Agenda
Planning and Policy Committee
West Olive Administration Building – Board Room
12220 Fillmore Street, West Olive, Michigan 49460
Thursday, June 14, 2012
9:30 AM

Consent Items:

1. Approval of the Agenda

2. Approval of the minutes from the May 10, 2012 Planning and Policy Committee meeting.

Action Items:

1. Resolution Opposing Changes to the Clean, Renewable and Efficient Energy Act of 2008
   Suggested Motion:
   To approve and authorize the Board Chairperson and Clerk to sign the resolution opposing changes in the 10% Retail Open Access Cap of the Clean, Renewable, and Efficient Energy Act of 2008.

2. Legal Services Policy
   Suggested Motion:
   To approve and forward to the Board of Commissioners the proposed Legal Services Policy for review and comment.

3. Performance Verification Policy
   Suggested Motion:
   To approve and forward to the Board of Commissioners the revised Performance Verification Policy (formally Performance Measurement Policy) for review and comment.

Discussion Item:

None

Adjournment

Comments on the day's business are to be limited to three (3) minutes.

PLANNING AND POLICY COMMITTEE

Proposed Minutes

DATE: May 10, 2012

TIME: 9:30 a.m.

PLACE: Fillmore Street Complex

PRESENT: Dennis Swartout, Jane Ruiter, Stu Visser, James Holtvluwer, Roger Rycenga

STAFF & GUESTS: Alan Vanderberg, Administrator; Beth Thomas, Director of the Emergency Management Unit; John Scholtz, Parks & Recreation Director; Sherri Sayles, Deputy Clerk; Greg Rappleye, Corporation Counsel; Keith VanBeek, Assistant Administrator; Nancy Fuller; Ken David

SUBJECT: CONSENT ITEMS

To approve by consent the agenda of today as presented and to approve by consent the minutes from the April 12, 2012 meeting as presented.

SUBJECT: BID TABULATION – PIGEON CREEK LODGE ADDITION

PP 12-019 Motion: To receive and forward to the Board of Commissioners bids for the Pigeon Creek Lodge Addition and accept the low bid from Gale Builders in the amount of $126,800 with funding from the Parks and Recreation budget.
Moved by: Swartout UNANIMOUS

SUBJECT: JOINT HAZARD MITIGATION PLAN – OTTAWA & KENT COUNTIES

PP 12-020 Motion: To approve and forward to the Board of Commissioners the Resolution to adopt the Joint Hazard Mitigation Plan for Ottawa & Kent Counties.
Moved by: Ruiter UNANIMOUS

SUBJECT: CLOSED SESSION TO DISCUSS PROPERTY ACQUISITION

PP 12-021 Motion: To go into closed session at 9:45 a.m. for the purpose of discussing property acquisition. (2/3 roll call vote required)
Moved by: Holtvluwer UNANIMOUS

Roll call vote: Yeas: Holtvluwer, Ruiter, Swartout, Visser, Rycenga. (5)

PP 12-022 Motion: To rise from closed session at 10:00 a.m.
Moved by: Holtvluwer UNANIMOUS

SUBJECT: ADJOURNMENT

PP-12-023 Motion: To adjourn at 10:00 a.m.
Moved by: Swartout UNANIMOUS

Action Request

Committee: Planning and Policy Committee

Meeting Date: 6/14/2012

Requesting Department: Administration

Submitted By: Greg Rappleye

Agenda Item: Resolution Opposing Changes to the Clean, Renewable and Efficient Energy Act of 2008

SUGGESTED MOTION:

To approve and authorize the Board Chairperson and Clerk to sign the resolution opposing changes in the 10% Retail Open Access Cap of the Clean, Renewable, and Efficient Energy Act of 2008.

SUMMARY OF REQUEST:

On April 10, 2012, Dennis McKee from Consumer's Energy appeared before the Board of Commissioners to discuss proposed amendments to the "Clean, Renewable and Efficient Energy Act of 2008" (Act 286 and Act 295 of 2008). The proposed changes would raise the 10% Retail Open Access Cap for purchases from alternate energy suppliers, thereby potentially shifting the burden of maintaining and expanding existing utility infrastructure onto a smaller group of industrial, business and family customers.

A Resolution to oppose the lifting of the ROA Cap at this time (without further study and analysis) is attached for your consideration.

I have also attached a copy of the materials submitted by Mr. McKee at the earlier meeting, and copies of Act 286 and Act 295.

