

SENATE BILL NO. 642

June 10, 1999, Introduced by Senators SIKKEMA, BULLARD and VAN REGENMORTER and referred to the Committee on Technology and Energy.

A bill to amend 1909 PA 106, entitled

"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,"

(MCL 460.551 to 460.559) by amending the title and by adding sections 10, 12, 14, 15, 23, 26, 27, and 33.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

TITLE

2

An act to regulate the transmission AND DELIVERY of

3

~~electricity through the public highways, streets and places of~~

4

ELECTRIC SERVICE IN this state; ~~, where the source of supply and~~

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~~place of use are in the same or different counties;~~ to regulate

6

~~the~~ CERTAIN charges to be made for electricity so transmitted;

1 to regulate the rules and conditions of PROVIDING ELECTRIC
2 service; ~~under which said electricity shall be furnished and to~~
3 ~~confer upon the Michigan public utilities commission certain~~
4 ~~powers and duties in regard thereto~~ TO RESTRUCTURE THE ELECTRIC
5 INDUSTRY AND PROMOTE COMPETITION; TO PRESCRIBE THE POWERS AND
6 DUTIES OF CERTAIN STATE AGENCIES AND OFFICIALS; AND TO PROVIDE
7 PENALTIES AND OTHER REMEDIES FOR A VIOLATION OF THIS ACT.

8 SEC. 10. THE PURPOSE OF SECTIONS 11 THROUGH 32 IS TO DO ALL
9 OF THE FOLLOWING:

10 (A) CREATE COMPETITIVE MARKETS TO LOWER THE COST OF ELECTRIC
11 ENERGY AND IMPROVE THE QUALITY AND CHOICES OF SERVICE FOR RESI-
12 DENTIAL, COMMERCIAL, AND INDUSTRIAL CONSUMERS IN THIS STATE.

13 (B) IMPROVE THIS STATE'S COMPETITIVE ECONOMIC POSITION IN
14 REGIONAL, NATIONAL, AND INTERNATIONAL MARKETS.

15 (C) PLACE GREATER RELIANCE ON COMPETITIVE MARKETS, WHEN SUCH
16 MARKETS EXIST, TO DELIVER ELECTRIC SERVICES IN GREATER VARIETY
17 AND AT LOWER COST THAN TRADITIONAL, BUNDLED ELECTRIC SERVICES.

18 (D) MAINTAIN ADEQUATE REGULATORY OVERSIGHT OVER COMPETITIVE
19 PROVIDERS OF ELECTRIC SERVICES TO ASSURE THAT CONSUMER PROTECTION
20 SAFEGUARDS INHERENT TO TRADITIONAL ELECTRIC REGULATION ARE MAIN-
21 TAINED, WITHOUT UNDULY IMPEDING COMPETITIVE MARKETS.

22 (E) MAINTAIN REGULATORY AUTHORITY OVER NONCOMPETITIVE ELEC-
23 TRIC DELIVERY SERVICES.

24 (F) ENSURE THAT RATES FOR NONCOMPETITIVE ELECTRIC SERVICES
25 DO NOT SUBSIDIZE THE PROVISION OF COMPETITIVE ELECTRIC SERVICES
26 BY PROVIDERS OF DELIVERY SERVICES OR THEIR AFFILIATES.

1 (G) AUTHORIZE THE COMMISSION TO MODIFY THE REGULATION OF
2 COMPETITIVE ELECTRIC SERVICES, AND TO PROMOTE ECONOMIC
3 DEVELOPMENT IN THIS STATE.

4 (H) IMPROVE THE RELIABILITY OF ELECTRIC POWER SUPPLY AND
5 DELIVERY SYSTEMS AS THE MARKETPLACE IS TRANSFORMED FROM A MONOP-
6 OLY TO A COMPETITIVE ENVIRONMENT.

7 SEC. 12. (1) THE COMMISSION SHALL HOLD A PUBLIC HEARING AND
8 ISSUE A REPORT NOT LATER THAN JANUARY 1 OF EACH YEAR DETAILING
9 THE STATE OF COMPETITION IN THE ELECTRIC GENERATION SERVICE
10 MARKET WITHIN THE SERVICE TERRITORY OF EACH PROVIDER OF DELIVERY
11 SERVICE. THE FIRST REPORT SHALL BE ISSUED NO EARLIER THAN
12 JANUARY 1, 2001.

13 (2) THE REPORT ISSUED UNDER SUBSECTION (1) SHALL BE BASED ON
14 RELEVANT ECONOMIC TESTS, INCLUDING, BUT NOT LIMITED TO, THOSE IN
15 SUBSECTION (5). THE FINDINGS IN THE REPORT SHALL NOT BE BASED ON
16 ANY SINGLE MEASURE OF COMPETITION, BUT APPROPRIATE WEIGHT SHALL
17 BE GIVEN TO ALL MEASURES OF COMPETITION. THE REPORT AND FINDINGS
18 SHALL BE SUPPORTED BY SUBSTANTIAL EVIDENCE.

