

2000 PUBLIC AND LOCAL ACTS

[No. 141]

(SB 937)

AN ACT to amend 1939 PA 3, entitled "An act to provide for the regulation and control of public utilities and other services affected with a public interest within this state; 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 therein 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 rate increases without notice and hearing; to qualify residential energy conservation programs permitted under state law for certain federal exemption; to provide for a restructuring of rates for certain utilities; to encourage the utilization of resource recovery facilities; to provide for appeals; to provide appropriations; to declare the effect of this act; to prescribe penalties; and to repeal all acts contrary to this act," by amending the title and section 6I (MCL 460.6I), the title as amended by 1989 PA 2 and section 6I as added by 1982 PA 304, and by adding sections 10, 10a, 10b, 10c, 10d, 10e, 10f, 10g, 10p, 10q, 10r, 10s, 10t, 10u, 10v, 10w, 10x, 10y, 10aa, 10bb, and 10cc.

The People of the State of Michigan enact:

TITLE

An act to provide for the regulation and control of public 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.

460.6I 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.
[M.S.A. 22.13(6I)]

Sec. 6I. (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 calendar year.

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(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.

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(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 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.

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460.10 Short title of §§ 460.10 to 460.10bb; title of sections; purpose; applicability after January 1, 2002. [M.S.A. 22.13(10)]

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.

(3) Subsection (2) does not apply after December 31, 2003.

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; orders issued before effective date of amendatory act; self-service power; affiliate wheeling; rights of parties to existing contracts and agreements; true-up adjustment; determination of net stranded costs; securitization charges; rates of returning customers.
[M.S.A. 22.13(10a)]

Sec. 10a. (1) No later than January 1, 2002, 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 provide for full recovery of a utility's net stranded costs and implementation costs as determined by the commission.

(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 Michigan, 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) Within 180 days after the effective date of the amendatory act that added this section, 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

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also be applicable to electric utilities and alternative electric suppliers consistent with section 10, this section, and sections 10b through 10bb.

(5) The orders issued by the commission before the effective date of the amendatory act that added this section that allow customers of an electric utility to choose an alternative electric supplier, including orders that determine and authorize recovery of net stranded costs and implementation costs and that confirm any voluntary commitments of electric utilities, are in compliance with this act and enforceable by the commission. An electric utility that has not had voluntary commitments to provide customer choice previously approved by orders of the commission shall file a restructuring plan to allow customers to choose an alternative electric supplier no later than the date ordered by the commission. The plan shall propose a methodology to determine the electric utility's net stranded costs and implementation costs.

(6) This act does not prohibit or limit the right of a person to obtain self-service power, and it 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, and the 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 the effective date of the amendatory act that added this section 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 the effective date of the amendatory act that added this section.

(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.

(7) 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 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.

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(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.

(8) 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.

(9) The commission shall, after a contested case proceeding, issue annually an order approving for each electric utility a true-up adjustment to reconcile any overcollections or undercollections of the preceding 12 months to ensure the recovery of all amounts of net stranded costs. The rates for customers remaining with an incumbent electric utility will not be affected by the true-up process under this subsection. The commission shall review the electric utility's stranded cost recovery charges and securitization charges implemented for the preceding 12 months, and adjust the stranded cost recovery charge, by way of supplemental surcharges or credits, to allow the netting of stranded costs.

(10) The commission shall consider the reasonableness and appropriateness of various methods to determine net stranded costs, including, but not limited to, all of the following:

(a) Evaluating the relationship of market value to the net book value of generation assets and purchased power contracts.

(b) Evaluating net stranded costs based on the market price of power in relation to prices assumed by the commission in prior orders.

(c) Any other method the commission considers appropriate.

(11) The true-up adjustment adopted under subsection (9) shall not result in a modification to the securitization charge. The commission shall not adjust or change in any manner securitization charges authorized by the commission in a financing order issued under section 10i as a result of its review and any action taken under subsection (9).

(12) After the time period described in section 10d(2), the rates for retail customers that remain with or leave and later return to the incumbent electric utility shall be determined in the same manner as the rates were determined before the effective date of this section.