FINANCIAL INFORMATION:

Total Cost: $0.00	General Fund Cost: $0.00	Included in Budget:	☐ Yes	☒ No

If not included in budget, recommended funding source:

ACTION IS RELATED TO AN ACTIVITY WHICH IS:

☐ Mandated	☒ Non-Mandated	☐ New Activity

ACTION IS RELATED TO STRATEGIC PLAN:

Goal: 3: To Contribute to a Healthy Physical, Economic, & Community Environment.

Objective: 3: Consider opportunities to improve economic development in the region.

ADMINISTRATION RECOMMENDATION: ☒ Recommended ☐ Not Recommended ☐ Without Recommendation

County Administrator: Alan G. Vanderberg

Digitally signed by Alan G. Vanderberg
DN: cn=Alan G. Vanderberg, c=US, o=County of Ottawa, ou=Administrator's Office, email=avanderberg@miottawa.org
Reason: I am the author of this document
Date: 2012.06.07 14:10:57 -04'00'

Committee/Governing/Advisory Board Approval Date:

M E M O R A N D U M

TO: Ottawa County Planning & Policy Committee

FROM: Gregory Rappleye, Ottawa County Corporation Counsel

DATE: June 6, 2012

RE: Resolution Opposing Changes to the Clean, Renewable and Efficient Energy Act of 2008

On April 10, 2012, Dennis McKee from Consumer's Energy appeared before the Board of Commissioners to discuss proposed amendments to the "Clean, Renewable and Efficient Energy Act of 2008" (Act 286 and Act 295 of 2008). The proposed changes would raise the 10% Retail Open Access Cap for purchases from alternate energy suppliers, thereby potentially shifting the burden of maintaining and expanding existing utility infrastructure onto a smaller group of industrial, business and family customers.

A Resolution to oppose the lifting of the ROA Cap at this time (without further study and analysis) is attached for your consideration.

I have also attached a copy of the materials submitted by Mr. McKee at the earlier meeting, and copies of Act 286 and Act 295.

COUNTY OF OTTAWA

STATE OF MICHIGAN

RESOLUTION

At a regular meeting of the Board of Commissioners of the County of Ottawa, Michigan, held at the Fillmore Street Complex in the Township of Olive, Michigan on the ___ day of _____, 2012 at _____ o'clock p.m. local time.

PRESENT: Commissioners: _____

_____

_____

ABSENT: Commissioners: _____

_____

_____

It was moved by Commissioner _____ and supported by Commissioner _____ that the following Resolution be adopted:

WHEREAS, in Act 286 and Act 295 of the Public Acts of 2008 (hereinafter, collectively referred to as "the Clean, Renewable and Efficient Energy Act of 2008"), the Michigan Legislature adopted certain provisions to assure a comprehensive energy policy for Michigan's future, designed, in relevant part, to encourage investment by Michigan's utility companies in needed infrastructure while encouraging competition and innovation by reserving not more than ten percent (10%) of the energy market to alternative energy suppliers; and,

WHEREAS, this 10% reserve for alternative energy suppliers, often referred to as "the Retail Open Access Cap" ("the ROA Cap") has worked well for Michigan,

providing both choice for customers and the assurance that Michigan's utilities will be able to secure financing for major infrastructure improvements in the State, such as the proposed $800 upgrade of the Ludington Pumped Storage Plant; and,

WHEREAS, a proposal has been made to significantly raise the ROA Cap above the 10% limit set in the "Clean, Renewable and Efficient Energy Act of 2008"; and,

WHEREAS, raising the ROA Cap above 10%, at this time, could well result in an increase in energy costs to industries, businesses, and individual families, as the cost of maintaining and improving energy infrastructure within the State of Michigan would be shifted onto a smaller percentage of utility customers; and,

WHEREAS, the Ottawa County Board of Commissioners believes that any changes in the terms and implementation of the "Clean, Renewable and Efficient Energy Act of 2008" should be carefully and thoughtfully analyzed to maximize the economic health of the State of Michigan and to minimize any adverse consequences of such changes to industries, businesses, and Michigan families;

NOW THEREFORE BE IT RESOLVED that the Ottawa County Board of Commissioners opposes efforts to raise the 10% ROA Cap reserved for alternative energy suppliers as provided for in the "Clean, Renewable and Efficient Energy Act of 2008" (Act 286 and Act 295 of the Public Acts of 2008), until and unless the economic impact of such an amendment upon Michigan's public utilities, industries, businesses and Michigan families is fully analyzed, understood, and agreed to; and,

BE IT FURTHER RESOLVED, that all resolutions and parts of resolutions insofar as they conflict with this Resolution are hereby repealed.

