

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

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

(5) This act does not prohibit or limit the right of a person to engage in affiliate wheeling and does not impose a transition, implementation, exit fee, or any other similar charge on a person engaged in affiliate wheeling.

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

(7) A customer that elects to receive service from an alternative electric supplier may subsequently provide notice to the electric utility of the customer's desire to receive standard tariff service from the electric utility under procedures approved by the commission.

(8) The commission shall authorize rates that will ensure that an electric utility that offered retail open access service from 2002 through October 6, 2008 fully recovers its restructuring costs and any associated

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accrued regulatory assets. This includes, but is not limited to, implementation costs, stranded costs, and costs authorized under section 10d(4) as it existed before October 6, 2008, that have been authorized for recovery by the commission in orders issued before October 6, 2008. The commission shall approve surcharges that will ensure full recovery of all such costs by October 6, 2013.

(9) As used in subsections (1) and (7):

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

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

(10) As used in this section:

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

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

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

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

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000;—Am. 2003, Act 214, Imd. Eff. Dec. 2, 2003;—Am. 2004, Act 88, Imd. Eff. Apr. 22, 2004;—Am. 2008, Act 286, Imd. Eff. Oct. 6, 2008;—Am. 2016, Act 341, Eff. Apr. 20, 2017.

Popular name: Customer Choice and Electricity Reliability Act

460.10b Rates, terms, and conditions of new technologies; application to unbundle existing rate schedules; providing reliable and lower cost competitive rates; standby generation service; identification of retail market prices.

Sec. 10b. (1) The commission shall establish rates, terms, and conditions of electric service that promote and enhance the development of new generation, transmission, and distribution technologies.

(2) No later than 1 year from June 5, 2000, each electric utility shall file an application with the commission to unbundle its existing commercial and industrial rate schedules and separately identify and charge for their discrete services. No earlier than 1 year from June 5, 2000, the commission may order the electric utility to file an application to unbundle existing residential rate schedules. The commission may allow the unbundled rates to be expressed on residential billings in terms of percentages in order to simplify residential billing. The commission shall allow recovery by electric utilities of all just and reasonable costs incurred by electric utilities to implement and administer the provisions of this subsection.

(3) The orders issued under this act shall include, but are not limited to, the providing of reliable and lower cost competitive rates for all customers in this state.

(4) An electric utility is obligated, with commission oversight, to provide standby generation service for open access load on a best efforts basis until December 31, 2001 or the date established under section 10d(2) as it existed prior to the effective date of the amendatory act that added this sentence, whichever is later. The pricing for the electric generation standby service is equal to the retail market price of comparable standby service allowed under subsection (5). An electric utility is not required to interrupt firm off-system sales or firm service customers to provide standby generation service. Until the date established under section 10d(2) as it existed prior to the effective date of the amendatory act that added this sentence, standby generation service shall continue to be provided to nonopen access customers under regulated tariffs.

(5) The methodology for identifying the retail market price for electric generation service to be applied under this section shall be determined by the commission based upon market indices commonly relied upon in the electric generation industry, adjusted as appropriate to reflect retail market prices in the relevant market.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000;—Am. 2008, Act 286, Imd. Eff. Oct. 6, 2008.

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Popular name: Customer Choice and Electricity Reliability Act

****** 460.10c THIS SECTION IS AMENDED EFFECTIVE APRIL 20, 2017: See 460.10c.amended ******

460.10c Determination of noncompliance; order of remedies and penalties; conduct of contested case; violation as unintentional and bona fide error; finding of frivolous complaint.

Sec. 10c. (1) Except for a violation under section 10a(3) and as otherwise provided under this section, upon a complaint or on the commission's own motion, if the commission finds, after notice and hearing, that an electric utility or an alternative electric supplier has not complied with a provision or order issued under sections 10 through 10bb, the commission shall order such remedies and penalties as necessary to make whole a customer or other person who has suffered damages as a result of the violation, including, but not limited to, 1 or more of the following:

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

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

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

(d) Revoke the license of the alternative electric supplier if the commission finds a pattern of violations.

(e) Issue cease and desist orders.

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

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

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

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

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

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

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

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

(g) Issue cease and desist orders.

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

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

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

****** 460.10c.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

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460.10c.amended Determination of noncompliance; order of remedies and penalties; contested case; violation as unintentional and bona fide error; finding of frivolous complaint.

Sec. 10c. (1) Except for a violation under section 10a(3) and as otherwise provided under this section, upon a complaint or on the commission's own motion, if the commission finds, after notice and hearing, that an electric utility or an alternative electric supplier has not complied with a provision or order issued under sections 10 through 10ee, or that a natural gas utility has not complied with a provision or order issued under section 10ee, the commission shall order any remedies and penalties necessary to make whole a customer or other person that has suffered damages as a result of the violation, including, but not limited to, 1 or more of the following:

(a) Order the electric utility, natural gas utility, or alternative electric supplier to pay a fine for the first offense of not less than $1,000.00 or more than $20,000.00. For a second offense, the commission shall order the person to pay a fine of not less than $2,000.00 or more than $40,000.00. For a third and any subsequent offense, the commission shall order the person to pay a fine of not less than $5,000.00 or more than $50,000.00.

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

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

(d) Revoke the license of the alternative electric supplier if the commission finds a pattern of violations.

(e) Issue cease and desist orders.

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

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

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

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

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

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

(e) Order a portion between 10% to 50% of the fine ordered under subdivision (a) be paid directly to the customer that suffered the violation under section 10a(3).

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

(g) Issue cease and desist orders.

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

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

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000;—Am. 2016, Act 341, Eff. Apr. 20, 2017.

Popular name: Customer Choice and Electricity Reliability Act

460.10d Electric utility serving less than 1,000,000 retail customers; utility issuing securitization bonds; compliance with federal rules, regulations, and standards; security recovery factor; protective orders; low-income and energy efficiency fund; refund;

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definitions.

Sec. 10d. (1) If an electric utility serving less than 1,000,000 retail customers in this state as of May 1, 2000 issues securitization bonds as allowed under this act, it has the same rights, duties, and obligations under this section as an electric utility serving 1,000,000 or more retail customers in this state as of May 1, 2000.

(2) The commission shall take the necessary steps to ensure that all electrical power generating facilities in this state comply with all rules, regulations, and standards of the federal environmental protection agency regarding mercury emissions.

(3) A covered utility may apply to the commission to recover enhanced security costs for an electric generating facility through a security recovery factor. If the commission approves a security recovery factor under subsection (5), the covered utility may recover those enhanced security costs.

(4) The commission shall require that notice of the application filed under subsection (3) be published by the covered utility within 30 days from the date the application was filed. The initial hearing by the commission shall be held within 20 days of the date the notice was published in newspapers of general circulation in the service territory of the covered utility.

(5) The commission may issue an order approving, rejecting, or modifying the security recovery factor. If the commission issues an order approving a security recovery factor, that order shall be issued within 120 days of the initial hearing required under subsection (4). In determining the security recovery factor, the commission shall only include costs that the commission determines are reasonable and prudent and that are jurisdictionally assigned to retail customers of the covered utility in this state. The costs included shall be net of any proceeds that have been or will be received from another source, including, but not limited to, any applicable insurance settlements received by the covered utility or any grants or other emergency relief from federal, state, or local governmental agencies for the purpose of defraying enhanced security costs. In its order, the commission shall designate a period for recovery of enhanced security costs, including a reasonable return on the unamortized balance, over a period not to exceed 5 years. The security recovery factor shall not be less than zero.

(6) No later than February 18, 2003, the commission shall by order prescribe the form for the filing of an application for a security recovery factor under subsection (3). If the commission or its designee determines that a filing is incomplete, it shall notify the covered utility within 10 days of the filing.

(7) Records or other information supplied by the covered utility in an application for recovery of security costs under subsection (3) that describe security measures, including, but not limited to, emergency response plans, risk planning documents, threat assessments, domestic preparedness strategies, and other plans for responding to acts of terrorism are not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall be treated as confidential by the commission.

(8) The commission shall issue protective orders as are necessary to protect the information found by the commission to be confidential under this section.

(9) An electric or natural gas utility shall not charge a customer to help fund the low-income and energy efficiency fund. The commission shall not include the low-income and energy efficiency charge in an affected utility's base rates. By February 1, 2012, the commission shall commence on its own motion a proceeding for each affected utility to determine the manner in which all money in the low-income and energy efficiency fund, including any unspent funds returned by grantees, and all money being held in escrow for the low-income and energy efficiency fund will be refunded to customers. The refund shall be allocated among each rate schedule proportional to the amount paid by each rate schedule, except that the refund to customers using 10 megawatts or more shall be within at least 6.5% of the actual amount paid and escrowed by that customer. As used in this subsection, "affected utility" means a regulated electric or natural gas utility that was authorized by the commission to collect in retail rates an amount that was designated to be contributed to the low-income and energy efficiency fund, and that since July 21, 2011 has been holding that collected amount in escrow.

(10) As used in this section:

(a) "Act of terrorism" means a willful and deliberate act that is all of the following:

(*i*) An act that would be a violent felony under the laws of this state, whether or not committed in this state.

(*ii*) An act that the person knows or has reason to know is dangerous to human life.

(*iii*) An act that is intended to intimidate or coerce a civilian population or influence or affect the conduct of government or a unit of government through intimidation or coercion.

(b) "Covered utility" means an electric utility with 1,000,000 or more retail customers in this state as of May 1, 2000 or an electric utility subject to the rate provisions of commission orders in case numbers U-11181-R and U-12204.

(c) "Enhanced security costs" means reasonable and prudent costs of new and enhanced security measures

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incurred before January 1, 2006 for an electric generating facility by a covered utility that are required by federal or state regulatory security requirements issued after September 11, 2001 or determined to be necessary by the commission to provide reasonable security from an act of terrorism. Enhanced security costs include increases in the cost of insurance that are attributable to an increased terror related risk and the costs of maintaining or restoring electric service as the result of an act of terrorism.

(d) "Security recovery factor" means an unbundled charge for all retail customers, except for customers of alternative electric suppliers, to recover enhanced security costs that have been approved by the commission.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000;—Am. 2002, Act 609, Imd. Eff. Dec. 20, 2002;—Am. 2008, Act 286, Imd. Eff. Oct. 6, 2008;—Am. 2011, Act 276, Imd. Eff. Dec. 20, 2011.

Popular name: Customer Choice and Electricity Reliability Act

460.10e Connection of merchant plants to transmission and distribution systems; finding of prevention or delay; remedies; merchant plant; standards; exception.

Sec. 10e. (1) An electric utility shall take all necessary steps to ensure that merchant plants are connected to the transmission and distribution systems within their operational control. If the commission finds, after notice and hearing, that an electric utility has prevented or unduly delayed the ability of the plant to connect to the facilities of the utility, the commission shall order remedies designed to make whole the merchant plant, including, but not limited to, reasonable attorney fees. The commission may also order fines of not more than $50,000.00 per day that the electric utility is in violation of this subsection.

(2) A merchant plant may sell its capacity to alternative electric suppliers, electric utilities, municipal electric utilities, retail customers, or other persons. A merchant plant making sales to retail customers is an alternative electric supplier and shall obtain a license under section 10a(2).

(3) The commission shall establish standards for the interconnection of merchant plants with the transmission and distribution systems of electric utilities. The standards shall not require an electric utility to interconnect with generating facilities with a capacity of less than 100 kilowatts for parallel operations. The standards shall be consistent with generally accepted industry practices and guidelines and shall be established to ensure the reliability of electric service and the safety of customers, utility employees, and the general public. The merchant plant will be responsible for all costs associated with the interconnection unless the commission has otherwise allocated the costs and provided for cost recovery.

(4) This section does not apply to interconnections or transactions that are subject to the jurisdiction of the federal energy regulatory commission.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

****** 460.10f THIS SECTION IS AMENDED EFFECTIVE APRIL 20, 2017: See 460.10f.amended ******

460.10f Generation capacity in excess of utility's retail sales load; determination of total generating capacity; market power mitigation plan; application; approval; requirements of independent brokering trustee; report to governor and legislature.

Sec. 10f. (1) If, After subtracting the average demand for each retail customer under contract that exceeds 15% of the utility's retail load in the relevant market, an electric utility has commercial control over more than 30% of the generating capacity available to serve a relevant market, the utility shall do 1 or more of the following with respect to any generation in excess of that required to serve its firm retail sales load, including a reasonable reserve margin:

(a) Divest a portion of its generating capacity.

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

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

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

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

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

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

(3) Within 30 days after a commission determination of the total generating capacity under subsection (2) in a relevant market, an electric utility that exceeds the 30% limit shall file an application with the

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commission for approval of a market power mitigation plan. The commission shall approve the plan if it is consistent with this act or require modifications to the plan to make it consistent with this act. The utility shall retain the right to determine what specific actions to take to achieve compliance with this section.

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

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

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

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000.

Compiler's note: At the beginning of subsection (1), the word "After" evidently should read "after".

Popular name: Customer Choice and Electricity Reliability Act

****** 460.10f.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

460.10f.amended Generation capacity in excess of utility's retail sales load; determination of total generating capacity; market power mitigation plan; application; approval; requirements of independent brokering trustee.

Sec. 10f. (1) If, after subtracting the average demand for each retail customer under contract that exceeds 15% of the utility's retail load in the relevant market, an electric utility has commercial control over more than 30% of the generating capacity available to serve a relevant market, the utility shall do 1 or more of the following with respect to any generation in excess of that required to serve its firm retail sales load, including a reasonable reserve margin:

(a) Divest a portion of its generating capacity.

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

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

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

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

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

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

(3) Within 30 days after a commission determination of the total generating capacity under subsection (2) in a relevant market, an electric utility that exceeds the 30% limit shall file an application with the commission for approval of a market power mitigation plan. The commission shall approve the plan if it is consistent with this act or require modifications to the plan to make it consistent with this act. The utility retains the right to determine what specific actions to take to achieve compliance with this section.

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

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

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000;—Am. 2016, Act 341, Eff. Apr. 20, 2017.

Popular name: Customer Choice and Electricity Reliability Act

460.10g Definitions; school properties.

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Sec. 10g. (1) As used in sections 10 through 10bb:

(a) "Alternative electric supplier" means a person selling electric generation service to retail customers in this state. Alternative electric supplier does not include a person who physically delivers electricity directly to retail customers in this state. An alternative electric supplier is not a public utility.

(b) "Commission" means the Michigan public service commission created in section 1.

(c) "Electric utility" means that term as defined in section 2 of the electric transmission line certification act, 1995 PA 30, MCL 460.562.

(d) "Independent transmission owner" means an independent transmission company as that term is defined in section 2 of the electric transmission line certification act, 1995 PA 30, MCL 460.562.

(e) "Merchant plant" means electric generating equipment and associated facilities with a capacity of more than 100 kilowatts located in this state that are not owned and operated by an electric utility.

(f) "Relevant market" means either the Upper Peninsula or the Lower Peninsula of this state.

(g) "Renewable energy source" means energy generated by solar, wind, geothermal, biomass, including waste-to-energy and landfill gas, or hydroelectric.

(2) A school district aggregating electricity for school properties or an exclusive aggregator for public or private school properties is not an electric utility or a public utility for the purpose of that aggregation.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000;—Am. 2001, Act 48, Imd. Eff. July 23, 2001;—Am. 2008, Act 286, Imd. Eff. Oct. 6, 2008.

Popular name: Customer Choice and Electricity Reliability Act

460.10h Definitions.

Sec. 10h. As used in this act:

(a) “Assignee” means an individual, corporation, or other legally recognized entity to which an interest in securitization property is transferred.

(b) “Commission” means the Michigan public service commission in the department of consumer and industry services.

(c) “Electric utility” means that term as defined in section 2 of the electric transmission line certification act, 1995 PA 30, MCL 460.562.

(d) “Financing order” means an order of the commission approving the issuance of securitization bonds and the creation of securitization charges and any corresponding utility rate reductions.

(e) “Financing party” means a holder of securitization bonds, including trustees, collateral agents, and other persons acting for the benefit of the holder.

(f) “Nonbypassable charge” means a charge in a financing order payable by a customer to an electric utility or its assignees or successors regardless of the identity of the customer's electric generation supplier.

(g) “Qualified costs” means an electric utility's regulatory assets as determined by the commission, adjusted by the applicable portion of related investment tax credits, plus any costs that the commission determines that the electric utility would be unlikely to collect in a competitive market, including, but not limited to, retail open access implementation costs and the costs of a commission approved restructuring, buyout or buy-down of a power purchase contract, together with the costs of issuing, supporting, and servicing securitization bonds and any costs of retiring and refunding the electric utility's existing debt and equity securities in connection with the issuance of securitization bonds. Qualified costs include taxes related to the recovery of securitization charges.

(h) “Securitization bonds” means bonds, debentures, notes, certificates of participation, certificates of a beneficial interest, certificates of ownership, or other evidences of indebtedness that are issued by an electric utility, its successors, or an assignee under a financing order, that have a term of not more than 15 years, and that are secured by or payable from securitization property. If certificates of participation, certificates of beneficial interest, or certificates of ownership are issued, references in this act to principal, interest, or premium shall refer to comparable amounts under those certificates.

(i) “Securitization charges” means nonbypassable amounts to be charged for the use or availability of electric services, approved by the commission under a financing order to fully recover qualified costs, that shall be collected by an electric utility, its successors, an assignee, or other collection agents as provided for in the financing order.

(j) “Securitization property” means the property described in section 10j.

History: Add. 2000, Act 142, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10i Financing order; recovery of qualified costs; conditions; amount; limitation on period for recovery of securitization charges; financing order as effective and irrevocable;

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evidence of indebtedness; time period to issue or reject; rehearing; appeal; retiring and refunding securitization bonds; retention of financial or legal services by commission.

Sec. 10i. (1) Upon the application of an electric utility, if the commission finds that the net present value of the revenues to be collected under the financing order is less than the amount that would be recovered over the remaining life of the qualified costs using conventional financing methods and that the financing order is consistent with the standards in subsection (2), the commission shall issue a financing order to allow the utility to recover qualified costs.

(2) In a financing order, the commission shall ensure all of the following:

(a) That the proceeds of the securitization bonds are used solely for the purposes of the refinancing or retirement of debt or equity.

(b) That securitization provides tangible and quantifiable benefits to customers of the electric utility.

(c) That the expected structuring and expected pricing of the securitization bonds will result in the lowest securitization charges consistent with market conditions and the terms of the financing order.

(d) That the amount securitized does not exceed the net present value of the revenue requirement over the life of the proposed securitization bonds associated with the qualified costs sought to be securitized.

(3) The financing order shall detail the amount of qualified costs to be recovered and the period over which the securitization charges are to be recovered, not to exceed 15 years.

(4) A financing order is effective in accordance with its terms, and the financing order, together with the securitization charges authorized in the order, shall be irrevocable and not subject to reduction, impairment, or adjustment by further action of the commission, except as provided under section 10k(3).

(5) Stocks, bonds, notes, or other evidence of indebtedness issued under a financing order of the commission shall be binding in accordance with their terms notwithstanding that the order of the commission is later vacated, modified, or otherwise held to be invalid in whole or in part.

(6) The commission shall after an expedited contested case proceeding issue a financing order or an order rejecting the application for a financing order no later than 90 days after the electric utility files its application.

(7) A financing order is only subject to rehearing by the commission on the motion of the applicant for securitization.

(8) Notwithstanding any other provision of law, a financing order may be reviewed by the court of appeals upon a filing by a party to the commission proceeding within 30 days after the financing order is issued. All appeals of a financing order shall be heard and determined as expeditiously as possible with lawful precedence over other matters. Review on appeal shall be based solely on the record before the commission and briefs to the court and shall be limited to whether the financing order conforms to the constitution and laws of this state and the United States and is within the authority of the commission under this act.

(9) At the request of an electric utility, the commission may adopt a financing order providing for retiring and refunding securitization bonds if the commission finds that the future securitization charges required to service the new securitization bonds, including transaction costs, will be less than the future securitization charges required to service the securitization bonds being refunded. On the retirement of the refunded securitization bonds, the commission shall adjust the related securitization charges accordingly.

(10) The commission shall have the authority to retain financial or legal services to assist in issuance of a financing order and to require the electric utility to pay the cost of the services. The payments shall be included as qualified costs defined in section 10h(g).

History: Add. 2000, Act 142, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10j Securitization property; rights and interests.

Sec. 10j. (1) Securitization property shall consist of the rights and interests of an electric utility, or its successor, under a financing order, including without limitation all of the following:

(a) The right to impose, collect, and receive securitization charges authorized in the financing order in an amount necessary to provide the full recovery of all qualified costs.

(b) The right under the financing order to obtain periodic adjustments of securitization charges under section 10k(3).

(c) All revenue, collections, payments, money, and proceeds arising out of the rights and interests described under this subsection.

(2) Securitization property shall constitute a present property right even though the imposition and collection of securitization charges depends on the further acts of the electric utility or others that have not yet occurred. The rights of an electric utility to securitization property before its sale to any assignee shall be considered a property interest in a contract. The financing order shall remain in effect and the securitization

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property shall continue to exist until the commission approved securitization bonds and expenses related to the bonds have been paid in full.

History: Add. 2000, Act 142, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10k Financing order; effect in connection with bankruptcy.

Sec. 10k. (1) The interest of an assignee or pledgee in securitization property and in the revenues and collections arising from that property are not subject to setoff, counterclaim, surcharge, or defense by the electric utility or any other person or in connection with the bankruptcy of the electric utility or any other entity. A financing order shall remain in effect and unabated notwithstanding the bankruptcy of the electric utility, its successors, or assignees.

(2) A financing order shall include terms ensuring that the imposition and collection of securitization charges authorized in the order are a nonbypassable charge.

(3) A financing order shall include a mechanism requiring that securitization charges be reviewed and adjusted by the commission at least annually, within 45 days of the anniversary date of the issuance of the securitization bonds, to correct any overcollections or undercollections of the preceding 12 months and to ensure the expected recovery of amounts sufficient to timely provide all payments of debt service and other required amounts and charges in connection with the securitization bonds.

History: Add. 2000, Act 142, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10*l* Agreement to transfer securitization property as true sale.

Sec. 10*l*. (1) An agreement by an electric utility or assignee to transfer securitization property that expressly states that the transfer is a sale or other absolute transfer signifies that the transaction is a true sale and is not a secured transaction and that title, legal and equitable, has passed to the entity to which the securitization property is transferred.

(2) A true sale under this section applies regardless of whether the purchaser has any recourse against the seller, or any other term of the parties' agreement, including the seller's retention of an equity interest in the securitization property, the fact that the electric utility acts as a collector of securitization charges relating to the securitization property, or the treatment of the transfer as a financing for tax, financial reporting, or other purposes.

History: Add. 2000, Act 142, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10m Lien and security interest; creation; changes in order or charges attachment; perfection; priority; sequestration and payment of revenues.

Sec. 10m. (1) A valid and enforceable lien and security interest in securitization property may be created only by a financing order and the execution and delivery of a security agreement with a financing party in connection with the issuance of securitization bonds.

(2) The lien and security interest shall attach automatically from the time that value is received for the bonds and shall be a continuously perfected lien and security interest in the securitization property and all proceeds of the property, whether accrued or not, shall have priority in the order of filing when a financing statement has been filed with respect to the security interest in accordance with the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102, and take precedence over any subsequent judicial and other lien creditor. In addition to the rights and remedies provided by this act, all rights and remedies with respect to a security interest provided by the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102, shall apply to the securitization property.

(3) Transfer of an interest in securitization property to an assignee shall be perfected against all third parties, including subsequent judicial and other lien creditors, when a financing statement has been filed with respect to the transfer in accordance with the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102.

(4) The priority of a lien and security interest under this section is not impaired by any later modification of the financing order or by the commingling of funds arising from securitization charges with other funds, and any other security interest that may apply to those funds shall be terminated when they are transferred to a segregated account for the assignee or a financing party. If securitization property has been transferred to an assignee, any proceeds of that property shall be held in trust for the assignee.

(5) In the event of default by the electric utility or its successors, in payment of revenues arising with respect to securitization property, the commission or a court of appropriate jurisdiction, upon the application

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of the financing party, and without limiting any other remedies available to the financing party, shall order the sequestration and payment to the financing party of revenues arising with respect to the securitization property. An order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the debtor, pledgor, or transferor of the property.

(6) Securitization property shall constitute an account as that term is defined under the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102.

(7) For purposes of this act and the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102, securitization property shall be in existence whether or not the revenue or proceeds in respect to the property have accrued and whether or not the value of the property right is dependent on the customers of an electric utility receiving service.

(8) Changes in the financing order or in the customer's securitization charges do not affect the validity, perfection, or priority of the security interest in the securitization property.

(9) The description of securitization property in a security agreement or other agreement or a financing statement is sufficient if it refers to this act and the financing order establishing the securitization property.

(10) This act shall control in any conflict between this act and any other law of this state regarding the attachment and perfection and the effect of perfection and priority of any security interest in securitization property.

(11) Notwithstanding the provisions of the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102, the law of the state of Michigan shall govern the perfection and the effect of perfection and priority of any security interest in the securizitation property.

History: Add. 2000, Act 142, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10n Securitization bonds; state pledge of certain conduct.

Sec. 10n. (1) Securitization bonds are not a debt or obligation of the state and are not a charge on its full faith and credit or taxing power.

(2) The state pledges, for the benefit and protection of the financing parties and the electric utility, that it will not take or permit any action that would impair the value of securitization property, reduce or alter, except as allowed under section 10k(3), or impair the securitization charges to be imposed, collected, and remitted to financing parties, until the principal, interest and premium, and any other charges incurred and contracts to be performed in connection with the related securitization bonds have been paid and performed in full. Any party issuing securitization bonds is authorized to include this pledge in any documentation relating to those bonds.

History: Add. 2000, Act 142, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10o Securitization bond; direct interest in acquisition, ownership, and disposition not used in determining tax; obligations of electric utility successor; assignee or financing party as public utility.

Sec. 10o. (1) The acquisition, ownership, and disposition of any direct interest in any securitization bond shall not be taken into account in determining whether a person is subject to any income tax, franchise tax, business activities tax, intangible property tax, excise tax, stamp tax, or any other tax imposed by this state or any agency or political subdivision of this state.

(2) Any successor to an electric utility, whether pursuant to any bankruptcy, reorganization, or other insolvency proceeding or pursuant to any merger or acquisition, sale or transfer, by operation of law, as a result of electric utility restructuring or otherwise, shall perform and satisfy all obligations of the electric utility under the amendatory act that added this section in the same manner and to the same extent as the electric utility, including, but not limited to, collecting and paying to the person entitled to revenues with respect to the securitization property.

(3) An assignee or financing party shall not be considered to be a public utility or person providing electric service solely by virtue of the transactions described in this act.

History: Add. 2000, Act 142, Imd. Eff. June 5, 2000;—Am. 2007, Act 180, Imd. Eff. Dec. 21, 2007.

Popular name: Customer Choice and Electricity Reliability Act

****** 460.10p THIS SECTION IS AMENDED EFFECTIVE APRIL 20, 2017: See 460.10p.amended ******

460.10p Establishment of industry worker transition program; adoption of service quality and reliability standards; compliance reports; rules; benchmarks; method for gathering

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data; incentives and penalties; "jurisdictional utility" or "jurisdictional entity" defined.

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

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

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

(a) That the acquiring entity or persons hire a sufficient number of nonsupervisory employees to safely and reliably operate and maintain the station, division, or unit by making offers of employment to the nonsupervisory workforce of the electric utility's division, business unit, generating station, or generating unit.

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

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

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

(4) The electric utility shall offer a transition plan to those employees who are not offered jobs by the entity because the entity has a need for fewer workers. If there is litigation concerning the sale, or other transfer of ownership of the electric utility's divisions, business units, generating stations, or generating units, the 30-month period under subsection (3) begins on the date the acquiring entity or persons take control or management of the divisions, business units, generating stations, or generating units of the electric utility.

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

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

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

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

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

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

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

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

(e) Recommendations for statutory changes that would be necessary to enable the commission to properly monitor and enforce standards to optimize power plant generating cost efficiency and minimize power quality disturbances. These recommendations shall include recommendations to provide methods to ensure that this state can obtain optimal and cost-effective end-use customer power quality to attract economic development and investment into the state.

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

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

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

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

(c) Ensure that the most cost-effective means of addressing power quality disturbances are promoted for each utility, including consideration of the installation of equipment or adoption of operating practices at the end-user's location.

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

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

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

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

(13) The commission is authorized to levy financial incentives and penalties upon any jurisdictional entity which exceeds or fails to meet the service quality and reliability standards.

(14) As used in this section, "jurisdictional utility" or "jurisdictional entity" means jurisdictional regulated utility as that term is defined in section 6q.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000;—Am. 2008, Act 286, Imd. Eff. Oct. 6, 2008.

Popular name: Customer Choice and Electricity Reliability Act

****** 460.10p.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

460.10p.amended Establishment of industry worker transition program; adoption of service quality and reliability standards; compliance report; rules; benchmarks; method for gathering data; incentives and penalties; "jurisdictional utility" or "jurisdictional entity" defined.

Sec. 10p. (1) Each electric utility operating in this state shall establish an industry worker transition program that, in consultation with employees or applicable collective bargaining representatives, provides skills upgrades, apprenticeship and training programs, voluntary separation packages consistent with

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reasonable business practices, and job banks to coordinate and assist placement of employees into comparable employment at no less than the wage rates and substantially equivalent fringe benefits received before the transition.

(2) The costs resulting from subsection (1) include audited and verified employee-related restructuring costs that are incurred as a result of 2000 PA 141 or as a result of prior commission restructuring orders, including employee severance costs, employee retraining programs, early retirement programs, outplacement programs, and similar costs and programs, that have been approved and found to be prudently incurred by the commission.

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

(a) That the acquiring entity or persons hire a sufficient number of nonsupervisory employees to safely and reliably operate and maintain the station, division, or unit by making offers of employment to the nonsupervisory workforce of the electric utility's division, business unit, generating station, or generating unit.

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

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

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

(4) The electric utility shall offer a transition plan to those employees who are not offered jobs by the entity because the entity has a need for fewer workers. If there is litigation concerning the sale, or other transfer of ownership of the electric utility's divisions, business units, generating stations, or generating units, the 30-month period under subsection (3) begins on the date the acquiring entity or persons take control or management of the divisions, business units, generating stations, or generating units of the electric utility.

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

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

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

(8) By December 31, 2009, the commission shall review its existing rules under this section and amend the rules, if needed, under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to implement performance standards for generation facilities and for distribution facilities to protect end-use customers from power quality disturbances.

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

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

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of each customer class.

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

(c) Ensure that the most cost-effective means of addressing power quality disturbances are promoted for each utility, including consideration of the installation of equipment or adoption of operating practices at the end-user's location.

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

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

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

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

(12) The commission may levy financial incentives and penalties upon any jurisdictional entity which exceeds or fails to meet the service quality and reliability standards.

(13) As used in this section, "jurisdictional utility" or "jurisdictional entity" means a jurisdictional regulated utility as that term is defined in section 6q.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000;—Am. 2008, Act 286, Imd. Eff. Oct. 6, 2008;—Am. 2016, Act 341, Eff. Apr. 20, 2017.

Popular name: Customer Choice and Electricity Reliability Act

460.10q Alternative electric supplier; license requirements.

Sec. 10q. (1) A person shall not engage in the business of an alternative electric supplier in this state unless the person obtains and maintains a license issued under section 10a.

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

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

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

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

(4) Only investor-owned, cooperative, or municipal electric utilities shall own, construct, or operate electric distribution facilities or electric meter equipment used in the distribution of electricity in this state. This subsection does not prohibit a self-service power provider from owning, constructing, or operating electric distribution facilities or electric metering equipment for the sole purpose of providing or utilizing self-service power. This act does not affect the current rights, if any, of a nonutility to construct or operate a private distribution system on private property or private easements. This does not preclude crossing of public rights-of-way.

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

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

****** 460.10r THIS SECTION IS AMENDED EFFECTIVE APRIL 20, 2017: See 460.10r.amended ******

460.10r Dissemination of disclosures, explanations, or sales information; establishment of Michigan renewables energy program; study, report, and plan.

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Sec. 10r. (1) The commission shall establish minimum standards for the form and content of all disclosures, explanations, or sales information disseminated by a person selling electric service to ensure that the person provides adequate, accurate, and understandable information about the service that enables a customer to make an informed decision relating to the source and type of electric service purchased. The standards shall be developed to do all of the following:

(a) Not be unduly burdensome.

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

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

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

(a) The average fuel mix, including categories for oil, gas, coal, solar, hydroelectric, wind, biofuel, nuclear, solid waste incineration, biomass, and other fuel sources. If a source fits into the other category, the specific source must be disclosed. A regional average, determined by the commission, may be used only for that portion of the electricity purchased by the customer for which the fuel mix cannot be discerned. For the purposes of this subdivision, "biomass" means dedicated crops grown for energy production and organic waste.

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

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

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

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

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

(5) The commission shall establish the Michigan renewables energy program. The program shall be designed to inform customers in this state of the availability and value of using renewable energy generation and the potential of reduced pollution. The program shall also be designed to promote the use of existing renewable energy sources and encourage the development of new facilities.

(6) Within 2 years of the effective date of the amendatory act that added this subsection, the commission shall conduct a study and report to the governor and the house and senate standing committees with oversight of public utilities issues on the advisability of separating electric distribution and generation within electric utilities, taking into account the costs, benefits, efficiencies to be gained or lost, effects on customers, effects on reliability or quality of service, and other factors which the commission determines are appropriate. The report shall include, but is not limited to, the advisability of locating within separate departments of the utility the personnel responsible for the day-to-day management of electric distribution and generation and maintaining separate books and records for electric distribution and generation.

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

(8) Within 270 days of the effective date of the amendatory act that added this subsection, each electric utility regulated by the commission shall file with the commission a plan for utilizing dispatchable customer-owned distributed generation within the context of its integrated resource planning process. Included in the utility's filing shall be proposals for enrolling and compensating customers for the utility's right to dispatch at-will the distributed generation assets owned by those customers and provisions requiring the customer to maintain these assets in a dispatchable condition. If an electric utility already has programs addressing the subject of the filing required under this subsection, the utility may refer to and take credit for

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those existing programs in its proposed plan.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000;—Am. 2008, Act 286, Imd. Eff. Oct. 6, 2008.

Popular name: Customer Choice and Electricity Reliability Act

****** 460.10r.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

460.10r.amended Dissemination of disclosures, explanations, or sales information; standards; establishment of Michigan renewables energy program; plan.

Sec. 10r. (1) The commission shall establish minimum standards for the form and content of all disclosures, explanations, or sales information disseminated by a person selling electric service to ensure that the person provides adequate, accurate, and understandable information about the service that enables a customer to make an informed decision relating to the source and type of electric service purchased. The commission shall develop the standards to do all of the following:

(a) Not be unduly burdensome.

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

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

(2) The commission shall require that all electric suppliers disclose in standardized, uniform format on the customer's bill with a bill insert, on customer contracts, or, for cooperatives, in periodicals issued by an association of rural electric cooperatives, information about the environmental characteristics of electricity products purchased by the customer, including all of the following:

(a) The average fuel mix, including categories for oil, gas, coal, solar, hydroelectric, wind, biofuel, nuclear, solid waste incineration, biomass, and other fuel sources. If a source fits into the other category, the specific source must be disclosed. A regional average, determined by the commission, may be used only for that portion of the electricity purchased by the customer for which the fuel mix cannot be discerned. As used in this subdivision, "biomass" means dedicated crops grown for energy production and organic waste.

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

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

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

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

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

(5) The Michigan agency for energy shall establish the Michigan renewables energy program. The program shall be designed to inform customers in this state of the availability and value of using renewable energy generation and the potential of reduced pollution. The program shall also be designed to promote the use of existing renewable energy sources and encourage the development of new facilities.

(6) By July 3, 2009, each electric utility regulated by the commission shall file with the commission a plan for utilizing dispatchable customer-owned distributed generation within the context of its integrated resource planning process. Included in the utility's filing shall be proposals for enrolling and compensating customers for the utility's right to dispatch at-will the distributed generation assets owned by those customers and provisions requiring the customer to maintain these assets in a dispatchable condition. If an electric utility already has programs addressing the subject of the filing required under this subsection, the utility may refer to and take credit for those existing programs in its proposed plan.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000;—Am. 2008, Act 286, Imd. Eff. Oct. 6, 2008;—Am. 2016, Act 341, Eff. Apr. 20, 2017.

Popular name: Customer Choice and Electricity Reliability Act

460.10s Low-income and energy assistance programs; availability of federal funds.

Sec. 10s. The commission shall monitor the extent to which federal funds are available for low-income and energy assistance programs. If there is a reduction in the amount of the federal funds available to residents in this state, the commission shall conduct a hearing to determine the amount of funds available and the need, if any, for supplemental funding. Upon completion of the hearing, the commission shall prepare a report and

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submit it to the governor and the legislature.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

****** 460.10t THIS SECTION IS AMENDED EFFECTIVE APRIL 20, 2017: See 460.10t.amended ******

460.10t Shut off of service; conditions; procedures; definitions.

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

(2) An electric utility or alternative electric supplier may shut off service to an eligible low-income customer who does not pay the monthly amounts required under subsection (1) after giving notice in the manner required by rules. The utility or supplier is not required to offer a settlement agreement to an eligible low-income customer who fails to make the monthly payments required under subsection (1).

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

(a) That the customer has defaulted on the winter protection plan.

(b) The nature of the default.

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

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

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

(f) That the customer has the right to request a hearing before a hearing officer if the complaint cannot be otherwise resolved and that the customer shall pay to the utility or supplier that portion of the bill that is not in dispute within 3 days of the date that the customer requests a hearing.

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

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

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

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

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

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

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

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

(6) As used in this section:

(a) “Eligible customer” means either an eligible low-income customer or an eligible senior citizen customer.

(b) “Eligible low-income customer” means a customer whose household income does not exceed 150% of the poverty level, as published by the United States department of health and human services, or who receives any of the following:

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

(*ii*) Food stamps.

(*iii*) Medicaid.

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

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

****** 460.10t.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

460.10t.amended Shut off of service; conditions; procedures; definitions.

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

(2) An electric utility or alternative electric supplier may shut off service to a customer as provided in part 7 of the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1201 to 460.1211, or to an eligible low-income customer who does not pay the monthly amounts required under subsection (1) after giving notice in the manner required by rules. The utility or supplier is not required to offer a settlement agreement to an eligible low-income customer who fails to make the monthly payments required under subsection (1).

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

(a) That the customer has not paid the per-meter charge described in section 205 of the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1205, or the customer has defaulted on the winter protection plan.

(b) The nature of the default.

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

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

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

(f) That the customer has the right to request a hearing before a hearing officer if the complaint cannot be otherwise resolved and that the customer shall pay to the utility or supplier that portion of the bill that is not in dispute within 3 days of the date that the customer requests a hearing.

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

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

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

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

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

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

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

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

(6) As used in this section:

(a) "Eligible customer" means either an eligible low-income customer or an eligible senior citizen customer.

(b) "Eligible low-income customer" means a customer whose household income does not exceed 150% of

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the poverty level, as published by the United States Department of Health and Human Services, or who receives any of the following:

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

(*ii*) Food stamps.

(*iii*) Medicaid.

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

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000;—Am. 2016, Act 341, Eff. Apr. 20, 2017.

Popular name: Customer Choice and Electricity Reliability Act

460.10u Report.

Sec. 10u. The commission shall compile a report by February 1 of each year that shall be posted on the commission's internet website and disseminated by any other means that the commission determines will properly notify the citizens of this state. A copy of the report shall be provided to the governor and the legislature. The report shall include all of the following:

(a) The status of competition for the supplying of electricity in this state.

(b) Recommendations for legislation, if any.

(c) Actions taken by the commission to implement measures necessary to protect consumers from unfair or deceptive business practices by utilities, alternative electric suppliers, and other market participants.

(d) Information regarding consumer education programs, approved by the commission, to inform consumers of all relevant information regarding the purchase of electricity and related services from alternative electric suppliers.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000;—Am. 2011, Act 274, Imd. Eff. Dec. 20, 2011.

Popular name: Customer Choice and Electricity Reliability Act

460.10v Joint plan to expand available transmission capability.

Sec. 10v. (1) Electric utilities serving more than 100,000 retail customers in this state shall file, by January 1, 2001, a joint plan with the commission detailing measures to permanently expand, within 2 years of the effective date of this section, the available transmission capability by at least 2,000 megawatts over the available transmission capability in place as of January 1, 2000.

(2) The joint plan shall detail all actions including additional facilities required, the proposed schedule for accomplishing the actions, the cost of the actions, and the proposed ratemaking treatment for the costs. The joint plan shall also identify all actions and facilities that are required of other transmission owners, including out-of-state entities, to accommodate the actions described in the joint plan.

(3) The commission may order modifications to the joint plan to make it consistent with this act. If the electric utilities are unable to agree upon a joint plan to meet the requirements of this act, the commission shall conduct a hearing to establish a joint plan. The commission shall authorize recovery from benefitting customers of all reasonable and prudent costs incurred by transmission owners for authorized actions taken and facilities installed to meet the requirements of this section that are not recovered through FERC transmission rates.

(4) If an electric utility or an affiliate that is the owner of the transmission assets is denied cost recovery of the reasonable and prudent costs expended to implement the joint plan, then the electric utility or affiliate shall have no further obligation to implement the joint plan. If an electric utility or its affiliate is subsequently granted cost recovery, then the obligation to implement the original joint plan is required. If cost recovery of the reasonable and prudent costs of implementing the joint plan is denied, an electric utility or its affiliate shall develop a new joint plan as provided under this section.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10w Investor-owned electric utility; FERC approval.

Sec. 10w. (1) Each investor-owned electric utility in this state shall, at the utility's option, either join a FERC approved multistate regional transmission system organization or other FERC approved multistate independent transmission organization or divest its interest in its transmission facilities to an independent transmission owner.

(2) An investor-owned electric utility that is party to a legitimate filing that was pending before the FERC on December 31, 2001 which is seeking FERC approval of a proposed multistate regional transmission system organization shall be considered to be in compliance with this section. Subsection (3) shall apply if FERC rejects a pending filing or if the electric utility withdraws from the filing or from a regional

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transmission system organization. This section does not provide guidance to FERC with respect to any pending filing.

(3) If an electric utility has not complied with this section by December 31, 2001, the commission shall direct the electric utility to join a FERC approved multistate regional transmission system organization selected by the commission.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10x Cooperative electric utility; requirements.

Sec. 10x. (1) Any retail customer of a cooperative with a peak load of 1 megawatt or greater shall be provided the opportunity to choose an alternative electric supplier subject to the provisions in section 10a.

(2) The commission shall not require a cooperative electric utility or an independent investor-owned utility with fewer than 60 employees to maintain separate facilities, operations, or personnel, used to deliver electricity to retail customers, provide retail electric service, or to be an alternative electric supplier.

(3) Any debt service recovery charge, or other charge approved by the commission for a cooperative electric utility serving primarily at wholesale may, upon application by its member cooperative or cooperatives, be assessed by and collected through its member cooperative or cooperatives.

(4) The commission shall not prohibit a cooperative electric utility from metering and billing its customers for electric services provided by the cooperative electric utility.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000;—Am. 2008, Act 286, Imd. Eff. Oct. 6, 2008.

Popular name: Customer Choice and Electricity Reliability Act

460.10y Municipally owned utility; requirements.

Sec. 10y. (1) The governing body of a municipally owned utility shall determine whether it will permit retail customers receiving delivery service from the municipally owned utility the opportunity of choosing an alternative electric supplier, subject to the implementation of rates, charges, terms, and conditions referred to in subsection (5).

(2) Except with the written consent of the municipally owned utility, a person shall not provide delivery service or customer account service to a retail customer that was receiving that service from a municipally owned utility as of June 5, 2000, or is receiving the service from a municipally owned utility. For purposes of this subsection, "customer" means the building or facilities served rather than the individual, association, partnership, corporation, governmental body, or any other entity taking service.

(3) With respect to any electric utility regarding delivery service to customers located outside of the municipal boundaries of the municipality that owns the utility, a governing body of a municipally owned utility may elect to operate in compliance with R 460.3411 of the Michigan administrative code, as in effect on June 5, 2000. However, compliance with R 460.3411(13) of the Michigan administrative code is not required for the municipally owned utility. Concurrent with the filing of an election under this subsection with the commission, the municipally owned utility shall serve a copy of the election on the electric utility. Beginning 30 days after service of the copy of the election, the electric utility shall, as to the electing municipally owned utility, be subject to the terms of R 460.3411 of the Michigan administrative code as in effect on June 5, 2000. The commission shall decide disputes arising under this subsection subject to judicial review and enforcement.

(4) A municipally owned utility and an electric utility that provides delivery service in the same municipality as the municipally owned utility may enter into a written agreement to define the territorial boundaries of each utility's delivery service area and any other terms and conditions as necessary to provide delivery service. The agreement is not effective unless approved by the governing body of the municipally owned utility and the commission. The governing body of the municipally owned utility and the commission shall annually review and supervise compliance with the terms of the agreement. At the request of a party to the agreement, disputes arising under the agreement shall be decided by the commission subject to judicial review and enforcement.

(5) If the governing body of a municipally owned utility establishes a program to permit any of its customers the opportunity to choose an alternative electric supplier, the governing body of the municipally owned utility shall have exclusive jurisdiction to do all of the following:

(a) Set delivery service rates applicable to services provided by the municipally owned utility that shall not be unduly discriminatory.

(b) Determine the amount and types of, and recovery mechanism for, stranded and transition costs that will be charged.

(c) Establish rules, terms of access, and conditions that it considers appropriate for the implementation of a

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program to allow customers the opportunity of choosing an alternative electric supplier.

(6) Complaints alleging unduly discriminatory rates or other noncompliance arising under subsection (5) shall be filed in the circuit court for the county in which the municipally owned utility is located.

(7) This section does not prevent or limit a municipally owned utility from selling electricity at wholesale. A municipally owned utility selling at wholesale is not considered to be an alternative electric supplier and is not subject to regulation by the commission.

(8) This section shall not be construed to impair the contractual rights of a municipally owned utility or customer under an existing contract.

(9) Contracts or other records pertaining to the sale of electricity by a municipally owned utility that are in the possession of a public body and that contain specific pricing or other confidential or proprietary information may be exempted from public disclosure requirements by the governing body of a municipally owned utility. Upon a showing of good cause, disclosure subject to appropriate confidentiality provisions may be ordered by a court or the commission.

(10) This section does not affect the validity of the order relating to the terms and conditions of service in the Traverse City area that was issued August 25, 1994, by the commission at the request of consumers power company and the light and power board of the city of Traverse City.

(11) As provided in section 6, the commission does not have jurisdiction over a municipally owned utility.

(12) As used in this section:

(a) "Delivery service" means the providing of electric transmission or distribution to a retail customer.

(b) "Municipality" means any city, village, or township.

(c) "Customer account services" means billing and collection, provision of a meter, meter maintenance and testing, meter reading, and other administrative activity associated with maintaining a customer account.

(13) In the event that an entity purchases 1 or more divisions or business units, or generating stations or generating units, of a municipal electric utility, the acquiring entity's contract and agreements with the selling municipality shall require all of the following for a period of at least 30 months:

(a) That the acquiring entity or persons hires a sufficient number of employees to safely and reliably operate and maintain the station, division, or unit by first making offers of employment to the workforce of the municipal electric utility's division, business unit, or generating unit.

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

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

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

(e) An acquiring entity is exempt from the obligations in this subsection if the selling municipality transfers all displaced municipal electric utility employees to positions of employment within the municipality at no less than the wage rates and substantially equivalent fringe benefits and terms and conditions of employment that are in effect at the time of transfer. The wage rates and substantially equivalent fringe benefits and terms and conditions of employment shall continue for at least 30 months from the time of the transfer unless the employees, or where applicable collective bargaining representative, and the municipality mutually agree to different terms and conditions of the employment within that 30-month period.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000;—Am. 2008, Act 286, Imd. Eff. Oct. 6, 2008.

Popular name: Customer Choice and Electricity Reliability Act

460.10z Provisions of act as severable.

Sec. 10z. Effective on the date the first securitization bonds are issued under this act, if any provision of this act or portion of this act is held to be invalid or is invalidated, superseded, replaced, repealed, or expires for any reason, that occurrence does not affect the validity or continuation of the amendatory act that added this section, or any part of those provisions, or any other provision of this act that is relevant to the issuance, administration, payment, retirement, or refunding of securitization bonds or to any actions of the electric utility, its successors, an assignee, a collection agent, or a financing party, which shall remain in full force and

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effect.

History: Add. 2000, Act 142, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10aa Impairment of contractual rights under existing contract.

Sec. 10aa. Nothing in this act impairs the contractual rights of electric utilities or customers under an existing contract that has been approved by the commission under section 11 of 1909 PA 300, MCL 462.11.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10bb Aggregation; use; definition.

Sec. 10bb. (1) Aggregation may be used for the purchasing of electricity and related services from an alternative electric supplier.

(2) Local units of government, public and private schools, universities, and community colleges may aggregate for the purpose of purchasing electricity for themselves or for customers within their boundaries with the written consent of each customer aggregated. Customers within a local unit of government shall continue to have the right to choose their electricity supplier and are not required to purchase electricity through the aggregator.

(3) As used in this section, "aggregation" means the combining of electric loads of multiple retail customers or a single customer with multiple sites to facilitate the provision of electric service to such customers.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

460.10cc Provisions as severable; certain rate reductions as void.

Sec. 10cc. (1) Except as otherwise provided under subsection (2), if any provision of this act is found to be invalid or unconstitutional, the remaining provisions shall not be affected and will remain in full force and effect.

(2) If any provision of this act is found to be invalid or unconstitutional in a manner which prevents the issuance of securitization bonds that would otherwise be allowed, the rate reductions required under section 10d shall also be void and the rates shall return to those in effect on May 1, 2000.

History: Add. 2000, Act 141, Imd. Eff. June 5, 2000.

Popular name: Customer Choice and Electricity Reliability Act

****** 460.10dd THIS SECTION IS AMENDED EFFECTIVE APRIL 20, 2017: See 460.10dd.amended ******

460.10dd Appropriation; hiring full-time positions to implement act.

Sec. 10dd. For the fiscal year ending September 30, 2009, there is appropriated to the commission from the assessments imposed under 1972 PA 299, MCL 460.111 to 460.120, the amount of $2,500,000.00 to hire 25.0 full-time equated positions to implement the provisions of the amendatory act that added this section.

History: Add. 2008, Act 286, Imd. Eff. Oct. 6, 2008.

****** 460.10dd.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

460.10dd.amended Appropriation; hiring full-time positions to implement act.

Sec. 10dd. (1) For the fiscal year ending September 30, 2017, there is appropriated to the commission from the assessments imposed under 1972 PA 299, MCL 460.111 to 460.120, the amount of $1,950,000.00 to hire 13 full-time equated positions to implement the provisions of the amendatory act that added section 6t.

(2) For the fiscal year ending September 30, 2017, there is appropriated to the attorney general from the assessments imposed under 1972 PA 299, MCL 460.111 to 460.120, the amount of $150,000.00 to hire 1.0 full-time equated position to implement the provisions of the amendatory act that added section 6t.

(3) For the fiscal year ending September 30, 2017, there is appropriated to the Michigan administrative hearing system from the assessments imposed under 1972 PA 299, MCL 460.111 to 460.120, the amount of $600,000.00 to hire 4.0 full-time equated positions to implement the provisions of the amendatory act that added section 6t.

(4) For the fiscal year ending September 30, 2017, there is appropriated to the department of environmental quality from the assessments imposed under 1972 PA 299, MCL 460.111 to 460.120, the amount of $150,000.00 to hire 1.0 full-time equated position to implement the provisions of the amendatory act that

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added section 6t.

(5) For the fiscal year ending September 30, 2017, there is appropriated to the Michigan agency for energy from the assessments imposed under 1972 PA 299, MCL 460.111 to 460.120, the amount of $260,000.00 to hire 2.0 full-time equated positions to implement the provisions of the amendatory act that added section 6t.

History: Add. 2008, Act 286, Imd. Eff. Oct. 6, 2008;—Am. 2016, Act 341, Eff. Apr. 20, 2017.

****** 460.10ee.added THIS ADDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

460.10ee.added Code of conduct; value-added programs and services; definitions.

Sec. 10ee. (1) The commission shall establish a code of conduct that applies to all utilities. The code of conduct shall include, but is not limited to, measures to prevent cross-subsidization, preferential treatment, and, except as otherwise provided under this section, information sharing, between a utility's regulated electric, steam, or natural gas services and unregulated programs and services, whether those services are provided by the utility or the utility's affiliated entities. The code of conduct established under this section is also applicable to electric utilities and alternative electric suppliers consistent with sections 10 through 10cc.

(2) A utility may offer its customers value-added programs and services if those programs or services do not harm the public interest by unduly restraining trade or competition in an unregulated market.

(3) Assets of a utility may be used in the operation of an unregulated value-added program or service if the unregulated value-added program or service compensates the utility as provided under this section for the proportional use of the assets of the utility. Except as otherwise provided in subsection (11), assets include the use of the utility's name and logo.

(4) A utility shall notify the commission of its intent to offer its customers value-added programs and services before offering those programs to its customers.