19 (3) THE REPORT SHALL INCLUDE A SEPARATE FINDING OF WHETHER
20 COMPETITION EXISTS IN EACH CUSTOMER CLASS FOR EACH GENERATION
21 SERVICE IN THE SERVICE TERRITORY OF EACH PROVIDER OF DELIVERY
22 SERVICE.

23 (4) A PERSON WHO DISAGREES WITH THE REPORT AND FINDINGS OF
24 THE COMMISSION MAY REQUEST A CONTESTED HEARING UNDER THE ADMINIS-
25 TRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO
26 24.328, NO LATER THAN 30 DAYS AFTER ISSUANCE OF THE TENTATIVE
27 REPORT. THE COMMISSION SHALL GRANT A REQUEST MADE UNDER THIS

1 SUBSECTION AND ISSUE ITS FINAL DECISION WITHIN 120 DAYS AFTER THE
2 DATE THE TENTATIVE REPORT WAS ISSUED.

3 (5) ALL OF THE FOLLOWING SHALL BE CONSIDERED BY THE COMMIS-
4 SION UNDER SUBSECTION (1):

5 (A) THE EXTENT TO WHICH A PROVIDER OF DELIVERY SERVICES, AN
6 AFFILIATE, OR BOTH CONTROL ALL OR A PORTION OF THE ELECTRIC GEN-
7 ERATION SERVICE MARKET. WITH RESPECT TO COMPETITION WITHIN A
8 SERVICE TERRITORY, CONTROL OF THE MARKET DOES NOT EXIST UNLESS
9 THE PROVIDER OF DELIVERY SERVICES, AN AFFILIATE, OR BOTH HAVE
10 MORE THAN A 30% MARKET SHARE OF ELECTRIC GENERATION SERVICES AS
11 MEASURED BY RETAIL SALES IN ANY CUSTOMER CLASS WITHIN THE SERVICE
12 TERRITORY.

13 (B) WHETHER THE TOTAL NUMBER OF COMPANIES PROVIDING ELECTRIC
14 GENERATION SERVICE IN THIS STATE IS SUFFICIENT TO PROVIDE CUSTOM-
15 ERS WITH MULTIPLE CHOICES OF ELECTRIC SUPPLIERS.

16 (C) THE ABILITY OF A PROVIDER OF DELIVERY SERVICES OR ITS
17 AFFILIATE TO IMPOSE ON CUSTOMERS IN AN IDENTIFIABLE MARKET A
18 PRICE LEVEL ON GENERATION SERVICE THAT IS SIGNIFICANTLY ABOVE THE
19 PRICE LEVEL THAT WOULD PREVAIL IN A COMPETITIVE MARKET.

20 (D) THE AVAILABILITY OF FIRM TRANSMISSION SERVICE IN ALL
21 GEOGRAPHIC REGIONS DURING EACH MONTH OF THE CALENDAR YEAR.

22 (E) ANY OTHER FACTORS THE COMMISSION CONSIDERS RELEVANT.

23 (6) THE REPORT AND FINDINGS REQUIRED UNDER THIS SECTION
24 SHALL BE FORWARDED TO THE GOVERNOR, THE CLERK OF THE HOUSE, THE
25 SECRETARY OF THE SENATE, AND THE HOUSE OF REPRESENTATIVES AND
26 SENATE COMMITTEES THAT DEAL WITH ENERGY ISSUES.

1 (7) NO LATER THAN 90 DAYS AFTER RECEIPT OF THE REPORT AND
2 FINDINGS UNDER THIS SECTION OR AT THE CONCLUSION OF A CONTESTED
3 CASE UNDER SUBSECTION (4), WHICHEVER IS LATER, THE LEGISLATURE,
4 BY CONCURRENT RESOLUTION, SHALL ADOPT OR REJECT, IN WHOLE OR IN
5 PART, THE COMMISSION'S FINDINGS BY A MAJORITY ROLL-CALL VOTE OF
6 ALL MEMBERS ELECTED AND SERVING IN EACH CHAMBER.

7 (8) BEGINNING JANUARY 1, 2003, IF THE LEGISLATURE ADOPTS A
8 COMMISSION FINDING THAT COMPETITION EXISTS WITHIN THE SERVICE
9 TERRITORY OF A PROVIDER OF DELIVERY SERVICE AS TO ALL OR CERTAIN
10 CUSTOMER CLASSES AND AS TO ALL OR CERTAIN ELECTRIC GENERATION
11 SERVICES, EXCEPT AS PROVIDED UNDER SECTION 13(7), THE COMMISSION
12 SHALL DEREGULATE RETAIL RATES FOR THOSE CUSTOMER CLASSES AND GEN-
13 ERATION SERVICES. A PROVIDER OF DELIVERY SERVICES THAT HAS HAD
14 ITS RETAIL RATES FOR A GENERATION SERVICE AND CUSTOMER CLASS
15 DEREGULATED UNDER THIS SUBSECTION IS PROHIBITED FROM PROVIDING
16 THAT GENERATION SERVICE TO THAT CLASS.