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. [M.S.A. 22.13(10b)]

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 the effective date of the amendatory act that added this section, 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 the effective date of the amendatory act that added this section, the commission may order the electric utility to file an

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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), 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), 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.

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.

[M.S.A. 22.13(10c)]

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:

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(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.

460.10d Electric utility with 1,000 or more retail customers; rates; recovery of costs; utility using securitization financing; compliance with federal rules, regulations, and standards. [M.S.A. 22.13(10d)]

Sec. 10d. (1) Unless otherwise reduced by the commission under subsection (4), the commission shall establish the residential rates for each electric utility with 1,000,000 or more retail customers in this state as of May 1, 2000 that will result in a 5% rate reduction from the rates that were authorized or in effect on May 1, 2000. Notwithstanding any other provision of law or commission order, rates for each electric utility with 1,000,000 or more retail customers established under this subsection become effective on the effective date of the amendatory act that added this section and remain in effect until December 31, 2003 and all other electric retail rates of an electric utility with 1,000,000 or more retail customers authorized or in effect as of May 1, 2000 shall remain in effect until December 31, 2003, unless otherwise reduced by the commission under subsection (4).

(2) On and after December 31, 2003, rates for an electric utility with 1,000,000 or more retail customers in this state as of May 1, 2000 shall not be increased until the earlier of December 31, 2013 or until the commission determines, after notice and hearing, that the utility meets the market test under section 10f and has completed the transmission expansion provided for in the plan required under section 10v. The rates for commercial or manufacturing customers of an electric utility with 1,000,000 or more retail customers with annual peak demands of less than 15 kilowatts shall not be increased before January 1,

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2005. There shall be no cost shifting from customers with capped rates to customers without capped rates as a result of this section. In no event shall residential rates be increased before January 1, 2006 above the rates established under subsection (1).

(3) Beginning January 1, 2004, annual return of and on capital expenditures in excess of depreciation levels incurred during and before the time period described in subsection (2), and expenses incurred as a result of changes in taxes, laws, or other state or federal governmental actions incurred by electric utilities during the period described in subsection (2), shall be accrued and deferred for recovery. After notice and hearing, the commission shall determine the amount of reasonable and prudent costs, if any, to be recovered and the recovery period, which shall not exceed 5 years, and shall not commence until after the expiration of the period described in subsection (2).

(4) If the commission authorizes an electric utility to use securitization financing under section 10i, any savings resulting from securitization shall be used to reduce retail electric rates from those authorized or in effect as of May 1, 2000 as required under subsection (1). A rate reduction under this subsection shall not be less than the 5% required under subsection (1). The financing order may provide that a utility shall only issue securitization bonds in an amount equal to or less than requested by the utility, but the commission shall not preclude the issuance of an amount of securitization bonds sufficient to fund the rate reduction required under section 10d(1).

(5) Except for savings assigned to the low-income and energy efficiency fund pursuant to subsection (6), securitization savings greater than those used to achieve the 5% rate reduction under subsection (1) shall be allocated by the commission to further rate reductions or to reduce the level of any charges authorized by the commission to recover an electric utility's stranded costs. The commission shall allocate approved securitization, transition, stranded, and other related charges and credits in a manner that does not result in a reallocation of cost responsibility among the different customer classes.

(6) If securitization savings exceed the amount needed to achieve a 5% rate reduction for all customers, then, for a period of 6 years, 100% of the excess savings, up to 2% of the electric utility's commercial and industrial revenues, shall be allocated to the low-income and energy efficiency fund administered by the commission. The commission shall establish standards for the use of the fund to provide shut-off and other protection for low-income customers and to promote energy efficiency by all customer classes. The commission shall issue a report to the legislature and the governor every 2 years regarding the effectiveness of the fund.

(7) Until the end of the period described in subsection (2), the commission shall not authorize any fees or charges that will cause the residential rate reduction required under subsection (1) to be less than 5%.

(8) 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 shall have 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.

(9) The public service 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.

