

HOUSE BILL No. 6388

August 24, 2010, Introduced by Rep. Meadows and referred to the Committee on Energy and Technology.

A bill to amend 1939 PA 3, entitled

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

by amending section 10a (MCL 460.10a), as amended by 2008 PA 286.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

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

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

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

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

25 **(E) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, ANY**
26 **PUBLIC OR PRIVATE SCHOOL, UNIVERSITY, OR COMMUNITY COLLEGE SHALL BE**
27 **PERMITTED TO PURCHASE ALL OR ANY PORTION OF ITS ELECTRICITY FROM AN**

1 ALTERNATIVE ELECTRIC SUPPLIER, REGARDLESS OF WHETHER THE SALES
2 EXCEED 10% OF THE SERVING ELECTRIC UTILITY'S AVERAGE WEATHER-
3 ADJUSTED RETAIL SALES.

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

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

23 (4) No later than December 2, 2000, the commission shall
24 establish a code of conduct that shall apply to all electric
25 utilities. The code of conduct shall include, but is not limited
26 to, measures to prevent cross-subsidization, information sharing,
27 and preferential treatment, between a utility's regulated and

1 unregulated services, whether those services are provided by the
2 utility or the utility's affiliated entities. The code of conduct
3 established under this subsection shall also be applicable to
4 electric utilities and alternative electric suppliers consistent
5 with section 10, this section, and sections 10b through 10cc.

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

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

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

18 (b) Maintain separate books and records for the program,
19 access to which shall be made available to the commission upon
20 request.

21 (c) Not promote or market the program through the use of
22 utility billing inserts, printed messages on the utility's billing
23 materials, or other promotional materials included with customers'
24 utility bills.

25 (7) All costs directly attributable to an appliance service
26 program allowed under subsection (5) shall be allocated to the
27 program as required by this subsection. The direct and indirect

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

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

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

18 (b) A customer's regulated utility service is not terminated
19 for nonpayment of the appliance service program portion of the
20 bill.

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

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

26 (a) The list of customers receiving regulated service from the
27 utility shall be available to a provider of appliance repair

1 service upon request within 2 business days. The customer list
2 shall be provided in the same electronic format as such information
3 is provided to the appliance service program. A new customer shall
4 be added to the customer list within 1 business day of the date the
5 customer requested to turn on service.

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

10 (c) Prior to enrolling a customer into the program, the
11 utility shall inform the potential customer of all of the
12 following:

13 (i) That appliance service programs may be available from
14 another provider.

15 (ii) That the appliance service program is not regulated by the
16 commission.

17 (iii) That a new customer shall have 10 days after enrollment to
18 cancel his or her appliance service program contract without
19 penalty.

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

24 (d) The utility name and logo may be used to market the
25 appliance service program provided that the program is not marketed
26 in conjunction with a regulated service. To the extent that a
27 program utilizes the utility's name and logo in marketing the

1 program, the program shall include language on all material
2 indicating that the program is not regulated by the commission.
3 Costs shall not be allocated to the program for the use of the
4 utility's name or logo.

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

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

19 (12) This act does not prohibit or limit the right of a person
20 to obtain self-service power and does not impose a transition,
21 implementation, exit fee, or any other similar charge on self-
22 service power. A person using self-service power is not an electric
23 supplier, electric utility, or a person conducting an electric
24 utility business. As used in this subsection, "self-service power"
25 means any of the following:

26 (a) Electricity generated and consumed at an industrial site,
27 ~~or~~ contiguous industrial site, ~~or~~ single commercial establishment,

1 or single residence without the use of an electric utility's
2 transmission and distribution system.

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

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

14 (d) A commercial or industrial facility or single residence
15 that meets the requirements of subdivision (a) or (b) meets this
16 definition whether or not the generation facility is owned by an
17 entity different from the owner of the commercial or industrial
18 site or single residence.

19 (13) This act does not prohibit or limit the right of a person
20 to engage in affiliate wheeling and does not impose a transition,
21 implementation, **OR** exit fee ,—or any other similar charge on a
22 person engaged in affiliate wheeling. ~~As used in this section:~~

23 ~~—— (a) "Affiliate" means a person or entity that directly, or~~
24 ~~indirectly through 1 or more intermediates, controls, is controlled~~
25 ~~by, or is under common control with another specified entity. As~~
26 ~~used in this subdivision, "control" means, whether through an~~
27 ~~ownership, beneficial, contractual, or equitable interest, the~~

1 ~~possession, directly or indirectly, of the power to direct or to~~
2 ~~cause the direction of the management or policies of a person or~~
3 ~~entity or the ownership of at least 7% of an entity either directly~~
4 ~~or indirectly.~~

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

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

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

21 (14) The rights of parties to existing contracts and
22 agreements in effect as of January 1, 2000 between electric
23 utilities and qualifying facilities, including the right to have
24 the charges recovered from the customers of an electric utility, or
25 its successor, shall not be abrogated, increased, or diminished by
26 this act, nor shall the receipt of any proceeds of the
27 securitization bonds by an electric utility be a basis for any

1 regulatory disallowance. Further, any securitization or financing
2 order issued by the commission that relates to a qualifying
3 facility's power purchase contract shall fully consider that
4 qualifying facility's legal and financial interests.

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

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

1 ensure full recovery of all such costs within 5 years of the
2 ~~effective date of the amendatory act that added this subsection~~
3 OCTOBER 6, 2008.

4 (17) AS USED IN THIS SECTION:

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

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

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

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

1 ELECTRIC SUPPLIER, AN ELECTRIC UTILITY, OR CONDUCTING AN ELECTRIC
2 UTILITY BUSINESS WHEN A PERSON ENGAGES IN AFFILIATE WHEELING.

3 (C) "APPLIANCE SERVICE PROGRAM" OR "PROGRAM" MEANS A
4 SUBSCRIPTION PROGRAM FOR THE REPAIR AND SERVICING OF HEATING AND
5 COOLING SYSTEMS OR OTHER APPLIANCES.

6 (18) ~~(17)~~—As used in subsections (1) and (15):

7 (a) "Customer" means the building or facilities served through
8 a single existing electric billing meter and does not mean the
9 person, corporation, partnership, association, governmental body,
10 or other entity owning or having possession of the building or
11 facilities.

12 (b) "Standard tariff service" means, for each regulated
13 electric utility, the retail rates, terms, and conditions of
14 service approved by the commission for service to customers who do
15 not elect to receive generation service from alternative electric
16 suppliers.