YEAS: Commissioners: _____

_____

_____

NAYS: Commissioners: _____

_____

_____

ABSTENTIONS: Commissioners: _____

_____

_____

RESOLUTION ADOPTED:

_____ _____

Chairperson, Ottawa County Board of Commissioners

Ottawa County Clerk

MICHIGAN
JOBS & ENERGY
COALITION

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Consumers Energy Count on Us

J.H. Campbell Complex
17000 Croswell Street
West Olive, MI 49460

Tel: 616 738 3360 West Olive
Tel: 231 843 5080 Ludington
Cell: 616 836 9913
E-Mail: damckee@cmsenergy.com

Ludington Pumped Storage Plant
3525 South Lakeshore Drive
Ludington, MI 49431

Dennis A. McKee
Area Manager
Governmental & Public Affairs

A CMS Energy Company

MICHIGAN
JOBS & ENERGY
COALITION

Welcome back Dennis, My profile Logout

About Us

The Michigan Jobs & Energy Coalition (MJEC) was established in 2008 to seek passage of a comprehensive Michigan energy reform law. The MJEC and its members know an adequate supply of reliable and affordable electricity is critical to Michigan's economy and quality of life.

The MJEC supports the timely implementation of the state's 2008 comprehensive energy law, the construction of new baseload power plants and renewable energy facilities and energy policies that create jobs and improve Michigan's economy.

The MJEC is comprised of Michigan's major utilities, electric cooperatives and municipal electricity providers; major business organizations and industrial customers; labor organizations; economic development interests; and renewable energy and energy efficiency advocates, and many others.

Key members of the MJEC include:

- Michigan Chamber of Commerce
- Michigan Manufacturers Association
- Protect Michigan (itself a coalition of the state's major labor organizations)
- Detroit Regional Chamber
- Consumers Energy
- DTE Energy
- Michigan Business and Professional Association
- Michigan Community Action Agency Association
- Michigan Electric Cooperative Association (MECA)
- Michigan Minority Business Development Council
- Michigan Municipal Electric Association (MMEA)
-

Detroit and Western Wayne County branches of the NAACP

Here is a list of our frequently asked questions. If you can't find yours, email us.

TAKE ACTION
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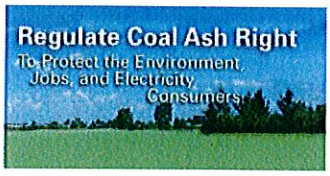
SHARE YOUR STORY
Tell us about your interest

Connect:



MICHIGAN JOBS & ENERGY COALITION

Issues

Straight Talk On Energy **Michigan's Comprehensive Energy Policy**

Less than three years ago, Michigan lawmakers set in place a comprehensive energy policy designed to safeguard the state's energy future.

That landmark reform – considered one of the best state energy policies in the nation – was crafted so each component worked in unison with the others. The main goals for this forward-looking package were ambitious:

- Provide regulatory certainty so utilities could make substantial job-creating investments in the state's energy infrastructure to provide customers with reliable energy from a balanced variety of energy sources and improve the environment
- Help customers save energy and save money by setting aggressive energy efficiency standards
- Boost the development of "green" energy by requiring 10 percent of the state's electricity to come from renewable sources by 2015
  - The energy efficiency and renewable energy standards were coupled with sensible caps on the size and cost of the programs to limit the effect on customer bills
- Improve the state's business climate by requiring prices to be based on the cost of service by 2013 and phasing out subsidies that pushed up business rates

The 2008 energy law already is doing what it was designed to do, even though it's not fully implemented.

- The state's two biggest utilities, Consumers Energy and DTE Energy, have invested nearly $4 billion in the state since the law took effect, creating thousands of jobs
- Customers can expect to save more than $800 million because of the investments being made in energy efficiency programs. Utilities have participated in outreach efforts with business associations to inform companies about the incentives and cost-saving opportunities through these programs. Local businesses also have benefited because they're heavily involved in these programs, which spur customer investments in energy efficiency products and services. The result is these programs have supported the creation and retention of countless jobs throughout Michigan.
- The expansion of renewable energy resources is diversifying the state's energy portfolio and creating economic growth, e.g., the first manufacturer of large-scale wind turbines has been established in the state, creating 200 jobs
- Schools and other customers already are benefitting from the shift to cost of service rates with the full benefits for businesses to be fully realized by 2013

Today, Michigan is emerging from a deep recession that pushed down the customer demand for electricity. As the state's economy recovers and energy needs rebound, Michigan already has in place the right public policy to make sure families and businesses have the reliable, affordable energy they need to power their future.