17 (9) IF THE LEGISLATURE DOES NOT ACT WITHIN 90 DAYS AS
18 REQUIRED UNDER SUBSECTION (7), REJECTS THE FINDINGS BY THE COM-
19 MISSION THAT COMPETITION EXISTS AS TO A CUSTOMER CLASS OR GENERA-
20 TION SERVICE WITHIN A SERVICE TERRITORY OF A PROVIDER OF DELIVERY
21 SERVICES, OR ADOPTS A FINDING BY THE COMMISSION THAT COMPETITION
22 DOES NOT EXIST AS TO A CLASS OR SERVICE, THE COMMISSION SHALL
23 REGULATE THE RETAIL RATES FOR THOSE CUSTOMER CLASSES AND GENERA-
24 TION SERVICES.

25 (10) IF COMPETITION IS FOUND NOT TO EXIST UNDER THIS SEC-
26 TION, THE COMMISSION SHALL TAKE THE NECESSARY ACTION CONSISTENT

1 WITH THIS ACT TO ENCOURAGE THE DEVELOPMENT OF A COMPETITIVE
2 MARKET IN THIS STATE.

3 (11) BEGINNING JANUARY 1, 2003, NOTWITHSTANDING SUBSECTIONS
4 (1) THROUGH (10), THE COMMISSION SHALL, UPON THE APPLICATION OF A
5 PROVIDER OF DELIVERY SERVICE, DEREGULATE RETAIL RATES FOR THE
6 GENERATION OF ELECTRICITY IN THE SERVICE TERRITORY OF THE PRO-
7 VIDER OF DELIVERY SERVICE IF THE COMMISSION DETERMINES THAT THE
8 TRANSMISSION IMPORT CAPABILITY INTO THE PROVIDER'S TERRITORY, NOT
9 RESERVED BY THE PROVIDER OF DELIVERY SERVICES, PLUS THE GENERA-
10 TION CAPACITY OF ELECTRIC SUPPLIERS LOCATED IN THE SERVICE TERRI-
11 TORY THAT ARE NOT UNDER THE COMMERCIAL CONTROL OR AFFILIATED WITH
12 THE PROVIDER OF DELIVERY SERVICE OR ITS AFFILIATES, ARE SUFFI-
13 CIENT TO PROVIDE RELIABLE ELECTRIC GENERATION SERVICE TO 100% OF
14 THE PEAK ELECTRIC LOAD IN THE TERRITORY ON A FIRM BASIS THROUGH-
15 OUT THE CALENDAR YEAR.

16 SEC. 14. (1) EXCEPT AS PROVIDED IN SECTION 11(5) AND (7)
17 AND SUBSECTION (14), THE COMMISSION SHALL ALLOW EACH ELECTRIC
18 UTILITY THE OPPORTUNITY TO RECOVER STRANDED COSTS THROUGH A TRAN-
19 SITION CHARGE RECOVERABLE FROM ALL CUSTOMERS WITHIN THE UTILITY'S
20 SERVICE TERRITORY.

21 (2) FOR EACH ELECTRIC UTILITY SERVING CUSTOMERS IN THIS
22 STATE ON DECEMBER 31, 1998, THE COMMISSION SHALL DETERMINE, TO
23 THE EXTENT THEY QUALIFY AS STRANDED COSTS UNDER SUBSECTION (1),
24 THE SUM OF THE COSTS OF A UTILITY'S REGULATORY ASSETS RELATED TO
25 GENERATION, PLUS THE GREATER OF ZERO OR THE SUM OF THE
26 FOLLOWING:

1 (A) EXCEPT AS PROVIDED IN SECTION 15(6), THE DIFFERENCE
2 BETWEEN NET PLANT INVESTMENT ASSOCIATED WITH ALL OF A UTILITY'S
3 GENERATION ASSETS AND THE MARKET VALUE OF THE GENERATION ASSETS.

4 (B) THE DIFFERENCE BETWEEN FUTURE CONTRACT PAYMENTS AND THE
5 MARKET VALUE OF ALL OF A UTILITY'S PURCHASED POWER CONTRACTS.