(5) The commission may initiate informal proceedings to determine if any program or service offered under this section potentially violates subsection (2) or (3). If the commission determines that a potential violation exists, the commission shall conduct formal proceedings to determine whether a violation has occurred and order corrective actions under this act. An informal proceeding allowed under this subsection is not required as a prerequisite to a formal complaint.

(6) A utility offering a value-added program or service under this section shall do all of the following:

(a) Provide the commission with written notice and a description of any newly offered value-added program or service.

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

(c) Maintain separate books and records for the program or service and provide an annual report to the commission showing how all of the utility's costs associated with the unregulated value-added program or service were allocated to the unregulated program or service. The annual report shall show to what extent the utility's rates were affected by the allocations. The utility may include this report as part of a request for rate relief.

(7) A utility offering an unregulated value-added program or service under this section shall not promote or market the program or service through the use of utility billing inserts, printed messages on the utility's billing materials, or other promotional materials included with customers' utility bills.

(8) All utility costs directly attributable to a value-added program or service allowed under this section shall be allocated to the program or service as required by this section. The direct and indirect costs of all utility assets used in the operation of the program or service shall be allocated to the program or service based on the proportional use by the program or service as compared to the total use of those assets by the utility. The cost of the program or service includes administrative and general expense loading to be determined in the same manner as the utility determines administrative and general expense loading for all of the utility's regulated and unregulated activities.

(9) A utility may include charges for its value-added programs and services offered under this section on its monthly billings to its customers if the utility complies with all of the following:

(a) The proportional share of all costs associated with the billing process, including the postage, envelopes, paper, and printing expenses, are allocated as required under subsection (8).

(b) A customer's regulated utility service is not terminated for nonpayment of the value-added program or service portions of the bill.

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

(10) In marketing a value-added program or service offered under this section to the public, a utility shall do all of the following:

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(a) In the manner and to the extent allowed by commission rule or order, provide upon request to a provider of a similar program or service any lists of customers receiving regulated service that the utility provides to its value-added programs or services. The customer list shall be provided within 5 business days of the request on a nondiscriminatory basis. A new customer shall be added to the customer list within 1 business day of the date the customer requests to enroll in the program or service.

(b) Appropriately allocate utility costs as required under subsection (8) when personnel employed at a utility's call center provide program marketing information to a prospective customer or customer service support for program payment issues to customers participating in a program or service offered under this section.

(c) Before enrolling a customer into the program or service offered under this section, the utility shall inform the potential customer of all of the following:

(*i*) That the program or service may be available from another provider.

(*ii*) That the program or service is not regulated by the commission.

(*iii*) That a new residential customer has 10 days after enrollment to cancel his or her program or service contract without penalty.

(*iv*) That the customer's regulated rates and conditions of service provided by the utility are not affected by enrollment in the program or service or by the decision of the customer to obtain the program or service from another provider.

(d) The utility name and logo may be used to market programs and services offered under this section if the utility complies with both of the following:

(*i*) Does not market the program or service in conjunction with a regulated service.

(*ii*) Clearly indicates on all marketing materials that the program or service is not regulated by the commission.

(11) For programs or services directly operated by a utility, costs shall not be allocated to the program or service for the use of the utility's name or logo.

(12) Except as otherwise provided in this subsection, the commission shall include only the revenues received by a utility to recover costs directly attributable to a value-based program or service under subsection (8) in determining a utility's base rates. The utility shall file with the commission the percentage of additional revenues over those that are allocated to recover costs directly attributable to a value-added program or service under subsection (8) that the utility wishes to include as an offset to the utility's base rates. Following a notice and hearing, the commission shall approve or modify the amount to be included as an offset to the utility's base rates.

(13) Except as otherwise provided in this section, the code of conduct shall not require a utility operating or offering a value-added program or service under this section as part of its regulated service to form a separate affiliate or division, impose further restrictions on the sharing of employees, vehicles, equipment, office space, and other facilities, or require the utility to provide other providers of appliance repair service or value-added programs or services with access to utility employees, vehicles, equipment, office space, or other facilities.

(14) In addition to any penalties allowed under section 10c, for violations of this section a utility shall pay all reasonable costs incurred by the prevailing party.

(15) A utility that offers value-added programs or services under this section shall file an annual report with the commission that provides a list of its offered value-added programs and services, the estimated market share occupied by each value-added program and service offered by the utility, and a detailed accounting of how the costs for the value-added programs and services were apportioned between the utility and the value-added programs and services. The utility shall certify to the commission that it is complying with the requirements of this section. The commission may conduct an audit of the books and records of the utility and the value-added programs and services to ensure compliance with this section.

(16) As used in this section:

(a) "Utility" means an electric, steam, or natural gas utility regulated by the commission.

(b) "Value-added programs and services" means programs and services that are utility or energy related, including, but not limited to, home comfort and protection, appliance service, building energy performance, alternative energy options, or engineering and construction services. Value-added programs and services do not include energy optimization or energy waste reduction programs paid for by utility customers as part of their regulated rates.

History: Add. 2016, Act 341, Eff. Apr. 20, 2017.

****** 460.10ff.added THIS ADDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

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460.10ff.added Energy ombudsman.

Sec. 10ff. (1) Effective January 1, 2017, the energy ombudsman is established in the Michigan agency for energy. The individual serving as energy ombudsman shall meet both of the following requirements:

(a) Understand the rate-making process and instruments to enable the energy ombudsman to provide rate information and track trends related to energy costs for businesses and individuals in this state.

(b) Possess the knowledge necessary to measure historic, ongoing, and future energy costs for businesses and individuals in this state based on the actions of the executive, legislative, and judicial branches of state government.

(2) The energy ombudsman shall do all of the following:

(a) Serve as a liaison for businesses and individuals in the state by guiding energy issues, problems, and disputes from businesses and individuals to the appropriate entity, agency, or venue for resolution.

(b) Monitor the activities of the commission, the Michigan agency for energy, and other regulatory entities of this state whose decisions affect businesses and individuals with respect to energy and communicate those entities' decisions, policy changes, and developments to businesses and individuals in this state. the issues the energy ombudsman shall monitor include, but are not limited to, all of the following:

(*i*) Renewable sources of energy.

(*ii*) Energy efficiency.

(*iii*) Net metering.

(*iv*) Combined heat and power.

(*v*) Distributed generation.

(*vi*) On-bill financing.

(c) Convene regular meetings in this state to share information and developments pertaining to energy issues, policies, and administrative processes affecting businesses and individuals in this state.

(d) Monitor the implementation of the code of conduct established by the commission under section 10ee and compile and annually publish statistics on unregulated services that are provided by utilities and their affiliates.

History: Add. 2016, Act 341, Eff. Apr. 20, 2017.

****** 460.11 THIS SECTION IS AMENDED EFFECTIVE APRIL 20, 2017: See 460.11.amended ******

460.11 Phase in of electric rates; impact on residential and industrial metal melting rates; commencement of proceeding; examination of cost allocation and rate design methods; scope; proposal; final order; other rate applications; interim report; forwarding proposal for decision to legislature; establishment of eligible low-income customer or senior citizen customer rates; public and private schools, universities, and community colleges; electric utility serving fewer than 120,000 retail customers; approval of rates; retention of independent consultant; analysis of affordable rates.

Sec. 11. (1) Except as otherwise provided in this subsection, the commission shall phase in electric rates equal to the cost of providing service to each customer class over a period of 5 years from October 6, 2008. If the commission determines that the rate impact on industrial metal melting customers will exceed the 2.5% limit in subsection (2), the commission may phase in cost-based rates for that class over a longer period. The cost of providing service to each customer class shall be based on the allocation of production-related and transmission costs based on using the 50-25-25 method of cost allocation. The commission may modify this method to better ensure rates are equal to the cost of service.

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

(3) Within 60 days of the effective date of the amendatory act that added this subsection, the commission shall commence a proceeding for each affected electric utility to examine cost allocation methods and rate design methods used to set rates. In each proceeding, each affected utility shall file within 60 days of the commencement of that proceeding a proposal to modify the existing cost allocation methods and rate design methods that have been used to set existing rates and shall provide notice to all of that utility's customers outlining the proposed cost allocation methods and rate design methods. A proposal filed by an affected electric utility must meet both of the following conditions:

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

(b) Explore different methods for allocation of production, transmission, distribution, and customer-related costs and overall rate design, based on cost of service, that support affordable and competitive electric rates

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for all customer classes.

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

(a) Implementing rates consistent with those cost allocation methods and rate design methods.

(b) Fixing a date for the establishment of rates consistent with those cost allocation methods and rate design methods, which date shall not be later than December 1, 2015.

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

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

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

(b) The schedules adopted for those proceedings.

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

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

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

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

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

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

(9) Notwithstanding any other provision of this section, the commission shall establish rate schedules which ensure that public and private schools, universities, and community colleges are charged retail electric rates that reflect the actual cost of providing service to those customers. Electric utilities regulated under this section shall file with the commission tariffs to ensure that public and private schools, universities, and community colleges are charged electric rates as provided in this subsection.

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

(11) Within 2 years of the effective date of the amendatory act that added this subsection, an electric utility serving fewer than 120,000 retail customers in this state may file an application with the commission to modify the cost allocation methods and rate design methods used to set that utility's existing rates. Within 180 days of the effective date of the amendatory act that added this subsection, an electric utility serving 120,000 or more but fewer than 1,000,000 retail customers in this state shall file an application with the commission to modify the cost allocation methods and rate design methods used to set that utility's existing rates. This subsection does not apply to a cooperative electric utility that has elected to become member-regulated under the electric cooperative member-regulation act, 2008 PA 167, MCL 460.31 to 460.39. Upon receipt of an application under this subsection, the commission shall commence a proceeding for that electric utility, limited to examining and implementing any modifications to the cost allocation methods and rate design

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methods used by that utility. An electric utility's application must meet both of the following conditions:

(a) Be consistent with the cost of providing service provisions of subsection (12).

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

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

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

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

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

(b) An analysis of the expected impact overall on customer bills.

History: Add. 2008, Act 286, Imd. Eff. Oct. 6, 2008;—Am. 2014. Act 169, Imd. Eff. June 17, 2014.

****** 460.11.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

460.11.amended Establishment of electric rates; establishment of eligible low-income customer or senior citizen customer rates; public and private schools, universities, and community colleges rate schedules.

Sec. 11. (1) Except as otherwise provided in this subsection, the commission shall ensure the establishment of electric rates equal to the cost of providing service to each customer class. In establishing cost of service rates, the commission shall ensure that each class, or sub-class, is assessed for its fair and equitable use of the electric grid. If the commission determines that the impact of imposing cost of service rates on customers of an electric utility would have a material impact on customer rates, the commission may approve an order that implements those rates over a suitable number of years. The commission shall ensure that the cost of providing service to each customer class is based on the allocation of production-related costs based on using the 75-0-25 method of cost allocation and transmission costs based on using the 100% demand method of cost allocation. The commission may modify this method if it determines that this method of cost allocation does not ensure that rates are equal to the cost of service.

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

(3) Notwithstanding any other provision of this section, the commission shall establish rate schedules that ensure that public and private schools, universities, and community colleges are charged retail electric rates that reflect the actual cost of providing service to those customers. Electric utilities regulated under this section shall file with the commission tariffs to ensure that public and private schools, universities, and community colleges are charged electric rates as provided in this subsection.

History: Add. 2008, Act 286, Imd. Eff. Oct. 6, 2008;—Am. 2014. Act 169, Imd. Eff. June 17, 2014;—Am. 2016, Act 341, Eff. Apr. 20, 2017.

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EXECUTIVE REORGANIZATION ORDER
E.R.O. No. 1993-9

460.20 Transfer of powers and duties of the utility consumer participation board from the department of management and budget to the department of commerce by a type II transfer.

WHEREAS, Article V, Section 2, of the Constitution of the State of Michigan of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units which he considers necessary for efficient administration; and

WHEREAS, the Utility Consumer Participation Board was created within the Department of Management and Budget by Section 6*l* of Act No. 304 of the Public Acts of 1982, being Section 460.6*l* of the Michigan Compiled Laws; and

WHEREAS, the functions, duties and responsibilities assigned to the Utility Consumer Participation Board can be more effectively carried out under the supervision and direction of the head of the Department of Commerce.

NOW, THEREFORE, I, John Engler, Governor of the State of Michigan, pursuant to the powers vested in me by the Constitution of the State of Michigan of 1963 and the laws of the State of Michigan, do hereby order the following:

(1) All the statutory authority, powers, duties, functions and responsibilities of the Utility Consumer Participation Board are hereby transferred to the Department of Commerce, but not within the Public Service Commission, by a Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

(2) Those activities with respect to the fund delegated by Section 6m of Act No. 304 of the Public Acts of 1982, being Section 460.6m of the Michigan Compiled Laws, to the state treasurer shall remain with and continue to be performed by the treasurer.

(3) The Director of the Office of Contract Management of the Department of Management and Budget shall provide executive direction and supervision for the implementation of the transfers. The assigned functions shall be administered under the direction and supervision of the Department of Commerce, and all prescribed functions of rule making, grant awards, grant payments and revenue collection shall be transferred to the Department of Commerce.

(4) All records, property and unexpended balances of appropriations, allocations and other funds used, held, employed, available or to be made available to the Utility Consumer Participation Board for the activities transferred are hereby transferred to the Department of Commerce to the extent required to provide for the efficient and effective operation of the Utility Consumer Participation Board.

(5) The Director of the Office of Contract Management of the Department of Management and Budget and the Director of the Department of Commerce shall immediately initiate coordination to facilitate the transfer and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or obligations to be resolved by the Utility Consumer Participation Board.

(6) All rules, orders, contracts and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended or repealed.

(7) Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order.

In fulfillment of the requirement of Article V, Section 2, of the Constitution of the State of Michigan of 1963, the provisions of this Executive Order shall become effective 60 days after filing.

History: 1993 E.R.O. No. 1993-9, Eff. Nov. 17, 1993.

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EXECUTIVE REORGANIZATION ORDER
E.R.O. No. 2015-3

460.21 Creation of Michigan agency for energy within department of licensing and regulatory affairs; transfer of powers and duties of public service commission under motor carrier act, carriers by water act, and motor carrier safety act to Michigan state police; transfer of powers and duties of department of environmental quality under retired engineers technical assistance program to Michigan agency for energy; transfer of powers and duties of air policy director of department of environmental quality to Michigan agency for energy; transfer of powers and duties of Michigan energy office from Michigan economic development corporation and Michigan strategic fund to department of licensing and regulatory affairs; transfer of powers and duties of Michigan energy office from department of licensing and regulatory affairs to Michigan agency for energy; transfer of public service commission from department of licensing and regulatory affairs to Michigan agency for energy.

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the state of Michigan in the Governor; and

WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units that he considers necessary for efficient administration; and

WHEREAS, there is a continued need to increase collaboration, optimize service delivery, and ensure efficient administration; and

WHEREAS, Michigan's energy future requires making long-term decisions that are adaptable, affordable, reliable, and environmentally protective; and

WHEREAS, such decision-making will be best informed if experts in each area are working closely together and ensuring their efforts are efficient and effective;

NOW, THEREFORE, I, Richard D. Snyder, Governor of the state of Michigan, by virtue of the powers and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

I. DEFINITIONS

As used in this Order:

A. "Agency" means the Michigan Agency for Energy created under Section II of this order.

B. "Department of Environmental Quality" means the principal department of state government created under Executive Order 2011-1.

C. "Department of Licensing and Regulatory Affairs" means the principal department of state government created as the Department of Commerce under Section 225 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.325, renamed the Department of Consumer and Industry Services under Executive Order 1996-2, MCL 445.2001, renamed the Department of Labor and Economic Growth under Executive Order 2003-18, MCL 445.2011, renamed the Department of Energy, Labor, and Economic Growth under Executive Order 2008-20, MCL 445.2025, and renamed the Department of Licensing and Regulatory Affairs under Executive Order 2011-4, MCL 445.2030.

D. "Department of State Police" means the principal department of state government created under Section 150 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.250.

E. "Executive Director" means the executive director of the Agency.

F. "Michigan Economic Development Corporation" means the public body corporate created under the Urban Cooperation Act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512, by a contractual interlocal agreement effective April 5, 1999, as amended, between the Michigan Strategic Fund and local participating economic development corporations formed under the Economic Development Corporations Act, 1974 PA 338, MCL 125.1601 to 125.1636.

G. "Michigan Strategic Fund" means the public body corporate and politic created under Section 5 of 1984 PA 270, MCL 125.2005.

H. "Public Service Commission" means the public body corporate created under the Michigan Public Service Commission Act of 1939, PA 3, MCL 460.1 et seq., as amended, located within the Department of Licensing and Regulatory Affairs.

I. "State Budget Director" means the individual appointed by the Governor pursuant to Section 321 of the Management and Budget Act, 1984 PA 431, MCL 18.1321.

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II. CREATION OF THE MICHIGAN AGENCY FOR ENERGY

A. The Michigan Agency for Energy is created as an agency within the Department of Licensing and Regulatory Affairs. The Agency shall exercise its prescribed powers, duties, and functions independently of the Director of the Department of Licensing and Regulatory Affairs.

B. The Agency shall be headed by an Executive Director who shall be appointed by the Governor and serve at the pleasure of the Governor. The Executive Director shall serve as a member of the Governor's Cabinet.

C. The Executive Director shall be the chief advisor to the Governor and the directors of state departments regarding the development of energy policies and programs.

III. FUNCTIONS OF THE AGENCY

A. The Agency shall perform the following functions:

i. Analyze and make recommendations to the Governor on proposed programs and policies relating to energy, and on the elimination of duplication in existing state programs in these areas;

ii. Directly administer certain programs related to energy, and serve as the coordinating office for all agencies of the executive branch of government that are responsible for programs related to energy;

iii. Provide information and assistance to all departments and agencies of the executive branch of government related to energy, both directly and by functioning as a clearinghouse for information received from such agencies, other branches of government, other states, and the federal government.

B. The Agency may make and execute contracts and other instruments necessary or convenient to the proper exercise of its functions.

IV. TRANSFER OF MOTOR CARRIER AUTHORITIES

A. Any authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds, including the functions of budgeting and procurement, of the Public Service Commission, Department of Licensing and Regulatory Affairs, under the following acts are transferred from the Public Service Commission, Department of Licensing and Regulatory Affairs, to the Michigan State Police:

a. Motor Carrier Act, P.A. 254 (1933), as amended, being Michigan Compiled Laws, MCL 475.1 to 479.49;

b. Carriers by Water Act, P.A. 246 (1921), as amended, being Michigan Complied Laws, MCL 460.201 to 460.206; and

c. Motor Carrier Safety Act, P.A. 181 (1963), as amended, being Michigan Compiled Laws, MCL 480.11 to 480.25.

B. Any authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds, including the functions of budgeting and procurement, used, held, employed, available, or to be made available to the Public Service Commission, Department of Licensing and Regulatory Affairs for the activities, powers, duties, functions, and responsibilities transferred by this Order are transferred to the Michigan State Police.

C. The Director of the Michigan State Police, after consultation with the Public Service Commissioners and the Director of the Department of Licensing and Regulatory Affairs, shall provide executive direction and supervision for the implementation of the transfers. The assigned functions shall be administered under the direction and supervision of the Director of the Michigan State Police.

D. Any authority, powers, duties, and functions relative to the final agency decisions for cases arising under the authorities transferred under this section of this Order are transferred from the Public Service Commission, Department of Licensing and Regulatory Affairs, to the Director of the State Police.

V. TRANSFER OF RETIRED ENGINEERS TECHNICAL ASSISTANCE PROGRAM AND AIR POLICY PROGRAM

A. Any authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds, including the functions of budgeting and procurement, of the Department of Environmental Quality under the Retired Engineers Technical Assistance Program, created under MCL 324.14511 and 324.14512, as amended, are transferred from the Department of Environmental Quality to the Michigan Agency for Energy, Department of Licensing and Regulatory Affairs.

B. Any authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds, including the functions of budgeting and procurement, of the Air Policy Director of the Department of Environmental Quality, are transferred from the Department of Environmental Quality to the Michigan Agency for Energy, Department of Licensing and Regulatory Affairs.

C. The Executive Director, after consultation with the Director of the Department of Environmental Quality and the Director of the Department of Licensing and Regulatory Affairs, shall provide executive

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direction and supervision for the implementation of the transfers. The assigned functions shall be administered under the direction and supervision of the Executive Director.

VI. TRANSFER OF THE MICHIGAN ENERGY OFFICE

A. Any authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds, including the functions of budgeting and procurement, of the Michigan Energy Office, are transferred from the Michigan Economic Development Corporation and the Michigan Strategic Fund to the Department of Licensing and Regulatory Affairs. Such funds shall include the Energy Efficiency and Renewable Energy Revolving Loan Fund, MCL 460.911 to 460.913, as amended.

B. Any authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds, including the functions of budgeting and procurement, of the Michigan Energy Office, are transferred from the Department of Licensing and Regulatory Affairs to the Michigan Agency for Energy, Department of Licensing and Regulatory Affairs.

C. The Executive Director, after consultation with the Chief Executive Officer of the Michigan Economic Development Corporation and the President of the Michigan Strategic Fund, shall provide executive direction and supervision for the implementation of the transfers. The assigned functions shall be administered under the direction and supervision of the Executive Director.

VII. RELATIONSHIP OF AGENCY AND MICHIGAN PUBLIC SERVICE COMMISSION, AND TRANSFER OF CERTAIN FUNCTIONS

A. The Public Service Commission shall be transferred intact from the Department of Licensing and Regulatory Affairs to the Michigan Agency for Energy.

B. The Public Service Commission shall exercise its functions as an autonomous entity independently from the Director of the Department of Licensing and Regulatory Affairs and the Executive Director of the Agency, as further described in this Order. Unless expressly stated otherwise in this Order, the Public Service Commission shall retain all of its statutory authority, powers, duties, functions, and responsibilities, including records, personnel, budgeting, procurement, and unexpended balances of appropriations. The powers, duties, and functions related to property are transferred to the Agency. The Public Service Commission shall retain control of all monies and funds, including but not limited to grants, bonds, notes, and reserves, subject to any agreements related to such grants, bonds, notes or reserves. Nothing in this Order shall be interpreted to infringe on the plenary powers of the Public Service Commission to regulate all rates, fares, fees, charges, services, rules, conditions of service, and all other matters pertaining to the formation, operation, or direction of public utilities, common carriers, or similar entities. The Commission shall retain the sole power and jurisdiction to hear and pass upon all matters pertaining to, necessary, or incidental to the regulation of public utilities, common carriers, or similar entities. It shall also retain all power to retain engineers, experts, and related personnel, and fix their compensation to assist it in such duties as provided under current law.

C. The legislative liaison and communications specialist of the Public Service Commission shall be transferred to the Agency. However, the Commission may request the services of either individual to advise the Public Service Commission regarding legislative matters and to communicate with the public regarding its plenary authorities, and the Executive Director shall ensure such personnel will provide the requested services to the Commission. When performing duties requested by the Commission, such individuals shall be considered Commission staff and supervision of those tasks shall be by the Commission.

D. Any authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds, including the functions of budgeting and procurement, of the customer service division, and the Energy Markets and Energy Data & Security sections of the Public Service Commission shall be transferred to the Michigan Agency for Energy, Department of Licensing and Regulatory Affairs. Additionally, one position supporting human resource functions and any positions dedicated to property functions in the administration section shall be transferred from the Public Service Commission to the Agency. Notwithstanding any of the above, those priorities, powers, duties, and functions that are within the plenary powers described in Section VII.B. of this Order shall remain with the Public Service Commission and shall not be subject to transfer. When undertaking activities necessary to carry out plenary powers, individuals shall be considered Commission staff and supervision of those tasks shall be by the Commission.

E. The Executive Director, after consultation with the Chair of the Public Service Commission and the Director of the Department of Licensing and Regulatory Affairs, shall provide executive direction and supervision for the implementation of the transfers. The assigned functions shall be administered under the direction and supervision of the Executive Director.

VIII. TRANSFER OF ENERGY ADVISORY COMMITTEE AUTHORITIES

A. Any authority, powers duties, functions, records, personnel, property, unexpended balances of

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appropriations, allocations or other funds, including the functions of budgeting and procurement related to the duties of the Director of Licensing and Regulatory Affairs created under MCL 10.82, and now residing in the Director of the Department of Licensing and Regulatory Affairs under Executive Orders 2008-20 and 2011-4, shall be transferred to the Executive Director of the Agency.

B. The Executive Director, after consultation with Director of the Department of Licensing and Regulatory Affairs, shall provide executive direction and supervision for the implementation of the transfers. The assigned functions shall be administered under the direction and supervision of the Executive Director.

IX. IMPLEMENTATION OF TRANSFERS

A. The Executive Director shall provide executive direction and supervision for the implementation of all transfers of authority under this Order in consultation with the Director of the Department of Licensing and Regulatory Affairs.

B. The Executive Director shall establish the internal organization of the Agency and allocate and reallocate duties and functions to promote economic and efficient administration and operation of the Agency. The Executive Director shall be responsible for the day-to-day operations of the Agency.

X. MISCELLANEOUS

A. All records, personnel, and property used, held, employed, or to be made available to the Department of Licensing and Regulatory Affairs, the Michigan Economic Development Corporation, the Michigan Strategic Fund, and the Department of Environmental Quality for the activities, powers, duties, functions, and responsibilities transferred by this Order to the Agency are hereby transferred to the Agency.

B. All records, personnel, and property used, held, employed, or to be made available to the Public Service Commission for the activities, powers, duties, functions, and responsibilities transferred by this Order to the Michigan State Police are hereby transferred to the Michigan State Police.

C. The State Budget Director shall determine and authorize the most efficient manner possible for the handling of financial transactions and records in the state's financial management system for the remainder of the current state fiscal year for transfers made under this Order.

D. All rules, orders, contracts, plans, and agreements relating to the functions transferred to the Agency by this Order lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, or rescinded.

E. Any suit, action, or other proceeding lawfully commenced by, against, or before any entity transferred by this Order shall not abate by reason of the taking effect of this Order. Any lawfully commenced suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected by this Order.

F. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order, which may be given effect without any invalid portion. Any portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

History: 2015, E.R.O. No. 2015-3, Eff. May 18, 2015.

Compiler's note: Executive Reorganization Order No. 2015-3 was promulgated March 18, 2015 as Executive Order No. 2015-10, Eff. May 18, 2015.

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ELECTRIC COOPERATIVE MEMBER-REGULATION ACT
Act 167 of 2008

AN ACT to provide for the member-regulation of electric cooperatives; to prescribe the powers and duties of certain state agencies and officials; and to provide for certain penalties and remedies.

History: 2008, Act 167, Imd. Eff. June 26, 2008.

The People of the State of Michigan enact:

460.31 Short title.

Sec. 1. This act shall be known and may be cited as the "electric cooperative member-regulation act".

History: 2008, Act 167, Imd. Eff. June 26, 2008.

460.32 Definitions.

Sec. 2. As used in this act:

(a) "Board of directors" or "board" means the group of members democratically elected by the members of a cooperative electric utility to manage the business and affairs of the cooperative electric utility.

(b) "Commission" means the Michigan public service commission.

(c) "Cooperative" or "cooperative electric utility" means an electric utility organized as a cooperative corporation under sections 98 to 109 of 1931 PA 327, MCL 450.98 to 450.109, serving primarily members of the cooperative electric utility.

(d) "Electric utility" means a person, partnership, corporation, association, or other legal entity whose transmission or distribution of electricity the commission regulates under 1909 PA 106, MCL 460.551 to 460.559, or 1939 PA 3, MCL 460.1 to 460.10cc. Electric utility does not include a municipal utility, affiliated transmission company, or independent transmission company.

(e) "Member" means a person, partnership, corporation, association, or other legal entity that purchases electricity from a cooperative electric utility as a member of the cooperative.

(f) "Member-regulation" means the board of directors of the cooperative is charged with establishing, maintaining, and applying all rates, charges, accounting standards, billing practices, and terms and conditions of service.

History: 2008, Act 167, Imd. Eff. June 26, 2008.

460.33 Cooperative electric utilities; purpose of act.

Sec. 3. Cooperative electric utilities, which are owned by the members they serve, are regulated by their members acting through democratically elected boards of directors. It is declared that member-regulation by a cooperative in the areas of rates, charges, accounting standards, billing practices, and terms and conditions of service may be more efficient and cost-effective. The purpose of this act is to allow the board of directors to elect member-regulation for rates, charges, accounting standards, billing practices, and terms and conditions of service.

History: 2008, Act 167, Imd. Eff. June 26, 2008.

460.34 Proposal by board of directors to become member-regulated; procedures.

Sec. 4. To become member-regulated under this act, the board of directors shall comply with the following procedures:

(a) A director may propose to become member-regulated at any properly convened meeting of the board of directors. The board may not act on the proposal until 90 days has passed from the date the proposal was made.

(b) The board may only act on the proposal to become member-regulated at a meeting of the board for which written notice of the time and place of the meeting has been provided to all members of the cooperative. Notice to the members shall be written and delivered not less than 21 or more than 60 days before the date of the meeting and shall contain a copy of the proposal. Notice may be sent by first-class mail or may be published in a periodical issued by an association of cooperative electric utilities and mailed to each member of record of the cooperative.

(c) The meeting of the board of directors at which the proposal is to be acted upon shall be open to all members of the cooperative. The board shall allow members of the cooperative reasonable time to address the board prior to its acting upon the proposal.

(d) A roll call vote of the board of directors with 2/3 of the members voting in support of the proposal to become member-regulated is necessary for adoption of the proposal.

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(e) The minutes of the meeting at which the proposal is acted upon, including the roll call vote, shall be provided to the members of the cooperative within 60 days from the date of the meeting in the same manner as the notice of the meeting at which the proposal was acted upon.

(f) The cooperative shall notify the commission in writing of the action of the board of directors on the proposal to become member-regulated within 10 days after the date of the action, and the cooperative shall become member-regulated as provided for in this act 90 days following the date of the notice to the commission.

(g) The board of directors may vote to rescind the proposal once adopted by following the same procedures that were followed in the adoption of the proposal.

History: 2008, Act 167, Imd. Eff. June 26, 2008.

460.35 Election to become member-regulated; overturn of proposal by members.

Sec. 5. The members of a cooperative that has elected to become member-regulated may overturn the proposal adopted by the board of directors by complying with the following:

(a) An election to overturn the vote by the board of directors to be member-regulated shall be called not less than 120 days after receipt of a valid petition signed by 5% or 750 members of the cooperative, whichever is less.

(b) The proposition to overturn the vote by the board of directors to be member-regulated shall be presented to a meeting of the members of the cooperative, the notice of which shall set forth the proposition for member-regulation and the time and place of the meeting. The cooperative shall deliver written notice to members not less than 21 days or more than 60 days before the date of the meeting. Notice shall be sent in the same manner as the notice for the meeting at which the proposal was acted upon. The cooperative shall pay the costs to notify the members of an election under this subdivision.

(c) Voting on the proposition to overturn the vote by the board of directors to be member-regulated shall be by mail ballot, and internet, provided members attending the meeting provided for in subdivision (b) may execute and deliver their ballot to the cooperative during or at the conclusion of the meeting. Proxy voting shall not be permitted.

(d) If the proposition to overturn the vote by the board of directors to be member-regulated is approved by the affirmative vote of not less than 2/3 of the members voting on the proposition, and at least 10% of the total number of members cast a vote, the cooperative shall notify the commission in writing of the results within 10 days after the date of the election, and the cooperative shall no longer be member-regulated as provided for in this act 90 days following the date of the notice to the commission.

(e) A cooperative's members may vote no more than once every 24 months to overturn the vote by the board of directors to be member-regulated as provided in this act.

(f) If the proposition to overturn the vote by the board of directors to be member-regulated is approved by the members in accordance with this section, the board of directors may not act on a proposal to member-regulate as provided for under section 4 until 36 months from the date notice of the election to overturn the vote of the board of directors was provided to the commission under subdivision (d).

History: 2008, Act 167, Imd. Eff. June 26, 2008.

460.36 Rates, charges, accounting standards, billing practices, and terms and conditions of service; jurisdiction and control by commission; scope.

Sec. 6. (1) A cooperative electing to be member-regulated under this act shall, by board action, establish, maintain, and apply all rates, charges, accounting standards, billing practices, and terms and conditions of service in accordance with this act.

(2) Notwithstanding the provisions of this act, the commission shall retain jurisdiction and control over all member-regulated cooperatives for matters involving safety, interconnection, code of conduct including, but not limited to, all relationships between a member-regulated cooperative and an affiliated alternative electric supplier, customer choice including, but not limited to, the ability of customers to elect service from an alternative electric supplier under 1939 PA 3, MCL 460.1 to 460.10cc, and the member-regulated cooperative's rates, terms, and conditions of service for customers electing service from an alternative electric supplier, service area, distribution performance standards, and quality of service, including interpretation of applicable commission rules and resolution of complaints and disputes, except any penalties pertaining to performance standards and quality of service shall be established by the cooperative's members when voting on the proposition for member-regulation or at an annual meeting of the cooperative.

History: 2008, Act 167, Imd. Eff. June 26, 2008.

460.37 Establishment, maintenance, and applicability of rates and charges; adoption,

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amendment, repeal, or addition to billing practices and service rules; availability of electronic copy; notice of rate increase or other changes.

Sec. 7. (1) A cooperative electric utility that is member-regulated under this act shall determine how rates and charges for service provided are to be established, maintained, and applied. The rates and charges shall reasonably reflect the costs of providing service and shall be uniform within the classes of service provided by the cooperative.

(2) The board of directors of a cooperative electric utility that is member-regulated may adopt, amend, repeal, or add to the cooperative's billing practices and service rules provided it has given written notice to members at least 30 days prior to the effective date of any action taken.

(3) Each cooperative which has elected to be member-regulated shall maintain and make available to the public an electronic copy of its rates, charges, accounting standards, billing practices and service rules, and terms and conditions of service on a website and shall maintain a paper copy at all offices of the cooperative for review by the general public. In addition, the cooperative shall provide a copy of the same to the commission as well as a copy of the cooperative's most recent audited financial statement.

(4) If a cooperative is member-regulated under this act, the board shall give at least 10 days' notice to all members of the cooperative of the time and place of any meeting of the board at which an increase in rates affecting at least 5% of the members or substantive changes in billing practices and service rules or terms and conditions of service are to be discussed and voted on. Any such meeting shall be open to all members. Notice under this subsection shall be sent by first-class mail to all members or may be published in a periodical issued by an association of cooperative electric utilities and mailed to each member of record of the cooperative electric utility.

History: 2008, Act 167, Imd. Eff. June 26, 2008.

460.38 Notice of rate change or other changes; time period; publication.

Sec. 8. (1) A cooperative electric utility that is member-regulated shall publish notice of any rate change or any change in billing practices and service rules or terms and conditions of service at least 30 days prior to the effective date of the change.

(2) The notice under this section shall be sent by first-class mail to all members or may be published in a periodical issued by an association of cooperative electric utilities and mailed to each member of record of the cooperative electric utility.

History: 2008, Act 167, Imd. Eff. June 26, 2008.

460.39 Areas served and line extension disputes involving member-regulated cooperative electric utility and electric utility; jurisdiction of commission; procedures.

Sec. 9. (1) The commission shall retain jurisdiction over all areas served and line extension disputes involving a cooperative electric utility that is member-regulated under this act and a regulated electric utility. This act does not limit the commission's jurisdiction over areas served and line extension disputes granted to the commission under any other law or statute. A cooperative electric utility that is member-regulated under this act shall operate in compliance with R 460.3411 of the Michigan administrative code, regarding extension of electric service in areas served by 2 or more utilities. The commission shall continue to possess all jurisdiction and authority necessary to administer and enforce the provisions of 1929 PA 69, MCL 460.501 to 460.506, and R 460.3411 of the Michigan administrative code with respect to member-regulated cooperative electric utilities.

(2) When a member-regulated cooperative is required to give notice to the commission and any affected electric utility of its intention to extend service to a prospective customer as required under R 460.3411 of the Michigan administrative code, the notice shall also include the charge to extend service, if any, and the rate or rates for the service offered.

(3) If the electric utility, after being notified under R 460.3411 of the Michigan administrative code, believes that a cooperative that is member-regulated under this act either proposes to unlawfully extend service to a prospective customer or has offered an unjustly preferential charge for extension of service or unjust rate to a prospective customer and that prospective customer could otherwise be served by the electric utility pursuant to the commission's rules for extension of electric service, the affected electric utility may file an objection with the commission. Any objection allowed under this subsection shall be filed within 60 days from the date notice of the intent to extend service was provided by the cooperative. If an objection is filed by the utility notified under R 460.3411 of the Michigan administrative code, the commission shall first determine whether the complaining utility or the cooperative, or both, have the lawful right to provide service to the prospective customer and then, if necessary, determine whether the charges or rates offered by the cooperative are just and reasonable based on the cooperative's cost of service. That determination shall be

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made at a contested case proceeding conducted pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. A cooperative's charges or rates offered to a prospective customer shall be considered just and reasonable upon a showing by the cooperative that the charges to extend service to a prospective customer and the rates offered are equivalent to the cooperative's charges to extend service and rates charged to other similarly situated customers served by the cooperative. If the cooperative does not provide service to other similarly situated customers, the cooperative shall demonstrate that its charges to extend service and the rates offered to the prospective customer are just and reasonable based on the cooperative's cost of providing service to the prospective customer, consistent with industry practice. At the choice of the customer, either the electric utility or the member-regulated cooperative may provide service to the prospective customer until the commission determines the appropriate service provider.

(4) A municipally owned utility that has entered into a service area agreement with a cooperative in accordance with section 10y(6) of 1939 PA 3, MCL 460.10y, may file an action in the circuit court in the district where the cooperative's main office is located alleging that a rate or charge offered by the cooperative is unjust and unreasonable. An action filed under this subsection shall be filed within 60 days after the municipally owned utility becomes aware of the rate or charge. In determining whether a rate or charge is just and reasonable, the circuit court shall use the standards set forth in subsection (3) for determinations made by the commission. If the circuit court determines that the rate or charge offered to the prospective customer is unjust or unreasonable, the court shall order the cooperative to assess the appropriate rate or charge to the prospective customer. Notwithstanding any law to the contrary, if the circuit court issues an order under this subsection, any prospective customer directly affected by the order shall be permitted by the cooperative to switch service to the objecting municipally owned utility, if the affected customer has given the cooperative written notice of the customer's intent to switch within 60 days from the date of the court's order and the objecting municipally owned utility agrees to pay the cooperative the reasonable value, as determined by the circuit court, of its facilities that will continue to be used to serve the customer by the objecting municipally owned utility.

(5) If the commission finds that an electric utility or cooperative providing temporary service to a customer under this act is not a lawful service provider for that customer, the commission shall order service to that customer transferred to the lawful provider. That order shall require the provider acquiring the customer to pay for the reasonable cost of the facilities, as determined by the commission, constructed to serve the transferred customer, which will be used by the acquiring provider to serve the transferred customer.

(6) If the commission finds that the cooperative is a lawful service provider but the cooperative's charges to extend service, if any, or the rates offered to the prospective customer are unjust or unreasonable, the commission shall order the cooperative to assess the appropriate charges to extend service and assess the appropriate rates to the prospective customer. Notwithstanding rules to the contrary, if the commission issues an order under this subsection, any prospective customer directly affected by the commission's order shall be permitted by the cooperative to switch service to the objecting electric utility, if the affected customer has given the cooperative written notice of the customer's intent to switch within 60 days from the date of the commission's order and the objecting electric utility agrees to pay the cooperative the reasonable value, as determined by the commission, of its facilities that will continue to be used to serve the customer by the objecting electric utility.

History: 2008, Act 167, Imd. Eff. June 26, 2008.

PUBLIC SERVICE COMMISSION INSPECTORS AS PEACE OFFICERS
Act 115 of 1970

460.41 Repealed. 1982, Act 531, Imd. Eff. Dec. 31, 1982.

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MICHIGAN PUBLIC UTILITIES COMMISSION
Act 419 of 1919

AN ACT to provide for the regulation and control of certain public utilities operated within this state; to create a public utilities commission and to define the powers and duties thereof; to abolish the Michigan railroad commission and to confer the powers and duties thereof on the commission hereby created; to provide for the transfer and completion of matters and proceedings now pending before said railroad commission; and to prescribe penalties for violations of the provisions hereof.

History: 1919, Act 419, Imd. Eff. May 15, 1919.

The People of the State of Michigan enact:

460.51 Repealed. 1993, Act 354, Imd. Eff. Jan. 14, 1994.

Compiler's note: The repealed section pertained to public utilities commission.

460.52 Repealed. 1975, Act 82, Imd. Eff. May 20, 1975.

Compiler's note: The repealed section pertained to appointment and compensation of officers, employees, engineers, and experts.

460.53, 460.53a Repealed. 1993, Act 354, Imd. Eff. Jan. 14, 1994.

Compiler's note: The repealed sections pertained to railroad commmission and equipment of vehicles for transporting employees.

460.54 Public utilities commission; powers and duties concerning rates; franchise rights; municipally owned utility.

Sec. 4. In addition to the rights, powers and duties vested in and imposed on said commission by the preceding section, its jurisdiction shall be deemed to extend to and include the control and regulation, including the fixing of rates and charges, of all public utilities within this state, producing, transmitting, delivering or furnishing steam for heating or power, or gas for heating or lighting purposes for the public use. Subject to the provisions of this act the said commission shall have the same measure of authority with reference to such utilities as is granted and conferred with respect to railroads and railroad companies under the various provisions of the statutes creating the Michigan railroad commission and defining its powers and duties. The power and authority granted by this act shall not extend to, or include, any power of regulation or control of any municipally owned utility; and it shall be the duty of said commission on the request of any city or village to give advice and render such assistance as may be reasonable and expedient with respect to the operation of any utility owned and operated by such city or village. In no case shall the commission have power to change or alter the rates or charges fixed in, or regulated by, any franchise or agreement heretofore or hereafter granted or made by any city, village or township. It shall be competent for any municipality and any public utility operating within the limits of said municipality, whether such utility is operating under the terms of a franchise or otherwise, to join in submitting to the commission any question involving the fixing or determination of rates or charges, or the making of rules or conditions of service, and the commission shall thereupon be empowered, and it shall be its duty to make full investigation as to all matters so submitted and to fix and establish such reasonable maximum rates and charges, and prescribe such rules and conditions of service and make such determination and order relative thereto as shall be just and reasonable. Such order when so made shall have like force and effect as other orders made under the provisions of this act. In any case where a franchise under which a utility is, or has been, operated, including street railways, shall have heretofore expired or shall hereafter expire, the municipality shall have the right to petition the commission to fix the rates and charges of said utility in accordance with the provisions of this act, or to make complaint as herein provided with reference to any practice, service or regulation of such utility, and thereupon said commission shall have full jurisdiction in the premises.

History: 1919, Act 419, Imd. Eff. May 15, 1919;—CL 1929, 11009;—Am. 1931, Act 138, Eff. Sept. 18, 1931;—CL 1948, 460.54.

460.55 Additional reports; verification; rules of commission; penalties.

Sec. 5. In addition to the reports now required to be made by any public utility under the laws of the state relating to the Michigan railroad commission, it shall be competent for the public utilities commission to require the making of such additional and further reports and the supplying of such data as is reasonably necessary for the proper performance of the powers and duties hereby contemplated. Any report required to be made by a utility operated and controlled by a corporation, joint stock company or association shall be verified by the affidavit of the president and secretary thereof. In all other cases such verification shall be made by the owner, or 1 of them, or by the general manager. Said commission shall have power and authority

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to make, adopt and enforce rules and regulations for the conduct of its business and the proper discharge of its functions hereunder, and all persons dealing with the commission or interested in any matter or proceedings pending before it shall be bound by such rules and regulations. The commission shall also have authority to make and prescribe regulations for the conducting of the business of public utilities, subject to the jurisdiction thereof, and it shall be the duty of every corporation, joint stock company, association or individual owning, managing or operating any such utility to obey such rules and regulations. Any such corporation, joint stock company, association or individual refusing or neglecting so to do, or refusing or neglecting to make any report required hereunder, shall be liable to a penalty of not less than 100 dollars nor more than 1,000 dollars; and the officer or individual in default shall also be deemed to be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not less than 10 dollars nor more than 1,000 dollars, or to imprisonment in the county jail not more than 6 months, or both such fine and imprisonment in the discretion of the court.

History: 1919, Act 419, Imd. Eff. May 15, 1919;—CL 1929, 11010;—CL 1948, 460.55.

Administrative rules: R 460.511 et seq.; R 460.915 et seq.; R 460.1451 et seq.; R 460.1951 et seq.; R 460.2011 et seq.; R 460.2051 et seq.; R 460.2101 et seq.; R 460.2211 et seq.; R 460.2501 et seq.; R 460.2601 et seq.; and R 460.3101 et seq. of the Michigan Administrative Code.

460.56 Books, records and accounts of public utility; examination by commission; failure to obey order, penalty; compulsory process.

Sec. 6. Said commission shall have authority to examine, or cause to be examined, the books, accounts and records kept on behalf of any public utility subject to the jurisdiction thereof. For the purpose of making such examination any member of the commission or any examiner or employee thereof shall be given free and full access to said books, accounts and records. Any person, or persons, in any way preventing or obstructing such examination or interfering with the person or persons authorized to make the same shall be deemed guilty of a misdemeanor. It shall also be competent for the commission to require by order or subpoena, which may be served in the same manner as is a subpoena issued out of the circuit court, the production of any books, papers or records relating to the operating or management of any such utility. The owner or manager or the officers of any corporation, company, or association, owning or operating any such utility, may likewise be summoned to appear before the commission to answer such questions as may be put to him touching the operation and business of such utility. Neglect or refusal to obey any such order or subpoena or refusal to so testify shall render the person or persons in default guilty of a misdemeanor. Said commission may also apply to any circuit court of the state for compulsory process to enforce any such order or subpoena, and said court shall have jurisdiction to compel obedience in the same manner as compliance with an order of the court might be enforced under the laws of the state pertaining thereto.

History: 1919, Act 419, Imd. Eff. May 15, 1919;—CL 1929, 11011;—CL 1948, 460.56.

460.57 Principal office of public utility; books, accounts, papers, and records; filing, printing, and posting of rate schedules; approval of schedule and changes therein; rules and regulations.

Sec. 7. Any corporation, joint stock company, association, or individual operating a public utility within this state subject to the provisions of this act shall have and maintain a principal office within this state. All books, accounts, papers, and records pertaining to the business and operation of the utility shall be kept in the office, unless the commission by special order or by rule or regulation may otherwise provide. Schedules of rates in a form and in such detail as the commission may direct shall be filed in the office of the commission and copies of the schedules shall be printed and posted in the principal office of the utility and other such locations as the commission may direct. A schedule shall not be operative unless and until it has been approved by the commission; nor shall any change be made in the schedules except upon approval of the commission. The commission may adopt rules and regulations governing the presentation of the schedules and desired changes, and action on the schedules, and shall have full authority to regulate the procedure to be observed.

History: 1919, Act 419, Imd. Eff. May 15, 1919;—CL 1929, 11012;—CL 1948, 460.57;—Am. 1988, Act 231, Imd. Eff. July 8, 1988
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Administrative rules: R 460.2011 et seq. and R 460.2051 et seq. of the Michigan Administrative Code.

460.58 Complaint; procedure for investigation; contempt; order of commission; witness fees.

Sec. 8. Upon complaint in writing that any rate, classification, regulation or practice charged, made or observed by any public utility is unjust, inaccurate, or improper, to the prejudice of the complainant, the

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commission shall proceed to investigate the matter. The procedure to be followed in all such cases shall be prescribed by rule of the commission: Provided, however, That in all cases reasonable notice shall be given to the parties concerned as to the time and place of hearing. An investigation of any such complaint, and the formal hearing thereon, if such is deemed necessary, may be held at any place within the state and by any member or members of the commission, or by any duly authorized representative thereof. Witnesses may be summoned and the production of books, and records before the commission, or the member, or any duly authorized representative thereof conducting the hearing, may be required. Any witness summoned to appear or to produce papers at any such hearing, who neglects or refuses so to do shall be deemed guilty of a contempt. It shall be competent for the commission in any such case to make application to any circuit court of the state setting forth the facts of the matter. Thereupon said court shall have the same power and authority to punish for the contempt and to compel obedience to the subpoena or order of the commission as though such person were in contempt of such court or had neglected or refused to obey its lawful order or process. The taking of testimony at such hearing shall be governed by the rules of the commission: Provided, That at the request of either party a record of such testimony shall be taken and preserved. Upon the completion of any such hearing, the commission shall have authority to make an order or decree dismissing the complaint or directing that the rate, charge, practice or other matter complained of, shall be removed, modified or altered, as the commission deems just, equitable and in accordance with the rights of the parties concerned. For attending on any such hearing, any witness summoned by the commission shall be entitled to the same fees as are, or may be, provided by law for attending the circuit court in any civil matter or proceedings, which said fees shall be paid out of the general fund in the treasury of the state. All claims for such fees shall be approved by the secretary, or by some member of the commission, and shall be audited and allowed by the board of state auditors.

History: 1919, Act 419, Imd. Eff. May 15, 1919;—CL 1929, 11013;—CL 1948, 460.58.

460.59 Review of order or decree.

Sec. 9. Any order or decree shall be subject to review in the manner provided for in section 26 of Act No. 300 of the Public Acts of 1909, being section 462.26 of the Michigan Compiled Laws.

History: 1919, Act 419, Imd. Eff. May 15, 1919;—CL 1929, 11014;—CL 1948, 460.59;—Am. 1987, Act 7, Eff. Apr. 1, 1987.

460.60 Rights not conferred.

Sec. 10. Nothing herein contained shall be deemed to confer upon any corporation, joint stock company, association or individuals any rights or privileges whatsoever of a determinate or of an indeterminate nature with respect to the use and enjoyment of franchises or the use and occupation of any street, highway or alley within the state.

History: 1919, Act 419, Imd. Eff. May 15, 1919;—CL 1929, 11015;—CL 1948, 460.60.

460.61 Repealed. 1978, Act 272, Imd. Eff. June 29, 1978.

Compiler's note: The repealed section pertained to fee for issuance of securities.

460.61a Disposition of funds paid into state treasury.

Sec. 11a. Notwithstanding this or any other act to the contrary, all funds paid into the state treasury under this act shall be credited to a special account to be utilized solely to finance the cost of regulating public utilities.

History: Add. 1972, Act 334, Imd. Eff. Jan. 4, 1973.

460.62 Declaration of necessity.

Sec. 12. This act is hereby declared immediately necessary for the preservation of the public peace, health and safety.

History: 1919, Act 419, Imd. Eff. May 15, 1919;—CL 1929, 11017;—CL 1948, 460.62.

PUBLIC UTILITIES COMMISSION
Act 200 of 1925

460.101,460.102 Repealed. 1993, Act 354, Imd. Eff. Jan. 14, 1994.

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COSTS OF REGULATING PUBLIC UTILITIES
Act 299 of 1972

AN ACT to provide for the assessment, collection and disposition of the costs of regulation of public utilities.

History: 1972, Act 299, Imd. Eff. Dec. 19, 1972.

The People of the State of Michigan enact:

460.111 Definitions.

Sec. 1. As used in this act:

(a) "Commission" means the public service commission.

(b) "Department" means the department of commerce.

(c) "Public utility" means a steam, heat, electric, power, gas, water, wastewater, telecommunications, telegraph, communications, pipeline, or gas producing company regulated by the commission, whether private, corporate, or cooperative, except a municipally owned utility.

History: 1972, Act 299, Imd. Eff. Dec. 19, 1972;—Am. 1992, Act 36, Imd. Eff. Apr. 21, 1992;—Am. 2005, Act 189, Imd. Eff. Nov. 7, 2005.

460.112 Assessments against public utilities; amount; apportionment.

Sec. 2. The department within 30 days after the enactment into law of any appropriation to it, shall ascertain the amount of the appropriation attributable to the regulation of public utilities. This amount shall be assessed against the public utilities and shall be apportioned amongst them as follows: The gross revenue for the preceding calendar year derived from intrastate operations for each public utility shall be totaled and each public utility shall pay a portion of the assessment in the same proportion that its gross revenue for the preceding calendar year derived from intrastate operations bears to such total. Each public utility shall pay a minimum assessment of not less than $50.00.

History: 1972, Act 299, Imd. Eff. Dec. 19, 1972.

460.113 Deductions from assessments.

Sec. 3. For the fiscal year commencing July 1, 1973 and annually thereafter, there shall be deducted from any amount to be assessed under section 2 an amount equal to the difference by which the actual expenditures for the previous fiscal year attributable to the regulation of public utilities are less than the amounts appropriated for those purposes. Such deductions shall be made in the same proportion as the original assessments in section 2 of the act.

History: 1972, Act 299, Imd. Eff. Dec. 19, 1972.

460.114 Repealed. 1978, Act 272, Imd. Eff. June 29, 1978.

Compiler's note: The repealed section pertained to credit for fees paid.

460.115 Disposition of moneys paid by public utilities.

Sec. 5. All moneys paid into the state treasury by a public utility under this act shall be credited to a special account, to be utilized solely to finance the cost of regulating public utilities.

History: 1972, Act 299, Imd. Eff. Dec. 19, 1972.

460.116 Objections to assessments; notice; hearing; findings; payment of assessments; interest on unpaid assessments; action by attorney general.