460.10e Connection of merchant plants to transmission and distribution systems; finding of prevention or delay; remedies; merchant plan; standards; exception. [M.S.A. 22.13(10e)]

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

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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.

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. [M.S.A. 22.13(10f)]

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 shall retain the right to determine what specific actions to take to achieve compliance with this section.

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(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.

460.10g Definitions; school properties. [M.S.A. 22.13(10g)]

Sec. 10g. 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.

(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) "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.

(e) "Relevant market" means either the Upper Peninsula or the Lower Peninsula of this state.

(f) "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.

460.10p Establishment of industry worker transition program; adoption of service quality and reliability standards; compliance report; analysis of data; incentives and penalties. [M.S.A. 22.13(10p)]

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.

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(2) Stranded costs 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) will begin 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 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.

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(7) The commission shall analyze the data to determine whether the jurisdictional entities are properly operating and maintaining their systems, assess the impact of deregulation on reliability, and take corrective action if needed.

(8) The commission shall be authorized to levy financial incentives and penalties upon any jurisdictional entity which exceeds or fails to meet the service quality and reliability standards.

460.10q Alternative electric supplier; license requirements. [M.S.A. 22.13(10q)]

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.

460.10r Dissemination of disclosures, explanations, or sales information; establishment of Michigan renewables energy program. [M.S.A. 22.13(10r)]

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.

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

(2) Before January 1, 2002, the commission shall establish a funding mechanism for electric utilities and alternative electric suppliers to carry out an educational program for customers to do all of the following:

(a) Inform customers of the changes in the provision of electric service, including, but not limited to, the availability of alternative electric suppliers.

(b) Inform customers of the requirements relating to disclosures, explanations, or sales information for alternative electric suppliers.

(c) Provide assistance to customers in understanding and using the information to make reasonably informed choices about which service to purchase and from whom to purchase it.

(3) 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, 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 subsection (3)(a), (b), and (c).

(4) The information required by subsection (3) 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.

(5) 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.

(6) 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.

460.10s Low-income and energy assistance programs; availability of federal funds. [M.S.A. 22.13(10s)]

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 submit it to the governor and the legislature.

460.10t Shut off of service; conditions; procedures; definitions.
[M.S.A. 22.13(10t)]

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.

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(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.

(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.

460.10u Report to governor and legislature. [M.S.A. 22.13(10u)]

Sec. 10u. The commission shall file a report with the governor and legislature by February 1 of each year that 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.

460.10v Joint plan to expand available transmission capability.
[M.S.A. 22.13(10v)]

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

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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.

460.10w Investor-owned electric utility; FERC approval.

[M.S.A. 22.13(10w)]

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 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.

460.10x Cooperative electric utility; requirements.

[M.S.A. 22.13(10x)]

Sec. 10x. (1) The commission shall not require a cooperative electric utility to provide its retail customers the ability to choose an alternative electric supplier before January 1, 2005, nor unbundle its rates as required under section 10b before July 1, 2004. 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 no later than January 1, 2002.

(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.

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(5) A cooperative electric utility shall not be required to provide funding under section 10r(2) until July 1, 2004 or such time as it is providing choice to all of its retail customers, whichever is earlier.

460.10y Municipally owned utility; requirements.

[M.S.A. 22.13(10y)]

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 (7).

(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 the effective date of the amendatory act that added this section, or is receiving the service from a municipally owned utility and has the opportunity to choose an alternative electric supplier under terms consistent with this section. 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) After December 31, 2007, subsection (2) does not apply if the governing body of the municipally owned utility does not permit all of its retail customers receiving delivery service from the municipally owned utility located outside of the boundaries of the municipality that owns the utility the opportunity to choose an alternative electric supplier.

(4) If a municipally owned utility elects to provide electric generation service to retail customers receiving delivery service from an electric utility, all of the following apply:

(a) The municipally owned utility shall provide all of its retail customers receiving delivery service from the municipally owned utility located outside of the boundaries of the municipality that owns the utility the opportunity of choosing an alternative electric supplier. The rates, charges, terms, and conditions of delivery service for customers choosing an alternative electric supplier shall be established by the governing body of the municipally owned utility as provided under subsection (7).