Why did we need energy reform in Michigan?

A 2000 law (Public Act 141) deregulated Michigan's electric market. That law created a one-of-a-kind hybrid market that allowed all the customers of the major utilities to get their power from alternative energy suppliers, if they wished.

If customers switched to alternative energy suppliers, Michigan's unique deregulation model also legally required utilities to take those same customers back at regulated rates whenever they wanted

to return to full utility service.

That system left utilities not knowing how many customers they would be serving or how much power those customers would need and seriously undermined their ability to plan for the future.

The high level of uncertainty made it impossible for utilities to secure reasonable financing for major projects and improvements needed to serve customers, despite the growing need for substantial investments in the state's energy infrastructure.

How did the 2008 energy law solve that problem?

A key provision of the energy reform law (Public Acts 286 and 295) retained competition in the state's electric market and provided utilities the certainty they need to make major investments.

The law did that by reserving 10 percent of the state's electric load for alternative energy suppliers. Regulated utilities, such as Consumers Energy and DTE Energy, retained the obligation to serve the remaining customer base.

The 10 percent reserved for the alternative energy suppliers typically is referred to as the Retail Open Access cap, or ROA cap.

How is the "ROA cap" working for Michigan?

Precisely as the law intended. The cap provides choice for customers who want to shop around, and provides certainty that utilities need to secure financing for major investments such as the recently announced $800 million upgrade of the Ludington Pumped Storage Plant.

The Ludington project and other substantial investments are expected to pump billions of dollars into the state's economy, generate sorely needed tax revenues and create thousands of jobs in the coming years.

When the law took effect, alternative energy suppliers were serving 3 percent to 4 percent of the state's electric load. The recession and new natural gas supplies pushed down customer demand and the price of power. In 2009, the 10 percent caps were reached for Consumers Energy and DTE Energy.

Once the cap has been reached, customers that wish to buy electricity from alternate suppliers must wait until other customers return to full utility service and space is freed up under the 10 percent cap.

So why not raise the ROA cap?

That's a bad idea for a number of reasons and here are the main ones:

- The 2008 energy law and the 10 percent ROA cap were the result of two years of research, analysis, and discussion by a diverse group of stakeholders, including business groups, labor, alternative energy suppliers, environmental and customer groups and the utilities. The various components of the package were designed to work together and reflect compromises and commitments made by all those involved in the negotiation.

- The 10 percent ROA cap protects customers. Raising the cap would shift fixed costs to customers who remain with the utilities. Consumers Energy and DTE Energy estimate that increasing the cap to 25 percent would shift about $800 million in fixed costs to the remaining customers, primarily residential and small commercial and industrial customers.

- At 10 percent, the ROA cap already has shifted about $330 million in fixed costs to the customers getting full service from Consumers Energy and DTE Energy.

- Only a relative handful of business customers would benefit at the expense of all the other customers. For example, only about 500 of Consumers Energy's 1.8 million electric customers now get their power from alternative energy suppliers.

- The alternative energy suppliers are primarily out-of-state power brokers trying to use short-term market conditions to undermine solid long-term energy policy so they can maximize their profits. They have few employees and minimal investment in Michigan and no long-term commitment to the state. They're just playing the market.

- These suppliers cloak their efforts under the guise of "competition." They conveniently ignore the fact that in 2008, when 100 percent of the state's electric market was open to them, they served only 3 percent to 4 percent of that market.

- The alternative energy suppliers aren't talking about true competition. They avoid many of the costly mandates that utilities must meet, such as low-income and senior citizen discounts, and don't have to accept all customers, including the bad credit risks, as the utilities do.

- The truth is that customer demand, power supplies, natural gas prices and other factors determine market prices rather than the form of "competition" pushed by the alternative energy suppliers.

- Michigan can't sustain a coherent long-term energy policy based on the vagaries of the volatile short-term wholesale markets. Raising the ROA cap when market prices dip equates to having no

cap at all. If the ROA cap is increased, utilities would have to cut back the substantial job-creating investments they are making now in Michigan.

What can I do?

Continue to support the 2008 energy reform law (PA 286 and PA 295) and explain its benefits to others. This landmark public policy already has provided benefits to customers and the state, even though it's not fully implemented. At the very least, this law should be fully implemented and its benefits fully analyzed and evaluated before any changes are discussed.

The answer is clear: This forward-looking public policy should be allowed to work as intended and help power Michigan's economic comeback.