Sec. 6. Within 15 days after the receipt of any statement of amount assessed under this act, the public utility may file with the commission objections setting forth in detail the grounds upon which the assessment is claimed to be excessive, erroneous, unlawful or invalid. The commission, after notice to the utility shall hold a hearing on the objections. If, after hearing, the commission finds the assessment is not excessive, erroneous, unlawful or invalid in whole or in part, it shall record its findings and transmit them to the public utility and again mail or serve a copy of the assessment upon the utility. Statements of assessment to which objections have not been filed, and statements of assessment and amended statements of assessment mailed or served after a hearing upon objections shall be paid not later than 30 days after their receipt. Assessments not paid when due shall bear interest at the rate of 1% per month. Statements of unpaid assessments together with interest thereon shall be recovered by the attorney general by appropriate action.

History: 1972, Act 299, Imd. Eff. Dec. 19, 1972.

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460.117 Restraining or delaying collection or payment of assessments; statement of claim; action for recovery of payment; issues; review; remedy exclusive.

Sec. 7. A suit or proceeding shall not be maintained in a court for the purpose of restraining or delaying the collection or payment of an assessment made under this act. A person or corporation making a payment under this act, believing the amount to be excessive, erroneous, unlawful or invalid may file a statement of claim with the court of claims. In an action for recovery of a payment made under this act, the claimant may raise every relevant issue of law and fact, evidenced by the record made before the commission. The court of claims may review questions of law and fact involved in a final decision or determination of the commission made under this act. The procedure providing for the determination of the lawfulness of assessments and the recovery of payments made under this act shall be exclusive of all other remedies and procedures.

History: 1972, Act 299, Imd. Eff. Dec. 19, 1972.

460.118 Exemption of certain public utilities.

Sec. 8. The commission may exempt a public utility from this act, if, after notice and hearing, it determines that gross revenues derived from intrastate operations is not a fair or equitable basis for assessing the costs of regulating that public utility and prescribes a fair and equitable manner for assessing such costs of regulation.

History: 1972, Act 299, Imd. Eff. Dec. 19, 1972.

460.119 Fees in lieu of assessment.

Sec. 9. Any public utility over which the commission has jurisdiction solely pursuant to the provisions of Act No. 9 of the Public Acts of 1929, as amended, being sections 483.101 to 483.120 of the Compiled Laws of 1948 or Act No. 16 of the Public Acts of 1929, as amended, being sections 483.1 to 483.11 of the Compiled Laws of 1948 or Act No. 144 of the Public Acts of 1909, as amended, being sections 460.301 to 460.303 of the Compiled Laws of 1948, shall pay fees as prescribed by the commission in lieu of any assessment under the provisions of this act.

History: 1972, Act 299, Imd. Eff. Dec. 19, 1972.

460.120 Effective date.

Sec. 10. This act shall take effect when Senate Bill No. 699 of 1971 is enacted and becomes effective.

History: 1972, Act 299, Imd. Eff. Dec. 19, 1972.

Compiler's note: Senate Bill No. 699 of 1971, referred to in this section, became Act 300 of 1972.

EMERGENCY ENERGY ACT OF 1973
Act 1 of 1974

460.151-460.184 Expired. 1974, Act 1, Eff. June 30, 1974.

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CARRIERS BY WATER
Act 246 of 1921

AN ACT to regulate the service, rates, fares and charges of carriers by water within this state.

History: 1921, Act 246, Imd. Eff. May 18, 1921.

The People of the State of Michigan enact:

460.201 Carriers by water; rates; filing, fixing by commission, exception.

Sec. 1. Any and all persons, firms and corporations engaged in the transportation of freight, passengers, or express, by water, wholly within this state shall, within 30 days after this act shall take effect, make and file with the Michigan public utilities commission in such form as it shall prescribe, its schedule of rates, fares, and charges for the carrying of freight, passengers, and express; which said rates, fares and charges shall continue in force until superseded by other schedules, filed in the manner above prescribed, by said carrier, with the Michigan public utilities commission: Provided, however, That said Michigan public utilities commission may, either upon request, or upon its own motion, suspend the operation of any rate, fare, charge, or tariff filed as aforesaid, for a period not exceeding 30 days; and in case any such rate, fare, charge, or tariff shall be suspended by said Michigan public utilities commission, it shall give the interested carrier immediate notice thereof, and, within 10 days from the date of such suspension, shall fix a date of hearing, not more than 20 days from the date of said suspension, and shall give notice thereof to said carrier and to other persons in interest, who may be heard; and after said hearing said commission shall fix the rate, fare, charge, or tariff in the matter complained of; and such rate, fare, charge or tariff, when so fixed, shall continue to be the legal rate, fare, charge, or tariff in force until superseded as provided by law: Provided, That any ferry company operating within any municipality under an agreement with such municipality shall not be affected either as to fares or operation by this act.

History: 1921, Act 246, Imd. Eff. May 18, 1921;—CL 1929, 11071;—CL 1948, 460.201.

Compiler's note: The public utilities commission, referred to in this section, was abolished and its powers and duties transferred to the public service commission by MCL 460.4.

460.202 Carriers by water; audit of books by commission; duty to furnish data.

Sec. 2. The Michigan public utilities commission may examine any and all books, accounts, records, and papers of any such carrier by water, and audit the same; and it shall be the duty of any such carrier by water, to furnish to said Michigan public utilities commission, its proper officers, and employes, any and all data in relation to its investment, income, operating expenses, and such other statistical data as it may require.

History: 1921, Act 246, Imd. Eff. May 18, 1921;—CL 1929, 11072;—CL 1948, 460.202.

460.203 Carriers by water; rules of commission.

Sec. 3. The Michigan public utilities commission is hereby authorized, empowered and directed to make all needful rules and regulations governing its investigations of the affairs of such carriers by water, and to prescribe the form of all reports required from such carriers.

History: 1921, Act 246, Imd. Eff. May 18, 1921;—CL 1929, 11073;—CL 1948, 460.203.

460.204 Carriers by water; investigation, regulation of service and fixing of rates.

Sec. 4. Whenever any complaint shall be made to said Michigan public utilities commission by any person, firm, or corporation against any rate, fare, charge, or tariff of any carrier by water within this state, or against any rule, regulation, or service of such carrier, or against the neglect, failure, or refusal of any such carrier to make, observe or perform any rate, fare, charge, or tariff, or any rule, regulation, or service, said Michigan public utilities commission shall investigate the same, and it may regulate the performance or observance of any rate, fare, charge, or tariff, and any rule, regulation, or service, and may prescribe the same to be observed by such carrier: Provided, That such carrier shall in all cases be entitled to reasonable notice and an opportunity to be heard on such investigation before any rate, fare, charge, or tariff, or any rule, regulation, or service shall be prescribed, established, or imposed by said commission, in accordance with the terms of this section, and when any rate, fare, charge, or tariff, or any rule, regulation, or service shall be prescribed, established, or imposed by said commission, it shall thereafter be the duty of said carrier to observe and obey the same.

History: 1921, Act 246, Imd. Eff. May 18, 1921;—CL 1929, 11074;—CL 1948, 460.204.

460.205 Carriers by water; review of orders of regulation.

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Sec. 5. Any order made by the Michigan public utilities commission prescribing or affecting any rate, fare, charge, or tariff, or any rule, regulation, or service of any carrier by water within this state, shall be subject to review in the same manner as is now provided by law for the review of orders made by said Michigan public utilities commission.

History: 1921, Act 246, Imd. Eff. May 18, 1921;—CL 1929, 11075;—CL 1948, 460.205.

460.206 Penalty.

Sec. 6. Any person, firm, or corporation violating any of the provisions of this act, or any order of the Michigan public utilities commission made in pursuance thereof, shall be punishable by a fine not to exceed 100 dollars for each violation, and any officer or director of any corporation violating the provisions of this act, or any of the orders of the Michigan public utilities commission made in pursuance thereof, shall be punishable by a fine not exceeding 100 dollars for each such violation, or by imprisonment in the county jail for not more than 3 months, or by both such fine and punishment, in the discretion of the court.

History: 1921, Act 246, Imd. Eff. May 18, 1921;—CL 1929, 11076;—CL 1948, 460.206.

PUBLIC UTILITIES SECURITIES
Act 144 of 1909

460.301-460.303 Repealed. 1995, Act 246, Imd. Eff. Dec. 27, 1995.

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ORDERS AND JURISDICTION OF PUBLIC SERVICE COMMISSION
Act 149 of 1996

AN ACT to validate certain orders; and to extend the jurisdiction of the Michigan public service commission over the regulation and issuance of certain stocks, bonds, and other evidences of indebtedness.

History: 1996, Act 149, Imd. Eff. Mar. 25, 1996.

The People of the State of Michigan enact:

460.311 Repeal of MCL 460.301 to 460.303; effect on certain public service commission orders.

Sec. 1. The repeal of Act No. 144 of the Public Acts of 1909, being sections 460.301 to 460.303 of the Michigan Compiled Laws, did not alter or void any order issued by the Michigan public service commission authorizing the issue of securities under Act No. 144 of the Public Acts of 1909.

History: 1996, Act 149, Imd. Eff. Mar. 25, 1996.

460.312 Jurisdiction of commission over stocks, bonds, or other evidences of indebtedness.

Sec. 2. Notwithstanding the repeal of former Act No. 144 of the Public Acts of 1909, being sections 460.301 to 460.303 of the Michigan Compiled Laws, the Michigan public service commission shall continue to have jurisdiction over any stocks, bonds, or other evidences of indebtedness that were issued pursuant to an order of the commission under former Act No. 144 of the Public Acts of 1909.

History: 1996, Act 149, Imd. Eff. Mar. 25, 1996.

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REHEARINGS BY PUBLIC UTILITY COMMISSION
Act 94 of 1923

AN ACT to authorize the Michigan public utilities commission to grant rehearings and to alter, modify or amend its findings and orders.

History: 1923, Act 94, Eff. Aug. 30, 1923.

The People of the State of Michigan enact:

460.351 Rehearings; amendment of orders.

Sec. 1. The Michigan public utilities commission, in any proceeding which may now be pending before it or which shall hereafter be brought before it, shall have full power and authority to grant rehearings and to alter, amend or modify its findings and orders.

History: 1923, Act 94, Eff. Aug. 30, 1923;—CL 1929, 11081;—CL 1948, 460.351.

Compiler's note: The public utilities commission, referred to in this section, was abolished and its powers and duties transferred to the public service commission by MCL 460.4.

For transfer of functions relating to the regulation of common carrier railroads from the Public Service Commission to the Department of Transportation, see E.R.O. No. 1982-3, compiled at MCL 247.823 of the Michigan Compiled Laws.

Transfer of powers: See MCL 247.823.

460.352 Suit to review order; time.

Sec. 2. The time allowed by law for the bringing of suit to review any order of the commission, shall continue after the order denying a rehearing or made upon a rehearing, for the same number of days now provided by law for review of the order upon which such rehearing was denied or had.

History: 1923, Act 94, Eff. Aug. 30, 1923;—CL 1929, 11082;—CL 1948, 460.352.

Compiler's note: For transfer of functions relating to the regulation of common carrier railroads from the Public Service Commission to the Department of Transportation, see E.R.O. No. 1982-3, compiled at MCL 247.823 of the Michigan Compiled Laws.

EXPENSES OF AUDIT AND APPRAISAL BY PUBLIC UTILITY COMMISSION
Act 47 of 1921

460.401-460.403 Repealed. 1978, Act 272, Imd. Eff. June 29, 1978.

MUNICIPAL PUBLIC UTILITIES; UNIFORM SYSTEM OF ACCOUNTS
Act 38 of 1925

460.451 Repealed. 1986, Act 261, Eff. Dec. 9, 1986.

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LOANS TO CITIES OR VILLAGES OWNING PUBLIC UTILITIES
Act 182 of 1971

AN ACT to permit a city or village owning and operating a public utility to borrow money for a term not to exceed 5 years for the purpose of purchasing, acquiring, constructing, improving, enlarging, extending or repairing the facilities of the public utility; to issue notes or other evidences of indebtedness therefor; to repay such borrowing from the revenues of the utility; to permit the pledging or assignment of bonds or other securities or evidences of debt held as investments for said public utility to secure such borrowings; and to provide other powers, rights and duties.

History: 1971, Act 182, Imd. Eff. Dec. 20, 1971;—Am. 1972, Act 130, Imd. Eff. May 8, 1972.

The People of the State of Michigan enact:

460.461 Loans to cities or villages owning and operating public utilities; evidences of indebtedness; term of loan; security; indebtedness subject to revenue bond act.

Sec. 1. (1) A city or village owning and operating a public utility, without vote of its electors and upon approval of its legislative body, may borrow money and issue and sell its notes or other evidences of indebtedness in the form and on the terms it deems advisable for the purpose of purchasing equipment or fuel, or both, or of purchasing, acquiring, constructing, improving, enlarging, extending, or repairing the facilities of the public utility. Loans shall not be made or notes or other evidences of indebtedness issued for a term exceeding 5 years. Notes or other evidences of indebtedness relating to fuels or supplies shall not exceed a term of 18 months.

(2) Notes or other evidences of indebtedness issued under this act shall not be general obligations of the city or village but shall be secured by and payable from the unencumbered revenues of the utility and other pledges and assignments authorized in this act. The city or village may pledge or assign bonds or other securities or evidences of debt held by it as investments for the public utility as security for the loan and to guarantee its repayment.

(3) Notes or other evidences of indebtedness are subject to the revenue bond act of 1933, 1933 PA 94, MCL 141.101 to 141.140.

History: 1971, Act 182, Imd. Eff. Dec. 20, 1971;—Am. 1972, Act 130, Imd. Eff. May 8, 1972;—Am. 1975, Act 155, Imd. Eff. July 9, 1975;—Am. 2002, Act 409, Imd. Eff. June 3, 2002.

460.462 Home rule city act inapplicable.

Sec. 2. Section 5(g) of the home rule city act, 1909 PA 279, MCL 117.5, relative to notice of intention to issue an obligation, does not apply to any borrowing under this act.

History: 1971, Act 182, Imd. Eff. Dec. 20, 1971;—Am. 1972, Act 130, Imd. Eff. May 8, 1972;—Am. 1983, Act 121, Imd. Eff. July 18, 1983;—Am. 2002, Act 409, Imd. Eff. June 3, 2002.

460.463 Forfeiture of security to pledgee or assignee.

Sec. 3. A pledge or assignment may allow forfeiture of the security to the pledgee or assignee for default or noncompliance with the terms of the loan.

History: 1971, Act 182, Imd. Eff. Dec. 20, 1971.

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CERTIFICATE OF CONVENIENCE AND NECESSITY
Act 69 of 1929

AN ACT to define and regulate certain public utilities and to require them to secure a certificate of convenience and necessity in certain cases.

History: 1929, Act 69, Imd. Eff. Apr. 23, 1929.

The People of the State of Michigan enact:

460.501 Certificate of convenience and necessity; definition.

Sec. 1. The term "municipality", when used in this act, means a city, village or township.

The term "public utility", when used in this act, means persons and corporations, other than municipal corporations, or their lessees, trustees and receivers now or hereafter owning or operating in this state equipment or facilities for producing, generating, transmitting, delivering or furnishing gas or electricity for the production of light, heat or power to or for the public for compensation.

The term "commission", when used in this act, means the Michigan public utilities commission or such other state governmental agency as may exercise the powers now conferred upon said commission.

History: 1929, Act 69, Imd. Eff. Apr. 23, 1929;—CL 1929, 11087;—CL 1948, 460.501.

Compiler's note: The public utilities commission, referred to in this section, was abolished and its powers and duties transferred to the public service commission by MCL 460.4.

460.502 Certificate of convenience; necessity for gas or electric utilities.

Sec. 2. No public utility shall hereafter begin the construction or operation of any public utility plant or system thereof nor shall it render any service for the purpose of transacting or carrying on a local business either directly, or indirectly, by serving any other utility or agency so engaged in such local business, in any municipality in this state where any other utility or agency is then engaged in such local business and rendering the same sort of service, or where such municipality is receiving service of the same sort, until such public utility shall first obtain from the commission a certificate that public convenience and necessity requires or will require such construction, operation, service, or extension.

History: 1929, Act 69, Imd. Eff. Apr. 23, 1929;—CL 1929, 11088;—CL 1948, 460.502.

460.503 Petition; contents.

Sec. 3. Before any such certificate of convenience and necessity shall issue, the applicant therefor shall file a petition with the commission stating the name of the municipality or municipalities which it desires to serve and the kind of service which it proposes to render, and that the applicant has secured the necessary consent or franchise from such municipality or municipalities authorizing it to transact a local business.

History: 1929, Act 69, Imd. Eff. Apr. 23, 1929;—CL 1929, 11089;—CL 1948, 460.503.

460.504 Hearing; notices.

Sec. 4. Upon filing such application, the commission shall set a day for the hearing thereof in accordance with its rules and practice relating to hearings and notify the applicant thereof. A copy of said application and a notice of the time and place of hearing such application shall also be served upon each and every other utility or agency in the municipality or municipalities proposed to be served by said applicant then rendering similar service therein, and also upon the clerk or other similar officer of each municipality, at least 10 days before such hearing, and said persons so served shall each be permitted to appear and be heard with reference to said application.

History: 1929, Act 69, Imd. Eff. Apr. 23, 1929;—CL 1929, 11090;—CL 1948, 460.504.

460.505 Hearing; matters for consideration; certificate, contents.

Sec. 5. In determining the question of public convenience and necessity the commission shall take into consideration the service being rendered by the utility then serving such territory, the investment in such utility, the benefit, if any, to the public in the matter of rates and such other matters as shall be proper and equitable in determining whether or not public convenience and necessity requires the applying utility to serve the territory. Every certificate of public convenience and necessity issued by the commission, under the authority hereby granted, shall describe in detail the territory in which said applicant shall operate and it shall not operate in or serve any other territory under the authority of said certificate.

History: 1929, Act 69, Imd. Eff. Apr. 23, 1929;—CL 1929, 11091;—CL 1948, 460.505.

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460.506 Review of order or decree.

Sec. 6. Any order or decree of the Michigan public service commission shall be subject to review in the manner provided for in section 26 of Act No. 300 of the Public Acts of 1909, being section 462.26 of the Michigan Compiled Laws.

History: 1929, Act 69, Imd. Eff. Apr. 23, 1929;—CL 1929, 11092;—CL 1948, 460.506;—Am. 1987, Act 11, Imd. Eff. Mar. 31, 1987.

Compiler's note: For provisions of Act 419 of 1919, referred to in this section, see MCL 460.51 et seq.

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TRANSMISSION OF ELECTRICITY
Act 106 of 1909

AN ACT to regulate the transmission of electricity through the public highways, streets and places of this state, where the source of supply and place of use are in the same or different counties; to regulate the charges to be made for electricity so transmitted; to regulate the rules and conditions of service under which said electricity shall be furnished and to confer upon the Michigan public utilities commission certain powers and duties in regard thereto.

History: 1909, Act 106, Eff. Sept. 1, 1909;—Am. 1921, Act 274, Eff. Aug. 18, 1921.

The People of the State of Michigan enact:

460.551 Transmission of electricity in or between counties; control.

Sec. 1. When electricity is generated or developed by steam, water or other power, within 1 county of this state, and transmitted and delivered to the consumer in the same or some other county, then the transmission and distribution of the same in or on the public highways, streets and places, the rate of charge to be made to the consumer for the electricity so transmitted and distributed and the rules and conditions of service under which said electricity shall be transmitted and distributed shall be subject to regulation as in this act provided.

History: 1909, Act 106, Eff. Sept. 1, 1909;—CL 1915, 4842;—Am. 1921, Act 274, Eff. Aug. 18, 1921;—CL 1929, 11093;—CL 1948, 460.551.

Administrative rules: R 460.501 et seq.; R 460.581 et seq.; and R 460.2101 et seq. of the Michigan Administrative Code.

460.552 Transmission of electricity; rate regulation by commission.

Sec. 2. The Michigan public utilities commission, hereinafter referred to as “the commission” shall have control and supervision of the business of transmitting and supplying electricity as mentioned in the first section of this act and no public utility supplying electricity shall put into force any rate or charge for the same without first petitioning said commission for authority to initiate or put into force such rate or charge and securing the affirmative action of the commission approving said rate or charge.

History: 1909, Act 106, Eff. Sept. 1, 1909;—CL 1915, 4843;—Am. 1921, Act 274, Eff. Aug. 18, 1921;—CL 1929, 11094;—CL 1948, 460.552.

Compiler's note: The public utilities commission, referred to in this section, was abolished and its powers and duties transferred to the public service commission by MCL 460.4.

460.553 Transmission of electricity; user of streets, regulation.

Sec. 3. Any person, firm or corporation engaged or organized to engage in any such business of transmitting and supplying electricity in 1 or more counties of this state shall, with the consent of the duly constituted city, village and township authorities of the cities, villages and townships in or through which it operates or may hereafter propose to operate, have the right to use the highways, streets, alleys and other public places of such cities, villages and townships: Provided, That in all cases each transmission line used shall have insulation and conductivity in accordance with its voltage. In case it has or procures a franchise from any city, village or township or a right to do business therein, it may transact a local business therein. Nothing herein contained shall be construed to impair any right possessed by any village or township to the reasonable control of its streets, alleys and public places in all matters of mere local concern.

History: 1909, Act 106, Eff. Sept. 1, 1909;—CL 1915, 4844;—Am. 1921, Act 274, Eff. Aug. 18, 1921;—CL 1929, 11095;—CL 1948, 460.553.

460.554 Data and information; specifications of construction; filing; height of lines; stenciling of poles; act subject to electric transmission line certification act.

Sec. 4. (1) If required by the commission, an electric utility erecting lines to transmit electricity in or through the highways, streets, or public places of 1 or more counties of this state shall prepare and file with the commission data and information concerning the method and manner of the construction of those lines, the franchise or consent under which those lines were constructed or are being maintained, and other information the commission reasonably requires. The commission may require the filing of detailed specifications covering the type of construction of transmission lines. The specifications shall show the details of construction of lines of various voltages. If the commission approves the specifications, all lines built by the electric utility shall be constructed according to the specifications. Transmission lines at all highway crossings shall be not less than 22 feet high and at railroad crossings shall be in accordance with the commission's rules made under authority of law. The commission may require all poles used in transmitting

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electricity to be stenciled or otherwise marked with the owner's name.

(2) This act is subject to the electric transmission line certification act.

History: 1909, Act 106, Eff. Sept. 1, 1909;—CL 1915, 4845;—Am. 1921, Act 274, Eff. Aug. 18, 1921;—Am. 1923, Act 93, Eff. Aug. 30, 1923;—CL 1929, 11096;—CL 1948, 460.554;—Am. 1995, Act 33, Imd. Eff. May 17, 1995.

460.555 Public utility commission; inspection; order for improvements.

Sec. 5. The commission shall have power to inspect and examine all such electrical apparatus already installed in any public highways, streets or places and all such apparatus hereafter installed, and to investigate from time to time the method employed by persons, firms or corporations transmitting and supplying electricity, and shall have power to order such improvements in such method as shall be necessary to secure good service and the safety of the public and of those employed in the business of transmitting and distributing such electricity, and of any persons liable to be injured by the erection, maintenance and use of such apparatus.

History: 1909, Act 106, Eff. Sept. 1, 1909;—CL 1915, 4846;—Am. 1921, Act 274, Eff. Aug. 18, 1921;—CL 1929, 11097;—CL 1948, 460.555.

460.556 Public utility commission; discretionary powers; annual report of utilities; audit, expense.

Sec. 6. The commission shall have power in its discretion to order electric current for distribution to be delivered at a suitable primary voltage, to any city, village or township through which a transmission line or lines may pass; to order service to be rendered by any such electric utility in any case in which it will be reasonable for such service to be ordered; prescribe uniform methods of keeping accounts to be observed by all persons, firms or corporations engaged in such business of transmitting and supplying electricity, and to keep informed as to the methods employed by all electric utilities in the transaction of their business; and to see that their property is maintained and operated for the security and accommodation of the public and in compliance with the provisions of law. It shall have power to require of such persons, firms or corporations annually a verified report upon such form and giving such information as will enable the commission to better discharge the duties imposed upon it hereby; and shall also have power to require from all electric utilities in the state such information as the commission may need at any time in connection with the performance of the duties imposed upon it by this act. Said commission shall also have power, in connection with any rate or service hearing or investigation, to make such audit and analysis of the books and records of the utility, and such inventory and appraisal of its property as may be necessary in connection with the duties imposed upon the commission by this act; and in any such case the commission shall keep a record of all expenses incurred by it in connection with its investigation of the affairs and property of the said utility and during the progress or at the conclusion of its work, shall state the amount thereof in writing to the said utility and said utility shall pay into the treasury of the state the amount of such expense at such times and in such manner as the commission may by order require. Said moneys when so paid into the state treasury shall go to the credit of the Michigan public utilities commission, and are hereby appropriated to the payment of its expenses.

History: 1909, Act 106, Eff. Sept. 1, 1909;—CL 1915, 4847;—Am. 1921, Act 274, Eff. Aug. 18, 1921;—CL 1929, 11098;—CL 1948, 460.556.

460.557 Investigation of complaints; notice; hearing; fixing of rates; rates as just and reasonable; rate-making subject to electric transmission line certification act; rules; review of order or decree.

Sec. 7. (1) The commission shall investigate each complaint against an electric utility submitted in writing by a consumer or a city, village, or township concerning the price of the electricity sold and delivered, the service rendered, or any other matter of complaint. The commission's agents, examiners, inspectors, engineers, and accountants may inspect the system and method used in transmitting and supplying electricity and examine the electric utility's books and papers pertaining to transmitting and supplying electricity, services rendered, or any other matter of complaint.

(2) The commission shall cause a notice of the complaint with a copy of the complaint to be served on the electric utility complained of or affected by the complaint. The electric utility has the right to a hearing in respect to the complaint. After investigation and hearing, the commission may by order fix the price of electricity to be charged by the electric utility within lawful limits. The electric utility shall receive notice of the price fixed by the commission and shall charge that fixed price until the commission changes the fixed price. The commission may establish by order rules and conditions of service that are just and reasonable. In determining the price, the commission shall consider and give due weight to all lawful elements necessary to determine the price to be fixed for supplying electricity, including cost, reasonable return on the fair value of

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all property used in the service, depreciation, obsolescence, risks of business, value of service to the consumer, the connected load, the hours of the day when used, and the quantity used each month. However, the commission shall not change or alter the price fixed in or regulated by or under a franchise granted by a city, village, or township.

(3) If identical or substantially identical rates are established in 2 or more contiguous cities, villages, townships, or communities served or whose inhabitants are served by the same electric utility, the territory served shall be treated as a unit for fixing rates. A rate shall not be changed with respect to 1 or more of the cities, villages, townships, or communities so as to establish a rate difference within the territory served, unless it is shown that the continuance of the identical or substantially identical rate or rates will work substantial hardship to a city, village, township, person, firm, or corporation affected or unless otherwise provided by law.

(4) The rates of an electric utility shall be just and reasonable and a consumer shall not be charged more or less than other consumers are charged for like contemporaneous service rendered under similar circumstances and conditions. An electric utility doing business within this state shall not, directly or indirectly by a special rate, rebate, draw-back, or other device, charge, demand, collect, or receive from a person, partnership, or corporation, a greater or lesser compensation for a service rendered than the electric utility charges, demands, collects, or receives from any other person, partnership, or corporation for rendering, a like contemporaneous service.

A person, partnership, or corporation shall not, directly or indirectly, ask, demand, or accept a rebate, draw-back, or other device by which the person, partnership, or corporation shall obtain electric service for a rate less than that charged others in like circumstances.

(5) Rate-making pursuant to this act is subject to the electric transmission line certification act.

(6) The commission may promulgate rules for the conduct of its business and the proper discharge of its functions under this act, pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. A person dealing with the commission or interested in a matter or proceeding pending before the commission is bound by those rules.

(7) An order or decree of the commission is subject to review as provided in section 26 of Act No. 300 of the Public Acts of 1909, being section 462.26 of the Michigan Compiled Laws.

History: 1909, Act 106, Eff. Sept. 1, 1909;—CL 1915, 4848;—Am. 1921, Act 274, Eff. Aug. 18, 1921;—Am. 1923, Act 108, Eff. Aug. 30, 1923;—CL 1929, 11099;—CL 1948, 460.557;—Am. 1987, Act 8, Eff. Apr. 1, 1987;—Am. 1995, Act 33, Imd. Eff. May 17, 1995.

Compiler's note: For provisions of Act 419 of 1919, referred to in this section, see MCL 460.51 et seq. For provisions of Act 300 of 1909, referred to in this section, see MCL 462.2 et seq.

Section 2 of Act No. 497 of the Public Acts of 1982, which act amended this section, provided that this "amendatory act shall not take effect unless House Bill No. 5719 (request no. 02467 '81) of the 81st Legislature is enacted into law." House Bill No. 5719 was not enacted into law during the 1982 Regular Session.

Administrative rules: R 460.511 et seq.; R 460.2011 et seq.; R 460.2101 et seq.; R 460.2601 et seq.; and R 460.3101 et seq. of the Michigan Administrative Code.

460.558 Public utility commission; order mandatory; failure to comply, penalty.

Sec. 8. Every corporation, its officers, agents and employes, and all persons and firms engaged in the business of furnishing electricity as aforesaid shall obey and comply with every lawful order made by the commission under the authority of this act so long as the same shall remain in force. Any corporation or person engaged in such business or any officer, agent, or employe thereof, who wilfully or knowingly fails or neglects to obey or comply with such order or any provision of this act shall forfeit to the state of Michigan not to exceed the sum of 300 dollars for each offense. Every distinct violation of any such order or of this act, shall be a separate offense, and in case of a continued violation, each day shall be deemed a separate offense. An action to recover such forfeiture may be brought in any court of competent jurisdiction in this state in the name of the people of the state of Michigan, and all moneys recovered in any such action, together with the costs thereof, shall be paid into the state treasury to the credit of the general fund.

History: 1909, Act 106, Eff. Sept. 1, 1909;—CL 1915, 4849;—Am. 1921, Act 274, Eff. Aug. 18, 1921;—CL 1929, 11100;—CL 1948, 460.558.

460.559 Scope; limitation.

Sec. 9. This act shall not apply to the transmission or use of electricity for the purpose of conveying intelligence by telegraph, telephone or by other methods now or hereafter adopted therefor.

History: 1909, Act 106, Eff. Sept. 1, 1909;—CL 1915, 4850;—Am. 1921, Act 274, Eff. Aug. 18, 1921;—CL 1929, 11101;—CL 1948, 460.559.

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ELECTRIC TRANSMISSION LINE CERTIFICATION ACT
Act 30 of 1995

AN ACT to regulate the location and construction of certain electric transmission lines; to prescribe powers and duties of the Michigan public service commission and to give precedence to its determinations in certain circumstances; and to prescribe the powers and duties of certain local units of government and officials of those local units of government.

History: 1995, Act 30, Imd. Eff. May 17, 1995.

The People of the State of Michigan enact:

460.561 Short title.

Sec. 1. This act shall be known and may be cited as the "electric transmission line certification act".

History: 1995, Act 30, Imd. Eff. May 17, 1995.

460.562 Definitions.

Sec. 2. As used in this act:

(a) "Affiliated transmission company" means a person, partnership, corporation, association, or other legal entity, or its successors or assigns, which has fully satisfied the requirements to join a regional transmission organization as determined by the federal energy regulatory commission, is engaged in this state in the transmission of electricity using facilities it owns that were transferred to the entity by an electric utility that was engaged in the generation, transmission, and distribution of electricity in this state on December 31, 2000, and is not independent of an electric utility or an affiliate of the utility, generating or distributing electricity to retail customers in this state.

(b) "Certificate" means a certificate of public convenience and necessity issued for a major transmission line under this act or issued for a transmission line under section 9.

(c) "Commission" means the Michigan public service commission.

(d) "Construction" means any substantial action taken on a route constituting placement or erection of the foundations or structures supporting a transmission line. Construction does not include preconstruction activity or the addition of circuits to an existing transmission line.

(e) "Electric utility" means a person, partnership, corporation, association, or other legal entity whose transmission or distribution of electricity the commission regulates under 1909 PA 106, MCL 460.551 to 460.559, or 1939 PA 3, MCL 460.1 to 460.10cc. Electric utility does not include a municipal utility, affiliated transmission company, or independent transmission company.

(f) "Independent transmission company" means a person, partnership, corporation, association, or other legal entity, or its successors or assigns, engaged in this state in the transmission of electricity using facilities it owns that have been divested to the entity by an electric utility that was engaged in the generation, transmission, and distribution of electricity in this state on December 31, 2000, and is independent of an electric utility or an affiliate of the utility, generating or distributing electricity to retail customers in this state.

(g) "Major transmission line" means a transmission line of 5 miles or more in length wholly or partially owned by an electric utility, affiliated transmission company, or independent transmission company through which electricity is transferred at system bulk supply voltage of 345 kilovolts or more.

(h) "Municipality" means a city, township, or village.

(i) "Preconstruction activity" means any activity on a proposed route conducted before construction of a transmission line begins. Preconstruction activity includes surveys, measurements, examinations, soundings, borings, sample-taking, or other testing procedures, photography, appraisal, or tests of soil, groundwater, structures, or other materials in or on the real property for contamination. Preconstruction activity does not include an action that permanently or irreparably alters the real property on or across the proposed route.

(j) "Route" means real property on or across which a transmission line is constructed or proposed to be constructed.

(k) "Transmission line" means all structures, equipment, and real property necessary to transfer electricity at system bulk supply voltage of 100 kilovolts or more.

History: 1995, Act 30, Imd. Eff. May 17, 1995;—Am. 2004, Act 198, Imd. Eff. July 12, 2004.

460.563 Transmission as essential service; act as controlling.

Sec. 3. (1) Transmission of electricity is an essential service.

(2) This act shall control in any conflict between this act and any other law of this state.

History: 1995, Act 30, Imd. Eff. May 17, 1995;—Am. 2004, Act 198, Imd. Eff. July 12, 2004.

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460.564 Construction plan.

Sec. 4. (1) If an electric utility that has 50,000 or more residential customers in this state, affiliated transmission company, or an independent transmission company plans to construct a major transmission line in this state in the 5 years after planning commences, the electric utility, affiliated transmission company, or independent transmission company shall submit a construction plan to the commission. An electric utility with fewer than 50,000 residential customers in this state may submit a plan under this section. A plan shall include all of the following:

(a) The general location and size of all major transmission lines to be constructed in the 5 years after planning commences.

(b) Copies of relevant bulk power transmission information filed by the electric utility, affiliated transmission company, or independent transmission company with any state or federal agency, national electric reliability coalition, or regional electric reliability coalition.

(c) Additional information required by commission rule or order that directly relates to the construction plan.

(2) At the same time the electric utility, affiliated transmission company, or independent transmission company submits a construction plan to the commission under subsection (1), the electric utility, affiliated transmission company, or independent transmission company shall provide a copy of the construction plan to each municipality in which construction of the planned major transmission line is intended.

History: 1995, Act 30, Imd. Eff. May 17, 1995;—Am. 2004, Act 198, Imd. Eff. July 12, 2004.

460.565 Transmission line; certificate required.

Sec. 5. An electric utility, affiliated transmission company, or independent transmission company shall not begin construction of a major transmission line for which a plan has been submitted under section 4 until the commission issues a certificate for that transmission line. Except as otherwise provided in section 9, a certificate of public convenience and necessity under this act is not required for constructing a new transmission line other than a major transmission line or for reconstructing, repairing, replacing, or improving an existing transmission line, including the addition of circuits to an existing transmission line.

History: 1995, Act 30, Imd. Eff. May 17, 1995;—Am. 2004, Act 198, Imd. Eff. July 12, 2004.

460.566 Public meeting as condition for certificate application.

Sec. 6. (1) Before applying for a certificate under section 5, an electric utility, affiliated transmission company, or independent transmission company shall schedule and hold a public meeting in each municipality through which a proposed major transmission line for which a plan has been submitted under section 4 would pass. A public meeting held in a township satisfies the requirement that a public meeting be held in each affected village located within the township.

(2) In the 60 days before a public meeting held under subsection (1), the electric utility, affiliated transmission company, or independent transmission company shall offer in writing to meet with the chief elected official of each affected municipality or his or her designee to discuss the utility's, affiliated transmission company's, or independent transmission company's desire to build the major transmission line and to explore the routes to be considered.

History: 1995, Act 30, Imd. Eff. May 17, 1995;—Am. 2004, Act 198, Imd. Eff. July 12, 2004.

460.567 Application for certificate for proposed major transmission line; withdrawal; contents.

Sec. 7. (1) An electric utility that has 50,000 or more residential customers in this state, an affiliated transmission company, or an independent transmission company shall apply to the commission for a certificate for a proposed major transmission line. An applicant may withdraw an application at any time.

(2) An application for a certificate shall contain all of the following:

(a) The planned date for beginning construction.

(b) A detailed description of the proposed major transmission line, its route, and its expected configuration and use.

(c) A description and evaluation of 1 or more alternate major transmission line routes and a statement of why the proposed route was selected.

(d) If a zoning ordinance prohibits or regulates the location or development of any portion of a proposed route, a description of the location and manner in which that zoning ordinance prohibits or regulates the location or construction of the proposed route.

(e) The estimated overall cost of the proposed major transmission line.

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(f) Information supporting the need for the proposed major transmission line, including identification of known future wholesale users of the proposed major transmission line.

(g) Estimated quantifiable and nonquantifiable public benefits of the proposed major transmission line.

(h) Estimated private benefits of the proposed major transmission line to the applicant or any legal entity that is affiliated with the applicant.

(i) Information addressing potential effects of the proposed major transmission line on public health and safety.

(j) A summary of all comments received at each public meeting and the applicant's response to those comments.

(k) Information indicating that the proposed major transmission line will comply with all applicable state and federal environmental standards, laws, and rules.

(*l*) Other information reasonably required by the commission pursuant to rule.

History: 1995, Act 30, Imd. Eff. May 17, 1995;—Am. 2004, Act 198, Imd. Eff. July 12, 2004.

460.568 Public notice; publication; conduct of proceeding; fees; consultants; granting or denying application; criteria; identification of route and estimated cost; validity and duration of certificate.

Sec. 8. (1) Upon applying for a certificate, the electric utility, affiliated transmission company, or independent transmission company shall give public notice in the manner and form the commission prescribes of an opportunity to comment on the application. Notice shall be published in a newspaper of general circulation in the area to be affected within a reasonable time period after an application is provided to the commission and shall be sent to each affected municipality and each affected landowner on whose property a portion of the proposed major transmission line will be constructed. The notice shall be written in plain, nontechnical, and easily understood terms and shall contain a title that includes the name of the electric utility, affiliated transmission company, or independent transmission company and the words “NOTICE OF INTENT TO CONSTRUCT A MAJOR TRANSMISSION LINE”.

(2) The commission shall conduct a proceeding on the application as a contested case under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Upon receiving an application for a certificate, each affected municipality and each affected landowner shall be granted full intervenor status as of right in commission proceedings concerning the proposed major transmission lines.

(3) The commission may assess certificate application fees from the electric utility, affiliated transmission company, or independent transmission company to cover the commission's administrative costs in processing the application and may require the electric utility, affiliated transmission company, or independent transmission company to hire consultants chosen by the commission to assist the commission in evaluating those issues the application raises.

(4) The commission shall grant or deny the application for a certificate not later than 1 year after the application's filing date. If a party submits an alternative route for the proposed major transmission line, the commission shall grant the application for either the electric utility's, affiliated transmission company's, or independent transmission company's proposed route or 1 alternative route or shall deny the application. The commission may condition its approval upon the applicant taking additional action to assure the public convenience, health, and safety and reliability of the proposed major transmission line.

(5) The commission shall grant the application and issue a certificate if it determines all of the following:

(a) The quantifiable and nonquantifiable public benefits of the proposed major transmission line justify its construction.

(b) The proposed or alternative route is feasible and reasonable.

(c) The proposed major transmission line does not present an unreasonable threat to public health or safety.

(d) The applicant has accepted the conditions contained in a conditional grant.

(6) A certificate issued under this section shall identify the major transmission line's route and shall contain an estimated cost for the transmission line.

(7) If construction of a proposed major transmission line is not begun within 5 years of the date that a certificate is granted, the certificate is invalid and a new certificate shall be required for the proposed major transmission line.

History: 1995, Act 30, Imd. Eff. May 17, 1995;—Am. 2004, Act 198, Imd. Eff. July 12, 2004.

460.569 Certificate other than for major transmission line; provisions applicable to issuance; applicability of MCL 460.564.

Sec. 9. (1) An electric utility, affiliated transmission company, or independent transmission company may file an application with the commission for a certificate for a proposed transmission line other than a major

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transmission line. If an electric utility, affiliated transmission company, or independent transmission company applies for a certificate under this section, the electric utility, affiliated transmission company, or independent transmission company shall not begin construction of the proposed transmission line until the commission issues a certificate for that transmission line.

(2) The commission shall proceed on an application in the same manner as provided in section 8. Except as otherwise provided in subsection (3), the provisions of this act that apply to applications and certificates for major transmission lines apply in the same manner to applications and certificates issued under this section.

(3) Section 4 does not apply to a transmission line for which a certificate is sought under this section.

History: 1995, Act 30, Imd. Eff. May 17, 1995;—Am. 2004, Act 198, Imd. Eff. July 12, 2004.

460.570 Local ordinances or limitations in conflict with certificate; effect.

Sec. 10. (1) If the commission grants a certificate under this act, that certificate shall take precedence over a conflicting local ordinance, law, rule, regulation, policy, or practice that prohibits or regulates the location or construction of a transmission line for which the commission has issued a certificate.

(2) A zoning ordinance or limitation imposed after an electric utility, affiliated transmission company, or independent transmission company files for a certificate shall not limit or impair the transmission line's construction, operation, or maintenance.

(3) In an eminent domain or other related proceeding arising out of or related to a transmission line for which a certificate is issued, a certificate issued under this act is conclusive and binding as to the public convenience and necessity for that transmission line and its compatibility with the public health and safety or any zoning or land use requirements in effect when the application was filed.

History: 1995, Act 30, Imd. Eff. May 17, 1995;—Am. 2004, Act 198, Imd. Eff. July 12, 2004.

460.571 Limited license.

Sec. 11. In a civil action in the circuit court under section 4 of the uniform condemnation procedures act, 1980 PA 87, MCL 213.54, the court may grant a limited license to an electric utility, affiliated transmission company, or independent transmission company for entry on land to conduct preconstruction activity related to a proposed major transmission line or a transmission line if the electric utility, affiliated transmission company, or independent transmission company has scheduled or held a public meeting in connection with a certificate sought under section 7 or 9 and if written notice of the intent to enter the land has been given to each affected landowner on whose property the electric utility, affiliated transmission company, or independent transmission company wishes to enter. The limited license may be granted upon such terms as justice and equity require. An electric utility, affiliated transmission company, or independent transmission company that obtains a limited license shall provide each affected land owner with a copy of the limited license. A limited license shall include a description of the purpose of entry, the scope of activities permitted, and the terms and conditions of entry with respect to the time, place, and manner of entry. The court shall not deny a limited license for entry to conduct preconstruction activity for any of the following reasons:

(a) A disagreement exists over the proposed route.

(b) The electric utility, affiliated transmission company, or independent transmission company has not yet applied for a certificate.

(c) The commission has not yet granted or denied the application.

(d) An alleged lack of public convenience or necessity.

History: 1995, Act 30, Imd. Eff. May 17, 1995;—Am. 2004, Act 198, Imd. Eff. July 12, 2004.

460.572 Costs to be included in rates.

Sec. 12. Reasonable and prudent costs for a transmission line for which a certificate is issued shall be included in an electric utility's rates. The commission shall not disallow costs the electric utility incurs in constructing a transmission line for which a certificate is issued, which costs do not exceed the amount set forth in the certificate unless the commission determines that the actual costs were imprudently and unreasonably incurred, based upon substantial evidence presented in opposition to the electric utility's rate request. Costs incurred by the electric utility that exceed the amount set forth in the certificate shall be included in the electric utility's rates, if reasonably and prudently incurred based upon substantial evidence presented in support of the electric utility's rate request.

History: 1995, Act 30, Imd. Eff. May 17, 1995.

460.573 Information as public record; disclosure of confidential information; waiver.

Sec. 13. (1) Except as otherwise provided in this section, information obtained by the commission under this act is a public record as provided in the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

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(2) An electric utility, affiliated transmission company, or independent transmission company may designate information received from a third party that the electric utility, affiliated transmission company, or independent transmission company submits to the commission in an application for a certificate or in other documents required by the commission for purposes of certification submitted to the commission as being only for the confidential use of the commission. The commission shall notify the electric utility, affiliated transmission company, or independent transmission company of a request for public records under section 5 of the freedom of information act, 1976 PA 442, MCL 15.235, if the scope of the request includes information designated as confidential. The electric utility, affiliated transmission company, or independent transmission company has 10 days after the receipt of the notice to demonstrate to the commission that the information designated as confidential should not be disclosed because the information is a trade secret or secret process or is production, commercial, or financial information the disclosure of which would jeopardize the competitive position of the electric utility, affiliated transmission company, or independent transmission company or the person from whom the information was obtained. The commission shall not grant the request for the information if the electric utility, affiliated transmission company, or independent transmission company demonstrates to the satisfaction of the commission that the information should not be disclosed for a reason authorized in this section. If the commission makes a decision to grant a request, the information requested shall not be released until 3 days have elapsed after notice of the decision is provided to the electric utility, affiliated transmission company, or independent transmission company.

(3) If any person uses information described in subsection (1) to forecast electrical demand, the person shall structure the forecast so the third party is not identified unless the third party waives confidentiality.

History: 1995, Act 30, Imd. Eff. May 17, 1995;—Am. 2004, Act 198, Imd. Eff. July 12, 2004.

460.574 Rules.

Sec. 14. (1) The commission may promulgate rules to implement this act pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. The rules may contain standards to determine a proposed major transmission line's health and safety aspects, including but not limited to standards for permissible additions to electric and magnetic fields produced by the transmission line.

(2) Until rules are promulgated pursuant to subsection (1), the commission shall consider and determine any health or safety issue a party raises in a proceeding concerning a certificate application.

History: 1995, Act 30, Imd. Eff. May 17, 1995.

460.575 Commission order; review; powers and duties.

Sec. 15. (1) A commission order relating to a certificate or other matter provided for under this act is subject to review as provided in section 26 of 1909 PA 300, MCL 462.26.

(2) In administering this act, the commission shall have only those powers and duties granted to the commission under this act.

History: 1995, Act 30, Imd. Eff. May 17, 1995;—Am. 2004, Act 198, Imd. Eff. July 12, 2004.

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PUBLIC UTILITY FRANCHISE
Act 266 of 1909

AN ACT to authorize township boards to grant the right to use the highways, streets, alleys and other public places of any township for poles, wires, pipes or conduits, or tracks for railways, and to operate and maintain the same, and to authorize townships to grant public utility franchises, and to provide for the submission of such public utility franchise grants to the electors for confirmation.

History: 1909, Act 266, Eff. Sept. 1, 1909.

The People of the State of Michigan enact:

460.601 Franchise to use streets and public places; grant by township board.

Sec. 1. The township board of any township may grant to any person, partnership, association or corporation the right to use the highways, streets, alleys, and other public places of the township to set poles, string wires, lay pipes or conduits or to lay tracks for railways and to operate and maintain the same and the right to transact a local business in such township, subject to such reasonable regulations as said board shall prescribe from time to time.

History: 1909, Act 266, Eff. Sept. 1, 1909;—CL 1915, 4836;—CL 1929, 11103;—CL 1948, 460.601.

460.602 Franchise granted by township board; majority vote; designation as revocable or irrevocable; vote by electors.

Sec. 2. (1) A township may grant a franchise by a majority vote of the township board. The board shall designate a franchise granted under this act as either revocable or irrevocable.

(2) If the franchise is designated as irrevocable, approval of the franchise as irrevocable shall be submitted to a vote of the electors of the township at the next election.

(3) If the electors do not approve the irrevocability of the franchise, the franchise shall remain valid but continue as a revocable franchise.

History: 1909, Act 266, Eff. Sept. 1, 1909;—CL 1915, 4837;—CL 1929, 11104;—CL 1948, 460.602;—Am. 1996, Act 322, Imd. Eff. June 26, 1996.

460.603 Vote by electors to grant irrevocable trust; notice.

Sec. 3. At least 20 days before the next election, the township clerk shall give notice that the question of granting an irrevocable franchise will be submitted to a vote of the electors by posting a notice in 3 or more public places in the township.

History: 1909, Act 266, Eff. Sept. 1, 1909;—CL 1915, 4838;—CL 1929, 11105;—CL 1948, 460.603;—Am. 1996, Act 322, Imd. Eff. June 26, 1996.

460.603a Revocable franchise granted before effective date of act.

Sec. 3a. Unless revoked by the board or otherwise voted by the electors, a revocable franchise granted before the effective date of the amendatory act that added this section shall be a revocable franchise under this act subject to the terms and conditions of any existing agreements or contracts between the franchisee and the township.

History: Add. 1996, Act 322, Imd. Eff. June 26, 1996.

460.604, 460.605 Repealed. 1996, Act 322, Imd. Eff. June 26, 1996.

Compiler's note: The repealed sections pertained to confirmation of grant by electors.

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GUARANTY DEPOSITS
Act 347 of 1921

AN ACT to allow public utilities to require a guaranty deposit; to require public utilities to pay interest on guaranty deposits; and to prescribe certain powers and duties of the Michigan public service commission.

History: 1921, Act 347, Eff. Aug. 18, 1921;—Am. 1988, Act 168, Imd. Eff. June 17, 1988.

The People of the State of Michigan enact:

460.651 Guaranty deposit; approval of terms and conditions.

Sec. 1. A public utility regulated by the Michigan public service commission may require a ratepayer to pay a deposit as a guaranty for the payment of the utility's services. In the absence of specific rules adopted by the commission, the terms and conditions for a guaranty deposit required by a utility must be approved by the commission.

History: 1921, Act 347, Eff. Aug. 18, 1921;—CL 1929, 11108;—CL 1948, 460.651;—Am. 1988, Act 168, Imd. Eff. June 17, 1988.

460.652 Rules.

Sec. 2. The Michigan public service commission may prescribe by rule all of the following:

(a) The circumstances under which a utility may require a guaranty deposit.

(b) The amount of the guaranty deposit.

(c) The interest rate payable on the guaranty deposit.

(d) The method by which the utility will pay interest on the guaranty deposit to the ratepayer.

(e) The circumstances under which the guaranty deposit must be returned to the ratepayer.

History: 1921, Act 347, Eff. Aug. 18, 1921;—CL 1929, 11109;—CL 1948, 460.652;—Am. 1988, Act 168, Imd. Eff. June 17, 1988.

PROTECTION OF UNDERGROUND FACILITIES
Act 53 of 1974

460.701-460.718 Repealed. 2013, Act 174, Eff. Apr. 1, 2014.

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MISS DIG UNDERGROUND FACILITY DAMAGE PREVENTION AND SAFETY ACT
Act 174 of 2013

AN ACT to enhance public safety, protect the environment, and prevent the disruption of vital public services by reducing the incidences of damage to underground facilities caused by excavation or blasting activity by providing notices to facility owners and facility operators before excavation or blasting; to provide for certain notices to affected parties when underground facilities are damaged; to provide for the powers and duties of certain state governmental officers and entities; to allow the promulgation of rules; to prescribe penalties; to allow the imposition of a fee; to provide for immunity for certain individuals; to allow claims for damages against certain governmental entities in certain circumstances; and to repeal acts and parts of acts.

History: 2013, Act 174, Eff. Apr. 1, 2014.

The People of the State of Michigan enact:

460.721 Short title.

Sec. 1. This act shall be known and may be cited as the "MISS DIG underground facility damage prevention and safety act".

History: 2013, Act 174, Eff. Apr. 1, 2014.

460.723 Definitions.

Sec. 3. As used in this act:

(a) "Additional assistance" means a response by a facility owner or facility operator to a request made by an excavator during business hours, for help in locating a facility.

(b) "Approximate location" means a strip of land at least 36 inches wide, but not wider than the width of the marked facility plus 18 inches on either side of the facility marks.

(c) "Blasting" means changing the level or grade of land or rendering, tearing, demolishing, moving, or removing earth, rock, buildings, structures, or other masses or materials by seismic blasting or the detonation of dynamite or any other explosive agent.

(d) "Business day" means Monday through Friday, excluding holidays observed by the notification system and posted on the notification system website.

(e) "Business hours" means from 7 a.m. to 5 p.m., eastern standard time, on business days.

(f) "Caution zone" means the area within 48 inches of either side of the facility marks provided by a facility owner or facility operator.

(g) "Commission" means the Michigan public service commission created in section 1 of 1939 PA 3, MCL 460.1.

(h) "Damage" means any impact upon or exposure of an underground facility requiring its repair or replacement due to weakening, partial destruction, or complete destruction of the facility, including, but not limited to, the protective coating, lateral support, cathodic protection, or housing of the facility.

(i) "Design ticket" means a communication to the notification system in which a request for information regarding underground facilities for predesign, design, or advance planning purposes, but not marking for excavation or blasting, is made under the procedures described in section 6a.