(b) If a municipally owned utility and an electric utility both provide delivery service to retail customers in the same municipality located outside of the boundaries of the municipality that owns the municipal utility, then the municipally owned utility shall do 1 of the following:

(i) Make a filing as provided under subsection (5).

(ii) Enter into a written agreement as provided under subsection (6).

(c) The municipally owned utility shall comply with orders issued pursuant to sections 10a(3), 10q, 10r, and 10t with respect to customers located outside of the municipality that owns the municipally owned utility. Upon a complaint or on the commission's own motion, if the commission finds, after notice and hearing, that the municipally owned utility has not complied with a provision or order issued under sections 10a(3), 10q, 10r, and 10t 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:

(i) Order the municipally owned utility to pay a fine of not less than \$1,000.00 or more than \$20,000.00 for the first offense and not less than \$40,000.00 for a second and any subsequent offense.

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

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

(iv) Revoke the license of the municipally owned utility if the commission finds a pattern of violations.

(v) Issue cease and desist orders.

(d) The municipally owned utility may provide electric generation service to serve electric retail customers receiving delivery service from an electric utility up to an amount equal to the municipally owned utility's retail customer load that has the opportunity of choosing from an alternative electric supplier.

(e) The municipally owned utility shall obtain a license under section 10a(2). The commission shall issue a license unless it determines that the municipally owned utility has adopted rates, charges, terms, and conditions for delivery service that are unduly discriminatory or reflect recovery of stranded costs in an amount considered unjust and unreasonable by the commission. A municipally owned utility operating under a license issued by the commission shall notify the commission before modifying rates, charges, terms, and conditions for delivery services. This subsection does not grant the commission authority to set rates for a municipally owned utility. The commission, after notice and opportunity for hearing, may revoke a license issued to a municipally owned utility if it determines that the municipally owned utility is not in compliance with this subsection.

(5) 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 the effective date of the amendatory act that added this section. 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 the effective date of the amendatory act that added this section. The commission shall decide disputes arising under this subsection subject to judicial review and enforcement.

(6) 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.

(7) 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.

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(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 program to allow customers the opportunity of choosing an alternative electric supplier.

(8) Complaints alleging unduly discriminatory rates or other noncompliance arising under subsection (7) shall be filed in the circuit court for the county in which the municipally owned utility is located. Complaints arising under subsection (4) shall be decided by the commission subject to judicial review and enforcement.

(9) 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.

(10) If a municipally owned utility complies with subsection (4)(a), (b), and (e) and is a member of a joint agency established under the Michigan energy employment act of 1976, 1976 PA 448, MCL 460.801 to 460.848, it may with the consent of the joint agency assign to the joint agency an amount of load up to the amount that it is allowed to serve as an electric supplier under subsection (4)(d), for the purpose of allowing the joint agency the opportunity to sell retail electric generation as an electric supplier, if the joint agency complies with sections 10a(3), 10q, 10r, and 10t and obtains a license under section 10a(2).

(11) This section shall not be construed to impair the contractual rights of a municipally owned utility or customer under an existing contract.

(12) 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 showing of good cause, disclosure subject to appropriate confidentiality provisions may be ordered by a court or the commission.

(13) 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.

(14) Except as otherwise provided under subsections (4)(c), (4)(e), and (10), sections 6l, 10 through 10x, and 10z through 10bb do not apply to a municipally owned utility.

(15) 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.

(16) 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.

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(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.

460.10aa Impairment of contractual rights under existing contract.
[M.S.A. 22.13(10aa)]

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.

460.10bb Aggregation; use; definition. [M.S.A. 22.13(10bb)]

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.

460.10cc Provisions as severable; certain rate reductions as void.
[M.S.A. 22.13(10cc)]

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.

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(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.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 1253 of the 90th Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved June 3, 2000.

Filed with Secretary of State June 5, 2000.

Compiler's note: Senate Bill No. 1253, referred to in enacting section 1, was filed with the Secretary of State June 5, 2000, and became P.A. 2000, No. 142, Imd. Eff. June 5, 2000.