6 (3) WHEN DETERMINING THE MARKET VALUE OF GENERATION ASSETS
7 AND PURCHASED POWER CONTRACTS UNDER SUBSECTION (2), THE COMMIS-
8 SION SHALL RELY TO THE GREATEST EXTENT POSSIBLE ON MARKET INFOR-
9 MATION, INCLUDING, BUT NOT LIMITED TO, MARKET VALUATIONS THAT
10 BECOME KNOWN AS GENERATION ASSETS AND THE RIGHTS TO POWER UNDER
11 CONTRACTS WITH QUALIFYING FACILITIES ARE SOLD OR APPRAISALS CON-
12 DUCTED BY THIRD PARTIES INDEPENDENT OF THE ELECTRIC UTILITY TO
13 DETERMINE THE MAXIMUM MARKET VALUE OF THE ASSETS THAT COULD BE
14 REALIZED BY AN OPEN AND COMPETITIVE SALE.

15 (4) FOR EACH ELECTRIC UTILITY SERVING LESS THAN 1,000,000
16 CUSTOMERS IN THIS STATE ON DECEMBER 31, 1998, THE COMMISSION MAY
17 ADOPT A DIFFERENT METHODOLOGY TO DETERMINE THE AMOUNT OF STRANDED
18 COSTS THAT THE UTILITY MAY RECOVER. HOWEVER, IN NO EVENT MAY THE
19 COMMISSION DETERMINE THAT A UTILITY SHALL RECEIVE LESS THAN ITS
20 REGULATORY ASSETS AS ITS STRANDED COSTS RECOVERY.

21 (5) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT, THE
22 COMMISSION SHALL NOT INCLUDE ANY COSTS FOR OBLIGATIONS INCURRED
23 AFTER DECEMBER 31, 1998 IN AN ELECTRIC UTILITY'S STRANDED COSTS.

24 (6) THE COMMISSION SHALL CALCULATE A COST REDUCTION CREDIT
25 FOR EACH CUSTOMER SERVED BY A PROVIDER OF DELIVERY SERVICE
26 DESCRIBED IN SUBDIVISIONS (A) AND (B). THE CREDIT SHALL BE
27 ALLOCATED IN A COMPETITIVELY NEUTRAL MANNER BY THE COMMISSION AND

1 WITHOUT REGARD TO WHETHER THE CUSTOMER IS EXERCISING DIRECT
2 ACCESS OR RECEIVING GENERATION SERVICES FROM A PROVIDER OF DELIV-
3 ERY SERVICES. THE COST REDUCTION CREDIT SHALL REDUCE THE TOTAL
4 MONTHLY BILL OF CUSTOMERS SERVED BY A PROVIDER OF DELIVERY
5 SERVICES. THE COMMISSION SHALL APPLY THE COST REDUCTION CREDIT
6 THROUGH DECEMBER 31, 2008 AND SHALL DETERMINE THE AMOUNT OF THE
7 MONTHLY CREDIT FROM THE FOLLOWING AGGREGATE NUMBERS:

8 (A) FOR A PROVIDER OF DELIVERY SERVICES SERVING 1,000,000 OR
9 MORE BUT LESS THAN 2,000,000 CUSTOMERS IN THIS STATE AS OF
10 DECEMBER 31, 1997, \$94,000,000.00, PRESENT DISCOUNTED VALUE, 7%
11 DISCOUNT RATE, SHALL BE DISBURSED AS PROVIDED BY THIS SECTION.

12 (B) FOR A PROVIDER OF DELIVERY SERVICES SERVING 2,000,000 OR
13 MORE CUSTOMERS IN THIS STATE AS OF DECEMBER 31, 1997,
14 \$532,000,000.00, PRESENT DISCOUNTED VALUE, 7% DISCOUNT RATE,
15 SHALL BE DISBURSED AS PROVIDED BY THIS SECTION.

16 (7) EXCEPT AS REQUIRED UNDER SECTION 31, A TRANSITION CHARGE
17 ESTABLISHED UNDER THIS SECTION AND SECTION 15 SHALL APPLY TO ALL
18 CUSTOMERS UNTIL JANUARY 1, 2008.

19 (8) AS A PORTION OF THE TRANSITION CHARGE, THE COMMISSION
20 SHALL ALSO DETERMINE AN IMPLEMENTATION CHARGE THAT SHALL APPLY TO
21 ALL RETAIL CUSTOMERS. IN DETERMINING THE LEVEL OF THIS CHARGE,
22 THE COMMISSION MAY ONLY CONSIDER AUDITED AND VERIFIED
23 EMPLOYEE-RELATED RESTRUCTURING COSTS THE COMMISSION HAS APPROVED
24 AND DETERMINED TO BE REASONABLE AND PRUDENT THAT ARE INCURRED AS
25 A RESULT OF COMMISSION ORDERS OR THE AMENDATORY ACT THAT ADDED
26 THIS SECTION, INCLUDING EMPLOYEE SEVERANCE COSTS, EMPLOYEE
27 RETRAINING PROGRAMS, EARLY RETIREMENT PROGRAMS, OUTPLACEMENT