(j) "Dig notice" means a communication to the notification system by an excavator providing notice of intended excavation or blasting activity as required by this act.

(k) "Emergency" means a sudden or unforeseen occurrence, including a government-declared emergency, involving a clear and imminent danger to life, health, or property, or imminent danger to the environment, that requires immediate correction in order to restore or to prevent the interruption of essential governmental services, utility services, or the blockage of public transportation and that requires immediate excavation or blasting.

(*l*) "Emergency notice" means a communication to the notification system to alert the facility owners or facility operators of the urgent need for marking the location of a facility due to an emergency.

(m) "Excavation" means moving, removing, or otherwise displacing earth, rock, or other material below existing surface grade with power tools or power equipment, including, but not limited to, grading, trenching, tiling, digging, drilling, boring, augering, tunneling, scraping, cable or pipe plowing, and pile driving; and wrecking, razing, rending, moving, or removing a structure or mass of materials. Excavation does not include any of the following:

(*i*) Any of the following activities performed in the course of farming operations:

(A) Any farming operation performed in the public right-of-way to a depth of not more than 12 inches below the existing surface grade if the farming operation is not performed within 6 feet of any aboveground

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structure that is part of a facility.

(B) Any farming operation performed outside a public right-of-way and within 25 yards of an existing petroleum or natural gas pipeline to a depth of not more than 18 inches below the existing surface grade if the farming operation is not performed within 6 feet of any aboveground structure that is part of a facility.

(C) Any farming operation performed outside a public right-of-way and not within 25 yards of an existing petroleum or natural gas pipeline if the farming operation is not performed within 6 feet of any aboveground structure that is part of a facility.

(*ii*) Replacing a fence post, sign post, or guardrail in its existing location.

(*iii*) Any excavation performed at a grave site in a cemetery.

(*iv*) Any excavation performed within a landfill unit as defined in R 299.4103 of the Michigan administrative code during its active life as defined in R 299.4101 of the Michigan administrative code or during its postclosure period as set forth in R 299.4101 to R 299.4922 of the Michigan administrative code.

(*v*) Any of the following activities if those activities are conducted by railroad employees or railroad contractors and are carried out with reasonable care to protect any installed facilities placed in the railroad right-of-way by agreement with the railroad:

(A) Any routine railroad maintenance activities performed in the public right-of-way as follows:

(I) Within the track area, either to the bottom of the ballast or to a depth of not more than 12 inches below the bottom of the railroad tie, whichever is deeper, if the routine railroad maintenance activity is not performed within 6 feet of any aboveground structure that is part of a facility that is not owned or operated by that railroad.

(II) Outside the track area, not more than 12 inches below the ground surface, if the routine railroad maintenance activity is not performed within 6 feet of any aboveground structure that is part of a facility that is not owned or operated by that railroad.

(B) Any routine railroad maintenance activities performed to a depth of not more than 18 inches below the flow line of a ditch or the ground surface in the railroad right-of-way, excluding the public right-of-way, if the routine railroad maintenance activity is not performed within 6 feet of any aboveground structure that is part of a facility that is not owned or operated by that railroad.

(*vi*) Routine maintenance or preventative maintenance as those terms are defined in section 10c of 1951 PA 51, MCL 247.660c, to a depth of not more than 12 inches below the roadway and any shoulder of a street, county road, or highway.

(n) "Excavator" means any person performing excavation or blasting.

(o) "Facility" or "underground facility" means an underground or submerged conductor, pipe, or structure, including, but not limited to, a conduit, duct, line, pipe, wire, or other device and its appurtenances used to produce, store, transmit, or distribute a utility service, including communications, data, cable television, electricity, heat, natural or manufactured gas, oil, petroleum products, steam, sewage, video, water, and other similar substances, including environmental contaminates or hazardous waste.

(p) "Facility operator" means a person that controls the operation of a facility.

(q) "Facility owner" means a person that owns a facility.

(r) "Farm" means that term as defined in section 2 of the Michigan right to farm act, 1981 PA 93, MCL 286.472.

(s) "Farming operations" means plowing, cultivating, planting, harvesting, and similar operations routine to most farms and that are performed on a farm. Farming operations do not include installation of drainage tile, underground irrigation lines, or the drilling of a well.

(t) "Governmental agency" means the state and its political subdivisions, including counties, townships, cities, villages, or any other governmental entity.

(u) "Mark", "marks", or "marking" means the temporary identification on the surface grade of the location of a facility in response to a ticket as described in section 7.

(v) "Notification system" means MISS DIG System, Inc., a Michigan nonprofit corporation formed and operated by each facility owner and facility operator to administer a 1-call system for the location of facilities, or any successor to this corporation.

(w) "Person" means an individual, firm, joint venture, partnership, corporation, association, governmental agency, department or agency, utility cooperative, or joint stock association, including any trustee, receiver, assignee, or personal representative thereof.

(x) "Positive response" means the procedure administered by the notification system to allow excavators to determine whether all facility owners or facility operators contacted under a ticket have responded in accordance with this act.

(y) "Public right-of-way" means the area on, below, or above a public roadway, highway, street, alley, easement, or waterway.

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(z) "Railroad" means that term as defined in section 109 of the railroad code of 1993, 1993 PA 354, MCL 462.109.

(aa) "Safe zone" means an area 48 inches or more from either side of the facility marks provided by a facility owner or facility operator.

(bb) "Soft excavation" means a method and technique designed to prevent contact damage to underground facilities, including, but not limited to, hand-digging, cautious digging with nonmechanical tools, vacuum excavation methods, or use of pneumatic hand tools.

(cc) "Start date" means the date that a proposed excavation or blasting is expected to begin as indicated on a ticket.

(dd) "Ticket" means a communication from the notification system to a facility owner or facility operator requesting the marking of underground facilities, based on information provided by an excavator in a dig notice.

(ee) "White lining" means marking by an excavator of the area of a proposed excavation or blasting, with white paint or flags, or both, before giving notice to the notification system.

History: 2013, Act 174, Eff. Apr. 1, 2014.

460.724 MISS DIG Systems, Inc.; operation and membership; notification system; duties and responsibilities; funding; fees; farm operation; tax exemption.

Sec. 4. (1) Facility owners and facility operators shall continue to operate and be members of MISS DIG Systems, Inc., a Michigan nonprofit corporation, that shall have the duties and undertake the responsibilities of the notification system under this act on and after the effective date of this act. The notification system responsibilities and duties do not include the physical marking of facilities, which is the responsibility of a facility owner or facility operator upon notification under this act.

(2) The notification system and its procedures shall be governed by its board of directors and in accordance with its current articles of incorporation and bylaws as of the effective date of this act, with any future changes made in accordance with the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192, and the notification system's articles, bylaws, and board procedures. The notification system shall request input regarding its policies from all interested persons, including facility owners and facility operators, excavators, marking service providers, and governmental agencies.

(3) Funding for the notification system operations shall be established by the notification system, including through fees based on a reasonable assessment of operating costs among facility owners or facility operators. A facility owner or facility operator shall not charge a fee to excavators for marking facilities under this act.

(4) Facility owners and facility operators shall be members of and participate in the notification system and pay the fees levied by the notification system under this section. This obligation and the requirements of this act for facility owners and facility operators do not apply to persons owning or operating a facility located on real property the person owns or occupies if the facility is operated solely for the benefit of that person.

(5) Owners of real property on which there is a farm operation, as that term is defined in section 2 of the Michigan right to farm act, 1981 PA 93, MCL 286.472, may become a nonvoting member of the notification system, known as a farm member, upon providing the notification system with the information necessary to send the farm member a ticket for purposes of notification under section 6(1). A farm member is not subject to any fees levied under subsection (3).

(6) The notification system is exempt from taxes collected under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155.

History: 2013, Act 174, Eff. Apr. 1, 2014.

460.725 Duty of excavator to provide dig notice to notification system; contents of notice; validity of ticket; compliance with procedures and requirements; exposure of facility; notice requirements; excavation using power equipment.

Sec. 5. (1) An excavator shall provide a dig notice to the notification system at least 72 hours, but not more than 14 calendar days, before the start of any blasting or excavation. If the dig notice is given during business hours, the 72-hour period shall be measured from the time the dig notice is made to the notification system. If a dig notice is given before 7 a.m. on a business day, the 72-hour period begins at 7 a.m. on that day. If a dig notice is given on a nonbusiness day or after 5 p.m. on a business day, the 72-hour period begins at 7 a.m. on the next business day. All hours of nonbusiness days are excluded in counting the 72-hour period. If there are multiple excavators on the same site, each excavator shall provide its own dig notice.

(2) A dig notice shall contain at least all of the following:

(a) The name, address, and telephone number of the excavator.

(b) A description of the proposed area of blasting or excavation, including the street address and a property

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description.

(c) The specific type of work to be performed.

(d) The start date and time of blasting or excavation.

(e) Whether the proposed blasting or excavation will be completed within 21 days after the start date.

(3) A ticket is valid for 21 days from the start date of the excavation or blasting on the ticket as identified by the excavator, except that a ticket is valid for 180 days from the start date if the dig notice indicates that the proposed excavation or blasting will not be completed within 21 days from the start date.

(4) An excavator shall comply with the notification system procedures and all requirements of this act.

(5) Except as otherwise provided in this subsection, before blasting or excavating in a caution zone, an excavator shall expose all marked facilities in the caution zone by soft excavation. If conditions make complete exposure of the facility impractical, an excavator shall consult with the facility owner or facility operator to reach agreement on how to protect the facility. For excavations in a caution zone parallel to a facility, an excavator shall use soft excavation at intervals as often as reasonably necessary to establish the precise location of the facility. An excavator may use power tools and power equipment in a caution zone only after the facilities are exposed or the precise location of the facilities is established.

(6) An excavator shall provide support or bracing of facilities or excavation walls in an excavation or blasting area that are reasonably necessary for protection of the facilities.

(7) An excavator shall provide notification to the notification system if facility markings are destroyed or covered by excavation or blasting activities or if a ticket expires before the commencement of excavation. If a ticket expires before the commencement of excavation, an excavator shall provide a new dig notice to the notification system, and comply with subsection (1).

(8) An excavator shall provide notification to the notification system requesting additional assistance if the location of a marked facility within the approximate location cannot be determined.

(9) An excavator shall provide immediate additional notice to the notification system and stop excavation in the immediate vicinity if the excavator has reason to suspect the presence of an unmarked facility due to any 1 of the following:

(a) Visible evidence of a facility with no marks visible.

(b) Lack of a positive response to a ticket.

(c) A positive response from a facility owner or facility operator indicating the presence of a facility with no marks visible.

(10) If an excavator contacts or damages a facility, the excavator shall provide immediate notice to the facility owner or facility operator.

(11) If an excavator damages a facility resulting in the escape of any flammable, toxic, or corrosive gas or liquid, or endangering life, health, or property, the excavator shall call 9-1-1 and provide immediate notice to the facility owner or facility operator. The excavator shall also take reasonable measures to protect the excavator, those in immediate danger, the general public, and the environment until the facility owner or facility operator, or emergency first responders, have arrived and taken control of the site.

(12) An excavator shall provide prompt emergency notice to the notification system for any proposed excavation or blasting in an emergency. In an emergency, blasting or excavation required to address the conditions of the emergency may be performed as the emergency conditions reasonably require, subject to the provisions in this act for emergency notice and marking facilities in response to an emergency notice.

(13) If the location of a proposed excavation or blasting cannot be described in a manner sufficient to enable the facility owner or facility operator to ascertain the precise tract or parcel involved, an excavator shall provide white lining in advance of submitting a ticket or additional assistance to the facility owner or facility operator on reasonable request to identify the area of the proposed excavation or blasting.

(14) For purposes of this section, notice to the notification system constitutes notice to all facility owners or facility operators regarding facilities located in the area of the proposed excavation or blasting.

(15) Except as otherwise provided in this act, an excavator may conduct excavation in a safe zone using power equipment without establishing the precise location of any facilities.

History: 2013, Act 174, Eff. Apr. 1, 2014.

460.726 Notification system; transmission of ticket to facility owners or operators; availability; positive response system; maintenance of records; emergency notice; design tickets.

Sec. 6. (1) The notification system shall receive dig notice notification of proposed excavation and blasting activities and promptly transmit a ticket to facility owners or facility operators of facilities in the area of the proposed excavation or blasting. The notification system shall provide alternative means of access and notification to the system. Except for shutdowns caused by acts of nature, war, or terrorism, the notification

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system shall be available 24 hours per day, 7 days per week.

(2) The notification system shall publicize the availability and use of the notification system and educate the public, governmental agencies, excavators, farm operators, facility owners, and facility operators regarding the practices and procedures of the notification system, the requirements of this act, and practices to protect underground facilities from damage.

(3) The notification system shall administer a positive response system to allow excavators to determine whether all of the facility owners or facility operators in the area have responded to a ticket and whether a particular facility owner or facility operator does not have facilities in the area of a proposed excavation or blasting.

(4) The notification system shall maintain adequate records of its notification activity for a period of 6 years after the date of the notice, including voice recordings of calls. The notification system shall provide copies of those records to any interested person upon written request and payment of a reasonable charge for reproduction and handling as determined by the notification system.

(5) The notification system shall expedite the processing of any emergency notice it receives under this act.

(6) The notification system shall receive design tickets under the procedures described in section 6a and transmit them to facility owners or facility operators.

History: 2013, Act 174, Eff. Apr. 1, 2014.

460.726a Project design or planning services; fees; procedures; design ticket response; marking facility location.

Sec. 6a. (1) The notification system shall establish reasonable procedures, including marking response times, for design ticket notification to facility owners or facility operators of requests for project design or planning services to determine the type, size, and general location of facilities during the planning and design stage of a construction or demolition project. Facility owners or operators may charge the person requesting project design or planning services separate fees for design or planning services.

(2) Procedures under this section do not affect or alter the obligation of excavators to provide notice of blasting or excavation under section 5.

(3) The response to a design ticket is to provide general information regarding the location of underground facilities, not to mark any facilities. However, if a facility owner or operator does not have drawings or records that show the location of a facility, the facility owner or operator shall mark that facility under the procedures described in section 7. A design ticket or information provided in response to a design ticket does not satisfy the requirement under this act for excavation or blasting notice to the notification system or marking the approximate location of facilities for blasting or excavation.

History: 2013, Act 174, Eff. Apr. 1, 2014.

460.727 Marking facility location; positive response; additional assistance of facility owner or operator upon request by excavator; damage to facility; emergency response; construction of new facility.

Sec. 7. (1) A facility owner or facility operator shall respond to a ticket by the start date and time for the excavation or blasting under section 5(1) by marking its facilities in the area of the proposed excavation or blasting in a manner that permits the excavator to employ soft excavation to establish the precise location of the facilities.

(2) A facility owner or facility operator shall mark the location of each facility with paint, stakes, flags, or other customary methods using the uniform color code of the American national standards institute as follows:

(a) White – used by excavators to mark a proposed excavation or blasting area.

(b) Pink – temporary survey markings.

(c) Red – electric power lines, cables, conduit, and lighting cables.

(d) Yellow – gas, oil, steam, petroleum, or gaseous materials.

(e) Orange – communication, cable television, alarm or signal lines, cables, or conduit.

(f) Blue – potable water.

(g) Purple – reclaimed water, irrigation, and slurry lines.

(h) Green – sewers and drain lines.

(3) A facility owner or facility operator shall provide notification to the notification system using positive response.

(4) Upon receiving a notification during business hours from an excavator through the notification system of previous marks being covered or destroyed, a facility owner or facility operator shall mark the location of a facility within 24 hours, excluding all hours on nonbusiness days.

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(5) If a facility owner or facility operator receives a request under section 5(8) or (9), that facility owner or facility operator shall provide additional assistance to an excavator within 3 hours of a request made by the excavator during business hours. An excavator and a facility owner or facility operator may agree to an extension of the time for additional assistance. If a request for additional assistance is made at a time when the additional assistance cannot be provided during normal business hours or assistance is required at a remote rural location, the response time shall be no later than 3 hours after the start of the next business day or a time based on mutual agreement.

(6) If a facility owner or facility operator receives notice that a facility has been damaged, that facility owner or facility operator shall promptly dispatch personnel to the area.

(7) A facility owner or facility operator shall respond within 3 hours to an emergency notice, or before the start day and time provided in an emergency notice if that start day and time is more than 3 hours from the time of notice.

(8) New facilities built after the effective date of this act shall be constructed in a manner that allows their detection when in use.

(9) This section does not apply to the state transportation department or to the marking of a county or intercounty drain by a county drain commissioner's office or drainage board.

History: 2013, Act 174, Eff. Apr. 1, 2014.

460.728 Damages or equitable relief.

Sec. 8. This act does not limit the right of an excavator, facility owner, or facility operator to seek legal relief and recovery of actual damages incurred and equitable relief in a civil action arising out of a violation of the requirements of this act, or to enforce the provisions of this act, nor shall this act determine the level of damages or injunctive relief in any such civil action. This section does not affect or limit the availability of any contractual or legal remedy that may be available to an excavator, facility owner, or facility operator arising under any contract to which they may be a party.

History: 2013, Act 174, Eff. Apr. 1, 2014.

460.729 Liability of officers, agents, or employees of notification system; liability of excavator or farmer engaged in farming operations or owner of farm.

Sec. 9. (1) The notification system and its officers, agents, or employees are not liable for any damages, including damages for injuries or death to persons or damage to property, caused by its acts or omissions in carrying out the provisions of this act. The notification system is not responsible for assuring performance by a facility owner or facility operator of its obligation to participate in the notification system under section 4(4).

(2) An excavator or a farmer engaged in farming operations that complies with this act is not responsible for damages that occur to a facility that is improperly marked, not marked, or determined to be within the safe zone.

(3) An owner of a farm who complies with this act is not liable for any damages to a facility if the damage occurred in the course of farming operations, except in those lands within the public right-of-way, unless the owner intentionally damaged the underground facility or acted with wanton disregard or recklessness in damaging the facility. As used in this subsection, "owner" includes a family member, employee, or tenant of the owner.

History: 2013, Act 174, Eff. Apr. 1, 2014.

460.730 Ordinances, charters, or other laws requiring permits.

Sec. 10. This act does not authorize, affect, or impair local ordinances, charters, or other provisions of law requiring permits to be obtained before excavating or tunneling in a public street or highway or to construct or demolish buildings or other structures on private property. A permit issued by a governmental agency does not relieve a person from the responsibility of complying with this act. The failure of any person who has been granted a permit to comply with this act does not impose any liability upon the governmental agency issuing the permit.

History: 2013, Act 174, Eff. Apr. 1, 2014.

460.731 Prohibited conduct; violations as misdemeanor; penalty; civil fine; use of commission determination in court action or proceeding; instruction forms; rules; incident reports; maintenance and availability of information.

Sec. 11. (1) A person who engages in any of the following conduct is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $5,000.00, or both:

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(a) Knowingly damages an underground facility and fails to promptly notify the facility owner or facility operator.

(b) Knowingly damages an underground facility and backfills the excavation or otherwise acts to conceal the damage.

(c) Willfully removes or otherwise destroys stakes or other physical markings used to mark the approximate location of underground facilities unless that removal or destruction occurs after the excavation or blasting is completed or as an expected consequence of the excavation or blasting activity.

(2) Upon complaint filed with the commission or upon the commission's own motion, following notice and hearing, a person, other than a governmental agency, who violates any of the provisions of this act may be ordered to pay a civil fine of not more than $5,000.00 for each violation. In addition to or as an alternative to any fine, the commission may require the person to obtain reasonable training to assure future compliance with this act. Before filing a complaint under this subsection, a person shall attempt to settle the dispute with the adverse party or parties using any reasonable means of attempted resolution acceptable to the involved parties. In determining the amount of any fine, the commission shall consider all of the following:

(a) The ability of the person charged to pay or continue in business.

(b) The nature, circumstances, and gravity of the violation.

(c) Good-faith efforts by the person charged to comply with this act.

(d) The degree of culpability of the person charged and of the complainant.

(e) The history of prior violations of the person charged.

(3) A commission determination under subsection (2) shall not be used against a party in any action or proceeding before any court. A complaint filed under subsection (2) does not limit a person's right to bring a civil action to recover damages that person incurred arising out of a violation of the requirements of this act.

(4) The commission shall develop forms with instructions and may promulgate administrative rules for processing complaints under this act, pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(5) Not later than October 1, 2014, the commission shall establish requirements for reporting incidents involving damage to underground facilities.

(6) Beginning April 1, 2015, the commission shall maintain information on damaged facilities reported under subsection (5), including, but not limited to, any damage that occurs during excavation, digging, or blasting that is excluded from the definition of excavation under section 3(m). The commission shall make any information maintained under this subsection publicly available on its website.

History: 2013, Act 174, Eff. Apr. 1, 2014.

460.732 Governmental liability.

Sec. 12. (1) Except as provided in this section, this act does not affect the liability of a governmental agency for damages for tort or the application of 1964 PA 170, MCL 691.1401 to 691.1419.

(2) A facility owner or a facility operator may file a complaint with the commission seeking a civil fine and, if applicable, damages from a governmental agency under this section for any violation of this act.

(3) After notice and a hearing on a complaint under subsection (2), the commission may order the following, as applicable:

(a) If the commission has not issued an order against the governmental agency under this section within the preceding 12 months, a civil fine of not more than $5,000.00. In determining the amount of the fine, the commission shall consider the factors in section 11(2).

(b) If the commission has issued an order under subdivision (a) against the governmental agency within the preceding 12 months, both of the following:

(*i*) A civil fine of not more than $10,000.00. In determining the amount of the fine, the commission shall consider the factors in section 11(2).

(*ii*) That the governmental agency provide at its expense underground facility safety training to all its personnel involved in underground utility work or excavating.

(c) If the commission has issued an order under subdivision (b) against the governmental agency within the preceding 12 months, both of the following:

(*i*) A civil fine of not more than $15,000.00. In determining the amount of the fine, the commission shall consider the factors in section 11(2).

(*ii*) If the violation of this act by the governmental agency caused damage to the facilities of the facility owner or facility operator, that the governmental agency pay to the owner or operator the cost of repair of the facilities.

(4) A party to a complaint filed under this section or section 11 may file an appeal of a commission order issued under this section or section 11 in the Ingham county circuit court.

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(5) This section does not apply if the violation of this act was a result of action taken in response to an emergency.

(6) A finding by the commission under this section is not admissible in any other proceeding or action.

(7) A civil fine ordered under this act shall be paid to the commission and used for underground facilities safety education and training.

(8) Each day upon which a violation described in this act occurs is a separate offense.

History: 2013, Act 174, Eff. Apr. 1, 2014.

460.733 Compliance by individual engaged in farming operation.

Sec. 13. An individual engaged in a farming operation on a farm shall comply with this act beginning May 1, 2014.

History: 2013, Act 174, Eff. Apr. 1, 2014.

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MICHIGAN ENERGY EMPLOYMENT ACT OF 1976
Act 448 of 1976

AN ACT to prescribe the powers and duties of municipalities and governmental units to acquire, finance, maintain, and operate generating, transmission, and distribution facilities of electric power and energy, fuel and energy sources and reserves and all necessary related properties, equipment and facilities; to permit the exercise of those powers in joint venture or joint agency agreements; to provide for the issuance of bonds and notes; to prescribe the powers and duties of the municipal finance commission or its successor agency and of certain other state officers and agencies with respect to municipal electric utility financing; to create certain funds and prescribe their operation; to provide for tax exemptions and other exemptions; and to prescribe penalties and provide remedies.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977;—Am. 1983, Act 120, Imd. Eff. July 18, 1983;—Am. 1998, Act 193, Eff. Mar. 23, 1999.

The People of the State of Michigan enact:

ARTICLE 1
GENERAL ADMINISTRATIVE PROVISIONS

460.801 Short title.

Sec. 1. This act may be cited as the “Michigan energy employment act of 1976”.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.802 Meanings of words and phrases.

Sec. 2. For purposes of this act, the words and phrases defined in sections 3 to 6 shall have the meanings respectively ascribed to them in those sections.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.803 Definitions; E to J.

Sec. 3. (1) "Electric utility facility" means a facility which a municipality is authorized to acquire as part of a municipal electric utility system under this act or other law.

(2) "Governing body" means the council, commission, or board of trustees of a municipality, or when the charter of a municipality provides that a separate board has general management over the municipal electric utility system, "governing body" means that separate board, subject to review by the legislative body of the municipality as its charter may provide.

(3) "Governmental unit" means a municipality or a joint agency.

(4) "Joint agency" means a public body corporate and politic consisting of a combination of 2 or more municipalities, authorities, or other public bodies organized under article 3.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977;—Am. 2008, Act 21, Imd. Eff. Mar. 7, 2008.

460.804 Definitions; M.

Sec. 4. (1) “Municipal bond” means a bond or note or other evidence of indebtedness payable from ad valorem taxes which a governmental unit may issue.

(2) “Municipal electric utility system” means a system owned by a municipality or combination of municipalities to furnish heat, power, and light.

(3) “Municipality” means a city, county, incorporated village, township, or metropolitan district of this state, or a board, agency, or commission thereof, owning a system or facility for the generation, transmission, or distribution of electric power and energy for public or private use, or proposing to own such a system or facility.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.805 Definitions; P.

Sec. 5. (1) "Project" means a system or facility, inside or outside the state, or service related to a system or facility inside or outside the state, for the generation, transmission, or transformation of electricity, in whole or in part, or for sale to or use by a municipal electric utility system or joint agency by any means. Project also means stock, membership units, contractual interests, or any other interest in a system or facility, inside or outside of the state, for the generation, transmission, or transformation of electricity or in a multistate regional transmission system organization approved by the federal government and operating in this state or a transmission-owning entity which is a member of a multistate regional transmission system organization

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approved by the federal government and operating in this state.

(2) "Project cost" includes, but is not limited to, the cost of acquisition, construction, improvement, or extension of a project, the cost of studies, plans, specifications, surveys, and estimates of related costs and revenues, the cost of land, land rights, rights of way, easements, water rights, fees, permits, approvals, licenses, certificates, franchises, and the preparation of any required applications, engineering and inspection expenses, financing costs, working capital, fuel costs, interest on bonds, establishment of reserves, and all other costs of the municipality or joint agency that are incidental, necessary, or convenient to the acquisition, construction, improvement, or extension of a project.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977;—Am. 2002, Act 513, Imd. Eff. July 23, 2002;—Am. 2008, Act 21, Imd. Eff. Mar. 7, 2008.

460.806 Definitions; P to R.

Sec. 6. (1) "Person" means an individual, corporation, association, partnership, governmental entity, or any other legal entity.

(2) "Power utility" means any person engaged or that may engage, inside or outside the state, in generating, transmitting, or distributing or furnishing electricity.

(3) "Power utility bond" means electric utility bonds, notes, or other evidences of indebtedness of a municipality, including refunding bonds issued to underwrite projects authorized by this act.

(4) "Revenues" means all fees, charges, moneys, profits, payment of principal of, or interest on, municipal or power utility bonds, or other gifts, grants, contributions and appropriations.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977;—Am. 2008, Act 21, Imd. Eff. Mar. 7, 2008.

460.807 Sources of electrical energy for distribution and sale; facilities for control, abatement, or prevention of pollution or damages to environment; facilities for safe disposal of waste or by-products.

Sec. 7. The governing body of a municipal electric utility system may purchase, acquire, construct, improve, enlarge, extend, or repair in the name of the municipality a source or sources of electrical energy for distribution and sale by the municipal electric utility system, whether the source is located within or without the state. A source may include, but not be limited to, facilities utilizing fossil fuels, garbage, trash, and other waste materials, nuclear fuels, water power (including pumped storage), solar energy, wind power, geothermal energy, energy derived from municipal waste of any kind, or other energy or fuel sources of whatever nature. The governing body may in relation to a source, purchase, acquire, construct, improve, enlarge, extend, or repair facilities for the control, abatement, or prevention of pollution or damage to the environment which might otherwise be caused by facilities for the generation of electric power, and may acquire facilities for the safe disposal of waste or by-products from the generation of electrical power.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.808 Fuel sources and reserves; facilities for transportation and storage.

Sec. 8. The governing body of a municipal electric utility system may purchase, acquire, construct, improve, enlarge, extend, or repair in the name of the municipality fuel sources and reserves it deems necessary to the continued efficient operation of the municipal electric utility system, together with the necessary facilities for transportation and storage. The fuel sources and reserves may include, but not be limited to, advance payments on contracts for nuclear fuels, and contracts for heat from facilities belonging to others. Facilities for transportation and storage of fuels shall include, but not be limited to, pipelines, conveyor systems, railroad cars, ships, storage tanks, underground storage areas, and other necessary and related appurtenances.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.809 Facilities for transmission of energy; contracts with other power utilities.

Sec. 9. The governing body of a municipal electric utility system may purchase, acquire, construct, improve, enlarge, extend, or repair facilities for the transmission of energy, and may contract for the purchase, sale, exchange, interchange, wheeling, pooling, or transmission of electrical energy with another power utility for a consideration and for a period and upon other terms and conditions as may be determined by the parties to the agreement.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977;—Am. 2008, Act 21, Imd. Eff. Mar. 7, 2008.

460.810 Electric utility facilities; exercise of authority by governing body.

Sec. 10. The governing body of a municipal electric utility system may exercise its authority to plan,

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finance, acquire, construct, own, operate, maintain, and improve electric utility facilities, individually, in joint venture agreements authorized by article 2, or in joint agency agreements as authorized by article 3, or in other joint endeavors authorized by this act or other law, and in cooperation with 1 or more other power utilities, whether authorized by this act or other law.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.811 Joint venture, joint agency agreement, or other joint endeavor; percentage of common facility to be owned; exception; defraying interest and other payments; operation and maintenance expenses.

Sec. 11. A municipality engaging in a joint venture, joint agency agreement, or other joint endeavor described in section 10 and authorized by article 2 or article 3 shall own a percentage of any common facility equal to the percentage of the money furnished or the value of the property supplied by the municipality for the acquisition and construction of the common facility, except in the case of a facility at least 2/3 of which is owned or to be owned by a state, a political subdivision of this or another state or a Canadian province, an agency of this or another state or of a political subdivision of this state or another state, a federal agency, or a Canadian federal or provincial agency or agency of a political subdivision of a Canadian province, or any corporation or other entity controlled directly or indirectly by 1 or more of the entities listed above, in which case ownership shall be as provided in the contract between the municipality or joint agency and the entity owning or to own at least 2/3 of the facility. Each municipality in a joint endeavor shall defray its own interest and other payments required to be made in connection with a financing undertaken by it to pay its own percentage of the money furnished or the value of the property supplied by it for the planning, acquisition, and construction of a common facility, or an addition or betterment to the common facility. The agreement shall provide a uniform method of determining and allocating operation and maintenance expenses of the joint facility or agency.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977;—Am. 2008, Act 21, Imd. Eff. Mar. 7, 2008.

460.812 Financing cost of electric utility facility; bonds.

Sec. 12. A municipality may finance the cost of an electric utility facility, or its share of the cost of an electric utility facility acquired jointly pursuant to article 2 or article 3 or other law, by any lawful means available to the municipality, including the issuance of general obligation bonds pursuant to charter authority, the issuance of revenue bonds pursuant to Act No. 94 of the Public Acts of 1933, as amended, being sections 141.101 to 141.139 of the Michigan Compiled Laws, or the issuance of mortgage bonds pursuant to charter authority. An agreement for the joint acquisition of facilities entered into under this act shall be subject to provisions contained in this and other law relating to the issuance of bonds by the municipality. It is declared to be in the public interest and for a public purpose that power utilities be permitted to participate jointly in the development of electric facilities as provided in this act as a means of achieving economies of scale and promoting the economic development of the state; and to this end the issuance of revenue bonds is a public purpose. A municipality may pledge for the payment of the principal of, premium if any, and interest on the bonds, the revenues, or a portion thereof, derived or to be derived from the ownership and operation of the municipality's system or facilities for the generation, transmission, or distribution of electric power or energy, or its interest in a joint project or projects, except that the proceeds of the bonds issued for a joint project and the faith and credit of the municipality pledged for the bonds shall be dedicated exclusively to the acquisition of the municipality's undivided share of a joint project as specified in section 11.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.813 Exemption from taxation.

Sec. 13. To the extent of ownership by governmental units or joint agencies, projects undertaken pursuant to joint venture agreements authorized by article 2 or joint agency agreements authorized by article 3 of this act are exempt from assessment, collection, and levy of general or special taxes of the state or its political subdivisions. Income produced from municipal ownership in a joint venture or a joint agency shall be exempt from taxation by the state or its political subdivisions. A joint agency corporation formed under article 3 shall not be required to pay taxes upon its income, existence, or franchise. The bonds and notes issued by a municipality in a joint venture agreement or a joint agency corporation, their transfer and the income therefrom, including a profit made on the sale of the bonds or notes, shall be exempt from taxation within this state.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.814 License agreements.

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Sec. 14. In connection with the ownership and operation of an electric utility facility, whether owned individually or jointly, the governing body of a municipal electric utility system may enter into the necessary license agreements with federal, state, or Canadian regulatory agencies, and comply with conditions imposed by the licensing agency, including, but not limited to, actions necessary to preserve and protect the environment, the acquisition of required public liability insurance, including waiver of defenses and payment of retrospective premiums, and other actions as may be necessary.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.815 Grants in aid and loans.

Sec. 15. The governing body of a municipality or the board of commissioners of a joint agency may make application and enter into contracts for, and accept grants in aid and loans from state and federal agencies and private and public organizations for any purpose authorized by this act. Pursuant to this authority, the governing body of a municipality or the board of commissioners of a joint agency may:

(a) Enter into and carry out contracts with the state or federal government or an agency or institution thereof under which the government, agency, or institution grants financial or other assistance to the municipality or joint agency.

(b) Accept assistance or funds granted or loaned by the state or federal government, with or without a contract.

(c) Agree to or comply with reasonable conditions which are imposed upon a grant or loan accepted under this section.

(d) Make expenditures from funds granted or loaned.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.816 Eminent domain.

Sec. 16. A municipality may take private property under Act No. 149 of the Public Acts of 1911, as amended, being sections 213.21 to 213.41 of the Michigan Compiled Laws, for the purposes defined in and authorized by this act, which taking and use shall be considered necessary for public purposes and for public benefit, except that a municipality shall not exercise its power of eminent domain to acquire an existing electrical generation or transmission facility or a part thereof held in private ownership, without first securing in writing the approval of the lawful private owner or owners. The acquired property may be conveyed for use in joint agency or joint venture projects authorized by this act in a manner and upon terms as the municipality deems appropriate.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

ARTICLE 2

460.821 Joint venture agreement; undivided interest in project; determination of future power requirements.

Sec. 21. (1) A governmental unit may join in a joint venture agreement to plan, finance, develop, construct, reconstruct, acquire, improve, enlarge, better, own, operate, or maintain an undivided interest in a project situated within or without the state with 1 or more municipalities, joint agencies, or power utilities; and make plans and enter into contracts in connection with that project, not inconsistent with this act, as are necessary or appropriate.

(2) Before entering a joint venture agreement, the governing body of a municipality shall determine the needs of the municipality for power and energy based on engineering studies and reports. In determining the future power requirements of a municipality, the following shall be considered:

(a) The economies and efficiencies to be achieved in constructing on a large scale facilities for the generation and transmission of electric power and energy.

(b) The municipality's need for reserve and peaking capacity, and to meet obligations under pooling and reserve sharing agreements reasonably related to its needs for power and energy to which it is or may become a party.

(c) The estimated useful life of the project.

(d) The estimated time necessary for the planning, development, acquisition, or construction of the project, and the length of time required in advance to obtain, acquire, or construct additional power supply.

(e) The reliability and availability of existing or alternative power supply sources, and the cost of those existing or alternative power supply sources.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977;—Am. 2008, Act 21, Imd. Eff. Mar. 7, 2008.

460.822 Joint venture agreement; proportion of undivided interest in project to be owned;

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percentage share of output and capacity; liability; restrictions as to money, property, or undivided share; acquisition of project; sources of money; providing property, services, and other considerations.

Sec. 22. Pursuant to a joint venture agreement, each governmental unit shall own an undivided interest in a project or projects in proportion to the amount of money furnished or the value of property or other consideration supplied by the governmental unit for the planning, development, acquisition, or construction of the project, and each governmental unit shall be entitled to a percentage share of output and capacity from the project equal to its undivided interest. Each governmental unit shall be severally liable for its own acts, but shall not be jointly or severally liable for the acts, omissions or obligations of other governmental units or power utility party to the joint venture agreement, and money or property or other consideration supplied by the governmental unit shall not be credited or otherwise applied to the account of another governmental unit or power utility, nor shall the undivided share of a governmental unit in a project be charged directly or indirectly with a debt or obligation of another governmental unit or be subject to a lien as a result of a debt or obligation of another governmental unit or power utility. The acquisition of a project may include, but not limited to, the purchase or lease of an existing, completed project, or the purchase of a project under construction. A governmental unit participating in the joint planning, financing, construction, reconstruction, acquisition, improvement, enlargement, betterment, ownership, operation, or maintenance of a project under this act may furnish money derived from the proceeds of bonds, from the ownership and operation of its electrical system, or from any other source, and may provide property, both real and personal, services, and other considerations.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.823 Joint venture agreement; terms, conditions, and provisions; ratification of contracts by resolution; provisions of contract.

Sec. 23. A joint venture agreement entered into by governmental units with respect to joint ownership in a project shall contain those terms, conditions, and provisions, not inconsistent with this act, as the governing bodies of the governmental units determine to be in the interest of the governmental units. The contracts shall be ratified by resolution of the governing body of each governmental unit in the manner as may be prescribed by law or local charter. A contract shall include provisions relating to, but not limited to, the following:

(a) The purpose or purposes of the contract.

(b) The duration of the contract.

(c) The method of appointing or employing the personnel necessary in connection with the project.

(d) The method of financing the project, including the apportionment of costs and revenues.

(e) The ownership interests of the parties in property used or useful in connection with the project, and the procedures for disposition of that property when the contract expires or is terminated, or when the project is abandoned, decommissioned, or dismantled.

(f) The prohibition or restrictions of the alienation or partition of a governmental unit's undivided interest in a project, which provisions shall not be subject to a law restricting covenants against alienation or partition.

(g) The construction of a project, which may include the determination that a governmental unit jointly participating, or a person, firm, or corporation, may construct the project as agent for all parties to the joint venture agreement.

(h) The operation and maintenance of a project, which may include a determination that a governmental unit jointly participating, or that a person, firm, or corporation, may operate and maintain the project for all parties.

(i) Detailed project costs.

(j) The creation of a committee of representatives of the governmental units or power utility jointly participating, which committee shall have powers regarding the construction and operation of the project as the contract, not inconsistent with this act, may provide.

(k) If 1 or more of the governmental units defaults in the performance or discharge of its or their obligations with respect to the project, the other party or parties may assume, pro rata or otherwise, the obligations of the defaulting parties, and may succeed to the rights and interests of the defaulting party or parties in the project as may be agreed upon in the contract.

(*l*) Methods for amending the contract.

(m) Methods for terminating the contract.

(n) Any other necessary or proper matter.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.824 Sale or exchange of capacity or output; licenses, permits, certificates, or approvals;

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contracts for electric power and energy; authority, rights, privileges, and immunities of personnel; annual report; operating and financial statement; audit.

Sec. 24. (1) Capacity or output derived by a governmental unit from its ownership share of a project not then required by the governmental unit for its own use and for the use of its customers may be sold or exchanged by the governmental unit for a consideration and for a period and upon other terms and conditions as may be determined by the parties to the sale.

(2) Municipalities proposing to jointly plan, finance, develop, own and operate a project, may either jointly or separately apply to the appropriate agencies of the state, the federal government, another state, or another proper agency, for the necessary licenses, permits, certificates, or approvals; may construct, maintain, and operate the project in accordance with the licenses, permits, certificates, or approvals; and may obtain, hold, and use the licenses, permits, certificates, or approvals in the same manner as the operating unit of any other power utility.

(3) Municipalities participating in a joint project or projects may enter into contracts for the purchase, sale, exchange, interchange, wheeling, pooling, or transmission of electric power and energy produced by the project or projects with a power utility.

(4) Personnel appointed by a municipality to work on a joint project shall have the same authority, rights, privileges, and immunities that the officers, agents, and employees of the appointing municipality enjoy within the jurisdictional boundaries of the municipality, whether within or without that territory, when the personnel are acting within the scope of their authority or within the course of their employment.

(5) Municipalities party to a joint project authorized by this article shall, following the end of each fiscal year, prepare an annual report of the activities of the project, including a complete operating and financial statement covering the operations of the project for that year. The municipalities shall conduct an audit of the books of records and accounts of the project to be made not less than annually by a certified public accountant, and the cost of the audit may be treated as part of the cost of construction of the project, or as part of the expense of administering the project covered by the audit.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977;—Am. 2008, Act 21, Imd. Eff. Mar. 7, 2008.

ARTICLE 3

460.831 Joint agency; formation; creation; purpose; determination of best interest.

Sec. 31. A joint agency is formed when the governing bodies of 2 or more municipalities by resolution determine that it is in the best interest of the municipalities in accomplishing the purposes of this act to create a joint agency for the purpose of undertaking the planning, financing, development, acquisition, construction, reconstruction, improvement, enlargement, betterment, operation, or maintenance of a project or projects to supply electric power and energy for their present or future needs as an alternative or supplemental method of obtaining the benefits and assuming the responsibilities of ownership in a project. In determining whether the creation of a joint agency for this purpose is in the best interest of a municipality, the governing body of each municipality shall consider, but shall not be limited to, the following:

(a) Whether a separate entity may be able to finance the cost of projects in a more economic and efficient manner.

(b) Whether financial market acceptance may be enhanced if 1 entity is responsible for issuing and selling all of the bonds required for a project or projects in a timely and orderly manner and with a uniform credit rating, instead of multiple entities marketing their separate issues of bonds.

(c) Whether savings and other advantages may be obtained by providing a separate entity responsible for the acquisition, construction, ownership, and operation of a project or projects.

(d) Whether the existence of a separate entity will foster the continuation of joint planning and undertaking of projects, and the resulting economies and efficiencies to be realized from the joint planning and undertaking will serve the interests of the residents of the municipality. The determination made by the governing body of a municipality hereunder shall be conclusive.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977;—Am. 2008, Act 21, Imd. Eff. Mar. 7, 2008.

460.832 Board of commissioners; appointment and term of commissioners.

Sec. 32. The joint agency shall be governed by a board of commissioners appointed by the respective governing bodies of the municipalities which are members of the joint agency. The governing body of each member municipality shall, by resolution, appoint 1 commissioner who, at the discretion of the governing body, may be an officer or an employee of the municipality. Each commissioner shall serve at the pleasure of the governing body by which he was appointed.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

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460.833 Board of commissioners; officers; record of proceedings; custody of records, documents, minutes, and seal; copies; certificate.

Sec. 33. The board of commissioners of a joint agency shall annually elect 1 of the commissioners as chairperson, another as vice-chairperson, and another person or persons, who may or may not be a commissioner, as treasurer, secretary, and if desired, assistant secretary. The office of treasurer may be held by the secretary or assistant secretary. The board of commissioners may appoint additional officers as it deems necessary. The secretary or assistant secretary of the joint agency shall keep a record of the proceedings of the joint agency, and the secretary shall be the custodian of all records, books, documents, and papers filed with the joint agency, the minutes or journal of the joint agency, and its official seal. Either the secretary or the assistant secretary of the joint agency may cause copies to be made of all minutes and other records and documents of the joint agency and may give certificates under the official seal of the joint agency to the effect that the copies are true copies, and all persons dealing with the joint agency may rely upon a certificate under the official seal of the joint agency.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.833a Records, books, documents, and papers; exclusion from public disclosure; exception.

Sec. 33a. (1) Records, books, documents, and papers of a joint agency or a municipal electric utility system, including those maintained electronically, may be exempted from public disclosure by the board of commissioners of the joint agency or the governing body of the municipal electric utility system if any of the following apply:

(a) They contain specific pricing or other confidential or proprietary information.

(b) They pertain to the development, construction, financing, or leasing of a project.

(c) They contain information which was received from a power utility or other person and which is subject to a confidentiality agreement.

(2) Upon a showing of good cause, disclosure subject to appropriate confidentiality provisions may be ordered by a court.

History: Add. 2008, Act 21, Imd. Eff. Mar. 7, 2008.

460.834 Joint agency as public body politic and corporate; essential public function; articles of incorporation; amendments.

Sec. 34. (1) A joint agency formed for the purposes provided in this article is a public body politic and corporate and the powers conferred by this act are considered to be the performance of an essential public function.