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Everything Michigan

Consumers Energy customers would pay $350 million in annual fixed costs if electric-choice law changed, spokesman says

Published: Monday, February 06, 2012, 1:00 PM **Updated: Monday, February 06, 2012, 1:03 PM**

By **Tarryl Jackson | tjackso1@mlive.com**

File PhotoConsumers Energy

Opening Michigan's electric market to more competition would shift $350 million in annual fixed costs onto remaining Consumers Energy customers, said spokesman Jeff Holyfield.

Currently, **more than 1,000 commercial and industrial customers in the Jackson-based utility's service territory are buying their power from someone else**. At the same time, more and more customers are on the waiting list to do the same.

In 2011, 3,739 Consumers Energy's business customers were on the list to buy their electricity from another provider, up from 38 in 2009, according to the Michigan Public Service Commission's annual electric choice report.

Groups like Customer Choice Coalition and Energy Choice Now — who say that Consumers Energy and Detroit Edison are monopolizing the market — want to raise the cap that limits competition to 10 percent of the utilities' sales in Michigan's 2008 energy-reform law.

Increasing the 10 percent cap to allow more competition would lead to a price spike for remaining customers, Holyfield said.

"A few customers would benefit, and everyone else would pay more," he said.

The cap also gives the utility the certainty it needs to continue investing millions of dollars in Michigan, he said. Consumers Energy plans to invest $6.6 billion in Michigan to serve customers and improve the environment in the next five years, Holyfield said.

When the energy-reform law was enacted in October 2008, 3 percent of Consumers' customers were buying from alternative providers. Ten months later, that figure hit the 10 percent cap.

Hypothetically, if the cap did not exist, choice participation would be about 20 percent for Consumers Energy at the end of 2011, **according to the commission's report**.

As electric rates become more and more out of whack, more companies are looking for a way out, said David Waymire, spokesman for the Customer Choice Coalition. Getting on the waiting list is the first step for these companies to find that way out, he said.

"Because of the current law, it is very difficult for the MPSC to turn down rate hike requests (from utilities)," Waymire said.

Waymire said the groups will continue to advocate to raise the cap to allow more choice for customers and are hopeful that Gov. Rick Snyder will take more of a leadership role on the issue.

"Right now there's virtually no energy competition in Michigan — only a few winners who have been picked by the state, and a whole lot of losers," Wayne Kuipers, executive director of Energy Choice Now, said in a statement. "Michigan's current energy policy is not fair — not fair to businesses trying to compete, and not fair to consumers trying to keep their heads above water in a tough economy. Raising the cap is the only way to bring true energy relief to our state."

Kuipers noted that Michigan's rates have increased more than any other Midwest state since 2008, when the new law was passed. Meanwhile, Ohio and Illinois, the region's states with the most electric competition, have seen rates increase the least, he said.

Holyfield said these groups are using short-term market conditions to tinker with long-term public policy.

Currently, 23 licensed alternative-energy suppliers serve about 7,000 electric choice customers throughout Michigan.

"They're just in Michigan to make a quick buck," Holyfield said. "Once that's not possible for them, they will leave. We're committed to Michigan."

MICHIGAN JOBS & ENERGY COALITION

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Action Center

Take Action Today!

Take action on behalf of the MJEC and learn more about the legislative and regulatory issues that affect Michigan.

» Take action now!

Spread the word!

Do you know others who support these issues? Click here to send them a message and get them involved today!

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Share your story!

Click here and take a moment to tell us about your interest in the issues as well as your personal reasons for becoming involved.

» Share your story!

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Do you have a relationship with a legislator? If yes, click here to tell us more.

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Tell us about your interest

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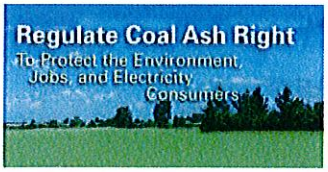



Consumers Energy
Count on Us

Consumers Energy – Committed to Michigan

- Second largest investor in Michigan
  - Invested $2 billion in Michigan in 2009-10
  - Plan to invest more than $6 billion over next five years
- Seventh largest employer in Michigan
  - 7,700 employees
  - 7,500 jobs supported by utility
- Spent $2 billion with Michigan suppliers and governmental agencies in 2010

Proudly Serving Customers for 125 years.