1 PROGRAMS, AND SIMILAR COSTS AND PROGRAMS. COSTS RELATING TO
2 OFFICERS, SENIOR SUPERVISORY EMPLOYEES, AND PROFESSIONAL EMPLOY-
3 EES PERFORMING REGULATORY AND LEGAL FUNCTIONS OF AN ELECTRIC
4 UTILITY OR AN AFFILIATE OF THE UTILITY, EMPLOYEES OF AN AFFILIATE
5 OF THE UTILITY, OR EMPLOYEES HIRED AFTER THE EFFECTIVE DATE OF
6 THE AMENDATORY ACT THAT ADDED THIS SECTION SHALL NOT BE INCLUDED
7 UNDER THIS SUBSECTION.

8 (9) THE COMMISSION SHALL ALLOCATE THE CHARGES TO BE RECOV-
9 ERED UNDER THIS SECTION BETWEEN THE DIFFERENT CUSTOMER CLASSES OF
10 EACH ELECTRIC UTILITY ACCORDING TO THE SAME ALLOCATION PERCENT-
11 TAGES AS APPROVED BY THE COMMISSION IN THE ELECTRIC UTILITY'S
12 MOST RECENTLY COMPLETED GENERAL RATE CASE AS OF THE EFFECTIVE
13 DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION.

14 (10) STRANDED COSTS FOR A COOPERATIVE ELECTRIC UTILITY SERV-
15 ING PRIMARILY AT WHOLESALE SHALL BE ASSESSED BY AND COLLECTED
16 THROUGH ITS MEMBER COOPERATIVES CONSISTENT WITH STATE AND FEDERAL
17 LAW.

18 (11) IN MAKING DETERMINATIONS UNDER THIS SECTION AND SECTION
19 15, THE COMMISSION SHALL ONLY INCLUDE UTILITY INVESTMENTS JURIS-
20 DICTIONALLY ASSIGNED TO CUSTOMERS IN THIS STATE.

21 (12) THE COMMISSION SHALL CONTINUE TO HAVE THE AUTHORITY AND
22 RESPONSIBILITY TO ESTABLISH NUCLEAR DECOMMISSIONING CHARGES FOR
23 NUCLEAR POWER PLANTS. UPON APPLICATION BY AN ELECTRIC UTILITY,
24 THE COMMISSION SHALL ESTABLISH CHARGES APPLICABLE TO CUSTOMERS OF
25 THE PROVIDER OF DELIVERY SERVICES IN THIS STATE WHICH ARE SUFFI-
26 CIENT FOR DECOMMISSIONING.

1 (13) THIS SECTION SHALL NOT IMPAIR OR ALTER THE TERMS OF A
2 COMMISSION APPROVED CONTRACT BETWEEN A UTILITY AND A CUSTOMER.

3 (14) AS USED IN THIS SECTION AND SECTION 15:

4 (A) "REGULATORY ASSETS" DOES NOT INCLUDE DEBT RELATED
5 EXPENSES AND CAPITAL COSTS RELATING TO NUCLEAR POWER PLANTS AND
6 PURCHASE POWER AGREEMENTS.

7 (B) "STRANDED COSTS" MEANS AN ELECTRIC UTILITY'S LEGITIMATE,
8 VERIFIABLE, AND UNMITIGABLE COSTS MADE UNRECOVERABLE AS A RESULT
9 OF THE RESTRUCTURING OF THE ELECTRIC INDUSTRY REQUIRED BY THIS
10 ACT AND DETERMINED BY THE COMMISSION AS PROVIDED IN THIS
11 SECTION.

12 SEC. 15. (1) TRANSITION CHARGES ESTABLISHED UNDER SECTION
13 14 SHALL BE SUBJECT TO ANNUAL ADJUSTMENT IN A TRUE-UP PROCEEDING
14 CONDUCTED AT THE END OF EACH YEAR BEGINNING WITH 1999, UP TO AND
15 INCLUDING THE YEAR 2007 IF STRANDED COSTS HAVE NOT BEEN
16 RECOVERED. THE COMMISSION SHALL ASSURE THAT THE TRANSITION
17 CHARGES ALLOWED UNDER SECTION 14 ACCURATELY REFLECT THE ACTUAL
18 STRANDED COSTS AND EMPLOYEE RELATED RESTRUCTURING COSTS OF THE
19 ELECTRIC UTILITY BY MAKING THE NECESSARY ADJUSTMENTS TO PREVENT
20 OVERRECOVERY OR UNDERRECOVERY OF THOSE COSTS.

21 (2) THE TRUE-UP PROCEEDING FOR 2000 SHALL BE CONDUCTED AS A
22 CONTESTED CASE UNDER THE ADMINISTRATIVE PROCEDURES ACT OF 1969,
23 1969 PA 306, MCL 24.201 TO 24.328.