(2) Any combination of 2 or more municipalities described in section 31 may incorporate a joint agency by the adoption of articles of incorporation by resolution of the governing body of each municipality. The fact of adoption shall be endorsed on the articles of incorporation by the chief executive officer and clerk of the municipality, in form substantially as follows:

```
        The foregoing articles of incorporation
were adopted by the ___________________________,
of the_________, of _____________________ county,
Michigan, at a meeting duly held on the ____ day
of _____________, _____.
                                  ___________________________________
                                  _______________________ of said
                                  ___________________________________
                                  _______________________ of said
                                  ___________________________________.
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(3) The articles of incorporation shall be published at least once in a newspaper or newspapers designated in the articles and generally circulating within the area of each municipality. One printed copy of the articles of incorporation, certified as a true copy by the person or persons designated in the articles, with the date and place of the publication, shall be filed with the county clerk or clerks of the county or counties in which the incorporating municipalities are located and the secretary of state. The incorporation of the joint agency shall become effective at the time provided in the articles of incorporation. The validity of the joint agency incorporation shall be conclusive unless questioned in a court of competent jurisdiction within 60 days after the filing of certified copies with the county clerk or clerks and the secretary of state.

(4) The articles of incorporation shall state the name of the joint agency, the names of the various incorporating municipalities, the purpose or purposes for which it is created, the powers, duties, and

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limitations of the joint agency and its officers, the method of selecting its governing body, officers, and employees, the person or persons who are charged with the responsibility for causing the articles of incorporation to be published and filed or who are charged with the responsibility in connection with the incorporation of the joint agency, the place of publication, and all other matters which the incorporating municipalities consider advisable, all of which shall be subject to article 3 of this act and of the constitution and laws of the state.

(5) The board of commissioners of a joint agency may, by resolution, authorize the establishment of 1 or more classes of associate membership in the joint agency. A municipality admitted as an associate member shall have participatory and other rights and obligations as provided in the resolution establishing the associate membership class or classes.

(6) A municipality described in section 31 which did not join in the original incorporation of a joint agency may become a member or an associate member of the joint agency by the adoption of a resolution by the governing body of the municipality and by a resolution unanimously adopted by all members of the board of commissioners of the joint agency. The resolution of the board of commissioners may provide that a municipality shall become a member or an associate member at a future date or upon the occurrence of a future event and may provide further that the decision of the board of commissioners may not be revoked without the consent of the governing body of the municipality being added as a member or associate member. Upon the addition of a new member or associate member, the articles of incorporation shall be conformed by the board of commissioners to show the addition of the new member or associate member and, if the municipality is being added as an associate member, the rights and obligations of the municipality as an associate member. Other amendments may be made to the articles of incorporation if adopted by the governing body of each municipality of which the joint agency is composed. An amendment shall be endorsed, published and certified and printed copies filed in the same manner as the original articles of incorporation, except an amendment showing only the addition of a new member or associate member and the rights and obligations of a new associate member need not be published.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977;—Am. 2008, Act 21, Imd. Eff. Mar. 7, 2008.

460.835 Board of commissioners; quorum; effect of vacancy; action authorized by resolution; expenses.

Sec. 35. A majority of the commissioners of a joint agency shall constitute a quorum for the transaction of business of the joint agency. A vacancy in the board of commissioners of the joint agency shall not impair the rights of a quorum to exercise all the rights and perform all the duties of the joint agency. Action taken by the joint agency under this article shall be authorized by resolution at any regular or special meeting, and each resolution shall take effect immediately. A vote of the majority of the commissioners on the board of commissioners shall be necessary to take action, or pass a resolution. A commissioner of a joint agency shall not receive compensation for the performance of his duties but may be reimbursed for actual and necessary expenses incurred while engaged in the performance of his duties.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.836 Other municipality as member of joint agency; application; resolution; withdrawal.

Sec. 36. After the creation of a joint agency, another municipality may become a member of the joint agency upon application to the joint agency after the adoption of a resolution of the governing body of the municipality as prescribed in section 31 of this article authorizing the municipality to participate, and with the unanimous consent of the members of the joint agency as provided in section 34(6). A municipality may withdraw from a joint agency, except that all contractual rights acquired and obligations incurred while a member municipality remain in full force and effect.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977;—Am. 2008, Act 21, Imd. Eff. Mar. 7, 2008.

460.837 Joint agency; rights and powers generally.

Sec. 37. A joint agency shall have the rights and powers necessary and convenient to effectuate this article, including, but not limited to, 1 or more of the following:

(a) To adopt bylaws for the regulation of the affairs and conduct of its business, and to prescribe rules, regulations, and policies in connection with the performance of its functions and duties.

(b) To adopt and alter an official seal.

(c) To maintain 1 or more offices.

(d) To sue and be sued.

(e) To receive, administer, and comply with the conditions and requirements respecting a gift, grant, or donation of property or money.

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(f) To acquire by purchase, lease, gift, or otherwise or to obtain options for the acquisition of real or personal property, or any interest in real property.

(g) To sell, lease, exchange, transfer, or otherwise dispose of, or to grant options for the disposal of any real or personal property or an interest in such property.

(h) To pledge or assign money, rents, charges, or other revenues or the proceeds derived by the joint agency from the sales of real or personal property, insurance, or condemnation awards.

(i) To issue bonds of the joint agency for the purpose of providing funds for any of its corporate purposes.

(j) To study, plan, finance, construct, reconstruct, acquire, participate in by contract or otherwise, improve, enlarge, extend, better, own, operate, or maintain, 1 or more projects, and to pay all or a part of the costs of the projects from the proceeds of bonds of the joint agency or from other funds made available to the joint agency.

(k) To authorize the construction, operation, or maintenance of a project or projects by a person, firm, or corporation, including a political subdivision or agency of another state.

(*l*) To acquire by lease, purchase, or otherwise an existing project or a project under construction.

(m) To sell or otherwise dispose of a project or projects.

(n) To fix, charge, and collect rents, rates, fees, and charges for electric power or energy or other services, facilities, or commodities sold, furnished, or supplied through a project.

(o) To generate, produce, transmit, deliver, exchange, purchase or sell for resale electric power or energy.

(p) To negotiate and to enter into contracts for the generation, production, purchase, sale, exchange, interchange, wheeling, pooling, transmission, delivery, or use of electric power and energy with a power utility.

(q) To make and execute contracts and other instruments necessary or convenient in the exercise of the powers and functions of the joint agency under this article.

(r) To apply to and obtain from the appropriate state or federal agency the necessary permits, licenses, certificates, or approvals to construct, maintain, and operate projects.

(s) To employ engineers, architects, attorneys, real estate counselors, appraisers, financial advisors, and other persons as may be required by the joint agency.

(t) To do all acts and things necessary, convenient, or desirable to carry out the purposes, and to execute the powers granted to the joint agency under this act.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977;—Am. 2008, Act 21, Imd. Eff. Mar. 7, 2008.

460.838 Board of commissioners; retention of general manager of joint agency; policies; retention of independent certified public accounting firm; rules.

Sec. 38. Not more than 90 days after the initial election of officers of the board of commissioners of the joint agency, the board of commissioners shall:

(a) Retain a general manager of the joint agency, on either an acting or permanent basis.

(b) Establish broad policies covering all major operations of the joint agency.

(c) Retain an independent certified public accounting firm to provide annual financial audits.

(d) Adopt rules specifying quality control standards for contractual professional services in accordance with rules establishing those criteria promulgated by the department of licensing and regulation or a board or commission within that department.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.839 General manager as chief executive and operating officer of joint agency; powers and duties generally.

Sec. 39. (1) The general manager shall be the chief executive and operating officer of the joint agency. The general manager shall exercise the management of the properties and business of the joint agency and its employees. The general manager shall direct the enforcement of all resolutions, rules, and regulations of the board of commissioners, and shall enter into contracts as necessary under the general control and direction of the board of commissioners. The general manager shall serve at the pleasure of the board of commissioners.

(2) Subject to the approval of the board of commissioners, the general manager may appoint the officers, employees, and agents necessary to carry out the general purposes of the joint agency. If the joint agency operates a project described in section 5(1), the general manager shall classify all the offices, positions, and grades of regular employment required in the project.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.840 Determining future power requirements; considerations.

Sec. 40. Before undertaking a project for the construction or acquisition of facilities for the transmission or

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generation of electric power and energy, a joint agency shall, based upon engineering studies and reports meeting the standards required under section 38(d), determine that the project is required to provide for the projected needs for power and energy of its members from the date the project is estimated to be placed in normal and continuous operation and for a reasonable period of time thereafter. In determining the future power requirements of members of a joint agency, the joint agency shall consider all of the following:

(a) The economies and efficiencies to be achieved in constructing facilities for the generation and transmission of electric power and energy.

(b) The needs of the joint agency for reserve and peaking capacity, and to meet obligations under pooling and reserve sharing agreements reasonably related to its needs for power and energy to which the joint agency is or may become a party.

(c) The estimated useful life of the project.

(d) The estimated time necessary for the planning, development, acquisition, or construction of the project and the length of time required in advance to obtain, acquire, or construct additional power supply for members of the joint agency.

(e) The reliability and availability of existing alternative power supplies and the cost of those existing alternative power supplies.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977;—Am. 2002, Act 533, Imd. Eff. July 25, 2002.

460.841 Tax levy prohibited; pledging credit or taxing power; financing projects of joint agencies.

Sec. 41. A joint agency may not levy taxes nor may it pledge the credit or taxing power of the state or a political subdivision, except for the pledging of receipts of taxes, special assessments, or charges collected by the state or a political subdivision and returnable and payable by law or by contract to the joint agency, and except for the pledge by a political subdivision of the state of its full faith and credit in support of its contractual obligations to the joint agency as authorized by law. Projects of joint agencies shall be financed, in addition to other methods of financing provided by law, as follows:

(a) By rents, rates, fees, and charges authorized pursuant to section 37(n).

(b) By other income or revenues from whatever source available, including contributions or appropriations of whatever nature, or other revenues of the member municipalities of the joint agency.

(c) By grants, loans, or contributions from federal, state, or other governmental units, and grants, contributions, gifts, bequests, or other devices from public or private sources.

(d) By the proceeds of taxes, special assessments, or charges imposed pursuant to law by member municipalities of the joint agency, then returned or paid to the joint agency pursuant to law or contract.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.842 Bonds; contractual obligations; resolution; bonds subject to revised municipal finance act; contracts or notes as to moneys advanced or property delivered; contracts pledging full faith and credit of municipality.

Sec. 42. (1) A joint agency may issue bonds to pay all or part of project costs of the joint agency. The bonds shall be payable from and may be issued in anticipation of payment of the proceeds of any of the methods of financing described in section 41 or elsewhere in this act or as may be provided by law. A member municipality of the joint agency may contract as provided in section 43 or may contract to make payments, appropriations, or contributions to the joint agency of the proceeds of taxes, special assessments, or charges imposed and collected by the member municipality or out of other funds legally available, and may pledge its full faith and credit in support of its contractual obligation to the joint agency. The contractual obligation shall not constitute an indebtedness of the municipality within a statutory or charter debt limitation. If the joint agency issues bonds in anticipation of payments, appropriations, or contributions to be made to the joint agency pursuant to contract by a political subdivision having the power to levy and collect ad valorem taxes, the political subdivision may obligate itself by the contract, and thereupon may levy a tax on all taxable property within the political subdivision, which tax as to rate or amount will not be subject to limitation, as provided in section 6 of article IX of the state constitution of 1963, for contract obligations in anticipation of which bonds are issued to provide sufficient money to fulfill its contractual obligation to the joint agency. The contract is not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(2) The bonds may be:

(a) Issued for any period of years not exceeding 50.

(b) Issued for a consideration other than cash.

(c) For an amount that includes interest capitalized for a period of not more than 10 years after the date of the bonds.

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(d) Secured by revenues, contract payments, funds or investments and securities as determined by the joint agency.

(3) The resolution authorizing bonds may provide for the appointment of 1 or more trustees for bondholders and a trustee may be an individual or corporation domiciled or located within or without this state and may be given appropriate powers whether with or without the execution of an indenture.

(4) Bonds issued by any joint agency under this act are subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(5) A municipality or governmental unit may advance money or deliver property to the joint agency to enable it to carry out or finance any of its powers and duties. The joint agency may agree to repay an advance or pay for the property within a period of not more than 10 years, from the proceeds of its bonds or from other funds legally available for that purpose, with or without interest as may be agreed at the time of the advance or delivery. The obligation of the joint agency to make the repayment or payment may be evidenced by contract or note, which contract or note may pledge a source of payment determined by the joint agency.

(6) A municipality desiring to enter into a contract under this section pledging the full faith and credit of the municipality shall authorize, by resolution of its governing body, the execution of the contract. Subsequent to the adoption of the resolution a notice of the contract shall be published in a newspaper of general publication in the municipality, which notice shall state:

(a) That the governing body has adopted a resolution authorizing execution of the contract.

(b) The purpose of the contract.

(c) The source of payment of the municipality's contractual obligation.

(d) The right of referendum on the contract.

(e) Any other information that the governing body determines to be necessary to adequately inform all interested persons of the nature of the obligation.

(7) The contract may be executed and delivered by the municipality upon approval by its governing body without a vote of the electors, but the contract shall not become effective until the expiration of 45 days after the date of publication of the notice. If within the 45-day period a petition signed by at least 10% or 15,000, whichever is the lesser, of the registered electors residing within the limits of the municipality is filed with the clerk of the municipality requesting a referendum upon the contract, the contract shall not become effective until approved by the vote of a majority of the electors of the municipality qualified to vote and voting on the question at a general or special election, which election shall be held within 180 days after the filing of a petition. When a contract described in this section is to be entered into by any township only on behalf of the unincorporated area of the township, only the registered electors residing within the unincorporated area of the township shall be qualified to sign the petition and vote at the election.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977;—Am. 1983, Act 120, Imd. Eff. July 18, 1983;—Am. 2002, Act 358, Imd. Eff. May 23, 2002.

460.842a Violation of MCL 168.1 to 168.992 applicable to petitions; penalties.

Sec. 42a. A petition under section 42, including the circulation and signing of the petition, is subject to section 488 of the Michigan election law, 1954 PA 116, MCL 168.488. A person who violates a provision of the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992, applicable to a petition described in this section is subject to the penalties prescribed for that violation in the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992.

History: Add. 1998, Act 193, Eff. Mar. 23, 1999.

460.843 Contract for purchase of capacity and output; payments; default; furnishing money, personnel, equipment, and property; advances or contributions; repayment.

Sec. 43. (1) A municipality which is a member of a joint agency may contract to buy power and energy and transmission or other related rights from the joint agency, and separately, or through the joint agency, from any other power utility, required for the municipality's present or future requirements, including the capacity and output of 1 or more specified projects. The contract may provide that the member municipality or the joint agency, or both, shall be obligated to make the payments required by the contract whether or not a project is completed, operable, or operating, and notwithstanding the suspension, interruption, interference, reduction, or curtailment of the output of a project or the power and energy contracted for, and that the payments under the contract shall not be subject to a reduction whether by offset or otherwise, and shall not be conditioned upon the performance or nonperformance of the joint agency or power utility or another member of the joint agency, or any other participant in a project within or outside the state, under the contract or other instrument. A contract with respect to the sale or purchase of capacity or output of a project entered into between a joint agency and its member municipalities, or between a joint agency or 1 or more of its

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members and another power utility, may also provide that if 1 or more of the members of the joint agency or other participants in a project of a power utility default in the payment of its or their obligations with respect to the purchase of the capacity or output, then the remaining member municipalities and other participants which are purchasing capacity and output under the contract are, subject to such conditions and limitations, if any, as the contract may provide, required to accept and pay for and shall be entitled proportionately to and may use or otherwise dispose of the capacity or output which was to be purchased by the defaulting municipality or other participant.

(2) Payments by a municipality under a contract for the purchase of capacity and output from a joint agency or other power utility shall be made solely from the revenues derived from the ownership and operation of the electric system of the municipality, and an obligation under the contract shall not constitute a legal or equitable pledge, charge, lien, or encumbrance upon property of the municipality or upon the municipality's income, receipts, or revenues, except the revenues of its electric system. Subject to any debt or debt-related contracts or indentures of a municipality or joint agency, payments described in this subsection shall be made as part of the operating and maintenance costs of the municipality's or agency's system. A municipality is obligated to fix, charge, and collect rents, rates, fees, and charges for electric power and energy and other services, facilities, and commodities, sold, furnished, or supplied through its electric systems sufficient to provide revenues adequate to meet its obligations under the contract, and to pay other amounts payable from or constituting a charge and lien upon those revenues, including amounts sufficient to pay the principal of and interest on general obligation bonds issued by the municipality for purposes related to its electric system.

(3) A municipality which is a member of a joint agency may furnish the joint agency with money derived solely from the ownership and operation of its electric system or facilities and provide the joint agency with personnel, equipment, and property, both real and personal. A member municipality may also provide services to a joint agency.

(4) A member municipality of a joint agency may contract for, advance, or contribute funds derived solely from ownership of its electric system or facilities to a joint agency as may be agreed upon by the joint agency and member municipality, and the joint agency shall repay the advance or contribution from the proceeds of bonds, from operating revenues, or from other funds of the joint agency, together with interest thereon as may be agreed upon by the member municipality and the joint agency.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977;—Am. 2008, Act 21, Imd. Eff. Mar. 7, 2008.

460.844 Sale or exchange of excess capacity or output.

Sec. 44. (1) A joint agency may sell or exchange the excess capacity or output of a project not required by any of its members for consideration upon terms and conditions as determined by the parties.

(2) A joint agency may do 1 or more of the following:

(a) Transfer all or part of its interest in or functional control of transmission facilities to a multistate regional transmission system organization approved by the federal government and operating in this state or to 1 or more of its transmission-owning members.

(b) Purchase, acquire, sell, or otherwise transfer stock, membership units, or any other interest in a multistate regional transmission system organization approved by the federal government and operating in this state or in 1 or more of its transmission-owning members.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977;—Am. 2002, Act 532, Imd. Eff. July 25, 2002;—Am. 2008, Act 21, Imd. Eff. Mar. 7, 2008.

460.845 Eminent domain.

Sec. 45. A joint agency may take private property under Act No. 149 of the Public Acts of 1911, as amended, or any other applicable law as determined necessary by a joint agency for carrying out its purpose, except that a joint agency shall not exercise its power of eminent domain to acquire an existing electrical generation or transmission facility or a part thereof held in private ownership, including, without limitation, nonprofit corporation, without first securing in writing the approval of the lawful private owner or owners.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.846 Dissolution of joint agency; resolution; vesting of title to funds and other properties.

Sec. 46. When the board of commissioners of a joint agency and the governing bodies of its member municipalities shall by resolution determine that the purposes for which the joint agency was formed have been substantially fulfilled and that bonds issued and other obligations incurred by the joint agency have been fully paid or satisfied, the board of commissioners and governing bodies may declare the joint agency to be dissolved. On the effective date of the resolution, the title to the funds and other properties owned by the joint

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agency at the time of the dissolution shall vest in the member municipalities of the joint agency as provided in this article and the bylaws of the joint agency, and in accordance with section 11 of this act.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.847 Annual report.

Sec. 47. A joint agency shall, following the close of each fiscal year, submit a report of its activities for the preceding year to the governing bodies of its member municipalities. The annual report shall set forth a complete operating and financial statement covering the operations of the joint agency during the preceding year, together with an audit of its operations as prescribed in section 48.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

460.848 Annual audit.

Sec. 48. The joint agency shall annually cause an audit of its books of records and accounts by a certified public accountant, and the cost of the audit may be treated as part of the cost of construction of a project or projects, or as part of the expense of administration of a project covered by the audit.

History: 1976, Act 448, Imd. Eff. Jan. 13, 1977.

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EXECUTIVE REORGANIZATION ORDER
E.R.O. No. 1986-4

460.901 Energy administration transferred from department of commerce to public service commission.

WHEREAS, Article V, Section 2, of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the Executive Branch or assignment of functions among its units which he considers necessary for efficient administration; and

WHEREAS, efficient use and adequate supplies of competitively priced energy are vital to the maintenance and growth of Michigan's economy; and

WHEREAS, the state's ability to coordinate strategic energy planning, policy and program development and evaluation must be strengthened to assure that sufficient energy resources are available to Michigan's citizens and businesses at competitive prices; and

WHEREAS, the current functions and responsibilities of the Energy Administration include coordination of non-regulatory state governmental actions relating to energy problems and planning; gathering and analysis of information on energy issues, including Michigan's policy and planning alternatives; development and implementation of statewide energy conservation programs, including the collection of reports from local units of government and school districts; provision of public information on the state's energy situation and energy conservation programs; liaison for the state with the federal government, other states, and local units of government on energy matters, including development and submission of plans for the disbursement of oil overcharge refunds; and provision of assistance to the Executive Office with energy policy and planning matters, as well as with the preparation of energy conservation plans; and

WHEREAS, the current functions and responsibilities of the Public Service Commission include broad supervision and regulation of all rates, services, rules, conditions of service, and other matters relating to the operations of public utilities providing services in Michigan; and

WHEREAS, the organizational merger of the Energy Administration and the Public Service Commission will significantly strengthen the regulatory and non-regulatory energy planning, policy and program capabilities of the State of Michigan and improve the administrative coordination and efficiency with which the state's energy-related programs are conducted;

NOW, THEREFORE, I, JAMES J. BLANCHARD, Governor of the State of Michigan, pursuant to the authority vested in me by the provisions of Article V, Section 2, of the Constitution of the State of Michigan of 1963, do hereby order that:

1. All functions and responsibilities of the Energy Administration, Department of Commerce, noted above and all of its authority, powers, duties, functions and responsibilities created by and described in Executive Directives dated March 29, 1976 (1976-2), September 22, 1976 (1976-5), November 1, 1982 and March 8, 1984 are hereby transferred to the Michigan Public Service Commission, a Type I agency of the Department of Commerce.

2. Further, all functions and responsibilities of the Energy Administration conferred by Act No. 191 of the Public Acts of 1982, being Sections 10.81 through 10.89 of the Michigan Compiled Laws; Act No. 190 of the Public Acts of 1983, being Section 206.262 of the Michigan Compiled Laws; Act Nos. 148, 400, 401, 402, 403 and 404 of the Public Acts of 1984, being Sections 389.122A, 46.11c, 117.56, 68.36, 41.75 and 78.24b of the Michigan Compiled Laws; and Act No. 22 of the Public Acts of 1985, being Section 380.1274a of the Michigan Compiled Laws, are hereby transferred to the Michigan Public Service Commission, a Type I agency of the Department of Commerce, and those powers, duties and responsibilities of the Director of the Energy Administration associated with the Director's designation as a member of the Energy Advisory Committee pursuant to Section 2 of Act No. 191 of the Public Acts of 1982, being Section 10.82 of the Michigan Compiled Laws, shall become the powers, duties and responsibilities of the Chairperson of the Michigan Public Service Commission. The Chairperson of the Michigan Public Service Commission is hereby designated as Chairperson of the Energy Advisory Committee pursuant to Section 2 of Act No. 191 of the Public Acts of 1982, being Section 10.82 of the Michigan Compiled Laws. The Chairperson of the Michigan Public Service Commission shall have only one vote on the Energy Advisory Committee.

3. The Public Service Commission shall make the internal organizational changes necessary to implement a strengthened regulatory and non-regulatory strategic energy planning, policy and program development and evaluation capability, and to improve the administrative efficiency and coordination of the state's energy-related program activities. Motor carrier fees or public utility assessments shall not be used by the Michigan Public Service Commission to carry out the powers, duties and responsibilities transferred herein. The appropriations made in Act No. 218 of the Public Acts of 1986 to the Michigan Public Service

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Commission for the state fiscal year ending September 30, 1987 shall be expended for Michigan Public Service Commission purposes and not for carrying out the powers, duties and responsibilities of the Energy Administration transferred herein.

4. All records, property, personnel and unexpended balances of appropriations, allocations and other funds used, held, employed, available, or to be made available to the Energy Administration or necessary for any of the functions transferred herein are also transferred to the Michigan Public Service Commission. The appropriations made in Act 218 of the Public Acts of 1986 for Energy Administration purposes for the state fiscal year ending September 30, 1987 shall be expended for carrying out the powers, duties and responsibilities of the Energy Administration transferred herein. No transfers shall be made within the appropriations for Energy Administration purposes for the state fiscal year ending September 30, 1987 without complying with Section 393 of Act 431 of the Public Acts of 1984, being Section 18.1393 of the Michigan Compiled Laws.

5. All state agencies shall cooperate with the Michigan Public Service Commission in the performance of its functions and responsibilities described herein.

In fulfillment of the requirements of Article V, Section 2, of the Constitution of 1963, this Order shall become effective January 1, 1987.

History: 1986, E.R.O. No. 1986-4, Eff. Jan. 1, 1987.

Compiler's note: In 2. of E.R.O. No. 1986-4, the reference to "117.56" evidently should read "117.5f".
For transfer of energy advisory committee, and its abolishment, see E.R.O. No. 2008-4, compiled at MCL 445.2025.

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ENERGY EFFICIENCY AND RENEWABLE ENERGY REVOLVING LOAN FUND
Act 242 of 2009

AN ACT to provide for loans, grants, and other assistance for energy efficiency and renewable energy projects; to create a restricted fund; and to provide for the powers and duties of certain state and local governmental officers and entities.

History: 2009, Act 242, Imd. Eff. Jan. 8, 2010.

The People of the State of Michigan enact:

460.911 Definitions.

Sec. 1. As used in this act:

(a) "Department" means the department of energy, labor, and economic growth.

(b) "Fund" means the energy efficiency and renewable energy revolving loan fund created in section 2.

History: 2009, Act 242, Imd. Eff. Jan. 8, 2010.

Compiler's note: For transfer of energy efficiency and renewable energy revolving loan fund from department of energy, labor, and economic growth to Michigan strategic fund, see E.R.O. No. 2011-4, compiled at MCL 445.2030.

460.912 Energy efficiency and renewable energy revolving loan fund; creation; deposit of money or other assets; administration; expenditures; loan agreement; provisions.

Sec. 2. (1) The energy efficiency and renewable energy revolving loan fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The department shall be the administrator of the fund for auditing purposes.

(5) The department shall expend money from the fund, upon appropriation, only to administer and operate a program to provide loans, grants, and other forms of assistance to public or private entities for energy efficiency and renewable energy projects. The program shall be consistent with part D of title III of the energy policy and conservation act, 42 USC 6321 to 6326, and other state and federal law, as applicable. Projects eligible for assistance from the program, the amount of assistance provided, and other conditions shall be determined by the department. This subsection is subject to section 3.

(6) If program assistance under subsection (5) is in the form of a loan, the loan shall be made through a loan agreement. A loan agreement shall contain appropriate provisions relating to maturity or length of the loan, repayment terms, state or local funding requirements, and other provisions as are necessary to comply with state and federal law.

History: 2009, Act 242, Imd. Eff. Jan. 8, 2010.

Compiler's note: For transfer of energy efficiency and renewable energy revolving loan fund from department of energy, labor, and economic growth to Michigan strategic fund, see E.R.O. No. 2011-4, compiled at MCL 445.2030.

460.913 Assistance with money received under American recovery and reinvestment act of 2009; condition.

Sec. 3. If the department provides a grant, loan, or other form of assistance for an energy efficiency or renewable energy project with money received under the American recovery and reinvestment act of 2009, Public Law 111-5, including, but not limited to, money in the fund, the department shall not impose a condition on the assistance that is more restrictive than required under the American recovery and reinvestment act of 2009, Public Law 111-5, other than a reasonable administrative condition.

History: 2009, Act 242, Imd. Eff. Jan. 8, 2010.

Compiler's note: For transfer of energy efficiency and renewable energy revolving loan fund from department of energy, labor, and economic growth to Michigan strategic fund, see E.R.O. No. 2011-4, compiled at MCL 445.2030.

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PROPERTY ASSESSED CLEAN ENERGY ACT
Act 270 of 2010

AN ACT to authorize local units of government to adopt property assessed clean energy programs and to create districts to promote the use of renewable energy systems and energy efficiency improvements by owners of certain real property; to provide for the financing of such programs through voluntary property assessments, commercial lending, and other means; to authorize a local unit of government to issue bonds, notes, and other evidences of indebtedness and to pay the cost of renewable energy systems and energy efficiency improvements from the proceeds thereof; to provide for the repayment of bonds, notes, and other evidences of indebtedness; to authorize certain fees; to prescribe the powers and duties of certain governmental officers and entities; and to provide for remedies.

History: 2010, Act 270, Imd. Eff. Dec. 14, 2010.

The People of the State of Michigan enact:

460.931 Short title.

Sec. 1. This act shall be known and may be cited as the "property assessed clean energy act".

History: 2010, Act 270, Imd. Eff. Dec. 14, 2010.

460.933 Definitions.

Sec. 3. As used in this act:

(a) "District" means a district created under a property assessed clean energy program by a local unit of government that lies within the local unit of government's jurisdictional boundaries. A local unit of government may create more than 1 district under the program, and districts may be separate, overlapping, or coterminous.

(b) "Energy efficiency improvement" means equipment, devices, or materials intended to decrease energy consumption, including, but not limited to, all of the following:

(*i*) Insulation in walls, roofs, floors, foundations, or heating and cooling distribution systems.

(*ii*) Storm windows and doors; multi-glazed windows and doors; heat-absorbing or heat-reflective glazed and coated window and door systems; and additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption.

(*iii*) Automated energy control systems.

(*iv*) Heating, ventilating, or air-conditioning and distribution system modifications or replacements.

(*v*) Caulking, weather-stripping, and air sealing.

(*vi*) Replacement or modification of lighting fixtures to reduce the energy use of the lighting system.

(*vii*) Energy recovery systems.

(*viii*) Day lighting systems.

(*ix*) Installation or upgrade of electrical wiring or outlets to charge a motor vehicle that is fully or partially powered by electricity.

(*x*) Measures to reduce the usage of water or increases the efficiency of water usage.

(*xi*) Any other installation or modification of equipment, devices, or materials approved as a utility cost-savings measure by the governing body.

(c) "Energy project" means the installation or modification of an energy efficiency improvement or the acquisition, installation, or improvement of a renewable energy system.

(d) "Governing body" means the county board of commissioners of a county, the township board of a township, or the council or other similar elected legislative body of a city or village.

(e) "Local unit of government" means a county, township, city, or village.

(f) "Person" means an individual, firm, partnership, association, corporation, unincorporated joint venture, or trust, organized, permitted, or existing under the laws of this state or any other state, including a federal corporation, or a combination thereof. However, person does not include a local unit of government.

(g) "Property" means privately owned commercial or industrial real property located within the local unit of government.

(h) "Property assessed clean energy program" or "program" means a program as described in section 5(2).

(i) "Record owner" means the person or persons possessed of the most recent fee title or land contract vendee's interest in property as shown by the records of the county register of deeds.

(j) "Renewable energy resource" means a resource that naturally replenishes over a human, not a geological, time frame and that is ultimately derived from solar power, water power, or wind power. Renewable energy resource does not include petroleum, nuclear, natural gas, or coal. A renewable energy

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resource comes from the sun or from thermal inertia of the earth and minimizes the output of toxic material in the conversion of the energy and includes, but is not limited to, all of the following:

(*i*) Biomass.

(*ii*) Solar and solar thermal energy.

(*iii*) Wind energy.

(*iv*) Geothermal energy.

(*v*) Methane gas captured from a landfill.

(k) "Renewable energy system" means a fixture, product, device, or interacting group of fixtures, products, or devices on the customer's side of the meter that use 1 or more renewable energy resources to generate electricity. Renewable energy system includes a biomass stove but does not include an incinerator or digester.

History: 2010, Act 270, Imd. Eff. Dec. 14, 2010.

460.935 Property assessed clean energy program; establishment by local unit of government; contract with record owner of property; financing.

Sec. 5. (1) Pursuant to the procedures provided in section 7, a local unit of government may establish a property assessed clean energy program and may, from time to time, create a district or districts under the program.

(2) Under a program, the local unit of government may enter into a contract with the record owner of property within a district to finance or refinance 1 or more energy projects on the property. The contract may provide for the repayment of the cost of an energy project through assessments upon the property benefited. The financing or refinancing may include the cost of materials and labor necessary for installation, permit fees, inspection fees, application and administrative fees, bank fees, and all other fees that may be incurred by the record owner pursuant to the installation on a specific or pro rata basis, as determined by the local unit of government.

History: 2010, Act 270, Imd. Eff. Dec. 14, 2010.

460.937 Establishment; actions to be taken by local unit of government; adoption or amendment of resolution.

Sec. 7. (1) To establish a property assessed clean energy program, the governing body of a local unit of government shall take the following actions in the following order:

(a) Adopt a resolution of intent that includes all of the following:

(*i*) A finding that the financing of energy projects is a valid public purpose.

(*ii*) A statement of intent to provide funds for energy projects, which may be repaid by assessments on the property benefited, with the agreement of the record owners.

(*iii*) A description of the proposed arrangements for financing the program.

(*iv*) The types of energy projects that may be financed.

(*v*) Reference to a report on the proposed program as described in section 9(1) and a location where the report is available pursuant to section 9(2).

(*vi*) The time and place for a public hearing on the proposed program.

(b) Hold a public hearing at which the public may comment on the proposed program, including the report required by section 9.

(c) Adopt a resolution establishing the program and setting forth its terms and conditions, including all of the following:

(*i*) Matters required by section 9 to be included in the report. For this purpose, the resolution may incorporate the report or an amended version thereof by reference.

(*ii*) A description of which aspects of the program may be amended without a new public hearing and which aspects may be amended only after a new public hearing is held.

(2) A property assessed clean energy program may be amended by resolution of the governing body. Adoption of the resolution shall be preceded by a public hearing if required pursuant to subsection (1)(c).

History: 2010, Act 270, Imd. Eff. Dec. 14, 2010.

460.939 Report; contents; availability.

Sec. 9. (1) The report on the proposed program required under section 7 shall include all of the following:

(a) A form of contract between the local unit of government and record owner governing the terms and conditions of financing and assessment under the program.

(b) Identification of an official authorized to enter into a program contract on behalf of the local unit of government.

(c) A maximum aggregate annual dollar amount for all financing to be provided by the local unit of

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government under the program.

(d) An application process and eligibility requirements for financing energy projects under the program.

(e) A method for determining interest rates on assessment installments, repayment periods, and the maximum amount of an assessment.

(f) Explanation of how assessments will be made and collected consistent with section 13(2).

(g) A plan for raising capital to finance improvements under the program. The plan may include any of the following:

(*i*) The sale of bonds or notes, subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(*ii*) Amounts to be advanced by the local unit of government through funds available to it from any other source.

(*iii*) Owner-arranged financing from a commercial lender. Under owner-arranged financing, the local unit of government may impose an assessment pursuant to section 11 and forward payments to the commercial lender or the record owner may pay the commercial lender directly.

(h) Information regarding all of the following, to the extent known, or procedures to determine the following in the future:

(*i*) Any reserve fund or funds to be used as security for bonds or notes described in subdivision (g).

(*ii*) Any application, administration, or other program fees to be charged to record owners participating in the program that will be used to finance costs incurred by the local unit of government as a result of the program.

(i) A requirement that the term of an assessment not exceed the useful life of the energy project paid for by the assessment.

(j) A requirement for an appropriate ratio of the amount of the assessment to the assessed value of the property.

(k) A requirement that the record owner of property subject to a mortgage obtain written consent from the mortgage holder before participating in the program.

(*l*) Provisions for marketing and participant education.

(m) Provisions for adequate debt service reserve fund.

(n) Quality assurance and antifraud measures.

(o) A requirement that a baseline energy audit be conducted before an energy project is undertaken, to establish future energy savings. After the energy project is completed, the local unit of government shall obtain verification that the renewable energy system or energy efficiency improvement was properly installed and is operating as intended.

(p) For an energy project financed with more than $250,000.00 in assessments, both of the following:

(*i*) A requirement for ongoing measurements that establish the savings realized by the record owner from the energy project.

(*ii*) A requirement that, in the contract for installation of the energy project, the contractor guarantee to the record owner that the energy project will achieve a savings-to-investment ratio greater than 1 and agree to pay the record owner, on an annual basis, any shortfall in savings below this level.

(2) The local unit of government shall make the report available for review on the local unit of government's website or at the office of the clerk or the official authorized to enter contracts on behalf of the local unit of government under the property assessed clean energy program.

History: 2010, Act 270, Imd. Eff. Dec. 14, 2010.

460.941 Imposition of assessment; written contract; verification.

Sec. 11. (1) A local unit of government may impose an assessment under a property assessed clean energy program only pursuant to a written contract with the record owner of the property to be assessed.

(2) Before entering into a contract with a record owner under a program, the local unit of government shall verify all of the following:

(a) That there are no delinquent taxes, special assessments, or water or sewer charges on the property.

(b) That there are no delinquent assessments on the property under a property assessed clean energy program.

History: 2010, Act 270, Imd. Eff. Dec. 14, 2010.

460.943 Assessment as lien against property; installments to be included in summer and winter tax bill.

Sec. 13. (1) An assessment imposed under a property assessed clean energy program, including any interest on the assessment and any penalty, constitute a lien against the property on which the assessment is

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imposed until the assessment, including any interest or penalty, is paid in full. The lien runs with the property and has the same priority and status as other property tax and assessment liens. The local unit of government has all rights in the case of delinquency in the payment of an assessment as it does with respect to delinquent property taxes. When the assessment, including any interest and penalty, is paid, the lien shall be removed from the property.

(2) Installments of assessments due under a program shall be included in each summer and winter tax bill issued under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155, and shall be collected at the same time and in the same manner as taxes collected under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155. Alternatively, installments may be billed and collected as provided in a special assessment ordinance of general applicability adopted by the local unit of government pursuant to state law or local charter.

History: 2010, Act 270, Imd. Eff. Dec. 14, 2010.

460.945 Bonds or notes; issuance.

Sec. 15. (1) A local unit of government may issue bonds or notes to finance energy projects under a property assessed clean energy program.

(2) Bonds or notes issued under subsection (1) shall not be general obligations of the local unit of government, but shall be secured by 1 or more of the following as provided by the governing body in the resolution or ordinance approving the bonds or notes:

(a) Payments of assessments on benefited property within the district or districts specified.

(b) Reserves established by the local unit of government from grants, bond or note proceeds, or other lawfully available funds.

(c) Municipal bond insurance, lines or letters of credit, public or private guaranties, standby bond purchase agreements, collateral assignments, mortgages, and any other available means of providing credit support or liquidity, including, but not limited to, arrangements described in section 315 of the revised municipal finance act, 2001 PA 34, MCL 141.2315.

(d) Tax increment revenues that may be lawfully available for such purposes.

(e) Any other amounts lawfully available for such purposes.

(3) A pledge of assessments, funds, or contractual rights made by a governing body in connection with the issuance of bonds or notes by a local unit of government under this act constitutes a statutory lien on the assessments, funds, or contractual rights so pledged in favor of the person or persons to whom the pledge is given, without further action by the governing body. The statutory lien is valid and binding against all other persons, with or without notice.

(4) Bonds or notes of 1 series issued under this act may be secured on a parity with bonds or notes of another series issued by the local unit of government pursuant to the terms of a master indenture or master resolution entered into or adopted by the governing body of the local unit of government.

(5) Bonds or notes issued under this act are subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(6) Bonds or notes issued under this act, and interest payable on such bonds and notes, are exempt from all taxation by this state and its political subdivisions.

(7) Bonds or notes issued under this act further essential public and governmental purposes, including, but not limited to, reduced energy costs, reduced greenhouse gas emissions, economic stimulation and development, improved property valuation, and increased employment.

History: 2010, Act 270, Imd. Eff. Dec. 14, 2010.

460.947 Self-directed energy optimization plan.

Sec. 17. A commercial or industrial electric customer that installs or modifies an electric energy efficiency improvement under a property assessed clean energy program is exempt from the energy optimization charges the customer would otherwise incur under section 89 or 91 of the clean, renewable, and efficient energy act, 2008 PA 295, MCL 460.1089 and 460.1091, if the customer conducts a self-directed energy optimization plan under and subject to the applicable requirements of section 93 of the clean, renewable, and efficient energy act, 2008 PA 295, MCL 460.1093. These requirements include, but are not limited to, the requirement that the plan provide for aggregate energy savings that each year meet or exceed the energy optimization standards based on the electricity purchases in the previous year for the site or sites covered by the self-directed plan.

History: 2010, Act 270, Imd. Eff. Dec. 14, 2010.

460.949 Property assessed clean energy program; joint implementation.

Sec. 19. (1) A local unit of government may join with any other local unit of government, or with any

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person, or with any number or combination thereof, by contract or otherwise as may be permitted by law, for the implementation of a property assessed clean energy program, in whole or in part.

(2) If a property assessed clean energy program is implemented jointly by 2 or more local units of government pursuant to subsection (1), a single public hearing held jointly by the cooperating local units of government is sufficient to satisfy the requirements of section 7(1)(b).

History: 2010, Act 270, Imd. Eff. Dec. 14, 2010.

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MUNICIPAL UTILITY RESIDENTIAL CLEAN ENERGY PROGRAM
Act 408 of 2014

AN ACT to authorize certain municipalities to adopt residential clean energy programs to promote the use of renewable energy systems and energy efficiency improvements by owners of certain real property in certain districts; to provide for the financing of those programs through commercial lending, loans by a nonprofit corporation, utility bill charges, and other means; to authorize municipalities to issue bonds, notes, and other evidences of indebtedness and to pay the cost of renewable energy systems and energy efficiency improvements; to provide for the repayment of bonds, notes, and other evidences of indebtedness; to authorize fees; to prescribe the powers and duties of certain governmental officers and entities; and to provide for remedies.

History: 2014, Act 408, Imd. Eff. Dec. 30, 2014.

The People of the State of Michigan enact:

460.961 Short title.

Sec. 1. This act shall be known and may be cited as the "municipal utility residential clean energy program act".

History: 2014, Act 408, Imd. Eff. Dec. 30, 2014.

460.963 Definitions.

Sec. 3. As used in this act:

(a) "District" means a district created under a clean energy program by a municipality.

(b) "Energy efficiency improvement" means equipment, devices, or materials intended to decrease energy consumption, including, but not limited to, all of the following:

(*i*) Insulation in walls, roofs, floors, foundations, or heating and cooling distribution systems.

(*ii*) Storm windows and doors; multi-glazed windows and doors; heat-absorbing or heat-reflective glazed and coated window and door systems; and additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption.

(*iii*) Automated energy control systems.

(*iv*) Heating, ventilating, or air-conditioning and distribution system modifications or replacements.

(*v*) Air sealing, caulking, and weather-stripping.

(*vi*) Lighting fixtures that reduce the energy use of the lighting system.

(*vii*) Energy recovery systems.

(*viii*) Day lighting systems.

(*ix*) Electrical wiring or outlets to charge a motor vehicle that is fully or partially powered by electricity.

(*x*) Measures to reduce the usage of water or increase the efficiency of water usage.

(*xi*) Any other installation or modification of equipment, devices, or materials approved as a utility cost-savings measure by the governing body.

(c) "Energy project" means the installation or modification of an energy efficiency improvement or the acquisition, installation, or improvement of a renewable energy system.

(d) "Governing body" means the township board of a township or the council or other similar elected legislative body of a city or village.

(e) "Home energy audit" means an evaluation of the energy performance of a residential structure, by a qualified person using building-performance diagnostic equipment and complying with American national standards institute approved home energy audit standards, that meets both of the following requirements:

(*i*) Determines how best to optimize energy performance while maintaining or improving human comfort, health, and safety and the durability of the structure.

(*ii*) Includes a baseline energy model and cost-benefit analysis for recommended energy efficiency improvements.

(f) "Municipality" means a city, village, or township, all or some of whose residents are served by a municipal electric utility.

(g) "Person" means an individual, firm, partnership, association, corporation, unincorporated joint venture, or trust, organized, permitted, or existing under the laws of this state or any other state, including a federal corporation, or a combination thereof. However, person does not include a local unit of government.

(h) "Property" means privately owned residential real property located within the municipality.

(i) "Record owner" means the person or persons possessed of the most recent fee title or land contract vendee's interest in property as shown by the records of the county register of deeds.

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(j) "Renewable energy resource" means a resource that naturally replenishes over a human, not a geological, time frame and that is ultimately derived from solar power, water power, or wind power. Renewable energy resource does not include petroleum, nuclear, natural gas, or coal. A renewable energy resource comes from the sun or from thermal inertia of the earth and minimizes the output of toxic material in the conversion of the energy and includes, but is not limited to, all of the following:

(*i*) Biomass.

(*ii*) Solar and solar thermal energy.

(*iii*) Wind energy.

(*iv*) Geothermal energy.

(*v*) Methane gas captured from a landfill.

(k) "Renewable energy system" means a fixture, product, device, or interacting group of fixtures, products, or devices on the customer's side of the meter that use 1 or more renewable energy resources. Renewable energy system includes a biomass stove but does not include an incinerator or digester.

(*l*) "Residential clean energy program" or "program" means a program as described in section 5(2).

History: 2014, Act 408, Imd. Eff. Dec. 30, 2014.

460.965 Powers of municipality.

Sec. 5. (1) Pursuant to section 7, a municipality may do all of the following:

(a) Establish a residential clean energy program.

(b) From time to time, designate a district or districts within its territorial jurisdiction where residents are served by a municipal electric utility. Districts may be separate, overlapping, or coterminous.

(2) Under a residential clean energy program, the municipality may enter into a contract with a record owner of property within a district to finance or refinance 1 or more energy projects on the property. The financing or refinancing may include the cost of materials and labor necessary for installation, home energy audit costs, permit fees, inspection fees, application and administrative fees, bank fees, and all other fees that may be incurred by the record owner for the installation on a specific or pro rata basis, as determined by the municipality.

History: 2014, Act 408, Imd. Eff. Dec. 30, 2014.

460.967 Residential clean energy program; actions; order; amendment by resolution.

Sec. 7. (1) To establish a residential clean energy program, the governing body of a municipality shall take the following actions in the following order:

(a) Adopt a resolution of intent that includes all of the following:

(*i*) A finding that the financing of energy projects is a valid public purpose.

(*ii*) A statement of intent to provide funds for financing energy projects, which may be repaid by charges on the electric utility bills for the properties benefited, with the agreement of the record owners.

(*iii*) A description of the proposed arrangements for financing the program.

(*iv*) The types of energy projects that may be financed.

(*v*) Reference to a report on the proposed program as described in section 11(1) and the internet address and office location where the report is available under section 11(2).

(*vi*) The time and place for a public hearing on the proposed program.

(b) Hold a public hearing on the proposed program, including the report described under section 11.

(c) Adopt a resolution or ordinance establishing the program and setting forth its terms and conditions, including all of the following:

(*i*) Matters required by section 11 to be included in the report. For this purpose, the resolution may incorporate the report or an amended version thereof by reference.

(*ii*) If the program is established by a resolution, a description of which aspects of the program may be amended without a new public hearing and which aspects may be amended only after a new public hearing is held.

(2) A residential clean energy program established by resolution or ordinance may be amended by resolution of the governing body or ordinance, respectively. Before the governing body adopts an amendment by resolution, the governing body shall conduct a public hearing if required pursuant to subsection (1)(c)(*ii*).

History: 2014, Act 408, Imd. Eff. Dec. 30, 2014.

460.969 Residential clean energy program; administration; loans; payment; shut off for nonpayment of per-meter charge; obligation to run with the land.

Sec. 9. (1) A residential clean energy program may be administered by a nonprofit corporation, including, but not limited to, a nonprofit corporation formed under section 4o of the home rule city act, 1909 PA 279,

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MCL 117.4o. The nonprofit corporation's administration of the program may be funded by money appropriated by the municipality, transferred from the municipality's electric utility, if any, or provided by private sources.

(2) A residential clean energy program may provide for financing energy projects through loans made to property owners by the municipal electric utility, by a nonprofit corporation described in subsection (1), or by commercial lenders. Loans by commercial lenders may be facilitated by the nonprofit corporation.

(3) If a nonprofit corporation makes loans to owners of property under subsection (2), all of the following apply:

(a) Interest shall be charged on the unpaid balance at a rate of not more than the adjusted prime rate as determined under section 23 of 1941 PA 122, MCL 205.23, plus 4%.

(b) A loan shall be repaid in monthly installments, subject to section 11(1)(i).

(c) The lender shall comply with all state and federal laws applicable to the extension of credit for home improvements.

(4) The program may provide for billing customers of the municipal electric utility any fees under section 11(1)(h)(*ii*) and the monthly installment payments as a per-meter charge on the bill for electric services. The payment shall be considered part of the charges for electric services to the property for purposes of enforcement as provided under section 21 of the revenue bond act of 1933, 1933 PA 94, MCL 141.121.

(5) Electric service may be shut off for nonpayment of the per-meter charge under subsection (4) in the same manner and pursuant to the same procedures as used to enforce nonpayment of other charges for electric service. If notice of a loan under the program is recorded with the register of deeds for the county in which the property is located, the obligation to pay the per-meter charge shall run with the land and be binding on future customers contracting for electric service to the property.

History: 2014, Act 408, Imd. Eff. Dec. 30, 2014.

460.971 Report.

Sec. 11. (1) The report on the proposed residential clean energy program required under section 7 shall include all of the following:

(a) A form of contract between the municipality and record owner governing the terms and conditions of financing under the program.

(b) Identification of an official authorized to enter into a program contract on behalf of the municipality.

(c) A maximum aggregate annual dollar amount for all financing to be provided by the municipality under the program.

(d) An application process and eligibility requirements for financing energy projects under the program, including the classes of property eligible.

(e) Subject to section 9(3), a method for determining interest rates on loan installments, repayment periods, and the maximum amount of a loan.

(f) An explanation of how monthly installment payments on loans will be billed and collected under section 9(4) or otherwise.

(g) A plan for raising capital to finance improvements under the program. The plan may include any of the following:

(*i*) The sale of bonds or notes, subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(*ii*) Amounts to be advanced by the municipality through funds available to it from any other source.

(*iii*) Owner-arranged financing from a commercial lender whether or not facilitated by a nonprofit corporation under section 9(2). Under owner-arranged financing, a municipal electric utility may collect monthly installment payments on the electric utility bills pursuant to section 9(4) and forward payments to the commercial lender or the record owner may pay the commercial lender directly.

(h) Information regarding all of the following, to the extent known, or procedures to determine the following in the future:

(*i*) Any reserve fund or funds to be used as security for bonds or notes described in subdivision (g).

(*ii*) Any application, administration, or other program fees to be charged to a record owner participating in the program. The fees shall be used to finance costs incurred by the municipality as a result of the record owner's participation.

(i) A requirement that the term for repayment of a loan to a property owner as described in section 9(2) not exceed the anticipated useful life of the energy project paid for by the loan or 180 months, whichever is less.

(j) Provisions for marketing and participant education.

(k) Provisions for adequate debt service reserve fund.

(*l*) Quality assurance and antifraud measures.

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(m) A requirement that a baseline home energy audit be conducted before an energy project is undertaken. After the energy project is completed, the municipality shall obtain verification that the renewable energy system or energy efficiency improvement was properly installed and is operating as intended.

(2) The municipality shall post the report under subsection (1) on the municipality's website, if any, and make the report available for review at the office of the clerk or the official authorized to enter contracts on behalf of the municipality under the residential clean energy program.

History: 2014, Act 408, Imd. Eff. Dec. 30, 2014.

ENERGY FOR ECONOMIC DEVELOPMENT ACT OF 2010
Act 297 of 2010

460.991-460.995 Repealed. 2010, Act 297, Eff. Dec. 1, 2015

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****** Act 295 of 2008 THIS TITLE, BEGINNING WITH THE FIRST INSTANCE OF "AN ACT", IS AMENDED EFFECTIVE APRIL 20, 2017: THIS AMENDED TITLE, BEGINNING WITH THE SECOND INSTANCE OF "AN ACT", IS EFFECTIVE APRIL 20, 2017 ******

CLEAN, RENEWABLE, AND EFFICIENT ENERGY ACT
Act 295 of 2008

AN ACT to require certain providers of electric service to establish renewable energy programs; to require certain providers of electric or natural gas service to establish energy optimization programs; to authorize the use of certain energy systems to meet the requirements of those programs; to provide for the approval of energy optimization service companies; to provide for certain charges on electric and natural gas bills; to promote energy conservation by state agencies and the public; to create a wind energy resource zone board and provide for its power and duties; to authorize the creation and implementation of wind energy resource zones; to provide for expedited transmission line siting certificates; to provide for a net metering program and the responsibilities of certain providers of electric service and customers with respect to net metering; to provide for fees; to prescribe the powers and duties of certain state agencies and officials; to require the promulgation of rules and the issuance of orders; and to provide for civil sanctions, remedies, and penalties. AN ACT to require certain providers of electric service to establish and recover costs for renewable energy programs; to require certain providers of electric or natural gas service to establish energy waste reduction programs; to authorize the use of certain energy systems to meet the requirements of those programs; to provide for the approval of energy waste reduction service companies; to reduce energy waste by state agencies and the public; to create a wind energy resource zone board and provide for its power and duties; to authorize the creation and implementation of wind energy resource zones; to provide for expedited transmission line siting certificates; to provide for customer generation and net metering programs and the responsibilities of certain providers of electric service and customers with respect to customer generation and net metering; to provide for fees; to prescribe the powers and duties of certain state agencies and officials; to require the promulgation of rules and the issuance of orders; to authorize the establishment of residential energy improvement programs by providers of electric or natural gas service; and to provide for civil sanctions, remedies, and penalties.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008;—Am. 2016, Act 342, Eff. Apr. 20, 2017.

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

The People of the State of Michigan enact:

PART 1.
GENERAL PROVISIONS

****** 460.1001 THIS SECTION IS AMENDED EFFECTIVE APRIL 20, 2017: See 460.1001.amended ******

460.1001 Short title; purpose of act.

Sec. 1. (1) This act shall be known and may be cited as the "clean, renewable, and efficient energy act".

(2) The purpose of this act is to promote the development of clean energy, renewable energy, and energy optimization through the implementation of a clean, renewable, and energy efficient standard that will cost-effectively do all of the following:

(a) Diversify the resources used to reliably meet the energy needs of consumers in this state.

(b) Provide greater energy security through the use of indigenous energy resources available within the state.

(c) Encourage private investment in renewable energy and energy efficiency.

(d) Provide improved air quality and other benefits to energy consumers and citizens of this state.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

****** 460.1001.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

460.1001.amended Short title; purpose and goal of act.

Sec. 1. (1) This act shall be known and may be cited as the "clean and renewable energy and energy waste

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reduction act".

(2) The purpose of this act is to promote the development and use of clean and renewable energy resources and the reduction of energy waste through programs that will cost-effectively do all of the following:

(a) Diversify the resources used to reliably meet the energy needs of consumers in this state.

(b) Provide greater energy security through the use of indigenous energy resources available within the state.

(c) Encourage private investment in renewable energy and energy waste reduction.

(d) Coordinate with federal regulations to provide improved air quality and other benefits to energy consumers and citizens of this state.

(e) Remove unnecessary burdens on the appropriate use of solid waste as a clean energy source.

(3) As a goal, not less than 35% of this state's electric needs should be met through a combination of energy waste reduction and renewable energy by 2025, if the investments in energy waste reduction and renewable energy are the most reasonable means of meeting an electric utility's energy and capacity needs relative to other resource options. Both of the following count toward achievement of the goal:

(a) All renewable energy, including renewable energy credits purchased or otherwise acquired with or without the associated renewable energy, and any banked renewable energy credits, that counted toward the renewable energy standard on the effective date of the 2016 amendatory act that added this subsection, as well as renewable energy credits granted as a result of any investments made in renewable energy by the utility or a utility customer after that effective date.

(b) The sum of the annual electricity savings since October 6, 2008, as recognized by the commission through annual reconciliation proceedings, that resulted from energy waste reduction measures implemented under an energy optimization plan or energy waste reduction plan approved under section 73.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008;—Am. 2016, Act 342, Eff. Apr. 20, 2017.

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

****** 460.1003 THIS SECTION IS AMENDED EFFECTIVE APRIL 20, 2017: See 460.1003.amended ******

460.1003 Definitions; A to C.

Sec. 3. As used in this act:

(a) "Advanced cleaner energy" means electricity generated using an advanced cleaner energy system.

(b) "Advanced cleaner energy credit" means a credit certified under section 43 that represents generated advanced cleaner energy.

(c) "Advanced cleaner energy system" means any of the following:

(*i*) A gasification facility.

(*ii*) An industrial cogeneration facility.

(*iii*) A coal-fired electric generating facility if 85% or more of the carbon dioxide emissions are captured and permanently geologically sequestered.

(*iv*) An electric generating facility or system that uses technologies not in commercial operation on the effective date of this act.

(d) "Affiliated transmission company" means that term as defined in the electric transmission line certification act, 1995 PA 30, MCL 460.562.

(e) "Applicable regional transmission organization" means a nonprofit, member-based organization governed by an independent board of directors that serves as the federal energy regulatory commission-approved regional transmission organization with oversight responsibility for the region that includes the provider's service territory.

(f) "Biomass" means any organic matter that is not derived from fossil fuels, that can be converted to usable fuel for the production of energy, and that replenishes over a human, not a geological, time frame, including, but not limited to, all of the following:

(*i*) Agricultural crops and crop wastes.

(*ii*) Short-rotation energy crops.

(*iii*) Herbaceous plants.

(*iv*) Trees and wood, but only if derived from sustainably managed forests or procurement systems, as defined in section 261c of the management and budget act, 1984 PA 431, MCL 18.1261c.

(*v*) Paper and pulp products.

(*vi*) Precommercial wood thinning waste, brush, or yard waste.

(*vii*) Wood wastes and residues from the processing of wood products or paper.

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(*viii*) Animal wastes.
(*ix*) Wastewater sludge or sewage.
(*x*) Aquatic plants.
(*xi*) Food production and processing waste.
(*xii*) Organic by-products from the production of biofuels.
(g) "Board" means the wind energy resource zone board created under section 143.
(h) "Carbon dioxide emissions benefits" means that the carbon dioxide emissions per megawatt hour of electricity generated by the advanced cleaner energy system are at least 85% less or, for an integrated gasification combined cycle facility, 70% less than the average carbon dioxide emissions per megawatt hour of electricity generated from all coal-fired electric generating facilities operating in this state on January 1, 2008.
(i) "Commission" means the Michigan public service commission.
(j) "Customer meter" means an electric meter of a provider's retail customer. Customer meter does not include a municipal water pumping meter or additional meters at a single site that were installed specifically to support interruptible air conditioning, interruptible water heating, net metering, or time-of-day tariffs.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

****** 460.1003amended THIS AMENDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

460.1003.amended Definitions; A to D.

Sec. 3. As used in this act:
(a) "Applicable regional transmission organization" means a nonprofit, member-based organization governed by an independent board of directors that serves as the regional transmission organization approved by the Federal Energy Regulatory Commission with oversight responsibility for the region that includes the provider's service territory.
(b) "Biomass" means any organic matter that is not derived from fossil fuels, that can be converted to usable fuel for the production of energy, and that replenishes over a human, not a geological, time frame, including, but not limited to, all of the following:
(*i*) Agricultural crops and crop wastes.
(*ii*) Short-rotation energy crops.
(*iii*) Herbaceous plants.
(*iv*) Trees and wood, but only if derived from sustainably managed forests or procurement systems, as defined in section 261c of the management and budget act, 1984 PA 431, MCL 18.1261c.
(*v*) Paper and pulp products.
(*vi*) Precommercial wood thinning waste, brush, or yard waste.
(*vii*) Wood wastes and residues from the processing of wood products or paper.
(*viii*) Animal wastes.
(*ix*) Wastewater sludge or sewage.
(*x*) Aquatic plants.
(*xi*) Food production and processing waste.
(*xii*) Organic by-products from the production of biofuels.
(c) "Board" means the wind energy resource zone board created under section 143.
(d) "Carbon dioxide emissions benefits" means that the carbon dioxide emissions per megawatt hour of electricity generated by the advanced cleaner energy system are at least 85% less or, for an integrated gasification combined cycle facility or an integrated pyrolysis combined cycle facility, 70% less than the average carbon dioxide emissions per megawatt hour of electricity generated from all coal-fired electric generating facilities operating in this state on January 1, 2008.
(e) "Cogeneration facility" means a facility that produces both electricity and useful thermal energy, such as heat or steam, in a way that is more efficient than the separate production of those forms of energy.
(f) "Commission" means the Michigan public service commission.
(g) "Customer meter" means an electric meter of a provider's retail customer. Customer meter does not include a municipal water pumping meter or additional meters at a single site that were installed specifically to support interruptible air conditioning, interruptible water heating, net metering, or time-of-day tariffs.
(h) "Distributed generation program" means the program established by the commission under section 173.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008;—Am. 2016, Act 342, Eff. Apr. 20, 2017.

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

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8.5, this act is severable."

****** 460.1005 THIS SECTION IS AMENDED EFFECTIVE APRIL 20, 2017: See 460.1005.amended ******

460.1005 Definitions; E, F.

Sec. 5. As used in this act:

(a) "Electric provider", subject to sections 21(1), 23(1), and 25(1), 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*) Except as used in subpart B of part 2, an alternative electric supplier licensed under section 10a of 1939 PA 3, MCL 460.10a.

(b) "Eligible electric generator" means that a methane digester or renewable energy system with a generation capacity limited to the customer's electric need and that does not exceed the following:

(*i*) For a renewable energy system, 150 kilowatts of aggregate generation at a single site.

(*ii*) For a methane digester, 550 kilowatts of aggregate generation at a single site.

(c) "Energy conservation" means the reduction of customer energy use through the installation of measures or changes in energy usage behavior. Energy conservation does not include the use of advanced cleaner energy systems.

(d) "Energy efficiency" means a decrease in customer consumption of electricity or natural gas achieved through measures or programs that target customer behavior, equipment, devices, or materials without reducing the quality of energy services.

(e) "Energy optimization", subject to subdivision (f), means all of the following:

(*i*) Energy efficiency.

(*ii*) Load management, to the extent that the load management reduces overall energy usage.

(*iii*) Energy conservation, but only to the extent that the decreases in the consumption of electricity produced by energy conservation are objectively measurable and attributable to an energy optimization plan.

(f) Energy optimization does not include electric provider infrastructure projects that are approved for cost recovery by the commission other than as provided in this act.

(g) "Energy optimization credit" means a credit certified pursuant to section 87 that represents achieved energy optimization.

(h) "Energy optimization plan" or "EO plan" means a plan under section 71.

(i) "Energy optimization standard" means the minimum energy savings required to be achieved under section 77.

(j) "Energy star" means the voluntary partnership among the United States department of energy, the United States environmental protection agency, product manufacturers, local utilities, and retailers to help promote energy efficient products by labeling with the energy star logo, educate consumers about the benefits of energy efficiency, and help promote energy efficiency in buildings by benchmarking and rating energy performance.

(k) "Federal approval" means approval by the applicable regional transmission organization or other federal energy regulatory commission approved transmission planning process of a transmission project that includes the transmission line. Federal approval may be evidenced in any of the following manners:

(*i*) The proposed transmission line is part of a transmission project included in the applicable regional transmission organization's board-approved transmission expansion plan.

(*ii*) The applicable regional transmission organization has informed the electric utility, affiliated transmission company, or independent transmission company that a transmission project submitted for an out-of-cycle project review has been approved by the applicable regional transmission organization, and the approved transmission project includes the proposed transmission line.

(*iii*) If, after the effective date of this act, the applicable regional transmission organization utilizes another approval process for transmission projects proposed by an electric utility, affiliated transmission company, or independent transmission company, the proposed transmission line is included in a transmission project approved by the applicable regional transmission organization through the approval process developed after the effective date of this act.

(*iv*) Any other federal energy regulatory commission approved transmission planning process for a transmission project.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

****** 460.1005.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

460.1005.amended Definitions; E, F.

Sec. 5. As used in this act:

(a) "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*) Except as used in subpart C of part 2, an alternative electric supplier licensed under section 10a of 1939 PA 3, MCL 460.10a.

(b) "Eligible electric generator" means a methane digester or renewable energy system with a generation capacity limited to the customer's electric need and that does not exceed the following:

(*i*) For a renewable energy system, 150 kilowatts of aggregate generation at a single site.

(*ii*) For a methane digester, 550 kilowatts of aggregate generation at a single site.

(c) "Energy conservation" means the reduction of customer energy use through the installation of measures or changes in energy usage behavior.

(d) "Energy efficiency" means a decrease in customer consumption of electricity or natural gas achieved through measures or programs that target customer behavior, equipment, devices, or materials without reducing the quality of energy services.

(e) "Energy star" means the voluntary partnership among the United States Department of Energy, the United States Environmental Protection Agency, product manufacturers, local utilities, and retailers to help promote energy efficient products by labeling with the energy star logo, educate consumers about the benefits of energy efficiency, and help promote energy efficiency in buildings by benchmarking and rating energy performance.

(f) "Energy waste reduction", subject to subdivision (g), means all of the following:

(*i*) Energy efficiency.

(*ii*) Load management, to the extent that the load management reduces provider costs.

(*iii*) Energy conservation, but only to the extent that the decreases in the consumption of electricity produced by energy conservation are objectively measurable and attributable to an energy waste reduction plan.

(g) Energy waste reduction does not include electric provider infrastructure projects that are approved for cost recovery by the commission other than as provided in this act.

(h) "Energy waste reduction credit" means a credit certified pursuant to section 87 that represents achieved energy waste reduction.

(i) "Energy waste reduction plan" means a plan under section 71.

(j) "Energy waste reduction standard" means the minimum energy savings required to be achieved under section 77 or 78(1), as applicable.

(k) "Federal approval" means approval by the applicable regional transmission organization or other Federal Energy Regulatory Commission-approved transmission planning process of a transmission project that includes the transmission line. Federal approval may be evidenced in any of the following manners:

(*i*) The proposed transmission line is part of a transmission project included in the applicable regional transmission organization's board-approved transmission expansion plan.

(*ii*) The applicable regional transmission organization has informed the electric utility, affiliated transmission company, or independent transmission company that a transmission project submitted for an out-of-cycle project review has been approved by the applicable regional transmission organization, and the approved transmission project includes the proposed transmission line.

(*iii*) If, after October 6, 2008, the applicable regional transmission organization utilizes another approval process for transmission projects proposed by an electric utility, affiliated transmission company, or independent transmission company, the proposed transmission line is included in a transmission project approved by the applicable regional transmission organization through the approval process developed after October 6, 2008.

(*iv*) Any other Federal Energy Regulatory Commission-approved transmission planning process for a transmission project.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008;—Am. 2016, Act 342, Eff. Apr. 20, 2017.

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

***** *460.1007 THIS SECTION IS AMENDED EFFECTIVE APRIL 20, 2017: See 460.1007.amended* *****

460.1007 Definitions; G to M.

Sec. 7. As used in this act:

(a) "Gasification facility" means a facility located in this state that uses a thermochemical process that does not involve direct combustion to produce synthesis gas, composed of carbon monoxide and hydrogen, from carbon-based feedstocks (such as coal, petroleum coke, wood, biomass, hazardous waste, medical waste, industrial waste, and solid waste, including, but not limited to, municipal solid waste, electronic waste, and waste described in section 11514 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.11514) and that uses the synthesis gas or a mixture of the synthesis gas and methane to generate electricity for commercial use. Gasification facility includes the transmission lines, gas transportation lines and facilities, and associated property and equipment specifically attributable to such a facility. Gasification facility includes, but is not limited to, an integrated gasification combined cycle facility and a plasma arc gasification facility.

(b) "Incremental costs of compliance" means the net revenue required by an electric provider to comply with the renewable energy standard, calculated as provided under section 47.

(c) "Independent transmission company" means that term as defined in section 2 of the electric transmission line certification act, 1995 PA 30, MCL 460.562.

(d) "Industrial cogeneration facility" means a facility that generates electricity using industrial thermal energy or industrial waste energy.

(e) "Industrial thermal energy" means thermal energy that is a by-product of an industrial or manufacturing process and that would otherwise be wasted. For the purposes of this subdivision, industrial or manufacturing process does not include the generation of electricity.

(f) "Industrial waste energy" means exhaust gas or flue gas that is a by-product of an industrial or manufacturing process and that would otherwise be wasted. For the purposes of this subdivision, industrial or manufacturing process does not include the generation of electricity.

(g) "Integrated gasification combined cycle facility" means a gasification facility that uses a thermochemical process, including high temperatures and controlled amounts of air and oxygen, to break substances down into their molecular structures and that uses exhaust heat to generate electricity.

(h) "LEED" means the leadership in energy and environmental design green building rating system developed by the United States green building council.

(i) "Load management" means measures or programs that target equipment or devices to result in decreased peak electricity demand such as by shifting demand from a peak to an off-peak period.

(j) "Modified net metering" means a utility billing method that applies the power supply component of the full retail rate to the net of the bidirectional flow of kilowatt hours across the customer interconnection with the utility distribution system, during a billing period or time-of-use pricing period. A negative net metered quantity during the billing period or during each time-of-use pricing period within the billing period reflects net excess generation for which the customer is entitled to receive credit under section 177(4). Standby charges for modified net metering customers on an energy rate schedule shall be equal to the retail distribution charge applied to the imputed customer usage during the billing period. The imputed customer usage is calculated as the sum of the metered on-site generation and the net of the bidirectional flow of power across the customer interconnection during the billing period. The commission shall establish standby charges for modified net metering customers on demand-based rate schedules that provide an equivalent contribution to utility system costs.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

***** *460.1007.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 20, 2017* *****

460.1007.amended Definitions; G to M.

Sec. 7. As used in this act:

(a) "Gasification facility" means a facility located in this state that, using a thermochemical process that does not involve direct combustion, produces synthesis gas, composed of carbon monoxide and hydrogen, from carbon-based feedstocks (such as coal, petroleum coke, wood, biomass, hazardous waste, medical waste,

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industrial waste, and solid waste, including, but not limited to, municipal solid waste, electronic waste, and waste described in section 11514 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.11514) and that uses the synthesis gas or a mixture of the synthesis gas and methane to generate electricity for commercial use. Gasification facility includes the transmission lines, gas transportation lines and facilities, and associated property and equipment specifically attributable to such a facility. Gasification facility includes, but is not limited to, an integrated gasification combined cycle facility and a plasma arc gasification facility.

(b) "Incremental costs of compliance" means the net revenue required by an electric provider to comply with the renewable energy standard, calculated as provided under section 47.

(c) "Independent transmission company" means that term as defined in section 2 of the electric transmission line certification act, 1995 PA 30, MCL 460.562.

(d) "Integrated gasification combined cycle facility" means a gasification facility that uses a thermochemical process, including high temperatures and controlled amounts of air and oxygen, to break substances down into their molecular structures and that uses exhaust heat to generate electricity.

(e) "Integrated pyrolysis combined cycle facility" means a pyrolysis facility that uses exhaust heat to generate electricity.

(f) "LEED" means the leadership in energy and environmental design green building rating system developed by the United States Green Building Council.

(g) "Load management" means measures or programs that target equipment or behavior to result in decreased peak electricity demand such as by shifting demand from a peak to an off-peak period.

(h) "Megawatt", "megawatt hour", or "megawatt hour of electricity", unless the context implies otherwise, includes the steam equivalent of a megawatt or megawatt hour of electricity.

(i) "Modified net metering" means a utility billing method that applies the power supply component of the full retail rate to the net of the bidirectional flow of kilowatt hours across the customer interconnection with the utility distribution system, during a billing period or time-of-use pricing period. A negative net metered quantity during the billing period or during each time-of-use pricing period within the billing period reflects net excess generation for which the customer is entitled to receive credit under section 177(4). Under modified net metering, standby charges for distributed generation customers on an energy rate schedule shall be equal to the retail distribution charge applied to the imputed customer usage during the billing period. The imputed customer usage is calculated as the sum of the metered on-site generation and the net of the bidirectional flow of power across the customer interconnection during the billing period. The commission shall establish standby charges under modified net metering for distributed generation customers on demand-based rate schedules that provide an equivalent contribution to utility system costs. A charge for net metering and distributed generation customers established pursuant to section 6a of 1939 PA 3, MCL 460.6a, shall not be recovered more than once. This subdivision is subject to section 177(5).

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008;—Am. 2016, Act 342, Eff. Apr. 20, 2017.

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

****** 460.1009 THIS SECTION IS AMENDED EFFECTIVE APRIL 20, 2017: See 460.1009.amended ******

460.1009 Definitions; N to Q.

Sec. 9. As used in this act:

(a) "Natural gas provider" means an investor-owned business engaged in the sale and distribution of natural gas within this state whose rates are regulated by the commission. However, as used in subpart B of part 2, natural gas provider does not include an alternative gas supplier licensed under section 9b of 1939 PA 3, MCL 460.9b.

(b) "Plasma arc gasification facility" means a gasification facility that uses a plasma torch to break substances down into their molecular structures.

(c) "Provider" means an electric provider or a natural gas provider.

(d) "PURPA" means the public utility regulatory policies act of 1978, Public Law 95-617.

(e) "Qualifying small power production facility" means that term as defined in 16 USC 824a-3.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

****** 460.1009.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

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460.1009.amended Definitions; N to P.

Sec. 9. As used in this act:

(a) "Natural gas provider" means an investor-owned business engaged in the sale and distribution at retail of natural gas within this state whose rates are regulated by the commission.

(b) "Pet coke" means a solid carbonaceous residue produced from a coker after cracking and distillation from petroleum refining operations.

(c) "Plasma arc gasification facility" means a gasification facility that uses a plasma torch to break substances down into their molecular structures.

(d) "Provider" means an electric provider or a natural gas provider.

(e) "PURPA" means the public utility regulatory policies act of 1978, Public Law 95-617.

(f) "Pyrolysis facility" means a facility that effects thermochemical decomposition at elevated temperatures without the participation of oxygen, from carbon-based feedstocks including, but not limited to, coal, wood, biomass, industrial waste, or solid waste, but not including pet coke, hazardous waste, coal waste, or scrap tires. Pyrolysis facility includes the transmission lines, gas transportation lines and facilities, and associated property and equipment specifically attributable to the facility. Pyrolysis facility includes, but is not limited to, an integrated pyrolysis combined cycle facility.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008;—Am. 2016, Act 342, Eff. Apr. 20, 2017.

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

****** 460.1011 THIS SECTION IS AMENDED EFFECTIVE APRIL 20, 2017: See 460.1011.amended ******

460.1011 Definitions; R.

Sec. 11. As used in this act:

(a) "Renewable energy" means electricity generated using a renewable energy system.

(b) "Renewable energy capacity portfolio" means the number of megawatts calculated under section 27(2) for a particular year.

(c) "Renewable energy contract" means a contract to acquire renewable energy and the associated renewable energy credits from 1 or more renewable energy systems.

(d) "Renewable energy credit" means a credit granted pursuant to section 41 that represents generated renewable energy.

(e) "Renewable energy credit portfolio" means the sum of the renewable energy credits achieved by a provider for a particular year.

(f) "Renewable energy credit standard" means a minimum renewable energy portfolio required under section 27.

(g) "Renewable energy generator" means a person that, together with its affiliates, has constructed or has owned and operated 1 or more renewable energy systems with combined gross generating capacity of at least 10 megawatts.

(h) "Renewable energy plan" or "plan", means a plan approved under section 21 or 23 or found to comply with this act under section 25, with any amendments adopted under this act.

(i) "Renewable energy resource" means a resource that naturally replenishes over a human, not a geological, time frame and that is ultimately derived from solar power, water power, or wind power. Renewable energy resource does not include petroleum, nuclear, natural gas, or coal. A renewable energy resource comes from the sun or from thermal inertia of the earth and minimizes the output of toxic material in the conversion of the energy and includes, but is not limited to, all of the following:

(*i*) Biomass.

(*ii*) Solar and solar thermal energy.

(*iii*) Wind energy.

(*iv*) Kinetic energy of moving water, including all of the following:

(A) Waves, tides, or currents.

(B) Water released through a dam.

(*v*) Geothermal energy.

(*vi*) Municipal solid waste.

(*vii*) Landfill gas produced by municipal solid waste.

(j) "Renewable energy standard" means the minimum renewable energy capacity portfolio, if applicable, and the renewable energy credit portfolio required to be achieved under section 27.

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(k) "Renewable energy system" means a facility, electricity generation system, or set of electricity generation systems that use 1 or more renewable energy resources to generate electricity. Renewable energy system does not include any of the following:

(*i*) A hydroelectric pumped storage facility.

(*ii*) A hydroelectric facility that uses a dam constructed after the effective date of this act unless the dam is a repair or replacement of a dam in existence on the effective date of this act or an upgrade of a dam in existence on the effective date of this act that increases its energy efficiency.

(*iii*) An incinerator unless the incinerator is a municipal solid waste incinerator as defined in section 11504 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.11504, that was brought into service before the effective date of this act, including any of the following:

(A) Any upgrade of such an incinerator that increases energy efficiency.

(B) Any expansion of such an incinerator before the effective date of this act.

(C) Any expansion of such an incinerator on or after the effective date of this act to an approximate design rated capacity of not more than 950 tons per day pursuant to the terms of a final request for proposals issued on or before October 1, 1986.

(*l*) "Revenue recovery mechanism" means the mechanism for recovery of incremental costs of compliance established under section 21.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

****** 460.1011.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

460.1011.amended Definitions; R.

Sec. 11. As used in this act:

(a) "Renewable energy" means electricity or steam generated using a renewable energy system.

(b) "Renewable energy contract" means a contract to acquire renewable energy and the associated renewable energy credits from 1 or more renewable energy systems.

(c) "Renewable energy credit" means a credit granted under a certification and tracking program established under section 41, which represents generated renewable energy.

(d) "Renewable energy credit portfolio" means the sum of the renewable energy credits achieved by a provider for a particular year.

(e) "Renewable energy credit standard" means a minimum renewable energy credit portfolio required under section 28 or former section 27.

(f) "Renewable energy plan" or "plan" means a plan approved under section 22 or former section 21 or 23 or found to comply with this act under former section 25, with any amendments adopted under this act.

(g) "Renewable energy resource" means a resource that naturally replenishes over a human, not a geological, time frame and that is ultimately derived from solar power, water power, or wind power. Renewable energy resource does not include petroleum, nuclear, natural gas, or coal. A renewable energy resource comes from the sun or from thermal inertia of the earth and minimizes the output of toxic material in the conversion of the energy and includes, but is not limited to, all of the following:

(*i*) Biomass.

(*ii*) Solar and solar thermal energy.

(*iii*) Wind energy.

(*iv*) Kinetic energy of moving water, including all of the following:

(A) Waves, tides, or currents.

(B) Water released through a dam.

(*v*) Geothermal energy.

(*vi*) Thermal energy produced from a geothermal heat pump.

(*vii*) Any of the following cleaner energy resources:

(A) Municipal solid waste, including the biogenic and anthropogenic factions.

(B) Landfill gas produced by municipal solid waste.

(C) Fuel that has been manufactured in whole or significant part from waste, including, but not limited to, municipal solid waste. Fuel that meets the requirements of this subparagraph includes, but is not limited to, material that is listed under 40 CFR 241.3(b) or 241.4(a) or for which a nonwaste determination is made by the United States Environmental Protection Agency pursuant to 40 CFR 241.3(c). Pet coke, hazardous waste, coal waste, or scrap tires are not fuel that meets the requirements of this subparagraph.

(h) "Renewable energy standard" means the minimum renewable energy capacity portfolio, if applicable,

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and the renewable energy credit portfolio required to be achieved under section 28 or former section 27.

(i) "Renewable energy system" means a facility, electricity generation system, or set of electricity generation systems that use 1 or more renewable energy resources to generate electricity or steam. Renewable energy system does not include any of the following:

(*i*) A hydroelectric pumped storage facility.

(*ii*) A hydroelectric facility that uses a dam constructed after October 6, 2008 unless the dam is a repair or replacement of a dam in existence on October 6, 2008 or an upgrade of a dam in existence on October 6, 2008 that increases its energy efficiency.

(*iii*) An incinerator unless the incinerator is a municipal solid waste incinerator as defined in section 11504 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.11504.

(j) "Revenue recovery mechanism" means the mechanism for recovery of incremental costs of compliance provided for under section 22.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008;—Am. 2016, Act 342, Eff. Apr. 20, 2017.

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

****** 460.1013 THIS SECTION IS AMENDED EFFECTIVE APRIL 20, 2017: See 460.1013.amended ******

460.1013 Definitions; S to W.

Sec. 13. As used in this act:

(a) "Site" means a contiguous site, regardless of the number of meters at that site. A site that would be contiguous but for the presence of a street, road, or highway shall be considered to be contiguous for the purposes of this subdivision.

(b) "Transmission line" means all structures, equipment, and real property necessary to transfer electricity at system bulk supply voltage of 100 kilovolts or more.

(c) "True net metering" means a utility billing method that applies the full retail rate to the net of the bidirectional flow of kilowatt hours across the customer interconnection with the utility distribution system, during a billing period or time-of-use pricing period. A negative net metered quantity during the billing period or during each time-of-use pricing period within the billing period reflects net excess generation for which the customer is entitled to receive credit under section 177(4).

(d) "Utility system resource cost test" means a standard that is met for an investment in energy optimization if, on a life cycle basis, the total avoided supply-side costs to the provider, including representative values for electricity or natural gas supply, transmission, distribution, and other associated costs, are greater than the total costs to the provider of administering and delivering the energy optimization program, including net costs for any provider incentives paid by customers and capitalized costs recovered under section 89.

(e) "Wind energy conversion system" means a renewable energy system that uses 1 or more wind turbines to generate electricity and has a nameplate capacity of 100 kilowatts or more.

(f) "Wind energy resource zone" or "wind zone" means an area designated by the commission under section 147.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

****** 460.1013.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

460.1013.amended Definitions; S to W.

Sec. 13. As used in this act:

(a) "Site" means a contiguous site, regardless of the number of meters at that site. A site that would be contiguous but for the presence of a street, road, or highway is considered to be contiguous for the purposes of this subdivision.

(b) "Transmission line" means all structures, equipment, and real property necessary to transfer electricity at system bulk supply voltage of 100 kilovolts or more.

(c) "True net metering" means a utility billing method that applies the full retail rate to the net of the bidirectional flow of kilowatt hours across the customer interconnection with the utility distribution system, during a billing period or time-of-use pricing period. A negative net metered quantity during the billing period or during each time-of-use pricing period within the billing period reflects net excess generation for which the customer is entitled to receive credit under section 177(4). This subdivision is subject to section 177(5).

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(d) "Utility system resource cost test" means a standard that is met for an investment in energy waste reduction if, on a life cycle basis, the total avoided supply-side costs to the provider, including representative values for electricity or natural gas supply, transmission, distribution, and other associated costs, are greater than the total costs to the provider of administering and delivering the energy waste reduction program, including net costs for any provider incentives paid by customers and capitalized costs recovered under section 89.

(e) "Wind energy conversion system" means a system that uses 1 or more wind turbines to generate electricity and has a nameplate capacity of 100 kilowatts or more.

(f) "Wind energy resource zone" or "wind zone" means an area designated by the commission under section 147.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008;—Am. 2016, Act 342, Eff. Apr. 20, 2017.

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

PART 2.
ENERGY STANDARDS

SUBPART A.
RENEWABLE ENERGY

****** 460.1021 THIS SECTION IS REPEALED BY ACT 342 OF 2016 EFFECTIVE APRIL 20, 2017 ******

460.1021 Electric providers; regulation of rates by commission; applicability of section; filing of proposed renewable energy plan; requirements; establishment of nonvolumetric mechanism; revenue recovery mechanism; agreement with customer to participate in commission-approved voluntary renewable energy program; reserve funds; contested case hearing on proposed plan; approval; determination; initial approval; review; amendment; rejection of proposed plan or amendment.

Sec. 21. (1) This section applies only to electric providers whose rates are regulated by the commission.

(2) Each electric provider shall file a proposed renewable energy plan with the commission within 90 days after the commission issues a temporary order under section 171. The proposed plan shall meet all of the following requirements:

(a) Describe how the electric provider will meet the renewable energy standards.

(b) Specify whether the number of megawatt hours of electricity used in the calculation of the renewable energy credit portfolio will be weather-normalized or based on the average number of megawatt hours of electricity sold by the electric provider annually during the previous 3 years to retail customers in this state. Once the plan is approved by the commission, this option shall not be changed.

(c) Include the expected incremental cost of compliance with the renewable energy standards for a 20-year period beginning when the plan is approved by the commission.

(d) For an electric provider that had 1,000,000 or more retail customers in this state on January 1, 2008, describe the bidding process to be used by the electric provider under section 33. The description shall include measures to be employed in the preparation of requests for proposals and the handling and evaluation of proposals received to ensure that any bidder that is an affiliate of the electric utility is not afforded a competitive advantage over any other bidder and that each bidder, including any bidder that is an affiliate of the electric provider, is treated in a fair and nondiscriminatory manner.

(3) The proposed plan shall establish a nonvolumetric mechanism for the recovery of the incremental costs of compliance within the electric provider's customer rates. The revenue recovery mechanism shall not result in rate impacts that exceed the monthly maximum retail rate impacts specified under section 45. The revenue recovery mechanism is subject to adjustment under sections 47(4) and 49. A customer participating in a commission-approved voluntary renewable energy program under an agreement in effect on the effective date of this act shall not incur charges under the revenue recovery mechanism unless the charges under the revenue recovery mechanism exceed the charges the customer is incurring for the voluntary renewable energy program. In that case, the customer shall only incur the difference between the charge assessed under the revenue recovery mechanism and the charges the customer is incurring for the voluntary renewable energy program. The limitation on charges applies only during the term of the agreement, not including automatic agreement renewals, or until 1 year after the effective date of this act, whichever is later. Before entering an agreement with a customer to participate in a commission-approved voluntary renewable energy program and before the last automatic monthly renewal of such an agreement that will occur less than 1 year after the

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effective date of this act, an electric provider shall notify the customer that the customer will be responsible for the full applicable charges under the revenue recovery mechanism and under the voluntary renewable energy program as provided under this subsection.

(4) If proposed by the electric provider in its proposed plan, the revenue recovery mechanism shall result in an accumulation of reserve funds in advance of expenditure and the creation of a regulatory liability that accrues interest at the average short-term borrowing rate available to the electric provider during the appropriate period. If proposed by the electric provider in its proposed plan, the commission shall establish a minimum balance of accumulated reserve funds for the purposes of section 47(4).

(5) The commission shall conduct a contested case hearing on the proposed plan filed under subsection (2), pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. If a renewable energy generator files a petition to intervene in the contested case in the manner prescribed by the commission's rules for interventions generally, the commission shall grant the petition. Subject to subsections (6) and (10), after the hearing and within 90 days after the proposed plan is filed with the commission, the commission shall approve, with any changes consented to by the electric provider, or reject the plan.

(6) The commission shall not approve an electric provider's plan unless the commission determines both of the following:

(a) That the plan is reasonable and prudent. In making this determination, the commission shall take into consideration projected costs and whether or not projected costs included in prior plans were exceeded.

(b) That the life-cycle cost of renewable energy acquired or generated under the plan less the projected life-cycle net savings associated with the provider's energy optimization plan does not exceed the expected life-cycle cost of electricity generated by a new conventional coal-fired facility. In determining the expected life-cycle cost of electricity generated by a new conventional coal-fired facility, the commission shall consider data from this state and the states of Ohio, Indiana, Illinois, Wisconsin, and Minnesota, including, if applicable, the life-cycle costs of the renewable energy system and new conventional coal-fired facilities. When determining the life-cycle costs of the renewable energy system and new conventional coal-fired facilities, the commission shall use a methodology that includes, but is not limited to, consideration of the value of energy, capacity, and ancillary services. The commission shall also consider other costs such as transmission, economic benefits, and environmental costs, including, but not limited to, greenhouse gas constraints or taxes. In performing its assessment, the commission may utilize other available data, including national or regional reports and data published by federal or state governmental agencies, industry associations, and consumer groups.

(7) An electric provider shall not begin recovery of the incremental costs of compliance within its rates until the commission has approved its proposed plan.

(8) Every 2 years after initial approval of a plan under subsection (5), the commission shall review the plan. The commission shall conduct a contested case hearing on the plan pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The annual renewable cost reconciliation under section 49 for that year may be joined with the overall plan review in the same contested case hearing. Subject to subsections (6) and (10), after the hearing, the commission shall approve, with any changes consented to by the electric provider, or reject the plan and any proposed amendments to the plan.

(9) If an electric provider proposes to amend its plan at a time other than during the biennial review process under subsection (8), the electric provider shall file the proposed amendment with the commission. If the proposed amendment would modify the revenue recovery mechanism, the commission shall conduct a contested case hearing on the amendment pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The annual renewable cost reconciliation under section 49 may be joined with the plan amendment in the same contested case proceeding. Subject to subsections (6) and (10), after the hearing and within 90 days after the amendment is filed, the commission shall approve, with any changes consented to by the electric provider, or reject the plan and the proposed amendment or amendments to the plan.

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

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides:
"Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."
In subsection (2), the reference to "section 171" evidently should read "section 191".

****** 460.1022.added THIS ADDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

460.1022.added Electric provider whose rates are regulated by commission; establishment

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of revenue recovery mechanism; review of electric provider's plan pursuant to filing schedule; contested cased hearing; approval or rejection of plan and proposed amendments to plan.

Sec. 22. (1) Renewable energy plans and associated revenue recovery mechanisms filed by an electric provider, approved under former section 21 or 23 or found to comply with this act under former section 25 and in effect on the effective date of the 2016 amendatory act that added this section, remain in effect, subject to amendments as provided for under subsections (3) and (4).

(2) For an electric provider whose rates are regulated by the commission, amended renewable energy plans shall establish a nonvolumetric mechanism for the recovery of the incremental costs of compliance within the electric provider's customer rates. The revenue recovery mechanism shall not result in rate impacts that exceed the monthly maximum retail rate impacts specified under section 45. The revenue recovery mechanism is subject to adjustment under sections 47(4) and 49.

(3) Within 1 year after the effective date of the 2016 amendatory act that added this section, the commission shall review each electric provider's plan pursuant to a filing schedule established by the commission. For an electric provider whose rates are regulated by the commission, the commission shall conduct a contested case hearing on the plan pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. After the hearing, the commission shall approve, with any changes consented to by the electric provider, or reject the plan and any amendments to the plan. For all other electric providers, the commission shall provide an opportunity for public comment on the plan. After the applicable opportunity for public comment, the commission shall determine whether any amendment to the plan proposed by the provider complies with this act. For alternative electric suppliers, the commission shall approve, with any changes consented to by the electric provider, or reject any proposed amendments to the plan. For cooperative electric utilities and municipally owned utilities, the proposed amendment is adopted if the commission determines that it complies with this act.

(4) If an electric provider proposes to amend its plan after the review process under subsection (3), the electric provider shall file the proposed amendment with the commission. For an electric provider whose rates are regulated by the commission, if the proposed amendment would modify the revenue recovery mechanism, the commission shall conduct a contested case hearing on the amendment pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. After the hearing and within 90 days after the amendment is filed, the commission shall approve, with any changes consented to by the electric provider, or reject the plan and the proposed amendment or amendments to the plan. For all other electric providers, the commission shall provide an opportunity for public comment on the amendment. After the applicable opportunity for public comment and within 90 days after the amendment is filed, the commission shall determine whether the proposed amendment to the plan complies with this act. For alternative electric suppliers, the commission shall approve, with any changes consented to by the electric provider, or reject any proposed amendments to the plan. For cooperative electric utilities and municipally owned utilities, the proposed amendment is adopted if the commission determines that it complies with this act.

(5) For an electric provider whose rates are regulated by the commission, the commission shall approve the plan or amendments to the plan if the commission determines:

(a) That the plan is reasonable and prudent. In making this determination, the commission shall take into consideration projected costs and whether or not projected costs in prior plans were exceeded.

(b) That the plan is consistent with the purpose and goal set forth in section 1(2) and (3) and meets the renewable energy credit standard through 2021.

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

History: Add. 2016, Act 342, Eff. Apr. 20, 2017.

***** *460.1023 THIS SECTION IS REPEALED BY ACT 342 OF 2016 EFFECTIVE APRIL 20, 2017* *****

460.1023 Alternative electric suppliers and cooperative electric utilities; applicability of section; filing of proposed renewable energy plan; requirements; public comment; initial approval; review; amendment; rejection of proposed plan or amendment.

Sec. 23. (1) This section applies only to alternative electric suppliers and cooperative electric utilities that have elected to become member-regulated under the electric cooperative member-regulation act, 2008 PA 167, MCL 460.31 to 460.39.

(2) Each alternative electric supplier or cooperative electric utility shall file a proposed renewable energy plan with the commission within 90 days or 120 days, respectively, after the commission issues a temporary order under section 171. The proposed plan shall meet all of the following requirements:

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(a) Describe how the electric provider will meet the renewable energy standards.

(b) Specify whether the number of megawatt hours of electricity used in the calculation of the renewable energy portfolio will be weather-normalized or based on the average number of megawatt hours of electricity sold by the electric provider annually during the previous 3 years to retail customers in this state. Once the plan is approved by the commission, this option shall not be changed.

(3) The commission shall provide an opportunity for public comment on the proposed plan filed under subsection (2). After the opportunity for public comment and within 90 days after the proposed plan is filed with the commission, the commission shall approve, with any changes consented to by the electric provider, or reject the plan.

(4) Every 2 years after initial approval of a plan under subsection (3), the commission shall review the plan. The commission shall provide an opportunity for public comment on the plan. After the opportunity for public comment, the commission shall approve, with any changes consented to by the electric provider, or reject any proposed amendments to the plan.

(5) If an electric provider proposes to amend its plan at a time other than during the biennial review process under subsection (4), the electric provider shall file the proposed amendment with the commission. The commission shall provide an opportunity for public comment on the amendment. After the opportunity for public comment and within 90 days after the amendment is filed, the commission shall approve, with any changes consented to by the electric provider, or reject the amendment.

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

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides:
"Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."
In subsection (2), the reference to "section 171" evidently should read "section 191".

****** 460.1025 THIS SECTION IS REPEALED BY ACT 342 OF 2016 EFFECTIVE APRIL 20, 2017 ******

460.1025 Municipally-owned electric utilities; applicability of section; filing of renewable energy plan; requirements; public comment; initial approval; review; amendment; determination of noncompliance.

Sec. 25. (1) This section applies only to municipally-owned electric utilities.

(2) Each electric provider shall file a proposed renewable energy plan with the commission within 120 days after the commission issues a temporary order under section 171. Two or more electric providers that each serve fewer than 15,000 customers may file jointly. The proposed plan shall meet all of the following requirements:

(a) Describe how the provider will meet the renewable energy standards.

(b) Specify whether the number of megawatt hours of electricity used in the calculation of the renewable energy credit portfolio will be weather-normalized or based on the average number of megawatt hours of electricity sold by the electric provider annually during the previous 3 years to retail customers in this state. Once the commission determines that the proposed plan complies with this act, this option shall not be changed.

(c) Include the expected incremental cost of compliance with the renewable energy standards.

(d) Describe the manner in which the provider will allocate costs.

(3) Subject to subsection (6), the commission shall provide an opportunity for public comment on the proposed plan filed under subsection (2). After the applicable opportunity for public comment and within 90 days after the proposed plan is filed with the commission, the commission shall determine whether the proposed plan complies with this act.

(4) Every 2 years after the commission initially determines under subsection (3) that a renewable energy plan complies with this act, the commission shall review the plan. Subject to subsection (6), the commission shall provide an opportunity for public comment on the plan. After the applicable opportunity for public comment, the commission shall determine whether any amendment to the plan proposed by the provider complies with this act. The proposed amendment is adopted if the commission determines that it complies with this act.

(5) If a provider proposes to amend its renewable energy plan at a time other than during the biennial review process under subsection (4), the provider shall file the proposed amendment with the commission. Subject to subsection (6), the commission shall provide an opportunity for public comment on the amendment. After the applicable opportunity for public comment and within 90 days after the amendment is filed, the commission shall determine whether the proposed amendment to the plan complies with this act.

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The proposed amendment is adopted if the commission determines that it complies with this act.

(6) The commission need not provide an opportunity for public comment under subsection (3), (4), or (5) if the governing body of the provider has already provided an opportunity for public comment and filed the comments with the commission.

(7) If the commission determines that a proposed plan or amendment under this section does not comply with this act, the commission shall explain in writing the reasons for its determination.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides:
"Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."
In subsection (2), the reference to "section 171" evidently should read "section 191".

****** 460.1027 THIS SECTION IS REPEALED BY ACT 342 OF 2016 EFFECTIVE APRIL 20, 2017 ******

460.1027 Electric utility with 1,000,000 or more retail customers; renewable energy capacity portfolio; renewable energy credit portfolio; standards; substitution of energy optimization credits, advanced cleaner energy credits, or combination; rates.

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

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

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

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

(a) The nameplate capacity in megawatts of renewable energy systems owned by the electric provider that were not in commercial operation before the effective date of this act.

(b) The capacity in megawatts of renewable energy that the electric provider is entitled to purchase under contracts that were not in effect before the effective date of this act.

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

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

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

(*ii*) The number of renewable energy credits equal to the number of megawatt hours of electricity produced or obtained by the electric provider in the 1-year period preceding the effective date of this act from renewable energy systems for which recovery in electric rates was approved on the effective date of this act.

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

(A) Taking into account the number of renewable energy credits under subparagraphs (*i*) and (*ii*), determine the number of additional renewable energy credits that the electric provider would need to reach a 10% renewable energy portfolio in that year.

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

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

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

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

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

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

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

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

(5) Subject to subsection (6), each electric provider shall meet the renewable energy credit standards with

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renewable energy credits obtained by 1 or more of the following means:

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

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

(6) An electric provider may substitute energy optimization credits, advanced cleaner energy credits with or without the associated advanced cleaner energy, or a combination thereof for renewable energy credits otherwise required to meet the renewable energy credit standards if the substitution is approved by the commission. However, commission approval is not required to substitute advanced cleaner energy from industrial cogeneration for renewable energy credits. The commission shall not approve a substitution unless the commission determines that the substitution is cost-effective compared to other sources of renewable energy credits and, if the substitution involves advanced cleaner energy credits, that the advanced cleaner energy system provides carbon dioxide emissions benefits. In determining whether the substitution of advanced cleaner energy credits is cost-effective, the commission shall include as part of the costs of the system the environmental costs attributed to the advanced cleaner energy system, including the costs of environmental control equipment or greenhouse gas constraints or taxes. The commission's determinations shall be made after a contested case hearing that includes consultation with the department of environmental quality on the issue of carbon dioxide emissions benefits, if relevant, and environmental costs.

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

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

(a) One energy optimization credit.

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

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

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

****** 460.1028.added THIS ADDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

460.1028.added Renewable energy credit portfolio; meeting renewable energy credit standards with renewable energy credits; means; submission and approval of contract; substitution of energy waste reduction credits for renewable energy credits.

Sec. 28. (1) An electric provider shall achieve a renewable energy credit portfolio as follows:

(a) In 2016 through 2018, a renewable energy credit portfolio that consists of at least the same number of renewable energy credits as were required under former section 27.

(b) In 2019 and 2020, a renewable energy credit portfolio of at least 12.5%, as calculated under subsection (2).

(c) In 2021, a renewable energy credit portfolio of at least 15%, as calculated under subsection (2).

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

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

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

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

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

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

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

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

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

(4) For an electric provider whose rates are regulated by the commission, the electric provider shall submit a contract entered into for the purposes of subsection (3) to the commission for review and approval. If the

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commission approves the contract, it shall be considered consistent with the electric provider's renewable energy plan. The commission shall not approve a contract based on an unsolicited proposal unless the commission determines that the unsolicited proposal provides opportunities that may not otherwise be available or commercially practical through a competitive bid process.

(5) An electric provider may substitute energy waste reduction credits for renewable energy credits otherwise required to meet the renewable energy credit standards if the substitution is approved by the commission. Under this subsection, energy waste reduction credits shall not be used by a provider to meet more than 10% of the renewable energy credit standard. One renewable energy credit shall be awarded per 1 energy waste reduction credit.

History: Add. 2016, Act 342, Eff. Apr. 20, 2017.

****** 460.1029 THIS SECTION IS AMENDED EFFECTIVE APRIL 20, 2017: See 460.1029.amended ******

460.1029 Renewable energy system location; requirements.

Sec. 29. (1) Subject to subsection (2), a renewable energy system that is the source of renewable energy credits used to satisfy the renewable energy standards shall be either located outside of this state in the retail electric customer service territory of any provider that is not an alternative electric supplier or located anywhere in this state. For the purposes of this subsection, a retail electric customer service territory shall be considered to be the territory recognized by the commission on January 1, 2008 and any expansion of retail electric customer service territory recognized by the commission after January 1, 2008 under 1939 PA 3, MCL 460.1 to 460.10cc. The commission may also expand a service territory for the purposes of this subsection if a lack of transmission lines limits the ability to obtain sufficient renewable energy from renewable energy systems that meet the location requirement of this subsection.

(2) The renewable energy system location requirements in subsection (1) do not apply if 1 or more of the following requirements are met:

(a) The renewable energy system is a wind energy conversion system and the electricity generated by the wind energy system, or the renewable energy credits associated with that electricity, is being purchased under a contract in effect on January 1, 2008. If the electricity and associated renewable energy credits purchased under such a contract are used by an electric provider to meet renewable energy requirements established after January 1, 2008 by the legislature of the state in which the wind energy conversion system is located, the electric provider may, for the purpose of meeting the renewable energy credit standard under this act, obtain, by any means authorized under section 27, up to the same number of replacement renewable energy credits from any other wind energy conversion systems located in that state. This subdivision shall not be utilized by an alternative electric supplier unless the alternative electric supplier was licensed in this state on January 1, 2008. Renewable energy credits from a renewable energy system under a contract with an alternative electric supplier under this subdivision shall not be used by another electric provider to meet its requirements under this part.

(b) The renewable energy system is a wind energy conversion system that was under construction or operational and owned by an electric provider on January 1, 2008. This subdivision shall not be utilized by an alternative electric supplier.

(c) The renewable energy system is a wind energy conversion system that includes multiple wind turbines, at least 1 of the wind turbines meets the location requirements of this section, and the remaining wind turbines are within 15 miles of a wind turbine that is part of that wind energy conversion system and that meets the location requirements of this section.

(d) Before January 1, 2008, an electric provider serving not more than 75,000 retail electric customers in this state filed an application for a certificate of authority for the renewable energy system with a state regulatory commission in another state that is also served by the electric provider. However, renewable energy credits shall not be granted under this subdivision for electricity generated using more than 10.0 megawatts of nameplate capacity of the renewable energy system.

(e) Electricity generated from the renewable energy system is sold by a not-for-profit entity located in Indiana or Wisconsin to a municipally-owned electric utility in this state or cooperative electric utility in this state under a contract in effect on January 1, 2008, and the electricity is not being used to meet another state's standard for renewable energy.

(f) Electricity generated from the renewable energy system is sold by a not-for-profit entity located in Ohio to a municipally-owned electric utility in this state under a contract approved by resolution of the governing body of the municipally-owned electric utility by January 1, 2008, and the electricity is not being used to meet another state's standard for renewable energy. However, renewable energy credits shall not be granted for

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electricity generated using more than 13.4 megawatts of nameplate capacity of the renewable energy system.

(g) All of the following requirements are met:

(*i*) The renewable energy system is a wind energy system, is interconnected to the electric provider's transmission system, and is located in a state in which the electric provider has service territory.

(*ii*) The electric provider competitively bid any contract for engineering, procurement, or construction of the renewable energy system, if the electric provider owns the renewable energy system, or for purchase of the renewable energy and associated renewable energy credits from the renewable energy system, if the provider does not own the renewable energy system, in a process open to renewable energy systems sited in this state.

(*iii*) The renewable energy credits from the renewable energy system are only used by that electric provider to meet the renewable energy standard.

(*iv*) The electric provider is not an alternative electric supplier.

(3) Advanced cleaner energy systems that are the source of the advanced cleaner energy credits used under section 27 shall be either located outside this state in the service territory of any electric provider that is not an alternative electric supplier or located anywhere in this state.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

****** 460.1029.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

460.1029.amended Renewable energy system location; requirements.

Sec. 29. (1) Subject to subsection (2), a renewable energy system that is the source of renewable energy credits used to satisfy the renewable energy standards shall be either located outside of this state in the retail electric customer service territory of any provider that is not an alternative electric supplier or located anywhere in this state. For the purposes of this subsection, a retail electric customer service territory shall be considered to be the territory recognized by the commission on January 1, 2008 and any expansion of retail electric customer service territory recognized by the commission after January 1, 2008 under 1939 PA 3, MCL 460.1 to 460.11. The commission may also expand a service territory for the purposes of this subsection if a lack of transmission lines limits the ability to obtain sufficient renewable energy from renewable energy systems that meet the location requirement of this subsection.

(2) The renewable energy system location requirements in subsection (1) do not apply if 1 or more of the following requirements are met:

(a) The renewable energy system is a wind energy conversion system and the electricity generated by the wind energy system, or the renewable energy credits associated with that electricity, is being purchased under a contract in effect on January 1, 2008. If the electricity and associated renewable energy credits purchased under such a contract are used by an electric provider to meet renewable energy requirements established after January 1, 2008 by the legislature of the state in which the wind energy conversion system is located, the electric provider may, for the purpose of meeting the renewable energy credit standard under this act, obtain, by any means authorized under section 28, up to the same number of replacement renewable energy credits from any other wind energy conversion systems located in that state. This subdivision shall not be utilized by an alternative electric supplier unless the alternative electric supplier was licensed in this state on January 1, 2008. Renewable energy credits from a renewable energy system under a contract with an alternative electric supplier under this subdivision shall not be used by another electric provider to meet its requirements under this part.

(b) The renewable energy system is a wind energy conversion system that was under construction or operational and owned by an electric provider on January 1, 2008. This subdivision shall not be utilized by an alternative electric supplier.

(c) The renewable energy system is a wind energy conversion system that includes multiple wind turbines, at least 1 of the wind turbines meets the location requirements of this section, and the remaining wind turbines are within 15 miles of a wind turbine that is part of that wind energy conversion system and that meets the location requirements of this section.

(d) Before January 1, 2008, an electric provider serving not more than 75,000 retail electric customers in this state filed an application for a certificate of authority for the renewable energy system with a state regulatory commission in another state that is also served by the electric provider. However, renewable energy credits shall not be granted under this subdivision for electricity generated using more than 10.0 megawatts of nameplate capacity of the renewable energy system.

(e) Electricity generated from the renewable energy system is sold by a not-for-profit entity located in

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Indiana, Ohio, or Wisconsin to a municipally-owned electric utility in this state or cooperative electric utility in this state, and the electricity is not being used to meet another state's standard for renewable energy.

(f) All of the following requirements are met:

(*i*) The renewable energy system is a wind energy system, is interconnected to the electric provider's transmission system, and is located in a state in which the electric provider has service territory.

(*ii*) The electric provider competitively bid any contract for engineering, procurement, or construction of the renewable energy system, if the electric provider owns the renewable energy system, or for purchase of the renewable energy and associated renewable energy credits from the renewable energy system, if the provider does not own the renewable energy system, in a process open to renewable energy systems sited in this state.

(*iii*) The renewable energy credits from the renewable energy system are only used by that electric provider to meet the renewable energy standard.

(*iv*) The electric provider is not an alternative electric supplier.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008;—Am. 2016, Act 342, Eff. Apr. 20, 2017.

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

****** 460.1031 THIS SECTION IS REPEALED BY ACT 342 OF 2016 EFFECTIVE APRIL 20, 2017 ******

460.1031 Extensions of 2015 renewable energy standard deadline; establishment of revised renewable energy standard; compliance; "good cause" defined.

Sec. 31. (1) Upon petition by an electric provider, the commission may for good cause grant 2 extensions of the 2015 renewable energy standard deadline under section 27. Each extension shall be for up to 1 year.

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

(3) An electric provider that makes a good faith effort to spend the full amount of incremental costs of compliance as outlined in its approved renewable energy plan and that complies with its approved plan, subject to any approved extensions or revisions, shall be considered to be in compliance with this subpart.

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

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

(b) Equipment cost or availability issues including electrical equipment or renewable energy system component shortages or high costs that effectively limit availability of renewable energy systems.

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

(d) Projected or actual unfavorable electric system reliability or operational impacts.

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

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

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

****** 460.1033 THIS SECTION IS REPEALED BY ACT 342 OF 2016 EFFECTIVE APRIL 20, 2017 ******

460.1033 Electric provider with 1,000,000 or more retail customers; obtaining renewable energy credits to meet standard in 2015; exception; submission of contract for approval.

Sec. 33. (1) Subject to subsections (2) and (3), an electric provider that had 1,000,000 or more retail

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customers in this state on January 1, 2008 shall obtain the renewable energy credits that are necessary to meet the renewable energy credit standard in 2015 and thereafter as follows:

(a) At the electric provider's option, up to but no more than 50% of the renewable energy credits shall be from any of the following:

(*i*) Renewable energy systems that were developed by and are owned by the electric provider. An electric provider shall competitively bid any contract for engineering, procurement, or construction of any new renewable energy systems described in this subdivision. However, an electric provider may consider unsolicited proposals presented to it by a renewable energy system developer outside of a competitive bid process. If the provider determines that such an unsolicited proposal provides opportunities that may not otherwise be available or commercially practical, the provider may enter into a contract with the developer.

(*ii*) Renewable energy systems that were developed by 1 or more third parties pursuant to a contract with the electric provider under which the ownership of the renewable energy system may be transferred to the electric provider, but only after the renewable energy system begins commercial operation. Any such contract shall be executed after a competitive bidding process conducted pursuant to guidelines issued by the commission. However, an electric provider may consider unsolicited proposals presented to it by a renewable energy system developer outside of a competitive bid process. If the provider determines that such an unsolicited proposal provides opportunities that may not otherwise be available or commercially practical, the provider may enter into a contract with the developer. An affiliate of the electric provider may submit a proposal in response to a request for proposals, subject to the code of conduct under section 10a(4) of 1939 PA 3, MCL 460.10a, and the sanctions for violation of the code under section 10c of 1939 PA 3, MCL 460.10c.

(b) At least 50% of the renewable energy credits shall be from renewable energy contracts that do not require transfer of ownership of the applicable renewable energy system to the electric provider or from contracts for the purchase of renewable energy credits without the associated renewable energy. A renewable energy contract or contract for the purchase of renewable energy credits under this subdivision shall be executed after a competitive bidding process conducted pursuant to guidelines issued by the commission. However, an electric provider may consider unsolicited proposals presented to it outside of a competitive bid process by a renewable energy system developer that is not affiliated with the electric provider. If the provider determines that such an unsolicited proposal provides opportunities that may not otherwise be available or commercially practical, the provider may enter into a contract with the developer. The contract is subject to review and approval by the commission under section 21. An electric provider or its affiliate may not submit a proposal in response to its own request for proposals under this subdivision. If an electric provider selects a bid other than the lowest price conforming bid from a qualified bidder, the electric provider shall promptly notify the commission. The commission shall determine in the manner provided under section 37 whether the electric provider had good cause for selecting that bid. If the commission determines that the electric provider did not have good cause, the commission shall disapprove the contract.

(2) Subsection (1) does not apply to either of the following:

(a) Renewable energy credits that are transferred to the electric provider pursuant to section 35(1).

(b) Renewable energy credits that are produced or obtained by the electric provider from renewable energy systems for which recovery in electric rates was approved as of the effective date of this act, including renewable energy credits resulting from biomass co-firing of electric generation facilities in existence on the effective date of this act, except to the extent the number of megawatt hours of electricity annually generated by biomass co-firing exceeds the number of megawatt hours generated during the 1-year period immediately preceding the effective date of this act.

(3) An electric provider shall submit a contract entered into pursuant to subsection (1) to the commission for review and approval. If the commission approves the contract, it shall be considered to be consistent with the electric provider's renewable energy plan. The commission shall not approve a contract based on an unsolicited proposal unless the commission determines that the unsolicited proposal provides opportunities that may not otherwise be available or commercially practical.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

460.1035 Resale of renewable energy under PURPA; investor-owned electric utility with less than 20,000 customers, a municipally-owned electric utility, or cooperative electric utility; resale under power purchase agreement or existing agreements; determination of number of renewable energy credits.

Sec. 35. (1) If an electric provider obtains renewable energy for resale to retail or wholesale customers

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under an agreement under PURPA, ownership of the associated renewable energy credits shall be as provided by the PURPA agreement. If the PURPA agreement does not provide for ownership of the renewable energy credits, then:

(a) Except to the extent that a separate agreement governs under subdivision (b), for the duration of the PURPA agreement, for every 5 renewable energy credits associated with the renewable energy, ownership of 4 of the renewable energy credits is transferred to the electric provider with the renewable energy, and ownership of 1 renewable energy credit remains with the qualifying small power production facility.

(b) If a separate agreement in effect on January 1, 2008 provides for the ownership of the renewable attributes of the generated electricity, the separate agreement shall govern until January 1, 2013 or until expiration of the separate agreement, whichever occurs first.

(2) If an investor-owned electric utility with less than 20,000 customers, a municipally-owned electric utility, or cooperative electric utility obtains all or substantially all of its electricity for resale under a power purchase agreement or agreements in existence on the effective date of this act, ownership of any associated renewable energy credits shall be considered to be transferred to the electric provider purchasing the electricity. The number of renewable energy credits associated with the purchased electricity shall be determined by multiplying the total number of renewable energy credits associated with the total power supply of the seller during the term of the agreement by a fraction, the numerator of which is the amount of energy purchased under the agreement or agreements and the denominator of which is the total power supply of the seller during the term of the agreement. This subsection does not apply unless 1 or more of the following occur:

(a) The seller and the electric provider purchasing the electricity agree that this subsection applies.

(b) For a seller that is an investor-owned electric utility whose rates are regulated by the commission, the commission reduces the number of renewable energy credits required under the renewable energy credit standard for the seller by the number of renewable energy credits to be transferred to the electric provider purchasing the electricity under this subsection.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

****** 460.1037 THIS SECTION IS REPEALED BY ACT 342 OF 2016 EFFECTIVE APRIL 20, 2017 ******

460.1037 Renewable energy contract without associated renewable energy; determination of compliance with retail rate impact limits.