24 (3) AN ELECTRIC UTILITY THAT HAS COLLECTED, OR IS ELIGIBLE
25 TO COLLECT, A COMMISSION-APPROVED TRANSITION CHARGE SHALL FILE
26 WITH THE COMMISSION, NO LATER THAN 60 DAYS AFTER THE END OF EACH
27 CALENDAR YEAR, AN APPLICATION WITH COMPLETE SUPPORTING

1 DOCUMENTATION FOR A TRUE-UP OF ITS TRANSITION CHARGE AND SHALL
2 PUBLISH A NOTICE OF ITS APPLICATION, IN FORM AND SUBSTANCE AS
3 APPROVED BY THE COMMISSION, IN NEWSPAPERS OF GENERAL CIRCULATION
4 THROUGHOUT ITS SERVICE TERRITORY.

5 (4) EXCEPT AS PROVIDED IN SUBSECTION (2), ANY CUSTOMER,
6 ALTERNATIVE ELECTRIC SUPPLIER, OR OTHER INTERESTED PERSON MAY
7 FILE COMMENTS, INCLUDING DATA, VIEWS, AND ARGUMENTS, WITHIN 60
8 DAYS OF THE FILING OR FINAL PUBLICATION OF THE NOTICE, WHICHEVER
9 IS LATER.

10 (5) EXCEPT AS PROVIDED IN SUBSECTION (2), THE COMMISSION
11 SHALL CONDUCT AN INVESTIGATION AND AFTER NOTICE AND HEARING ISSUE
12 AN ORDER ACCEPTING, REJECTING, OR MODIFYING THE TRUE-UP ADJUST-
13 MENT, WITHIN 60 DAYS OF THE DEADLINE FOR FILING OF COMMENTS. THE
14 COMMISSION'S INVESTIGATION, HEARING, AND ORDER UNDER THIS SUBSEC-
15 TION ARE NOT A CONTESTED CASE UNDER THE ADMINISTRATIVE PROCEDURES
16 ACT OF 1969, 1969 PA 306, MCL 24.201 TO 24.328.

17 (6) IF GENERATION ASSETS ARE DIVESTED TO AN UNAFFILIATED
18 THIRD PARTY, 95% OF THE PROCEEDS ABOVE NET BOOK VALUE SHALL BE
19 USED TO REDUCE TRANSITION CHARGES. FIVE PERCENT OF THE PROCEEDS
20 ABOVE NET BOOK VALUE SHALL BE DISTRIBUTED TO THE ELECTRIC UTILITY
21 AND SHALL NOT REDUCE TRANSITION CHARGES.

22 (7) PRIOR TO AN ELECTRIC UTILITY OR AN AFFILIATE OF AN ELEC-
23 TRIC UTILITY SOLICITING BIDS FOR THE SALE OF GENERATING ASSETS,
24 INCLUDING RIGHTS TO POWER PRODUCED UNDER CONTRACTS WITH A QUALI-
25 FYING FACILITY, OF THE ELECTRIC UTILITY OR THE ELECTRIC UTILITY
26 HOLDING COMPANY OR SOLICITING BIDS FOR THE SALE OF GENERATING
27 ASSETS, INCLUDING RIGHTS TO POWER PRODUCED UNDER CONTRACTS WITH A

1 QUALIFYING FACILITY, WHICH HAVE NOT BEEN APPROVED BY THE
2 COMMISSION FOR TRANSFER FROM THE ELECTRIC UTILITY TO THE ELECTRIC
3 UTILITY HOLDING COMPANY, THE COMMISSION SHALL ESTABLISH STANDARDS
4 FOR THE CONDUCT OF THE SALE BY THE UTILITY. THE STANDARDS SHALL
5 INCLUDE PROVISIONS FOR THE COMMISSION TO MONITOR THE BID PROCESS
6 TO ENSURE THAT IT IS CONDUCTED BY PARTIES ACTING IN THEIR OWN
7 BEST INTEREST AND IN A MANNER DESIGNED TO ENSURE A FAIR MARKET
8 VALUE DETERMINATION AND DOES NOT UNREASONABLY PRECLUDE PARTICIPA-
9 TION BY PROSPECTIVE PURCHASERS.

10 (8) BEFORE COMPLETING ANY SALE OF GENERATING ASSETS, INCLUD-
11 ING RIGHTS TO POWER PRODUCED UNDER CONTRACTS WITH A QUALIFYING
12 FACILITY, WITHIN THIS STATE, AN ELECTRIC UTILITY SHALL FILE FOR
13 AND OBTAIN APPROVAL BY THE COMMISSION OF THE SALE. THE COMMIS-
14 SION SHALL APPROVE THE SALE IF IT FINDS ALL OF THE FOLLOWING:

15 (A) THAT THE SALE REFLECTS THE FULL MARKET VALUE OF THE
16 ASSETS.