Sec. 37. If, after the effective date of this act, an electric provider whose rates are regulated by the commission enters a renewable energy contract or a contract to purchase renewable energy credits without the associated renewable energy, the commission shall determine whether the contract provides reasonable and prudent terms and conditions and complies with the retail rate impact limits under section 45. In making this determination, the commission shall consider the contract price and term. If the contract is a renewable energy contract, the commission shall also consider at least all of the following:

(a) The cost to the electric provider and its customers of the impacts of accounting treatment of debt and associated equity requirements imputed by credit rating agencies and lenders attributable to the renewable energy contract. The commission shall use standard rating agency, lender, and accounting practices for electric utilities in determining these costs, unless the impacts for the electric provider are known.

(b) Subject to section 45, the life-cycle cost of the renewable energy contract to the electric provider and customers including costs, after expiration of the renewable energy contract, of maintaining the same renewable energy output in megawatt hours, whether by purchases from the marketplace, by extension or renewal of the renewable energy contract, or by the electric provider purchasing the renewable energy system and continuing its operation.

(c) Electric provider and customer price and cost risks if the renewable energy systems supporting the renewable energy contract move from contracted pricing to market-based pricing after expiration of the renewable energy contract.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

****** 460.1039 THIS SECTION IS AMENDED EFFECTIVE APRIL 20, 2017: See 460.1039.amended ******

460.1039 Granting 1 renewable energy credit for each megawatt hour of electricity generated

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from renewable energy system; conditions; granting Michigan incentive renewable energy credits; expiration.

Sec. 39. (1) Except as otherwise provided in section 35(1), 1 renewable energy credit shall be granted to the owner of a renewable energy system for each megawatt hour of electricity generated from the renewable energy system, subject to all of the following:

(a) If a renewable energy system uses both a renewable energy resource and a nonrenewable energy resource to generate electricity, the number of renewable energy credits granted shall be based on the percentage of the electricity generated from the renewable energy resource.

(b) A renewable energy credit shall not be granted for renewable energy generated from a municipal solid waste incinerator to the extent that the renewable energy was generated by operating the incinerator in excess of the greater of the following, as applicable:

(*i*) The incinerator's nameplate capacity rating on January 1, 2008.

(*ii*) If the incinerator is expanded after the effective date of this act to an approximate continuous design rated capacity of not more than 950 tons per day pursuant to the terms of a final request for proposals issued not later than October 1986, the nameplate capacity rating required to accommodate that expansion.

(c) A renewable energy credit shall not be granted for renewable energy the renewable attributes of which are used by an electric provider in a commission-approved voluntary renewable energy program.

(2) Subject to subsection (3), the following additional renewable energy credits, to be known as Michigan incentive renewable energy credits, shall be granted under the following circumstances:

(a) 2 renewable energy credits for each megawatt hour of electricity from solar power.

(b) 1/5 renewable energy credit for each megawatt hour of electricity generated from a renewable energy system, other than wind, at peak demand time as determined by the commission.

(c) 1/5 renewable energy credit for each megawatt hour of electricity generated from a renewable energy system during off-peak hours, stored using advanced electric storage technology or a hydroelectric pumped storage facility, and used during peak hours. However, the number of renewable energy credits shall be calculated based on the number of megawatt hours of renewable energy used to charge the advanced electric storage technology or fill the pumped storage facility, not the number of megawatt hours actually discharged or generated by discharge from the advanced energy storage facility or pumped storage facility.

(d) 1/10 renewable energy credit for each megawatt hour of electricity generated from a renewable energy system constructed using equipment made in this state as determined by the commission. The additional credit under this subdivision is available for the first 3 years after the renewable energy system first produces electricity on a commercial basis.

(e) 1/10 renewable energy credit for each megawatt hour of electricity from a renewable energy system constructed using a workforce composed of residents of this state as determined by the commission. The additional credit under this subdivision is available for the first 3 years after the renewable energy system first produces electricity on a commercial basis.

(3) A renewable energy credit expires at the earliest of the following times:

(a) When used by an electric provider to comply with its renewable energy credit standard.

(b) When substituted for an energy optimization credit under section 77.

(c) Three years after the end of the month in which the renewable energy credit was generated.

(4) A renewable energy credit associated with renewable energy generated within 120 days after the start of a calendar year may be used to satisfy the prior year's renewable energy standard and expires when so used.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

***** *460.1039.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 20, 2017* *****

460.1039.amended Granting 1 renewable energy credit for each megawatt hour of electricity generated from renewable energy system; conditions; granting Michigan incentive renewable energy credits; expiration.

Sec. 39. (1) Except as otherwise provided in section 35(1), 1 renewable energy credit shall be granted to the owner of a renewable energy system for each megawatt hour of electricity generated from the renewable energy system, subject to all of the following:

(a) If a renewable energy system uses both a renewable energy resource and a nonrenewable energy resource to generate electricity or steam, the number of renewable energy credits granted shall be based on the percentage of the electricity or steam, or both, generated from the renewable energy resource.

(b) A renewable energy credit shall not be granted for renewable energy the renewable attributes of which

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are used by an electric provider in a commission-approved voluntary renewable energy program.

(2) The following additional renewable energy credits, to be known as Michigan incentive renewable energy credits, shall be granted under the following circumstances:

(a) 2 renewable energy credits for each megawatt hour of electricity from solar power generated by a renewable energy system that was approved in a renewable energy plan before the effective date of the 2016 amendatory act that amended this section.

(b) 1/5 renewable energy credit for each megawatt hour of electricity generated from a renewable energy system, other than wind, at peak demand time as determined by the commission.

(c) 1/5 renewable energy credit for each megawatt hour of electricity generated from a renewable energy system during off-peak hours, stored using advanced electric storage technology or a hydroelectric pumped storage facility, and used during peak hours. However, the number of renewable energy credits shall be calculated based on the number of megawatt hours of renewable energy used to charge the advanced electric storage technology or fill the pumped storage facility, not the number of megawatt hours actually discharged or generated by discharge from the advanced energy storage facility or pumped storage facility.

(d) 1/10 renewable energy credit for each megawatt hour of electricity generated from a renewable energy system constructed using equipment made in this state as determined by the commission. The additional credit under this subdivision is available for the first 3 years after the renewable energy system first produces electricity on a commercial basis.

(e) 1/10 renewable energy credit for each megawatt hour of electricity from a renewable energy system constructed using a workforce composed of residents of this state as determined by the commission. The additional credit under this subdivision is available for the first 3 years after the renewable energy system first produces electricity on a commercial basis.

(3) A renewable energy credit expires at the earliest of the following times:

(a) When used by an electric provider to comply with its renewable energy standard.

(b) When substituted for an energy waste reduction credit under section 77.

(c) When used by an electric provider whose rates are regulated by the commission to contribute to achievement of the goal under section 1(3).

(d) Five years after the end of the month in which the renewable energy credit was generated.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008;—Am. 2016, Act 342, Eff. Apr. 20, 2017.

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

****** 460.1041 THIS SECTION IS AMENDED EFFECTIVE APRIL 20, 2017: See 460.1041.amended ******

460.1041 Renewable energy credits; trade, sale, or transfer; demonstration of compliance; establishment of energy credit certification and tracking program; use not required in state.

Sec. 41. (1) Renewable energy credits may be traded, sold, or otherwise transferred.

(2) An electric provider is responsible for demonstrating that a renewable energy credit used to comply with a renewable energy credit standard is derived from a renewable energy source and that the electric provider has not previously used or traded, sold, or otherwise transferred the renewable energy credit.

(3) The same renewable energy credit may be used by an electric provider to comply with both a federal standard for renewable energy and the renewable energy standard under this subpart. An electric provider that uses a renewable energy credit to comply with another state's standard for renewable energy shall not use the same renewable energy credit to comply with the renewable energy credit standard under this subpart.

(4) The commission shall establish a renewable energy credit certification and tracking program. The certification and tracking program may be contracted to and performed by a third party through a system of competitive bidding. The program shall include all of the following:

(a) A process to certify renewable energy systems, including all existing renewable energy systems operating on the effective date of this act, as eligible to receive renewable energy credits.

(b) A process for verifying that the operator of a renewable energy system is in compliance with state and federal law applicable to the operation of the renewable energy system when certification is granted. If a renewable energy system becomes noncompliant with state or federal law, renewable energy credits shall not be granted for renewable energy generated by that renewable energy system during the period of noncompliance.

(c) A method for determining the date on which a renewable energy credit is generated and valid for transfer.

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(d) A method for transferring renewable energy credits.

(e) A method for ensuring that each renewable energy credit transferred under this act is properly accounted for under this act.

(f) If the system is established by the commission, allowance for issuance, transfer, and use of renewable energy credits in electronic form.

(g) A method for ensuring that both a renewable energy credit and an advanced cleaner energy credit are not awarded for the same megawatt hour of energy.

(5) A renewable energy credit purchased from a renewable energy system in this state is not required to be used in this state.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

****** 460.1041.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

460.1041.amended Renewable energy credits; trade, sale, or transfer; demonstration of compliance; establishment of renewable energy credit certification and tracking program; use not required in state.

Sec. 41. (1) Renewable energy credits may be traded, sold, or otherwise transferred.

(2) An electric provider is responsible for demonstrating that a renewable energy credit used to comply with a renewable energy credit standard is derived from a renewable energy source and that the electric provider has not previously used or traded, sold, or otherwise transferred the renewable energy credit.

(3) The same renewable energy credit may be used by an electric provider to comply with both a federal standard for renewable energy and the renewable energy standard under this subpart. An electric provider that uses a renewable energy credit to comply with another state's standard for renewable energy shall not use the same renewable energy credit to comply with the renewable energy credit standard under this subpart.

(4) The commission shall establish a renewable energy credit certification and tracking program. The certification and tracking program may be contracted to and performed by a third party through a system of competitive bidding. The program shall include all of the following:

(a) A process to certify renewable energy systems, including all existing renewable energy systems operating on October 6, 2008 as eligible to receive renewable energy credits.

(b) A process for verifying that the operator of a renewable energy system is in compliance with state and federal law applicable to the operation of the renewable energy system when certification is granted. If a renewable energy system becomes noncompliant with state or federal law, renewable energy credits shall not be granted for renewable energy generated by that renewable energy system during the period of noncompliance.

(c) A method for determining the date on which a renewable energy credit is generated and valid for transfer.

(d) A method for transferring renewable energy credits.

(e) A method for ensuring that each renewable energy credit transferred under this act is properly accounted for under this act.

(f) If the system is established by the commission, allowance for issuance, transfer, and use of renewable energy credits in electronic form.

(5) A renewable energy credit purchased from a renewable energy system in this state is not required to be used in this state.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008;—Am. 2016, Act 342, Eff. Apr. 20, 2017.

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

****** 460.1043 THIS SECTION IS REPEALED BY ACT 342 OF 2016 EFFECTIVE APRIL 20, 2017 ******

460.1043 Granting 1 advanced cleaner energy credit for each megawatt hour of electricity generated from advanced cleaner energy system; expiration; trade, sale, or transfer; establishment of advanced cleaner energy credit certification and tracking program; use not required in state.

Sec. 43. (1) One advanced cleaner energy credit shall be granted to the owner of an advanced cleaner energy system for each megawatt hour of electricity generated from the advanced cleaner energy system. However, if an advanced cleaner energy system uses both an advanced cleaner energy technology and an

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energy technology that is not an advanced cleaner energy technology to generate electricity, the number of advanced cleaner energy credits granted shall be based on the percentage of the electricity generated from the advanced cleaner energy technology. If a facility or system, such as a gasification facility using biomass as feedstock, qualifies as both an advanced cleaner energy system and a renewable energy system, at the owner's option, either an advanced cleaner energy credit or a renewable energy credit, but not both, may be granted for any given megawatt hour of electricity generated by the facility or system.

(2) An advanced cleaner energy credit expires at the earliest of the following times:

(a) When substituted for a renewable energy credit under section 27 or an energy optimization credit under section 77.

(b) 3 years after the end of the month in which the advanced cleaner energy credit was generated.

(3) Advanced cleaner energy credits may be traded, sold, or otherwise transferred.

(4) The commission shall establish an advanced cleaner energy credit certification and tracking program. The certification and tracking program may be contracted to and performed by a third party through a system of competitive bidding. The program shall include all of the following:

(a) A process to certify advanced cleaner energy systems, including all existing advanced cleaner energy systems operating on the effective date of this act, as eligible to receive advanced cleaner energy credits.

(b) A process for verifying that the operator of an advanced cleaner energy system is in compliance with state and federal law applicable to the operation of the advanced cleaner energy system when certification is granted. If an advanced cleaner energy system becomes noncompliant with state or federal law, advanced cleaner energy credits shall not be granted for advanced cleaner energy generated by that advanced cleaner energy system during the period of noncompliance.

(c) A method for determining the date on which an advanced cleaner energy credit is generated and valid for transfer.

(d) A method for transferring advanced cleaner energy credits.

(e) A method for ensuring that each advanced cleaner energy credit transferred is properly accounted for.

(f) Allowance for issuance, transfer, and use of advanced cleaner energy credits in electronic form.

(g) A method for ensuring that both a renewable energy credit and an advanced cleaner energy credit are not awarded for the same megawatt hour of electricity.

(5) An advanced cleaner energy credit purchased from an advanced cleaner energy system in this state is not required to be used in this state.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

****** 460.1045 THIS SECTION IS AMENDED EFFECTIVE APRIL 20, 2017: See 460.1045.amended ******

460.1045 Charges for electric provider's tariffs that permit recovery of incremental costs of compliance; calculation; report to residential customer in billing statement; values; determining long-term, life-cycle, levelized costs of building and operating and acquiring nonrenewable electric generating capacity and energy.

Sec. 45. (1) For an electric provider whose rates are regulated by the commission, the commission shall determine the appropriate charges for the electric provider's tariffs that permit recovery of the incremental cost of compliance subject to the retail rate impact limits set forth in subsection (2).

(2) An electric provider shall recover the incremental cost of compliance with the renewable energy standards by an itemized charge on the customer's bill for billing periods beginning not earlier than 90 days after the commission approves the electric provider's renewable energy plan under section 21 or 23 or determines under section 25 that the plan complies with this act. An electric provider shall not comply with the renewable energy standards to the extent that, as determined by the commission, recovery of the incremental cost of compliance will have a retail rate impact that exceeds any of the following:

(a) $3.00 per month per residential customer meter.

(b) $16.58 per month per commercial secondary customer meter.

(c) $187.50 per month per commercial primary or industrial customer meter.

(3) The retail rate impact limits of subsection (2) apply only to the incremental costs of compliance and do not apply to costs approved for recovery by the commission other than as provided in this act.

(4) The incremental cost of compliance shall be calculated for a 20-year period beginning with approval of the renewable energy plan and shall be recovered on a levelized basis.

(5) In its billing statements for a residential customer, each provider shall report to the residential customer

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all of the following in a format consistent with other information on the customer bill:

(a) An itemized monthly charge, expressed in dollars and cents, collected from the customer for implementing the renewable energy program requirements of this act. In the first bill issued after the close of the previous year, an electric provider shall notify each residential customer that the customer may be entitled to an income tax credit to offset some of the annual amounts collected for the renewable energy program.

(b) An itemized monthly charge, expressed in dollars and cents, collected from the customer for implementing the energy optimization program requirements of this act.

(c) An estimated monthly savings, expressed in dollars and cents, for that customer to reflect the reductions in the monthly energy bill produced by the energy optimization program under this act.

(d) An estimated monthly savings, expressed in dollars and cents, for that customer to reflect the long-term, life-cycle, levelized costs of building and operating new conventional coal-fired electric generating power plants avoided under this act as determined by the commission.

(e) The website address at which the commission's annual report under section 51 is posted.

(6) For the first year of the programs under this part, the values reported under subsection (5) shall be estimates by the commission. The values in following years shall be based on the provider's actual customer experiences. If the provider is unable to provide customer-specific information under subsection (5)(b) or (c), it shall instead specify the state average itemized charge or savings, as applicable, for residential customers. The provider shall make this calculation based on a method approved by the commission.

(7) In determining long-term, life-cycle, levelized costs of building and operating and acquiring nonrenewable electric generating capacity and energy for the purpose of subsection (5)(d), the commission shall consider historic and predicted costs of financing, construction, operation, maintenance, fuel supplies, environmental protection, and other appropriate elements of energy production. For purposes of this comparison, the capacity of avoided new conventional coal-fired electric generating facilities shall be expressed in megawatts and avoided new conventional coal-fired electricity generation shall be expressed in megawatt hours. Avoided costs shall be measured in cents per kilowatt hour.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

****** 460.1045.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

460.1045.amended Charges for electric provider's tariffs that permit recovery of incremental costs of compliance; calculation.

Sec. 45. (1) For an electric provider whose rates are regulated by the commission, the commission shall determine the appropriate charges for the electric provider's tariffs that permit recovery of the incremental cost of compliance subject to the retail rate impact limits set forth in subsection (2).

(2) An electric provider shall recover the incremental cost of compliance with the renewable energy standards. An electric provider shall not comply with the renewable energy standards to the extent that, as determined by the commission, recovery of the incremental cost of compliance will have a retail rate impact that exceeds any of the following:

(a) $3.00 per month per residential customer meter.

(b) $16.58 per month per commercial secondary customer meter.

(c) $187.50 per month per commercial primary or industrial customer meter.

(3) The retail rate impact limits of subsection (2) apply only to the incremental costs of compliance and do not apply to costs approved for recovery by the commission other than as provided in this act.

(4) The incremental cost of compliance shall be calculated for a 20-year period beginning with approval of the renewable energy plan and shall be recovered on a levelized basis.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008;—Am. 2016, Act 342, Eff. Apr. 20, 2017.

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

****** 460.1047 THIS SECTION IS AMENDED EFFECTIVE APRIL 20, 2017: See 460.1047.amended ******

460.1047 Cost of service to be recovered by electric provider; recovery of incremental costs of compliance; calculation; modification of revenue recovery mechanism; excess costs; refund to customer classes; certain actual costs considered as costs of service.

Sec. 47. (1) Subject to the retail rate impact limits under section 45, the commission shall consider all

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actual costs reasonably and prudently incurred in good faith to implement a commission-approved renewable energy plan by an electric provider whose rates are regulated by the commission to be a cost of service to be recovered by the electric provider. Subject to the retail rate impact limits under section 45, an electric provider whose rates are regulated by the commission shall recover through its retail electric rates all of the electric provider's incremental costs of compliance during the 20-year period beginning when the electric provider's plan is approved by the commission and all reasonable and prudent ongoing costs of compliance during and after that period. The recovery shall include, but is not limited to, the electric provider's authorized rate of return on equity for costs approved under this section, which shall remain fixed at the rate of return and debt to equity ratio that was in effect in the electric provider's base rates when the electric provider's renewable energy plan was approved.

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

(a) Determine the sum of the following costs to the extent those costs are reasonable and prudent and not already approved for recovery in electric rates as of the effective date of this act:

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

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

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

(*iv*) Ancillary service costs determined by the commission to be necessarily incurred to ensure the quality and reliability of renewable energy or advanced cleaner energy used to meet the renewable energy standards, regardless of the ownership of a renewable energy system or advanced cleaner energy technology.

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

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

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

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

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

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

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

(*ii*) Interest on regulatory liabilities.

(*iii*) Tax credits specifically designed to promote renewable energy or advanced cleaner energy.

(*iv*) Revenue derived from the provision of renewable energy or advanced cleaner energy to retail electric customers subject to a power supply cost recovery clause under section 6j of 1939 PA 3, MCL 460.6j, of an electric provider whose rates are regulated by the commission. After providing an opportunity for a contested case hearing for an electric provider whose rates are regulated by the commission, the commission shall annually establish a price per megawatt hour. In addition, an electric provider whose rates are regulated by the commission may at any time petition the commission to revise the price. In setting the price per megawatt hour under this subparagraph, the commission shall consider factors including, but not limited to, projected capacity, energy, maintenance, and operating costs; information filed under section 6j of 1939 PA 3, MCL 460.6j; and information from wholesale markets, including, but not limited to, locational marginal pricing. This price shall be multiplied by the sum of the number of megawatt hours of renewable energy and the

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number of megawatt hours of advanced cleaner energy used to maintain compliance with the renewable energy standard. The product shall be considered a booked cost of purchased and net interchanged power transactions under section 6j of 1939 PA 3, MCL 460.6j. For energy purchased by such an electric provider under a renewable energy contract or advanced cleaner energy contract, the price shall be the lower of the amount established by the commission or the actual price paid and shall be multiplied by the number of megawatt hours of renewable energy or advanced cleaner energy purchased. The resulting value shall be considered a booked cost of purchased and net interchanged power under section 6j of 1939 PA 3, MCL 460.6j.

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

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

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

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

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

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

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

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

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460.1047.amended Cost of service to be recovered by electric provider; recovery of incremental costs of compliance; calculation; modification of revenue recovery mechanism; excess costs; refund to customer classes; certain actual costs considered as costs of service; "advanced cleaner energy" and "advanced cleaner energy system" defined.

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

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

(a) Determine the sum of the following costs to the extent those costs are reasonable and prudent and not already approved for recovery in electric rates as of October 6, 2008:

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

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

(*iii*) Costs that are not otherwise recoverable in rates approved by the Federal Energy Regulatory Commission and that are related to the infrastructure required to bring renewable energy systems or advanced cleaner energy systems used to achieve compliance with the renewable energy standards on to the transmission system, including interconnection and substation costs for renewable energy systems or advanced cleaner energy systems used to meet the renewable energy standard.

(*iv*) Ancillary service costs determined by the commission to be necessarily incurred to ensure the quality and reliability of renewable energy or advanced cleaner energy used to meet the renewable energy standards, regardless of the ownership of a renewable energy system or advanced cleaner energy technology.

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

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

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

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

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

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

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

(*ii*) Interest on regulatory liabilities.

(*iii*) Tax credits specifically designed to promote renewable energy or advanced cleaner energy.

(*iv*) Revenue derived from the provision of renewable energy or advanced cleaner energy to retail electric customers subject to a power supply cost recovery clause under section 6j of 1939 PA 3, MCL 460.6j, of an

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electric provider whose rates are regulated by the commission. After providing an opportunity for a contested case hearing for an electric provider whose rates are regulated by the commission, the commission shall annually establish a price per megawatt hour. An electric provider whose rates are regulated by the commission may at any time petition the commission to revise the price. In setting the price per megawatt hour under this subparagraph, the commission shall consider factors including, but not limited to, projected capacity, energy, maintenance, and operating costs; information filed under section 6j of 1939 PA 3, MCL 460.6j; and information from wholesale markets, including, but not limited to, locational marginal pricing. This price shall be multiplied by the sum of the number of megawatt hours of renewable energy and the number of megawatt hours of advanced cleaner energy used to maintain compliance with the renewable energy standard. The product shall be considered a booked cost of purchased and net interchanged power transactions under section 6j of 1939 PA 3, MCL 460.6j. For energy purchased by such an electric provider under a renewable energy contract or advanced cleaner energy contract, the price shall be the lower of the amount established by the commission or the actual price paid and shall be multiplied by the number of megawatt hours of renewable energy or advanced cleaner energy purchased. The resulting value shall be considered a booked cost of purchased and net interchanged power under section 6j of 1939 PA 3, MCL 460.6j.

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

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

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

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

(4) If an electric provider's incremental costs of compliance in any given month during the 20-year period beginning when the electric provider's plan is approved by the commission are in excess of the revenue recovery mechanism as adjusted under section 49 and in excess of the balance of any accumulated reserve funds, subject to the minimum balance established under section 49, the electric provider shall immediately notify the commission. The commission shall promptly commence a contested case hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, and modify the revenue recovery mechanism so that the minimum balance is restored. However, if the commission determines that recovery of the incremental costs of compliance would otherwise exceed the maximum retail rate impacts specified under section 45, it shall set the revenue recovery mechanism for that electric provider to correspond to the maximum retail rate impacts. Excess costs shall be accrued and deferred for recovery. Not later than the expiration of the 20-year period beginning when the electric provider's plan is approved by the commission, for an electric provider whose rates are regulated by the commission, the commission shall determine the amount of deferred costs to be recovered under the revenue recovery mechanism and the recovery period, which shall not extend more than 5 years beyond the expiration of the 20-year period beginning when the electric provider's plan is approved by the commission. The recovery of excess costs shall be proportional to the retail rate impact limits in section 45 for each customer class. The recovery of excess costs alone, or, if begun before the expiration of the 20-year period, in combination with the recovery of incremental costs of compliance under the revenue recovery mechanism, shall not exceed the retail rate impact limits of section 45 for each customer class.

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

(6) After achieving compliance with the renewable energy standard for 2015, the actual costs reasonably and prudently incurred to continue to comply with this subpart both during and after the conclusion of the 20-year period beginning when the electric provider's plan is approved by the commission shall be considered

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costs of service. The commission shall determine a mechanism for an electric provider whose rates are regulated by the commission to recover these costs in its retail electric rates, subject to the retail rate impact limits in section 45. Remaining and future regulatory assets shall be recovered consistent with subsections (3) and (4) and section 49.

(7) As used in this section:

(a) "Advanced cleaner energy" means electricity generated using an advanced cleaner energy system.

(b) "Advanced cleaner energy system" means any of the following:

(*i*) A gasification facility.

(*ii*) A cogeneration facility.

(*iii*) A coal-fired electric generating facility if 85% or more of the carbon dioxide emissions are captured and permanently geologically sequestered or used for other commercial or industrial purposes that do not result in release of carbon dioxide to the atmosphere.

(*iv*) A hydroelectric pumped storage facility.

(*v*) An electric generating facility or system that uses technologies not in commercial operation on October 6, 2008 and that the commission determines has carbon dioxide emissions benefits or will significantly reduce other regulated air emissions.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008;—Am. 2016, Act 342, Eff. Apr. 20, 2017.

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

***** *460.1049 THIS SECTION IS AMENDED EFFECTIVE APRIL 20, 2017: See 460.1049.amended* *****

460.1049 Renewable cost reconciliation; commencement; contested case proceeding; discovery; modifications of revenue recovery mechanism; reconciliation of revenues with amounts actually expensed and projected; duties of commission; interest accrual.

Sec. 49. (1) This section applies only to an electric provider whose rates are regulated by the commission. Concurrent with the submission of each report under section 51, the commission shall commence an annual proceeding, to be known as a renewable cost reconciliation, for each electric provider whose rates are regulated by the commission. The renewable cost reconciliation proceeding shall be conducted as a contested case pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Reasonable discovery shall be permitted before and during the reconciliation proceeding to assist in obtaining evidence concerning reconciliation issues including, but not limited to, the reasonableness and prudence of expenditures and the amounts collected pursuant to the revenue recovery mechanism.

(2) At the renewable cost reconciliation, an electric provider may propose any necessary modifications of the revenue recovery mechanism to ensure the electric provider's recovery of its incremental cost of compliance with the renewable energy standards.

(3) The commission shall reconcile the pertinent revenues recorded and the allowance for the nonvolumetric revenue recovery mechanism with the amounts actually expensed and projected according to the electric provider's plan for compliance. The commission shall consider any issue regarding the reasonableness and prudence of expenses for which customers were charged in the relevant reconciliation period. In its order, the commission shall do all of the following:

(a) Make a determination of an electric provider's compliance with the renewable energy standards, subject to section 31.

(b) Adjust the revenue recovery mechanism for the incremental costs of compliance. The commission shall ensure that the retail rate impacts under this renewable cost reconciliation revenue recovery mechanism do not exceed the maximum retail rate impacts specified under section 45. The commission shall ensure that the recovery mechanism is projected to maintain a minimum balance of accumulated reserve so that a regulatory asset does not accrue.

(c) Establish the price per megawatt hour for renewable energy and advanced cleaner energy capacity and for renewable energy and advanced cleaner energy to be recovered through the power supply cost recovery clause under section 6j of 1939 PA 3, MCL 460.6j, as outlined in section 47(2)(b)(*iv*).

(d) Adjust, if needed, the minimum balance of accumulated reserve funds established under section 21.

(4) If an electric provider has recorded a regulatory liability in any given month during the 20-year period beginning when the electric provider's plan is approved by the commission, interest on the regulatory liability balance shall be accrued at the average short-term borrowing rate available to the electric provider during the appropriate period, and shall be used to fund incremental costs of compliance incurred in subsequent periods within the 20-year period beginning when the electric provider's plan is approved by the commission.

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History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

****** 460.1049.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

460.1049.amended Renewable cost reconciliation; commencement; contested case proceeding; discovery; modifications of revenue recovery mechanism; reconciliation of revenues with amounts actually expensed and projected; duties of commission; interest accrual; "advanced cleaner energy" defined.

Sec. 49. (1) This section applies only to an electric provider whose rates are regulated by the commission. The commission shall commence an annual proceeding, to be known as a renewable cost reconciliation, for each electric provider whose rates are regulated by the commission. The renewable cost reconciliation proceeding shall be conducted as a contested case pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Reasonable discovery shall be permitted before and during the reconciliation proceeding to assist in obtaining evidence concerning reconciliation issues including, but not limited to, the reasonableness and prudence of expenditures and the amounts collected pursuant to the revenue recovery mechanism.

(2) At the renewable cost reconciliation, an electric provider may propose any necessary modifications of the revenue recovery mechanism to ensure the electric provider's recovery of its incremental cost of compliance with the renewable energy standards.

(3) The commission shall reconcile the pertinent revenues recorded and the allowance for the nonvolumetric revenue recovery mechanism with the amounts actually expensed and projected according to the electric provider's renewable energy plan. The commission shall consider any issue regarding the reasonableness and prudence of expenses for which customers were charged in the relevant reconciliation period. In its order, the commission shall do all of the following:

(a) Make a determination of an electric provider's compliance with the renewable energy standards.

(b) Adjust the revenue recovery mechanism for the incremental costs of compliance. The commission shall ensure that the retail rate impacts under this renewable cost reconciliation revenue recovery mechanism do not exceed the maximum retail rate impacts specified under section 45. The commission shall ensure that the recovery mechanism is projected to maintain a minimum balance of accumulated reserve so that a regulatory asset does not accrue.

(c) Establish the price per megawatt hour for renewable energy and advanced cleaner energy capacity and for renewable energy and advanced cleaner energy to be recovered through the power supply cost recovery clause under section 6j of 1939 PA 3, MCL 460.6j, as outlined in section 47(2)(b)(*iv*).

(d) Adjust, if needed, the minimum balance of accumulated reserve funds described in subdivision (b).

(4) If an electric provider has recorded a regulatory liability in any given month during the 20-year period beginning when the electric provider's renewable energy plan was approved by the commission, interest on the regulatory liability balance shall be accrued at the average short-term borrowing rate available to the electric provider during the appropriate period, and shall be used to fund incremental costs of compliance incurred in subsequent periods within the 20-year period beginning when the electric provider's plan was approved by the commission.

(5) As used in this section, "advanced cleaner energy" means that term as defined in section 47.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008;—Am. 2016, Act 342, Eff. Apr. 20, 2017.

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

****** 460.1051 THIS SECTION IS REPEALED BY ACT 342 OF 2016 EFFECTIVE JANUARY 1, 2023 ******

460.1051 Compliance with renewable energy standards; submission of annual report by each electric provider; information; submission of report summary to customers of certain electric utilities; monitoring reports; submission of report to legislative committees; maintenance of report by department of enregy, labor, and economic growth.

Sec. 51. (1) By a time determined by the commission, each electric provider shall submit to the commission an annual report that provides information relating to the actions taken by the electric provider to comply with the renewable energy standards. Concurrently, a municipally-owned electric utility shall submit a copy of the report to the governing body of the municipally-owned electric utility, and a cooperative electric

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utility shall submit a copy of the report to its board of directors.

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

(a) The amount of electricity and renewable energy credits that the electric provider generated or acquired from renewable energy systems during the reporting period and the amount of renewable energy credits that the electric provider acquired, sold, traded, or otherwise transferred during the reporting period.

(b) The amount of electricity that the electric provider generated or acquired from advanced cleaner energy systems pursuant to this act during the reporting period.

(c) The capacity of each renewable energy system and advanced cleaner energy system owned, operated, or controlled by the electric provider, the total amount of electricity generated by each renewable energy system or advanced cleaner energy system during the reporting period, and the percentage of that total amount of electricity from each renewable energy system that was generated directly from renewable energy.

(d) Whether, during the reporting period, the electric provider began construction on, acquired, or placed into operation a renewable energy system or advanced cleaner energy system.

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

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

(3) Concurrent with the submission of each report under subsection (1), a municipally-owned electric utility shall submit a summary of the report to its customers in their bills with a bill insert and to its governing body. If, together with the summary required under this subsection, a municipally-owned electric utility submits to its residential customers the information required pursuant to section 45(5) for the year covered by the summary under this subsection, the municipally-owned electric utility shall be considered to be in compliance with the itemized billing requirements of section 45(2) and the reporting requirements of section 45(5) for that year. Concurrent with the submission of each report under subsection (1), a cooperative electric utility shall submit a summary of the report to its members in a periodical issued by an association of rural electric cooperatives and to its board of directors. A municipally-owned electric utility or cooperative electric provider shall make a copy of the report available at its office and shall post a copy of the report on its website. A summary under this section shall indicate that a copy of the report is available at the office or website.

(4) The commission shall monitor reports submitted under subsection (1) and ensure that actions taken under this act by electric providers serving customers in the same distribution territory do not create an unfair competitive advantage for any of those electric providers.

(5) By February 15, 2011 and each year thereafter, the commission shall submit to the standing committees of the senate and house of representatives with primary responsibility for energy and environmental issues a report that does all of the following:

(a) Summarizes data collected under this section.

(b) Discusses the status of renewable energy and advanced cleaner energy in this state and the effect of this subpart and subpart B on electricity prices.

(c) For each of the different types of renewable energy sold at retail in this state, specifies the difference between the cost of the renewable energy and the cost of electricity generated from new conventional coal-fired electric generating facilities.

(d) Discusses how the commission is fulfilling the requirements of subsection (4).

(e) Evaluates whether this subpart has been cost-effective.

(f) Provides a comparison of the cost effectiveness of the methods of an electric utility with 1,000,000 or more retail customers in this state as of January 1, 2008 obtaining renewable energy credits under the options described in section 33.

(g) Describes the impact of this subpart on employment in this state. The commission shall consult with other appropriate agencies of the department of energy, labor, and economic growth in the development of this information.

(h) Describes the effect of the percentage limits under section 27(7) on the development of advanced cleaner energy.

(i) Makes any recommendations the commission may have concerning amendments to this subpart, including changes in the percentage limits under section 27(7), or changes in the definition of renewable energy resource or renewable energy system to reflect environmentally preferable technology.

(6) The department of energy, labor, and economic growth shall maintain on the department's website a copy of the commission's most recent report under subsection (5).

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008;—Am. 2010, Act 174, Imd. Eff. Sept. 30, 2010.

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

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****** 460.1053 THIS SECTION IS REPEALED BY ACT 342 OF 2016 EFFECTIVE APRIL 20, 2017 ******

460.1053 Failure to meet renewable energy credit standard by deadline; civil action; contested case; final order.

Sec. 53. (1) If an electric provider whose rates are regulated by the commission fails to meet a renewable energy credit standard by the applicable deadline, subject to any extensions under section 31, both of the following apply:

(a) The electric provider shall purchase sufficient renewable energy credits necessary to meet the renewable energy credit standard.

(b) The electric provider shall not recover from its ratepayers the cost of purchasing renewable energy credits under subdivision (a) if the commission finds that the electric provider did not make a good faith effort to meet the renewable energy standard, subject to any extensions under section 31.

(2) The attorney general or any customer of a cooperative electric utility that has elected to become member-regulated under the electric cooperative member-regulation act, 2008 PA 167, MCL 460.31 to 460.39, may commence a civil action for injunctive relief against such a cooperative electric utility if the electric provider fails to meet the applicable requirements of this subpart or an order issued or rule promulgated under this subpart.

(3) An action under subsection (2) shall be commenced in the circuit court for the circuit in which the principal office of the cooperative electric utility that has elected to become member-regulated is located. An action shall not be filed under subsection (2) unless the prospective plaintiff has given the prospective defendant and the commission at least 60 days' written notice of the prospective plaintiff's intent to sue, the basis for the suit, and the relief sought. Within 30 days after the prospective defendant receives written notice of the prospective plaintiff's intent to sue, the prospective defendant and plaintiff shall meet and make a good faith attempt to determine if there is a credible basis for the action. If both parties agree that there is a credible basis for the action, the prospective defendant shall take all reasonable and prudent steps necessary to comply with the applicable requirements of this subpart within 90 days of the meeting.

(4) In issuing a final order in an action brought under subsection (2), the court may award costs of litigation, including reasonable attorney and expert witness fees, to the prevailing or substantially prevailing party.

(5) Upon receipt of a complaint by an alternative electric supplier's customer or on the commission's own motion, the commission may conduct a contested case to review allegations that the alternative electric supplier has violated this subpart or an order issued or rule promulgated under this subpart. If the commission finds, after notice and hearing, that an alternative electric supplier has violated this subpart or an order issued or rule promulgated under this subpart, the commission shall do 1 or more of the following:

(a) Revoke the license of the alternative electric supplier.

(b) Issue a cease and desist order.

(c) Order the alternative electric supplier to pay a civil fine of not less than $5,000.00 or more than $50,000.00 for each violation.

(6) Upon receipt of a complaint by any customer of a municipally-owned electric utility or upon the commission's own motion, the commission may review allegations that the municipally-owned electric utility has violated this subpart or an order issued or rule promulgated under this subpart. If the commission finds, after notice and hearing, that a municipally-owned electric utility has violated this subpart or an order issued or rule promulgated under this subpart, the commission shall advise the attorney general. The attorney general may commence a civil action for injunctive relief against the municipally-owned electric utility in the circuit court for the circuit in which the principal office of the municipally-owned electric utility is located.

(7) In issuing a final order in an action brought under subsection (6), the court may award costs of litigation, including reasonable attorney and expert witness fees, to the prevailing or substantially prevailing party.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

****** 460.1054.added THIS ADDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

460.1054.added Powers of local units of government under MCL 125.3101 to 125.3702.

Sec. 54. Nothing in this subpart abrogates the powers granted to local units of government under the Michigan zoning enabling act, 2006 PA 110, MCL 125.3101 to 125.3702.

History: Add. 2016, Act 342, Eff. Apr. 20, 2017.

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SUBPART B.
CUSTOMER-REQUESTED RENEWABLE ENERGY

***** *460.1061.added THIS ADDED SECTION IS EFFECTIVE APRIL 20, 2017* *****

460.1061.added Voluntary green pricing program.

Sec. 61. An electric provider shall offer to its customers the opportunity to participate in a voluntary green pricing program under which the customer may specify, from the options made available by the electric provider, the amount of electricity attributable to the customer that will be renewable energy. If the electric provider's rates are regulated by the commission, the program, including the rates paid for renewable energy, must be approved by the commission. The customer is responsible for any additional costs incurred and shall accrue any additional savings realized by the electric provider as a result of the customer's participation in the program. If an electric provider has not yet fully recovered the incremental costs of compliance, both of the following apply:

(a) A customer that receives at least 50% of the customer's average monthly electricity consumption through the program is exempt from paying surcharges for incremental costs of compliance.

(b) Before entering into an agreement to participate in a commission-approved voluntary green pricing program with a customer that will not receive at least 50% of the customer's average monthly electricity consumption through the program, the electric provider shall notify the customer that the customer will be responsible for the full applicable charges for the incremental costs of compliance and for participation in the voluntary renewable energy program as provided under this section.

History: Add. 2016, Act 342, Eff. Apr. 20, 2017.

SUBPART C.
ENERGY WASTE REDUCTION

***** *460.1071 THIS SECTION IS AMENDED EFFECTIVE APRIL 20, 2017: See 460.1071.amended* *****

460.1071 Proposed energy optimization plan; filing; time period; goal; combining with renewable energy plan; provisions; limitation on expenditures.

Sec. 71. (1) A provider shall file a proposed energy optimization plan with the commission within the following time period:

(a) For a provider whose rates are regulated by the commission, 90 days after the commission enters a temporary order under section 171.

(b) For a cooperative electric utility that has elected to become member-regulated under the electric cooperative member regulation act, 2008 PA 167, MCL 460.31 to 460.39, or a municipally-owned electric utility, 120 days after the commission enters a temporary order under section 171.

(2) The overall goal of an energy optimization plan shall be to reduce the future costs of provider service to customers. In particular, an EO plan shall be designed to delay the need for constructing new electric generating facilities and thereby protect consumers from incurring the costs of such construction. The proposed energy optimization plan shall be subject to approval in the same manner as an electric provider's renewable energy plan under subpart A. A provider may combine its energy optimization plan with its renewable energy plan.

(3) An energy optimization plan shall do all of the following:

(a) Propose a set of energy optimization programs that include offerings for each customer class, including low income residential. The commission shall allow providers flexibility to tailor the relative amount of effort devoted to each customer class based on the specific characteristics of their service territory.

(b) Specify necessary funding levels.

(c) Describe how energy optimization program costs will be recovered as provided in section 89(2).

(d) Ensure, to the extent feasible, that charges collected from a particular customer rate class are spent on energy optimization programs for that rate class.

(e) Demonstrate that the proposed energy optimization programs and funding are sufficient to ensure the achievement of applicable energy optimization standards.

(f) Specify whether the number of megawatt hours of electricity or decatherms or MCFs of natural gas used in the calculation of incremental energy savings under section 77 will be weather-normalized or based on the average number of megawatt hours of electricity or decatherms or MCFs of natural gas sold by the provider annually during the previous 3 years to retail customers in this state. Once the plan is approved by

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the commission, this option shall not be changed.

(g) Demonstrate that the provider's energy optimization programs, excluding program offerings to low income residential customers, will collectively be cost-effective.

(h) Provide for the practical and effective administration of the proposed energy optimization programs. The commission shall allow providers flexibility in designing their energy optimization programs and administrative approach. A provider's energy optimization programs or any part thereof, may be administered, at the provider's option, by the provider, alone or jointly with other providers, by a state agency, or by an appropriate experienced nonprofit organization selected after a competitive bid process.

(i) Include a process for obtaining an independent expert evaluation of the actual energy optimization programs to verify the incremental energy savings from each energy optimization program for purposes of section 77. All such evaluations shall be subject to public review and commission oversight.

(4) Subject to subsection (5), an energy optimization plan may do 1 or more of the following:

(a) Utilize educational programs designed to alter consumer behavior or any other measures that can reasonably be used to meet the goals set forth in subsection (2).

(b) Propose to the commission measures that are designed to meet the goals set forth in subsection (1) and that provide additional customer benefits.

(5) Expenditures under subsection (4) shall not exceed 3% of the costs of implementing the energy optimization plan.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides:
"Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."
In subdivisions (a) and (b) of subsection (1), the references to "section 171" evidently should read "section 191".

***** *460.1071.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 20, 2017* *****

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

Sec. 71. (1) A provider shall file a proposed energy optimization plan with the commission within the following time period:

(a) For a provider whose rates are regulated by the commission, by March 3, 2009.

(b) For a cooperative electric utility that has elected to become member-regulated under the electric cooperative member-regulation act, 2008 PA 167, MCL 460.31 to 460.39, or a municipally owned electric utility, by April 2, 2009.

(2) Energy optimization plans filed under subsection (1) remain in effect, subject to any amendments, as energy waste reduction plans.

(3) The overall goal of an energy waste reduction plan shall be to help the provider's customers reduce energy waste and to reduce the future costs of provider service to customers. In particular, an electric provider's energy waste reduction plan shall be designed to delay the need for constructing new electric generating facilities and thereby protect consumers from incurring the costs of such construction.

(4) An energy waste reduction plan shall do all of the following:

(a) Propose a set of energy waste reduction programs that include offerings for each customer class, including low-income residential. The commission shall allow a provider flexibility to tailor the relative amount of effort devoted to each customer class based on the specific characteristics of the provider's service territory.

(b) Specify necessary funding levels.

(c) Describe how energy waste reduction program costs will be recovered as provided in section 89(2).

(d) Ensure, to the extent feasible, that charges collected from a particular customer rate class are spent on energy waste reduction programs that benefit that rate class.

(e) Demonstrate that the proposed energy waste reduction programs and funding are sufficient to ensure the achievement of applicable energy waste reduction standards.

(f) Specify whether the number of megawatt hours of electricity or decatherms or MCFs of natural gas used in the calculation of incremental energy savings under section 77 will be weather-normalized or based on the average number of megawatt hours of electricity or decatherms or MCFs of natural gas sold by the provider annually during the previous 3 years to retail customers in this state. Once the plan is approved by the commission, this option shall not be changed.

(g) Demonstrate that the provider's energy waste reduction programs, excluding program offerings to low-income residential customers, will collectively be cost-effective.

(h) Provide for the practical and effective administration of the proposed energy waste reduction programs.

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The commission shall allow providers flexibility in designing their energy waste reduction programs and administrative approach, including the flexibility to determine the relative amount of effort to be devoted to each customer class based on the specific characteristics of the provider's service territory. A provider's energy waste reduction programs or any part thereof, may be administered, at the provider's option, by the provider, alone or jointly with other providers, by a state agency, or by an appropriate experienced nonprofit organization selected after a competitive bid process.

(i) Include a process for obtaining an independent expert evaluation of the actual energy waste reduction programs to verify the incremental energy savings from each energy waste reduction program for purposes of section 77. All such evaluations are subject to public review and commission oversight.

(5) Subject to subsection (6), an energy waste reduction plan may do 1 or more of the following:

(a) Utilize educational programs designed to alter consumer behavior or any other measures that can reasonably be used to meet the goals set forth in subsection (3).

(b) Propose to the commission measures that are designed to meet the goals set forth in subsection (3) and that provide additional customer benefits.

(6) Expenditures under subsection (5) shall not exceed 3% of the costs of implementing the energy waste reduction plan.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008;—Am. 2016, Act 342, Eff. Apr. 20, 2017.

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

****** 460.1073 THIS SECTION IS AMENDED EFFECTIVE APRIL 20, 2017: See 460.1073.amended ******

460.1073 Energy optimization plan; approval by commission.

Sec. 73. (1) A provider's energy optimization plan shall be filed, reviewed, and approved or rejected by the commission and enforced subject to the same procedures that apply to a renewable energy plan.

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

(a) The specific changes in customers' consumption patterns that the proposed EO plan is attempting to influence.

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

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

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

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

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

****** 460.1073.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

460.1073.amended Waste reduction plan; approval by commission; review; contested case hearing; proposed amendment; rejection of plan and amendments; applicability of section after December 31, 2021.

Sec. 73. (1) A provider's energy waste reduction plan shall be filed with, reviewed by, and approved or rejected by the commission. For a provider whose rates are regulated by the commission, the plan shall be enforced by the commission. For a provider whose rates are not regulated by the commission, the plan shall be enforced as provided in section 99. Notwithstanding any other provision of this subpart, the commission shall allow municipally owned electric utilities to design and administer energy waste reduction plans in a manner consistent with the administrative changes approved in the commission's April 17, 2012 order in case nos. U-16688 to U-16728 and U-17008.

(2) The commission shall not approve a proposed energy waste reduction plan unless the commission

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determines that the energy waste reduction plan meets the utility system resource cost test and, subject to section 78, is reasonable and prudent. In determining whether the energy waste reduction plan is reasonable and prudent, the commission shall review each element and consider whether it would reduce the future cost of service for the provider's customers. In addition, the commission shall consider at least all of the following:

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

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

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

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

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

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

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

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

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

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008;—Am. 2016, Act 342, Eff. Apr. 20, 2017.

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

****** 460.1074.added THIS ADDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

460.1074.added Energy waste reduction cost reconciliation.

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

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

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

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

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

History: Add. 2016, Act 342, Eff. Apr. 20, 2017.

****** 460.1075 THIS SECTION IS AMENDED EFFECTIVE APRIL 20, 2017: See 460.1075.amended ******

460.1075 Energy optimization plan; exceeding standard; authorization for commensurate

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financial incentive; payment; limitation.

Sec. 75. An energy optimization plan of a provider whose rates are regulated by the commission may authorize a commensurate financial incentive for the provider for exceeding the energy optimization performance standard. Payment of any financial incentive authorized in the EO plan is subject to the approval of the commission. The total amount of a financial incentive shall not exceed the lesser of the following amounts:

(a) 25% of the net cost reductions experienced by the provider's customers as a result of implementation of the energy optimization plan.

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

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides:
"Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."
In subdivision (b), "15% percent" evidently should read "15%".

***** *460.1075.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 20, 2017* *****

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

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

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

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

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

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

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

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

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

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

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

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008;—Am. 2016, Act 342, Eff. Apr. 20, 2017.

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

***** *460.1077 THIS SECTION IS AMENDED EFFECTIVE APRIL 20, 2017: See 460.1077.amended* *****

460.1077 Energy savings; minimum energy optimization standards to be met by provider; determination of incremental energy savings; calculations; basis; substitution; limitations.

Sec. 77. (1) Except as provided in section 81 and subject to the sales revenue expenditure limits in section 89, an electric provider's energy optimization programs under this subpart shall collectively achieve the

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following minimum energy savings:

(a) Biennial incremental energy savings in 2008-2009 equivalent to 0.3% of total annual retail electricity sales in megawatt hours in 2007.

(b) Annual incremental energy savings in 2010 equivalent to 0.5% of total annual retail electricity sales in megawatt hours in 2009.

(c) Annual incremental energy savings in 2011 equivalent to 0.75% of total annual retail electricity sales in megawatt hours in 2010.

(d) Annual incremental energy savings in 2012, 2013, 2014, and 2015 and, subject to section 97, each year thereafter equivalent to 1.0% of total annual retail electricity sales in megawatt hours in the preceding year.

(2) If an electric provider uses load management to achieve energy savings under its energy optimization plan, the minimum energy savings required under subsection (1) shall be adjusted by an amount such that the ratio of the minimum energy savings to the sum of maximum expenditures under section 89 and the load management expenditures remains constant.

(3) A natural gas provider shall meet the following minimum energy optimization standards using energy efficiency programs under this subpart:

(a) Biennial incremental energy savings in 2008-2009 equivalent to 0.1% of total annual retail natural gas sales in decatherms or equivalent MCFs in 2007.

(b) Annual incremental energy savings in 2010 equivalent to 0.25% of total annual retail natural gas sales in decatherms or equivalent MCFs in 2009.

(c) Annual incremental energy savings in 2011 equivalent to 0.5% of total annual retail natural gas sales in decatherms or equivalent MCFs in 2010.

(d) Annual incremental energy savings in 2012, 2013, 2014, and 2015 and, subject to section 97, each year thereafter equivalent to 0.75% of total annual retail natural gas sales in decatherms or equivalent MCFs in the preceding year.

(4) Incremental energy savings under subsection (1) or (3) for the 2008-2009 biennium or any year thereafter shall be determined for a provider by adding the energy savings expected to be achieved during a 1-year period by energy optimization measures implemented during the 2008-2009 biennium or any year thereafter under any energy efficiency programs consistent with the provider's energy efficiency plan.

(5) For purposes of calculations under subsection (1) or (3), total annual retail electricity or natural gas sales in a year shall be based on 1 of the following at the option of the provider as specified in its energy optimization plan:

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

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

(6) For any year after 2012, an electric provider may substitute renewable energy credits associated with renewable energy generated that year from a renewable energy system constructed after the effective date of this act, advanced cleaner energy credits other than credits from industrial cogeneration using industrial waste energy, load management that reduces overall energy usage, or a combination thereof for energy optimization credits otherwise required to meet the energy optimization performance standard, if the substitution is approved by the commission. The commission shall not approve a substitution unless the commission determines that the substitution is cost-effective and, if the substitution involves advanced cleaner energy credits, that the advanced cleaner energy system provides carbon dioxide emissions benefits. In determining whether the substitution of advanced cleaner energy credits is cost-effective compared to other available energy optimization measures, the commission shall consider the environmental costs related to the advanced cleaner energy system, including the costs of environmental control equipment or greenhouse gas constraints or taxes. The commission's determinations shall be made after a contested case hearing that includes consultation with the department of environmental quality on the issue of carbon dioxide emissions benefits, if relevant, and environmental costs.

(7) Renewable energy credits, advanced cleaner energy credits, load management that reduces overall energy usage, or a combination thereof shall not be used by a provider to meet more than 10% of the energy optimization standard. Substitutions for energy optimization credits shall be made at the following rates per energy optimization credit:

(a) 1 renewable energy credit.

(b) 1 advanced cleaner energy credit from plasma arc gasification.

(c) 4 advanced cleaner energy credits other than from plasma arc gasification.

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History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

****** 460.1077.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

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

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

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

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

(4) Incremental energy savings under subsection (1) or (3) for a year shall be determined for a provider by adding the energy savings expected to be achieved by energy waste reduction measures implemented during that year under any energy waste reduction programs consistent with the provider's energy waste reduction plan. The energy savings expected to be achieved shall be determined using a savings database or other savings measurement approach as determined reasonable by the commission.

(5) For purposes of calculations under subsection (1) or (3), total annual retail electricity or natural gas sales in a year shall be based on 1 of the following at the option of the provider as specified in its energy waste reduction plan:

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

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

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

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

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008;—Am. 2016, Act 342, Eff. Apr. 20, 2017.

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

****** 460.1078.added THIS ADDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

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

Sec. 78. (1) By January 1, 2022, and every 2 years thereafter, an electric provider whose rates are regulated by the commission shall file an energy waste reduction plan amendment with the commission under section 73 pursuant to a filing schedule established by the commission. The amendment shall detail the amount of energy waste reduction the electric provider proposes to achieve for the succeeding 2-year period. If the electric provider whose rates are regulated by the commission proposes a level of energy waste reduction that is higher than the level specified in the provider's current energy waste reduction plan, the commission may approve the proposed higher level if the commission finds that it is the most reasonable and prudent. If the electric provider whose rates are regulated by the commission proposes a level of energy waste reduction that is lower than the level specified in the provider's current energy waste reduction plan, the commission may

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approve the proposed lower level if the commission finds that it is the most reasonable and prudent. If the commission finds that the proposed lower level of energy waste reduction is not the most reasonable and prudent, the level of energy waste reduction to be achieved by the electric provider whose rates are regulated by the commission for the succeeding 2-year period under the energy waste reduction plan shall be the same as the level specified in the provider's current energy waste reduction plan.

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

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

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

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

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

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

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

History: Add. 2016, Act 342, Eff. Apr. 20, 2017.

****** 460.1079 THIS SECTION IS REPEALED BY ACT 342 OF 2016 EFFECTIVE APRIL 20, 2017 ******

460.1079 Advanced cleaner energy systems; location.

Sec. 79. Advanced cleaner energy systems that are the source of the advanced cleaner energy credits used under section 77 shall be either located outside this state in the service territory of any electric provider that is not an alternative electric supplier or located anywhere in this state.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

****** 460.1081 THIS SECTION IS REPEALED BY ACT 342 OF 2016 EFFECTIVE JANUARY 1, 2022 ******

****** 460.1081 THIS SECTION IS AMENDED EFFECTIVE APRIL 20, 2017: See 460.1081.amended ******

460.1081 Applicability of section to certain electric providers; establishment of alternative energy optimization standards; petition.

Sec. 81. (1) This section applies to electric providers that meet both of the following requirements:

(a) Serve not more than 200,000 customers in this state.

(b) Had average electric rates for residential customers using 1,000 kilowatt hours per month that are less than 75% of the average electric rates for residential customers using 1,000 kilowatt hours per month for all electric utilities in this state, according to the January 1, 2007, "comparison of average rates for MPSC-regulated electric utilities in Michigan" compiled by the commission.

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

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

****** 460.1081 THIS SECTION IS REPEALED BY ACT 342 OF 2016 EFFECTIVE JANUARY 1, 2022 ******

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****** 460.1081.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

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

Sec. 81. (1) This section applies to electric providers that meet both of the following requirements:

(a) Serve not more than 200,000 customers in this state.

(b) Had average electric rates for residential customers using 1,000 kilowatt hours per month that were less than 75% of the average electric rates for residential customers using 1,000 kilowatt hours per month for all electric utilities in this state, according to the January 1, 2007, "comparison of average rates for MPSC-regulated electric utilities in Michigan" compiled by the commission.

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

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

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008;—Am. 2016, Act 342, Eff. Apr. 20, 2017.

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

****** 460.1083 THIS SECTION IS AMENDED EFFECTIVE APRIL 20, 2017: See 460.1083.amended ******

460.1083 Energy optimization credit; grant; expiration; carrying forward excess credits.

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

(2) An energy optimization credit expires as follows:

(a) When used by a provider to comply with its energy optimization performance standard.

(b) When substituted for a renewable energy credit under section 27.

(c) As provided in subsection (3).

(3) If a provider's incremental energy savings in the 2008-2009 biennium or any year thereafter exceed the applicable energy optimization standard, the associated energy optimization credits may be carried forward and applied to the next year's energy optimization standard. However, all of the following apply:

(a) The number of energy optimization credits carried forward shall not exceed 1/3 of the next year's standard. Any energy optimization credits carried forward to the next year shall expire that year. Any remaining energy optimization credits shall expire at the end of the year in which the incremental energy savings were achieved, unless substituted, by an electric provider, for renewable energy credits under section 27.

(b) Energy optimization credits shall not be carried forward if, for its performance during the same biennium or year, the provider accepts a financial incentive under section 75. The excess energy optimization credits shall expire at the end of the year in which the incremental energy savings were achieved, unless substituted, by an electric provider, for renewable energy credits under section 27.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

****** 460.1083.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

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

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

(2) An energy waste reduction credit expires as follows:

(a) When used by a provider to comply with its energy waste reduction standard.

(b) When substituted for a renewable energy credit under section 28.

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(c) As provided in subsection (3).

(3) If a provider's incremental energy savings in any year exceed the applicable energy waste reduction standard, the associated energy waste reduction credits may be carried forward and applied to the next year's energy waste reduction standard. However, all of the following apply:

(a) The number of energy waste reduction credits carried forward shall not exceed 1/3 of the next year's standard. Any energy waste reduction credits carried forward to the next year shall expire that year. Any remaining energy waste reduction credits shall expire at the end of the year in which the incremental energy savings were achieved, unless substituted, by an electric provider, for renewable energy credits under section 28.

(b) Energy waste reduction credits shall not be carried forward if, for its performance during the same year, the provider accepts a financial incentive under section 75. The excess energy waste reduction credits shall expire at the end of the year in which the incremental energy savings were achieved, unless substituted, by an electric provider, for renewable energy credits under section 28.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008;—Am. 2016, Act 342, Eff. Apr. 20, 2017.

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

****** 460.1085 THIS SECTION IS AMENDED EFFECTIVE APRIL 20, 2017: See 460.1085.amended ******

460.1085 Energy optimization credit not transferable; program for transferability of credits; recommendations.

Sec. 85. (1) An energy optimization credit is not transferable to another entity.

(2) The commission, in the 2011 report under section 97, shall make recommendations concerning a program for transferability of energy optimization credits.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

****** 460.1085.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

460.1085.amended Energy waste reduction credit; transfer prohibited.

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

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008;—Am. 2016, Act 342, Eff. Apr. 20, 2017.

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

****** 460.1087 THIS SECTION IS AMENDED EFFECTIVE APRIL 20, 2017: See 460.1087.amended ******

460.1087 Certification and tracking program.

Sec. 87. The commission shall establish an energy optimization credit certification and tracking program. The certification and tracking program may be contracted to and performed by a third party through a system of competitive bidding. The program shall include all of the following:

(a) A determination of the date after which energy optimization must be achieved to be eligible for an energy optimization credit.

(b) A method for ensuring that each energy optimization credit substituted for a renewable energy credit under section 27 or carried forward under section 83 is properly accounted for.

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

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

****** 460.1087.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

460.1087.amended Certification and tracking program; credit.

Sec. 87. (1) The commission shall establish an energy waste reduction credit certification and tracking program. The certification and tracking program may be contracted to and performed by a third party through

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a system of competitive bidding. The program shall include all of the following:

(a) A determination of the date after which energy waste reduction must be achieved to be eligible for an energy waste reduction credit.

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

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

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

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008;—Am. 2016, Act 342, Eff. Apr. 20, 2017.

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

****** 460.1089 THIS SECTION IS AMENDED EFFECTIVE APRIL 20, 2017: See 460.1089.amended ******

460.1089 Recovery of costs; limitation; capitalization costs; funding level for low income residential programs; authorization of natural gas provider to implement revenue decoupling mechanism; limitation on expenditures of total utility retail sales revenues; percentages.

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

(2) Under subsection (1), costs shall be recovered from all natural gas customers and from residential electric customers by volumetric charges, from all other metered electric customers by per-meter charges, and from unmetered electric customers by an appropriate charge, applied to utility bills as an itemized charge.

(3) For the electric primary customer rate class customers of electric providers and customers of natural gas providers with an aggregate annual natural gas billing demand of more than 100,000 decatherms or equivalent MCFs for all sites in the natural gas utility's service territory, the cost recovery under subsection (1) shall not exceed 1.7% of total retail sales revenue for that customer class. For electric secondary customers and for residential customers, the cost recovery shall not exceed 2.2% of total retail sales revenue for those customer classes.

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

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

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

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(7) A natural gas provider or an electric provider shall not spend more than the following percentage of total utility retail sales revenues, including electricity or natural gas commodity costs, in any year to comply with the energy optimization performance standard without specific approval from the commission:

(a) In 2009, 0.75% of total retail sales revenues for 2007.

(b) In 2010, 1.0% of total retail sales revenues for 2008.

(c) In 2011, 1.5% of total retail sales revenues for 2009.

(d) In 2012 and each year thereafter, 2.0% of total retail sales revenues for the 2 years preceding.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

****** 460.1089.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

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

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

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

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

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

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

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008;—Am. 2016, Act 342, Eff. Apr. 20, 2017.

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

****** 460.1091 THIS SECTION IS AMENDED EFFECTIVE APRIL 20, 2017: See 460.1091.amended ******

460.1091 Alternative compliance payment.

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Sec. 91. (1) Except for section 89(6), sections 71 to 89 do not apply to a provider that pays the following percentage of total utility sales revenues, including electricity or natural gas commodity costs, each year to an independent energy optimization program administrator selected by the commission:

(a) In 2009, 0.75% of total retail sales revenues for 2007.

(b) In 2010, 1.0% of total retail sales revenues for 2008.

(c) In 2011, 1.5% of total retail sales revenues for 2009.

(d) In 2012 and each year thereafter, 2.0% of total retail sales revenues for the 2 years preceding.

(2) An alternative compliance payment received from a provider by the energy optimization program administrator under subsection (1) shall be used to administer energy efficiency programs for the provider. Money unspent in a year shall be carried forward to be spent in the subsequent year.

(3) The commission shall allow a provider to recover an alternative compliance payment under subsection (1). This cost shall be recovered from residential customers by volumetric charges, from all other metered customers by per-meter charges, and from unmetered customers by an appropriate charge, applied to utility bills.

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

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

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

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

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

****** 460.1091.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

460.1091.amended Alternative compliance payment.

Sec. 91. (1) Except for section 89(5), sections 71 to 89 do not apply to a provider that each year pays not less than 2.0% of total utility sales revenues for the second year preceding, including electricity or natural gas commodity costs, to an independent energy waste reduction program administrator selected by the commission.

(2) An alternative compliance payment received from a provider by the energy waste reduction program administrator under subsection (1) shall be used to administer energy efficiency programs for the provider.

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

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

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

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

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

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008;—Am. 2016, Act 342, Eff. Apr. 20, 2017.

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

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****** 460.1093 THIS SECTION IS AMENDED EFFECTIVE APRIL 20, 2017: See 460.1093.amended ******

460.1093 Self-directed energy optimization plan.

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

(2) Subject to subsection (3), an electric customer is not eligible under subsection (1) unless it is a commercial or industrial electric customer and meets all of the following requirements:

(a) In 2009 or 2010, the customer must have had an annual peak demand in the preceding year of at least 2 megawatts at each site to be covered by the self-directed plan or 10 megawatts in the aggregate at all sites to be covered by the plan.

(b) In 2011, 2012, or 2013, the customer or customers must have had an annual peak demand in the preceding year of at least 1 megawatt at each site to be covered by the self-directed plan or 5 megawatts in the aggregate at all sites to be covered by the plan.

(c) In 2014 or any year thereafter, the customer or customers must have had an annual peak demand in the preceding year of at least 1 megawatt in the aggregate at all sites to be covered by the self-directed plan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(14) The department of energy, labor, and economic growth shall maintain on the department's website a list of energy optimization service companies approved under subsection (13).

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008;—Am. 2010, Act 269, Imd. Eff. Dec. 14, 2010.

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

****** 460.1093.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

460.1093.amended Self-directed energy waste reduction plan.

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

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

(3) The eligibility requirements of subsection (2) do not apply to a commercial or industrial customer that

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installs or modifies an electric energy efficiency improvement under a property assessed clean energy program pursuant to the property assessed clean energy act, 2010 PA 270, MCL 460.931 to 460.949.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008;—Am. 2010, Act 269, Imd. Eff. Dec. 14, 2010;—Am. 2016, Act 342, Eff. Apr. 20, 2017.

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

****** 460.1095 THIS SECTION IS AMENDED EFFECTIVE APRIL 20, 2017: See 460.1095.amended ******

460.1095 Duties and authority of commission.

Sec. 95. (1) The commission shall do all of the following:

(a) Promote load management in appropriate circumstances.

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

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

(d) Work with residential, commercial, and industrial customers to reduce annual demand and conserve energy through load management techniques and other activities it considers appropriate. The commission shall file a report with the legislature by December 31, 2010 on the effort to reduce peak demand. The report shall also include any recommendations for legislative action concerning load management that the commission considers necessary.

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

(3) The commission shall do all of the following:

(a) Promote energy efficiency and energy conservation.

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

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

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

(e) By November 30, 2009, and each year thereafter, submit to the standing committees of the senate and house of representatives with primary responsibility for energy and environmental issues a report on the effort to implement energy conservation and energy efficiency programs or measures. The report may include any

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recommendations of the commission for energy conservation legislation.

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

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

****** 460.1095.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

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

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

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

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

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

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

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

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

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

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

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

(a) Promote energy efficiency and energy conservation.

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

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

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

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

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008;—Am. 2016, Act 342, Eff. Apr. 20, 2017.

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

****** 460.1097 THIS SECTION IS AMENDED EFFECTIVE APRIL 20, 2017: See 460.1097.amended ******

460.1097 Compliance with energy optimization standards; reports.

Sec. 97. (1) By a time determined by the commission, each provider shall submit to the commission an annual report that provides information relating to the actions taken by the provider to comply with the energy

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optimization standards. By that same time, a municipally-owned electric utility shall submit a copy of the report to the governing body of the municipally-owned electric utility, and a cooperative electric utility shall submit a copy of the report to its board of directors.

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

(a) The number of energy optimization credits that the provider generated during the reporting period.

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

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

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

(4) Not later than 1 year after the effective date of this act, the commission shall submit a report on the potential rate impacts on all classes of customers if the electric providers whose rates are regulated by the commission decouple rates. The report shall be submitted to the standing committees of the senate and house of representatives with primary responsibility for energy and environmental issues. The commission's report shall review whether decoupling would be cost-effective and would reduce the overall consumption of fossil fuels in this state.

(5) By October 1, 2010, the commission shall submit to the committees described in subsection (4) any recommendations for legislative action to increase energy conservation and energy efficiency based on reports under subsection (1), the energy optimization plans approved under section 89, and the commission's own investigation. By March 1, 2013, the commission shall submit to those committees a report on the progress of electric providers in achieving reductions in energy use. The commission may use an independent evaluator to review the submissions by electric providers.

(6) By February 15, 2011 and each year thereafter and by September 30, 2015, the commission shall submit to the committees described in subsection (4) a report that evaluates and determines whether this subpart and subpart A have each been cost-effective and makes recommendations to the legislature. The report shall be combined with any concurrent report by the commission under section 51.

(7) The report required by September 30, 2015 under subsection (6) shall also review the opportunities for additional cost-effective energy optimization programs and make any recommendations the commission may have for legislation providing for the continuation, expansion, or reduction of energy optimization standards. That report shall also include the commission's determinations of all of the following:

(a) The percentage of total energy savings required by the energy optimization standards that have actually been achieved by each electric provider and by all electric providers cumulatively.

(b) The percentage of total energy savings required by the energy optimization standards that have actually been achieved by each natural gas provider and by all natural gas providers cumulatively.

(c) For each provider, whether that provider's program under this subpart has been cost-effective.

(8) If the commission determines in its report required by September 30, 2015 under subsection (6) or determines subsequently that a provider's energy optimization program under this subpart has not been cost-effective, the provider's program is suspended beginning 180 days after the date of the report or subsequent determination. If a provider's energy optimization program is suspended under this subsection, both of the following apply:

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

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

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

****** 460.1097.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

460.1097.amended Compliance with energy waste reduction standards; reports; applicability

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of subsection (5).

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

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

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

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

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

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

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

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

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

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

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

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008;—Am. 2016, Act 342, Eff. Apr. 20, 2017.

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

****** 460.1099.added THIS ADDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

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

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

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History: Add. 2016, Act 342, Eff. Apr. 20, 2017.

SUBPART D.
MISCELLANEOUS

460.1111 Municipally-owned electric utilities; new authority not granted to commission.

Sec. 111. This part does not provide the commission with new authority with respect to municipally-owned electric utilities except to the extent expressly provided in this act.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

****** 460.1113 THIS SECTION IS AMENDED EFFECTIVE JANUARY 1, 2021: See 460.1113.amended ******

460.1113 Pollution control equipment; use of electricity or natural gas in installation, operation, or testing; exemption.

Sec. 113. Notwithstanding any other provision of this part, electricity or natural gas used in the installation, operation, or testing of any pollution control equipment is exempt from the requirements of, and calculations of compliance required under, this part.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

****** 460.1113.amended THIS AMENDED SECTION IS EFFECTIVE JANUARY 1, 2021 ******

460.1113.amended Pollution control equipment; use of natural gas in installation, operation, or testing; exemption; effective date of section.

Sec. 113. (1) Notwithstanding any other provision of this part, natural gas used in the installation, operation, or testing of any pollution control equipment is exempt from the requirements of, and calculations of compliance required under, this part.

(2) This section, as amended by the act that added this subsection, takes effect January 1, 2021.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008;—Am. 2016, Act 342, Eff. Jan. 1, 2021.

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

PART 3.
STATE GOVERNMENT ENERGY EFFICIENCY AND CONSERVATION

460.1131 Reduction in state government grid-based energy purchases; goal.

Sec. 131. It is the goal of this state to reduce state government grid-based energy purchases by 25% by 2015, when compared to energy use and energy purchases for the state fiscal year ending September 30, 2002.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

460.1133 Department of management and budget; duties.

Sec. 133. The department of management and budget, after consultation with the energy office in the department of labor and economic growth, shall do all of the following:

(a) Establish a program for energy analyses of each state building that identifies opportunities for reduced energy use, including the cost and energy savings for each such opportunity, and includes a completion schedule. Under the program, the energy star assessment and rating program shall be extended to all buildings owned or leased by this state. An energy analysis of each such building shall be conducted at least every 5 years. Within 1 year after the effective date of this act, an energy analysis shall be conducted of any such building for which an energy analysis was not conducted within 5 years before the effective date of this act. If building or facility modifications are allowed under the terms of a lease, the state shall undertake any recommendations resulting from an energy audit to those facilities if the recommendations will save money.

(b) Examine the cost and benefit of using LEED building code standards when constructing or remodeling a state building.

(c) Before the state leases a building, examine the cost and benefit of leasing a building that meets LEED

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building codes standards, or remodeling a building to meet such standards. The state shall take into consideration whether a building has historical, architectural, or cultural significance that could be harmed by a lease not being renewed solely based on the building's failure to meet LEED criteria.

(d) Assist each state department in appointing an energy reduction coordinator to work with the department of management and budget and the state energy office to reduce state energy use.

(e) Ensure that, during any renovation or construction of a state building, energy efficient products are used whenever possible and that the state purchases energy efficient products whenever possible.

(f) Implement a program to educate state employees on how to conserve energy. The energy office and the department of management and budget shall update the program every 3 years.

(g) Use more cost-effective lighting technologies, geothermal heat pumps, and other cost-effective technologies to conserve energy.

(h) Reduce state government energy use during peak summer energy use seasons with the goal of achieving reductions beginning in 2010.

(i) Create a web-based system for tracking energy efficiency and energy conservation projects occurring within state government.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

PART 4.

WIND ENERGY RESOURCE ZONE

460.1141 Definitions.

Sec. 141. As used in this part:

(a) "Construction" means any substantial action constituting placement or erection of the foundations or structures supporting a transmission line. Construction does not include preconstruction activity or the addition of circuits to an existing transmission line.

(b) "Route" means real property on or across which a transmission line is constructed or proposed to be constructed.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

460.1143 Wind energy resource zone board; membership.

Sec. 143. Within 60 days after the effective date of this act, the commission shall create the wind energy resource zone board. The board shall consist of 9 members, as follows:

(a) 1 member representing the commission.

(b) 2 members representing the electric utility industry.

(c) 1 member representing alternative electric suppliers.

(d) 1 member representing the attorney general.

(e) 1 member representing the renewable energy industry.

(f) 1 member representing cities and villages.

(g) 1 member representing townships.

(h) 1 member representing independent transmission companies.

(i) 1 member representing a statewide environmental organization.

(j) 1 member representing the public at large.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

460.1145 Wind energy resource zone board; powers, duties, and decision-making authority; report.

Sec. 145. (1) The wind energy resource zone board shall exercise its powers, duties, and decision-making authority under this part independently of the commission.

(2) The board shall do all of the following:

(a) In consultation with local units of government, study all of the following:

(*i*) Wind energy production potential and the viability of wind as a source of commercial energy generation in this state.

(*ii*) Availability of land in this state for potential utilization by wind energy conversion systems.

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(b) Conduct modeling and other studies related to wind energy, including studying existing wind energy conversion systems, estimates for additional wind energy conversion system development, and average annual recorded wind velocity levels. The board's studies should include examination of wind energy conversion system requests currently in the applicable regional transmission organization's generator interconnection queue.

(3) Within 240 days after the effective date of this act, issue a proposed report detailing its findings under subsection (2). The board's proposed report shall include the following:

(a) A list of regions in the state with the highest level of wind energy harvest potential.

(b) A description of the estimated maximum and minimum wind generating capacity in megawatts that can be installed in each identified region of this state.

(c) An estimate of the annual maximum and minimum energy production potential for each identified region of this state.

(d) An estimate of the maximum wind generation capacity already in service in each identified region of this state.

(4) The board shall submit a copy of the proposed report under subsection (3) to the legislative body of each local unit of government located in whole or part within any region listed in subsection (3)(a). The legislative body may submit comments to the board on the proposed report within 63 days after the proposed report was submitted to the legislative body. After the deadline for submitting comments on the proposed report, the board shall hold a public hearing on the proposed report. The board may hold a separate public hearing in each region listed under subsection (3)(a). The board shall give written notice of a public hearing under this subsection to the legislative body of each local unit of government located in whole or part within the region or regions that are the subject of the hearing and shall publish the notice in a newspaper of general circulation within the region or regions.

(5) Within 45 days after satisfying the requirements of subsection (4), the board shall issue a final report as described in subsection (3).

(6) After the board issues its report under subsection (5), electric utilities, affiliated transmission companies and independent transmission companies with transmission facilities within or adjacent to regions of this state identified in the board's report shall identify existing or new transmission infrastructure necessary to deliver maximum and minimum wind energy production potential for each of those regions and shall submit this information to the board for its review.

(7) The board is dissolved 90 days after it issues its report under subsection (5).

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

460.1147 Wind energy resource zone; designation; creation; preparation of order; report.

Sec. 147. (1) Based on the board's findings as reported under section 145, the commission shall, through a final order, designate the area of this state likely to be most productive of wind energy as the primary wind energy resource zone and may designate additional wind energy resource zones.

(2) A wind energy resource zone shall be created on land that is entirely within the boundaries of this state and shall encompass a natural geographical area or region of this state. A wind zone shall exclude land that is zoned residential when the board's proposed report is issued under section 145, unless the land is subsequently zoned for nonresidential use.

(3) In preparing its order, the commission shall evaluate projected costs and benefits in terms of the long-term production capacity and long-term needs for transmission. The order shall ensure that the designation of a wind zone does not represent an unreasonable threat to the public convenience, health, and safety and that any adverse impacts on private property values are minimal. In determining the location of a wind zone, the commission shall consider all of the following factors pursuant to the findings of the board:

(a) Average annual wind velocity levels in the region.

(b) Availability of land in the region that may be utilized by wind energy conversion systems.

(c) Existing wind energy conversion systems in the region.

(d) Potential for megawatt output of combined wind energy conversion systems in the region.

(e) Other necessary and appropriate factors as to which findings are required by the commission.

(4) In conjunction with the issuance of its order under subsection (1), the commission shall submit to the legislature a report on the effect that setback requirements and noise limitations under local zoning or other ordinances may have on wind energy development in wind energy resource zones. The report shall include any recommendations the commission may have for legislation addressing these issues. Before preparing the report, the commission shall conduct hearings in various areas of the state to receive public comment on the

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report.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

460.1149 Electric utility, affiliated transmission company, or independent transmission company; expedited siting certificate; application; approvals.

Sec. 149. (1) To facilitate the transmission of electricity generated by wind energy conversion systems located in wind energy resource zones, the commission may issue an expedited siting certificate for a transmission line to an electric utility, affiliated transmission company, or independent transmission company as provided in this part.

(2) An electric utility, affiliated transmission company, or independent transmission company may apply to the commission for an expedited siting certificate. An applicant may withdraw an application at any time.

(3) Before filing an application for an expedited siting certificate for a proposed transmission line under this part, an electric utility, affiliated transmission company, or independent transmission company must receive any required approvals from the applicable regional transmission organization for the proposed transmission line.

(4) Sixty days before seeking approval from the applicable regional transmission organization for a transmission line as described in subsection (3), an electric utility, affiliated transmission company, or independent transmission company shall notify the commission in writing that it will seek the approval.

(5) The commission shall represent this state's interests in all proceedings before the applicable regional transmission organization for which the commission receives notice under subsection (4).

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

460.1151 Expedited siting certificate; application; contents.

Sec. 151. An application for an expedited siting certificate shall contain all of the following:

(a) Evidence that the proposed transmission line received any required approvals from the applicable regional transmission organization.

(b) The planned date for beginning construction of the proposed transmission line.

(c) A detailed description of the proposed transmission line, its route, and its expected configuration and use.

(d) Information addressing potential effects of the proposed transmission line on public health and safety.

(e) Information indicating that the proposed transmission line will comply with all applicable state and federal environmental standards, laws, and rules.

(f) A description and evaluation of 1 or more alternate transmission line routes and a statement of why the proposed route was selected.

(g) Other information reasonably required by commission rules.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

460.1153 Notice; conduct of proceeding; determination by commission that requirements are met; precedence; certificate as conclusive and binding; time period for granting or denying certificate.

Sec. 153. (1) Upon applying for a certificate, an electric utility, affiliated transmission company, or independent transmission company shall give public notice in the manner and form the commission prescribes of an opportunity to comment on and participate in a contested case with respect to the application. Notice shall be published in a newspaper of general circulation in the relevant wind energy resource zone within a reasonable time period after an application is provided to the commission and shall be sent to each affected municipality, electric utility, affiliated transmission company, and independent transmission company and each affected landowner on whose property a portion of the proposed transmission line will be constructed. The notice shall be written in plain, nontechnical, and easily understood terms and shall contain a title that includes the name of the electric utility, affiliated transmission company, or independent transmission company and the words "Notice of Intent to Construct a Transmission Line to Serve a Wind Energy Resource Zone".

(2) The commission shall conduct a proceeding on the application for an expedited siting certificate as a

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contested case under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Upon receiving an application for a certificate, each affected municipality and each affected landowner shall be granted full intervener status as of right in commission proceedings concerning the proposed transmission lines.

(3) The commission shall grant an expedited siting certificate if it determines that all of the following requirements are met:

(a) The proposed transmission line will facilitate transmission of electricity generated by wind energy conversion systems located in a wind energy resource zone.

(b) The proposed transmission line has received federal approval.

(c) The proposed transmission line does not represent an unreasonable threat to the public convenience, health, and safety.

(d) The proposed transmission line will be of appropriate capability to enable the wind potential of the wind energy resource zone to be realized.

(e) The proposed or alternate route to be authorized by the expedited siting certificate is feasible and reasonable.

(4) If the commission grants an expedited siting certificate for a transmission line under this part, the certificate takes precedence over a conflicting local ordinance, law, rule, regulation, policy, or practice that prohibits or regulates the location or construction of the transmission line. A zoning ordinance or limitation imposed after an electric utility, affiliated transmission company, or independent transmission company files for a certificate shall not limit or impair the transmission line's construction, operation, or maintenance.

(5) In an eminent domain or other related proceeding arising out of or related to a transmission line for which a certificate is issued, a certificate issued under this act is conclusive and binding as to the public convenience and necessity for that transmission line and its compatibility with the public health and safety or any zoning or land use requirements in effect when the application was filed.

(6) The commission has a maximum of 180 days to grant or deny an expedited siting certificate under this section.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

****** 460.1155 THIS SECTION IS REPEALED BY ACT 342 OF 2016 EFFECTIVE APRIL 20, 2017 ******

460.1155 Annual report.

Sec. 155. The commission shall make an annual report, summarizing the impact of establishing wind energy resource zones, expedited transmission line siting applications, estimates for future wind generation within wind zones, and recommendations for program enhancements or expansion, to the governor and the legislature on or before the first Monday of March of each year.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

460.1157 Construction of transmission line not prohibited.

Sec. 157. This part does not prohibit an electric utility, affiliated transmission company, or independent transmission company from constructing a transmission line without obtaining an expedited siting certificate.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

460.1159 Commission order subject to review; administration of part.

Sec. 159. (1) A commission order relating to any matter provided for under this part is subject to review as provided in section 26 of 1909 PA 300, MCL 462.26.

(2) In administering this part, the commission has only those powers and duties granted to the commission under this part.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

460.1161 Eminent domain not conferred.

Sec. 161. This part does not confer the power of eminent domain.

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History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

PART 5.
DISTRIBUTED GENERATION

460.1171 "Electric utility" defined.

Sec. 171. As used in this part, "electric utility" means any person or entity whose rates are regulated by the commission for the purpose of selling electricity to retail customers in this state.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

****** 460.1173 THIS SECTION IS AMENDED EFFECTIVE APRIL 20, 2017: See 460.1173.amended ******

460.1173 Statewide net metering program; establishment; order; rules; 1 percent requirement; selection of participating customers; provisions; maintenance of records.

Sec. 173. (1) The commission shall establish a statewide net metering program by order issued not later than 180 days after the effective date of this act. No later than 180 days after the effective date of this act, the commission shall promulgate rules regarding any time limits on the submission of net metering applications or inspections of net metering equipment and any other matters the commission considers necessary to implement this part. Any rules adopted regarding time limits for approval of parallel operation shall recognize reliability and safety complications including those arising from equipment saturation, use of multiple technologies, and proximity to synchronous motor loads. The program shall apply to all electric utilities and alternative electric suppliers in this state. Except as otherwise provided under this part, customers of any class are eligible to interconnect eligible electric generators with the customer's local electric utility and operate the generators in parallel with the distribution system. The program shall be designed for a period of not less than 10 years and limit each customer to generation capacity designed to meet only the customer's electric needs. The commission may waive the application, interconnection, and installation requirements of this part for customers participating in the net metering program under the commission's March 29, 2005 order in case no. U-14346.

(2) An electric utility or alternative electric supplier is not required to allow for net metering that is greater than 1% of its in-state peak load for the preceding calendar year. The utility or supplier shall notify the commission if its net metering program reaches the 1% requirement under this subsection. The 1% limit under this subsection shall be allocated as follows:

(a) No more than 0.5% for customers with a system capable of generating 20 kilowatts or less.

(b) No more than 0.25% for customers with a system capable of generating more than 20 kilowatts but not more than 150 kilowatts.

(c) No more than 0.25% for customers with a system capable of generating more than 150 kilowatts.

(3) Selection of customers for participation in the net metering program shall be based on the order in which the applications for participation in the net metering program are received by the electric utility or alternative electric supplier.

(4) An electric utility or alternative electric supplier shall not refuse to provide or discontinue electric service to a customer solely for the reason that the customer participates in the net metering program.

(5) The program created under subsection (1) shall include all of the following:

(a) Statewide uniform interconnection requirements for all eligible electric generators. The interconnection requirements shall be designed to protect electric utility workers and equipment and the general public.

(b) Net metering equipment and its installation must meet all current local and state electric and construction code requirements. Any equipment that is certified by a nationally recognized testing laboratory to IEEE 1547.1 testing standards and in compliance with UL 1741 scope 1.1A, effective May 7, 2007, and installed in compliance with this part is considered to be eligible equipment. Within the time provided by the commission in rules promulgated under subsection (1) and consistent with good utility practice, protection of electric utility workers, protection of electric utility equipment, and protection of the general public, an electric utility may study, confirm, and ensure that an eligible electric generator installation at the customer's site meets the IEEE 1547 anti-islanding requirements. Utility testing and approval of the interconnection and execution of a parallel operating agreement must be completed prior to the equipment operating in parallel with the distribution system of the utility.

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(c) A uniform application form and process to be used by all electric utilities and alternative electric suppliers in this state. Customers who are served by an alternative electric supplier shall submit a copy of the application to the electric utility for the customer's service area.

(d) Net metering customers with a system capable of generating 20 kilowatts or less qualify for true net metering.

(e) Net metering customers with a system capable of generating more than 20 kilowatts qualify for modified net metering.

(6) Each electric utility and alternative electric supplier shall maintain records of all applications and up-to-date records of all active eligible electric generators located within their service area.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

****** 460.1173.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

460.1173.amended Distribution generation program.

Sec. 173. (1) The commission shall establish a distributed generation program by order issued not later than 90 days after the effective date of the 2016 act that amended this section. The commission may promulgate rules the commission considers necessary to implement this program. Any rules adopted regarding time limits for approval of parallel operation shall recognize reliability and safety complications including those arising from equipment saturation, use of multiple technologies, and proximity to synchronous motor loads. The program shall apply to all electric utilities whose rates are regulated by the commission and alternative electric suppliers in this state.

(2) Except as otherwise provided under this part, an electric customer of any class is eligible to interconnect an eligible electric generator with the customer's local electric utility and operate the eligible electric generator in parallel with the distribution system. The program shall be designed for a period of not less than 10 years and limit each customer to generation capacity designed to meet up to 100% of the customer's electricity consumption for the previous 12 months. The commission may waive the application, interconnection, and installation requirements of this part for customers participating in the net metering program under the commission's March 29, 2005 order in case no. U-14346.

(3) An electric utility or alternative electric supplier is not required to allow for a distributed generation program that is greater than 1% of its average in-state peak load for the preceding 5 calendar years. The electric utility or alternative electric supplier shall notify the commission if its distributed generation program reaches the 1% limit under this subsection. The 1% limit under this subsection shall be allocated as follows:

(a) No more than 0.5% for customers with an eligible electric generator capable of generating 20 kilowatts or less.

(b) No more than 0.25% for customers with an eligible electric generator capable of generating more than 20 kilowatts but not more than 150 kilowatts.

(c) No more than 0.25% for customers with a methane digester capable of generating more than 150 kilowatts.

(4) Selection of customers for participation in the distributed generation program shall be based on the order in which the applications for participation in the program are received by the electric utility or alternative electric supplier.

(5) An electric utility or alternative electric supplier shall not discontinue or refuse to provide electric service to a customer solely because the customer participates in the distributed generation program.

(6) The distributed generation program created under subsection (1) shall include all of the following:

(a) Statewide uniform interconnection requirements for all eligible electric generators. The interconnection requirements shall be designed to protect electric utility workers and equipment and the general public.

(b) Distributed generation equipment and its installation shall meet all current local and state electric and construction code requirements. Any equipment that is certified by a nationally recognized testing laboratory to IEEE 1547.1 testing standards and in compliance with UL 1741 scope 1.1A, effective May 7, 2007, and installed in compliance with this part is considered to be compliant. Within the time provided by the commission in rules promulgated under subsection (1) and consistent with good utility practice, and the protection of electric utility workers, electric utility equipment, and the general public, an electric utility may study, confirm, and ensure that an eligible electric generator installation at the customer's site meets the IEEE 1547 anti-islanding requirements or any applicable successor anti-islanding requirements determined by the commission to be reasonable and consistent with the purposes of this subdivision. If necessary to promote reliability or safety, the commission may promulgate rules that require the use of inverters that perform

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specific automated grid-balancing functions to integrate distributed generation onto the electric grid. Inverters that interconnect distributed generation resources may be owned and operated by electric utilities. Both of the following must be completed before the equipment is operated in parallel with the distribution system of the utility:

(*i*) Utility testing and approval of the interconnection, including all metering.

(*ii*) Execution of a parallel operating agreement.

(c) A uniform application form and process to be used by all electric utilities and alternative electric suppliers in this state. Customers who are served by an alternative electric supplier shall submit a copy of the application to the electric utility for the customer's service area.

(d) Distributed generation customers with a system capable of generating 20 kilowatts or less qualify for true net metering.

(e) Distributed generation customers with a system capable of generating more than 20 kilowatts qualify for modified net metering.

(7) Each electric utility and alternative electric supplier shall maintain records of all applications and up-to-date records of all active eligible electric generators located within their service area.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008;—Am. 2016, Act 342, Eff. Apr. 20, 2017.

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

****** 460.1175 THIS SECTION IS AMENDED EFFECTIVE APRIL 20, 2017: See 460.1175.amended ******

460.1175 Net metering; application fee; limitation; costs; interconnection requirements.

Sec. 175. (1) An electric utility or alternative electric supplier may charge a fee not to exceed $100.00 to process an application for net metering. A customer with a system capable of generating more than 20 kilowatts shall pay all interconnection costs. A customer with a system capable of generating more than 150 kilowatts shall pay standby costs. The commission shall recognize the reasonable cost for each electric utility and alternative electric supplier to operate a net metering program. For an electric utility with 1,000,000 or more retail customers in this state, the commission shall include in that utility's nonfuel base rates all costs of meeting all program requirements except that all energy costs of the program shall be recovered through the utility's power supply cost recovery mechanism under sections 6j and 6k of 1939 PA 3, MCL 460.6j and 460.6k. For an electric utility with less than 1,000,000 base distribution customers in this state, the commission shall allow that utility to recover all energy costs of the program through the power supply cost recovery mechanism under sections 6j and 6k of 1939 PA 3, MCL 460.6j and 460.6k, and shall develop a cost recovery mechanism for that utility to contemporaneously recover all other costs of meeting the program requirements.

(2) The interconnection requirements of the net metering program shall provide that an electric utility or alternative electric supplier shall, subject to any time requirements imposed by the commission and upon reasonable written notice to the net metering customer, perform testing and inspection of an interconnected eligible electric generator as is necessary to determine that the system complies with all applicable electric safety, power quality, and interconnection requirements. The costs of testing and inspection are considered a cost of operating a net metering program and shall be recovered under subsection (1).

(3) The interconnection requirements shall require all eligible electric generators, alternative electric suppliers, and electric utilities to comply with all applicable federal, state, and local laws, rules, or regulations, and any national standards as determined by the commission.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

****** 460.1175.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

460.1175.amended Participation in distribution generation program; application fee; limitation; costs; interconnection requirements.

Sec. 175. (1) An electric utility or alternative electric supplier may charge a fee not to exceed $50.00 to process an application to participate in the distributed generation program. The customer shall pay all interconnection costs. The commission shall recognize the reasonable cost for each electric utility and alternative electric supplier to operate a distributed generation program. For an electric utility with 1,000,000 or more retail customers in this state, the commission shall include in that electric utility's nonfuel base rates

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all costs of meeting all program requirements except that all energy costs of the program shall be recovered through the utility's power supply cost recovery mechanism under section 6j of 1939 PA 3, MCL 460.6j. For an electric utility with fewer than 1,000,000 base distribution customers in this state, the commission shall allow that electric utility to recover all energy costs of the program through the power supply cost recovery mechanism under section 6j of 1939 PA 3, MCL 460.6j, and shall develop a cost recovery mechanism for that utility to contemporaneously recover all other costs of meeting the program requirements.

(2) The interconnection requirements of the distributed generation program shall provide that an electric utility or alternative electric supplier shall, subject to any time requirements imposed by the commission and upon reasonable written notice to the distributed generation customer, perform testing and inspection of an interconnected eligible electric generator as is necessary to determine that the system complies with all applicable electric safety, power quality, and interconnection, including metering, requirements. The costs of testing and inspection are considered a cost of operating a distributed generation program and shall be recovered under subsection (1).

(3) The interconnection requirements shall require all eligible electric generators, alternative electric suppliers, and electric utilities to comply with all applicable federal, state, and local laws, rules, or regulations, and any national standards as determined by the commission.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008;—Am. 2016, Act 342, Eff. Apr. 20, 2017.

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

****** 460.1177 THIS SECTION IS AMENDED EFFECTIVE APRIL 20, 2017: See 460.1177.amended ******

460.1177 Customer's energy use in billing period; use of electric meters; credit.

Sec. 177. (1) Electric meters shall be used to determine the amount of the customer's energy use in each billing period, net of any excess energy the customer's generator delivers to the utility distribution system during that same billing period. For a customer with a generation system capable of generating more than 20 kilowatts, the utility shall install and utilize a generation meter and a meter or meters capable of measuring the flow of energy in both directions. A customer with a system capable of generating more than 150 kilowatts shall pay the costs of installing any new meters.

(2) An electric utility serving over 1,000,000 customers in this state may provide its customers participating in the net metering program, at no additional charge, a meter or meters capable of measuring the flow of energy in both directions.

(3) An electric utility serving fewer than 1,000,000 customers in this state shall provide a meter or meters described in subsection (2) to customers participating in the net metering program at cost. Only the incremental cost above that for meters provided by the electric utility to similarly situated nongenerating customers shall be paid by the eligible customer.

(4) If the quantity of electricity generated and delivered to the utility distribution system by an eligible electric generator during a billing period exceeds the quantity of electricity supplied from the electric utility or alternative electric supplier during the billing period, the eligible customer shall be credited by their supplier of electric generation service for the excess kilowatt hours generated during the billing period. The credit shall appear on the bill for the following billing period and shall be limited to the total power supply charges on that bill. Any excess kilowatt hours not used to offset electric generation charges in the next billing period will be carried forward to subsequent billing periods. Notwithstanding any law or regulation, net metering customers shall not receive credits for electric utility transmission or distribution charges. The credit per kilowatt hour for kilowatt hours delivered into the utility's distribution system shall be either of the following:

(a) The monthly average real-time locational marginal price for energy at the commercial pricing node within the electric utility's distribution service territory, or for net metering customers on a time-based rate schedule, the monthly average real-time locational marginal price for energy at the commercial pricing node within the electric utility's distribution service territory during the time-of-use pricing period.

(b) The electric utility's or alternative electric supplier's power supply component of the full retail rate during the billing period or time-of-use pricing period.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

****** 460.1177.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

460.1177.amended Customer's energy use in billing period; use of meters; credit; charges

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pursuant to MCL 460.6a.

Sec. 177. (1) Electric meters shall be used to determine the amount of the customer's energy use in each billing period, net of any excess energy the customer's generator delivers to the utility distribution system during that same billing period. For a customer with a generation system capable of generating more than 20 kilowatts, the utility shall install and utilize a generation meter and a meter or meters capable of measuring the flow of energy in both directions. A customer with a system capable of generating more than 150 kilowatts shall pay the costs of installing any new meters.

(2) An electric utility serving over 1,000,000 customers in this state may provide its customers participating in the distributed generation program, at no additional charge, a meter or meters capable of measuring the flow of energy in both directions.

(3) An electric utility serving fewer than 1,000,000 customers in this state shall provide a meter or meters described in subsection (2) to customers participating in the distributed generation program at cost. Only the incremental cost above that for meters provided by the electric utility to similarly situated nongenerating customers shall be paid by the eligible customer.

(4) If the quantity of electricity generated and delivered to the utility distribution system by an eligible electric generator during a billing period exceeds the quantity of electricity supplied from the electric utility or alternative electric supplier during the billing period, the eligible customer shall be credited by their supplier of electric generation service for the excess kilowatt hours generated during the billing period. The credit shall appear on the bill for the following billing period and shall be limited to the total power supply charges on that bill. Any excess kilowatt hours not used to offset electric generation charges in the next billing period will be carried forward to subsequent billing periods. Notwithstanding any law or regulation, distributed generation customers shall not receive credits for electric utility transmission or distribution charges. The credit per kilowatt hour for kilowatt hours delivered into the utility's distribution system shall be either of the following:

(a) The monthly average real-time locational marginal price for energy at the commercial pricing node within the electric utility's distribution service territory, or for distributed generation customers on a time-based rate schedule, the monthly average real-time locational marginal price for energy at the commercial pricing node within the electric utility's distribution service territory during the time-of-use pricing period.

(b) The electric utility's or alternative electric supplier's power supply component, excluding transmission charges, of the full retail rate during the billing period or time-of-use pricing period.

(5) A charge for net metering and distributed generation customers established pursuant to section 6a of 1939 PA 3, MCL 460.6a, shall not be reduced by any credit or other ratemaking mechanism for distributed generation under this section.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008;—Am. 2016, Act 342, Eff. Apr. 20, 2017.

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

****** 460.1179 THIS SECTION IS AMENDED EFFECTIVE APRIL 20, 2017: See 460.1179.amended ******

460.1179 Renewable energy credits.

Sec. 179. An eligible electric generator shall own any renewable energy credits granted for electricity generated under the net metering program created in this part.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

****** 460.1179.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

460.1179.amended Renewable energy credits.

Sec. 179. A customer shall own any renewable energy credits granted for electricity generated on the customer's site under the distributed generation program created in this part.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008;—Am. 2016, Act 342, Eff. Apr. 20, 2017.

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

460.1181 Finding of noncompliance; remedies and penalties.

Sec. 181. Upon a complaint or on the commission's own motion, if the commission finds, after notice and

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hearing, that an electric utility has not complied with a provision or order issued under this part, the commission shall order remedies and penalties as necessary to make whole a customer or other person who has suffered damages as a result of the violation.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

****** 460.1183.added THIS ADDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

460.1183.added Customer participating in net metering program before tariff established pursuant to MCL 460.6a; election to continue to receive service under program.

Sec. 183. (1) A customer participating in a net metering program approved by the commission before the commission establishes a tariff pursuant to section 6a(14) of 1939 PA 3, MCL 460.6a, may elect to continue to receive service under the terms and conditions of that program for up to 10 years from the date of enrollment.

(2) Subsection (1) does not apply to an increase in the generation capacity of the customer's eligible electric generator beyond the capacity on the effective date of this section.

History: Add. 2016, Act 342, Eff. Apr. 20, 2017.

****** 460.1185.added THIS ADDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

460.1185 Industrial customer building, owning, or operating self-generation or cogeneration facilities.

Sec. 185. Notwithstanding any other provision of this act, this act does not limit or restrict an industrial customer's ability to build, own, or operate, or have a third party build, own, or operate 1 or more self-generation or cogeneration facilities, and none of the provisions of part 5 shall be construed or interpreted to apply to such facilities.

History: Add. 2016, Act 342, Eff. Apr. 20, 2017.

PART 6.
MISCELLANEOUS COMMISSION PROVISIONS

460.1191 Temporary order; issuance; rules.

Sec. 191. (1) Within 60 days after the effective date of this act, the commission shall issue a temporary order implementing this act, including, but not limited to, all of the following:

(a) Formats of renewable energy plans for various categories of electric providers.

(b) Guidelines for requests for proposals under this act.

(2) Within 1 year after the effective date of this act, the commission shall promulgate rules to implement this act pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Upon promulgation of the rules, the order under subsection (1) is rescinded.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

460.1193 Contested case proceeding; intervention; confidential business information.

Sec. 193. (1) Any interested party may intervene in a contested case proceeding under this act as provided in general rules of the commission.

(2) The commission and a provider shall handle confidential business information under this act in a manner consistent with state law and general rules of the commission.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

460.1195 Authority of commission not limited.

Sec. 195. This act does not limit any authority of the commission otherwise provided by law.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

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

PART 7.

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***** *460.1201.added THIS ADDED SECTION IS EFFECTIVE APRIL 20, 2017* *****

460.1201.added Definitions.

Sec. 201. As used in this part:

(a) "Energy project" means the installation or modification of an energy waste reduction improvement or the acquisition, installation, or improvement of a renewable energy system.

(b) "Energy waste reduction improvement" means equipment, devices, or materials intended to decrease energy consumption, including, but not limited to, all of the following:

(*i*) Insulation in walls, roofs, floors, foundations, or heating and cooling distribution systems.

(*ii*) Storm windows and doors; multi-glazed windows and doors; heat-absorbing or heat-reflective glazed and coated window and door systems; and additional glazing, reductions in glass area, and other window and door modifications that reduce energy consumption.

(*iii*) Automated energy control systems.

(*iv*) Heating, ventilating, or air-conditioning and distribution system modifications or replacements.

(*v*) Air sealing, caulking, and weather-stripping.

(*vi*) Lighting fixtures that reduce the energy use of the lighting system.

(*vii*) Energy recovery systems.

(*viii*) Day lighting systems.

(*ix*) Electrical wiring or outlets to charge a motor vehicle that is fully or partially powered by electricity.

(*x*) Measures to reduce the usage of water or increase the efficiency of water usage.

(*xi*) Any other installation or modification of equipment, devices, or materials approved as a utility cost-savings measure by the governing body.

(c) "Home energy audit" means an evaluation of the energy performance of a residential structure that meets all of the following requirements:

(*i*) Is performed by a qualified person using building-performance diagnostic equipment.

(*ii*) Complies with American National Standards Institute-approved home energy audit standards.

(*iii*) Determines how best to optimize energy performance while maintaining or improving human comfort, health, and safety and the durability of the structure.

(*iv*) Includes a baseline energy model and cost-benefit analysis for recommended energy waste reduction improvements.

(d) "Property" means privately owned residential real property.

(e) "Record owner" means the person or persons possessed of the most recent fee title or land contract vendee's interest in property as shown by the records of the county register of deeds.

(f) "Residential energy projects program" or "program" means a program as described in section 203(2).

History: Add. 2016, Act 342, Eff. Apr. 20, 2017.

***** *460.1203.added THIS ADDED SECTION IS EFFECTIVE APRIL 20, 2017* *****

460.1203.added Residential energy projects program; establishment; itemized charges; right to propose differing program.

Sec. 203. (1) Pursuant to section 205, a provider whose rates are regulated by the commission may establish a residential energy projects program.

(2) Under a residential energy projects program, if a record owner of property in the provider's service territory obtains financing or refinancing of an energy project on the property from a commercial lender or other legal entity, including an independent subsidiary of the provider, the loan is repaid through itemized charges on the provider's utility bill for that property. The itemized charges may cover the cost of materials and labor necessary for installation, home energy audit costs, permit fees, inspection fees, application and administrative fees, bank fees, and all other fees that may be incurred by the record owner for the installation on a specific or pro rata basis, as determined by the provider.

(3) This act does not limit the right of a provider to propose a residential energy improvement program with elements that differ from those required for a residential energy projects program under this part or the authority of the commission to approve such a residential energy improvement program as reasonable and prudent.

History: Add. 2016, Act 342, Eff. Apr. 20, 2017.

***** *460.1205.added THIS ADDED SECTION IS EFFECTIVE APRIL 20, 2017* *****

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460.1205.added Residential energy projects program; plan; filing; contents; approval; determination; review.

Sec. 205. (1) A residential energy projects program may only be established and implemented pursuant to a plan approved by the commission. A provider seeking to establish a residential energy projects program shall file a proposed plan with the commission.

(2) A plan under subsection (1) shall include all of the following:

(a) The estimated costs of administration of the residential energy projects program.

(b) Whether the residential energy projects program will be administered by a third party.

(c) An application process and eligibility requirements for a record owner to participate in the residential energy projects program.

(d) An application form governing the terms and conditions for a record owner's participation in the program, including an explanation of billing under subdivision (f) and of the provisions of section 207.

(e) A description of any fees to cover application, administration, or other program costs to be charged to a record owner participating in the program, including the amount of each fee, if known, or procedures to determine the amount. A fee shall not exceed the costs incurred by the provider for the activity for which the fee is charged.

(f) Provisions for billing customers of the provider any fees under subdivision (e) and the monthly installment payments as a per-meter charge on the bill for electric or natural gas services.

(g) Provisions for marketing and participant education.

(3) The commission shall not approve a provider's proposed residential energy projects plan unless the commission determines that the plan is reasonable and prudent.

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

(5) Every 4 years after initial approval of a plan under subsection (1), the commission shall review the plan.

History: Add. 2016, Act 342, Eff. Apr. 20, 2017.

****** 460.1207.added THIS ADDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

460.1207.added Baseline home energy audit required; verification; per-meter charge; shut off for nonpayment; obligation to pay.

Sec. 207. (1) A baseline home energy audit shall be conducted before an energy project that will be paid for through charges on the utility bill under this part is undertaken. After the energy project is completed, the provider shall obtain verification that the energy project was properly installed and is operating as intended.

(2) Electric or natural gas service may be shut off for nonpayment of the per-meter charge described under section 205 in the same manner and pursuant to the same procedures as used to enforce nonpayment of other charges for the provider's electric or natural gas service. If notice of a loan under the program is recorded with the register of deeds for the county in which the property is located, the obligation to pay the per-meter charge shall run with the land and be binding on future customers contracting for electric service or natural gas service, as applicable, to the property.

History: Add. 2016, Act 342, Eff. Apr. 20, 2017.

****** 460.1209.added THIS ADDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

460.1209.added Loan; term; limitation; repayment; interest.

Sec. 209. (1) The term of a loan paid through a residential energy projects program shall not exceed the anticipated useful life of the energy project financed by the loan or 180 months, whichever is less. The loan shall be repaid in monthly installments.

(2) The lender shall comply with all state and federal laws applicable to the extension of credit for home improvements.

(3) If a nonprofit corporation makes loans to owners of property to be repaid under a residential energy projects program, interest shall be charged on the unpaid balance at a rate of not more than the adjusted prime rate as determined under section 23 of 1941 PA 122, MCL 205.23, plus 4%.

History: Add. 2016, Act 342, Eff. Apr. 20, 2017.

****** 460.1211.added THIS ADDED SECTION IS EFFECTIVE APRIL 20, 2017 ******

460.1211.added Rules; report; program with differing elements or approval by commission.

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Sec. 211. (1) Pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, the commission shall promulgate rules to implement this part within 1 year after the effective date of this section.

(2) Every 5 years after the promulgation of rules under subsection (1), the commission shall submit a report to the standing committees of the senate and house of representatives with primary responsibility for energy issues on the implementation of this part and any recommendations for legislation to amend this part. The report may be combined with the annual report under section 5a of 1939 PA 3, MCL 460.5a.

(3) This act does not limit the right of a provider to propose a residential energy improvement program with elements that differ from those required for a residential energy projects program under this part or the authority of the commission to approve such a residential energy improvement program as reasonable and prudent.

History: Add. 2016, Act 342, Eff. Apr. 20, 2017.

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