17 (B) THAT THE SALE IS OTHERWISE IN THE BEST INTEREST OF THE
18 ELECTRIC UTILITY'S CUSTOMERS.

19 (C) THAT THE SALE WILL NOT JEOPARDIZE THE RELIABILITY OF THE
20 ELECTRIC POWER SYSTEM.

21 (D) THAT THE SALE WILL NOT RESULT IN UNDUE CONTROL OF THE
22 ELECTRIC POWER MARKET BY THE PROSPECTIVE BUYER.

23 (9) AS A CONDITION OF RECOVERING STRANDED COSTS UNDER THIS
24 SECTION AND SECTION 14, EACH ELECTRIC UTILITY SHALL PROVIDE THE
25 COMMISSION WITH ALL INFORMATION THAT THE COMMISSION CONSIDERS
26 NECESSARY TO MAKE A DETERMINATION UNDER THIS SECTION.

1 SEC. 23. (1) THE COMMISSION SHALL ESTABLISH MINIMUM
2 STANDARDS FOR THE FORM AND CONTENT OF ALL DISCLOSURES,
3 EXPLANATIONS, OR SALES INFORMATION DISSEMINATED BY A PERSON SELL-
4 ING A COMPETITIVE SERVICE TO ENSURE THAT THE PERSON PROVIDES ADE-
5 QUATE, ACCURATE, AND UNDERSTANDABLE INFORMATION ABOUT THE SERVICE
6 WHICH ENABLES A CUSTOMER TO MAKE AN INFORMED DECISION RELATING TO
7 THE SOURCE AND TYPE OF ELECTRIC SERVICE PURCHASED. THE STANDARDS
8 SHALL BE DEVELOPED TO DO ALL OF THE FOLLOWING:

9 (A) NOT BE UNDULY BURDENSOME.

10 (B) NOT UNNECESSARILY DELAY OR INHIBIT THE INITIATION AND
11 DEVELOPMENT OF COMPETITION FOR ANY SERVICE IN ANY MARKET.

12 (C) ESTABLISH DIFFERENT REQUIREMENTS FOR DISCLOSURES, EXPLA-
13 NATIONS, OR SALES INFORMATION RELATING TO DIFFERENT SERVICES OR
14 SIMILAR SERVICES TO DIFFERENT CLASSES OF CUSTOMERS, WHENEVER SUCH
15 DIFFERENT REQUIREMENTS ARE APPROPRIATE TO CARRY OUT THE PROVI-
16 SIONS OF THIS ACT.

17 (2) THE COMMISSION, BEFORE AND AFTER THE COMMENCEMENT OF
18 DIRECT ACCESS TO ALTERNATIVE ELECTRIC SUPPLIERS, SHALL CARRY OUT
19 AN EDUCATIONAL PROGRAM FOR CUSTOMERS TO DO ALL OF THE FOLLOWING:

20 (A) INFORM CUSTOMERS OF THE CHANGES IN THE PROVISION OF
21 ELECTRIC SERVICE, INCLUDING, BUT NOT LIMITED TO, THE AVAILABILITY
22 OF ALTERNATIVE ELECTRIC SUPPLIERS.

23 (B) INFORM CUSTOMERS OF THE REQUIREMENTS RELATING TO DISCLO-
24 SURES, EXPLANATIONS, OR SALES INFORMATION FOR SELLERS OF COMPETI-
25 TIVE SERVICES.

1 (C) PROVIDE ASSISTANCE TO CUSTOMERS IN UNDERSTANDING AND
2 USING THE INFORMATION TO MAKE REASONABLY INFORMED CHOICES ABOUT
3 WHICH SERVICE TO PURCHASE AND FROM WHOM TO PURCHASE IT.

4 (3) THE SUPPLIER SHALL PROVIDE WRITTEN DISCLOSURE TO ITS
5 CUSTOMERS, AS REQUIRED BY THE COMMISSION, REGARDING THE NATURE
6 AND PERCENTAGES OF THE SOURCES OF POWER.

7 SEC. 26. (1) THE COMMISSION SHALL ESTABLISH A COMPLAINT
8 PROCEDURE TO ALLOW PERSONS, OR THE COMMISSION ON ITS OWN MOTION,
9 TO FILE CLAIMS OF VIOLATIONS OF SECTIONS 20, 21, 22, 23, 24, AND
10 25.

11 (2) UPON THE FILING OF A CLAIM, THE COMMISSION SHALL INVES-
12 TIGATE AND MAKE FINDINGS OF WHETHER A VIOLATION HAS OCCURRED.

13 (3) IN ADDITION TO ANY OTHER PENALTIES PROVIDED BY THIS ACT
14 OR LAW, IF THE COMMISSION FINDS, AFTER NOTICE AND HEARING, THAT
15 THERE HAS BEEN A VIOLATION OF SECTION 20, 21, 22, 23, 24, OR 25,
16 IT MAY ISSUE A CEASE AND DESIST ORDER.

17 (4) IF THE VIOLATION WARRANTS IMMEDIATE ACTION, THE COMMIS-
18 SION IS AUTHORIZED TO ISSUE A PRELIMINARY CEASE AND DESIST ORDER
19 BASED UPON AN ABBREVIATED HEARING BY AN ADMINISTRATIVE JUDGE. A
20 REQUEST FOR A PRELIMINARY ORDER UNDER THIS SUBSECTION SHALL BE
21 EITHER GRANTED OR DENIED WITHIN 3 BUSINESS DAYS FROM THE DATE THE
22 COMPLAINT IS FILED.

23 (5) IF A PERSON VIOLATES AN ORDER ISSUED UNDER SUBSECTION
24 (3) OR (4), THE COMMISSION MAY ORDER THE PERSON TO PAY A FINE OF
25 NOT MORE THAN \$50,000.00 PER DAY FOR EACH DAY THE PERSON IS IN
26 VIOLATION.

1 (6) THE COMMISSION MAY ORDER THE PROVIDER OF DELIVERY
2 SERVICE OR ITS AFFILIATE TO DIVEST TO AN UNAFFILIATED THIRD PARTY
3 ALL OR A PORTION OF ITS ELECTRIC GENERATION ASSETS AND OPERATION
4 SUFFICIENT TO ENSURE THAT THE PROVIDER OF DELIVERY SERVICES OR
5 ITS AFFILIATE MAY NOT ADVERSELY AFFECT THE DEVELOPMENT OF A COM-
6 PETITIVE MARKET FOR GENERATION SERVICES OR OTHERWISE IMPOSE ON
7 CUSTOMERS IN AN IDENTIFIABLE MARKET A PRICE LEVEL FOR GENERATION
8 SERVICES SIGNIFICANTLY HIGHER THAN THE PRICE LEVEL THAT WOULD
9 PREVAIL IN A COMPETITIVE MARKET, IF THE COMMISSION FINDS BOTH OF
10 THE FOLLOWING:

11 (A) THAT THERE IS A PATTERN OF VIOLATIONS BY A PROVIDER OF
12 DELIVERY SERVICES OR ITS AFFILIATE UNDER THIS SECTION.

13 (B) THAT THE VIOLATIONS HAVE SUBSTANTIALLY HARMED THE COM-
14 PETITIVE MARKET FOR GENERATION SERVICES IN THIS STATE.

15 (7) IF A PROVIDER OF DELIVERY SERVICE FAILS TO COMPLY WITH
16 AN ORDER ISSUED UNDER THIS SECTION, THE PROVIDER IS NOT ELIGIBLE
17 TO RECOVER TRANSITION CHARGES UNDER SECTIONS 14 AND 15.

18 SEC. 27. THE COMMISSION SHALL FILE A REPORT WITH THE GOVER-
19 NOR AND LEGISLATURE BY DECEMBER 31 OF EACH YEAR THAT SHALL
20 INCLUDE ALL OF THE FOLLOWING:

21 (A) ACTIONS TAKEN BY THE COMMISSION TO IMPLEMENT MEASURES
22 NECESSARY TO PROTECT CONSUMERS FROM UNFAIR OR DECEPTIVE BUSINESS
23 PRACTICES BY UTILITIES, ALTERNATIVE ELECTRIC SUPPLIERS, AND OTHER
24 MARKET PARTICIPANTS.

25 (B) INFORMATION REGARDING CONSUMER EDUCATION PROGRAMS,
26 APPROVED BY THE COMMISSION, TO INFORM CONSUMERS OF ALL RELEVANT

1 INFORMATION REGARDING THE PURCHASE OF ELECTRICITY AND RELATED
2 SERVICES FROM ALTERNATIVE ELECTRIC SUPPLIERS.

3 (C) ANY ACTIONS THE COMMISSION TAKES AS REQUIRED UNDER SEC-
4 TION 12(10).

5 SEC. 33. THIS ACT SHALL NOT BE CONSTRUED TO EXEMPT OR IMMUN-
6 NIZE FROM PUNISHMENT OR PROSECUTION CONDUCT THAT VIOLATES ANY
7 FEDERAL ANTITRUST LAWS OR ANY ANTITRUST LAWS OF THIS STATE.

8 Enacting section 1. This amendatory act does not take
9 effect unless all of the following bills of the 90th Legislature
10 are enacted into law:

11 (a) Senate Bill No. 643

12

13 (b) Senate Bill No. 644

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