Consumers Energy's Major Investments

Consumers Energy
Count on Us

Lake Winds
Energy Park
$235 million

Ludington Pumped
Storage Plant
$800 million
(*CE Share $400 million*)

Campbell Generating
Plant $730 million

White Pigeon
Compressor Station
$75 million

Karn/Weadock
Generating
Complex
$480 million

Cross Winds
Energy Park
$370 million

Ray Compressor Station
$140 million

West Oakland
Pipeline
$70 million

Smart Grid
$750 million

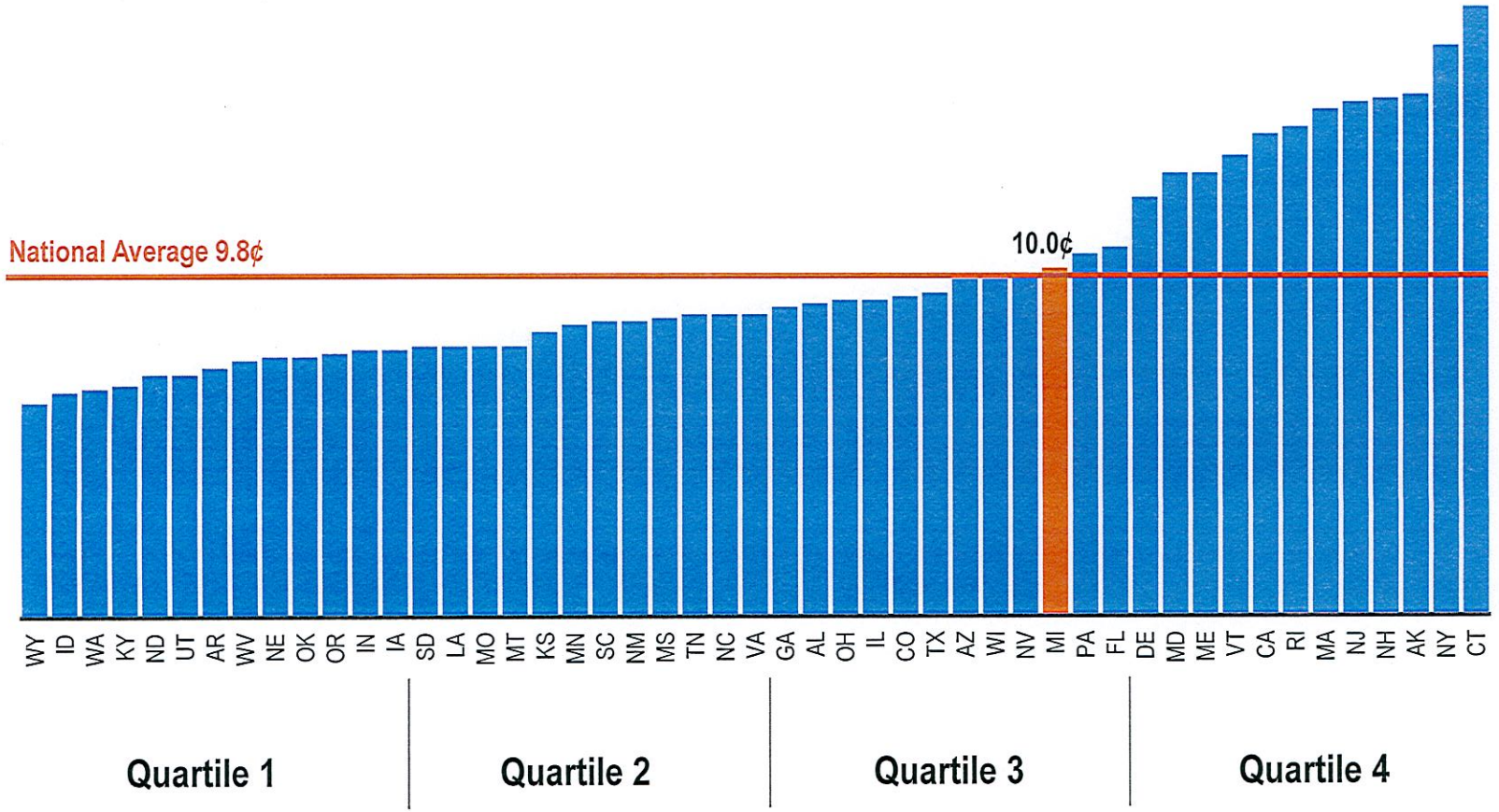
★ Complete ★ In Process/Planned

Current Plan Projections as of 1Q 2012

Benchmarking: 2010 National Electric Rates

Consumers Energy
Count on Us

Total Electric Rates



Rate Impact of Deregulated States

Consumers Energy
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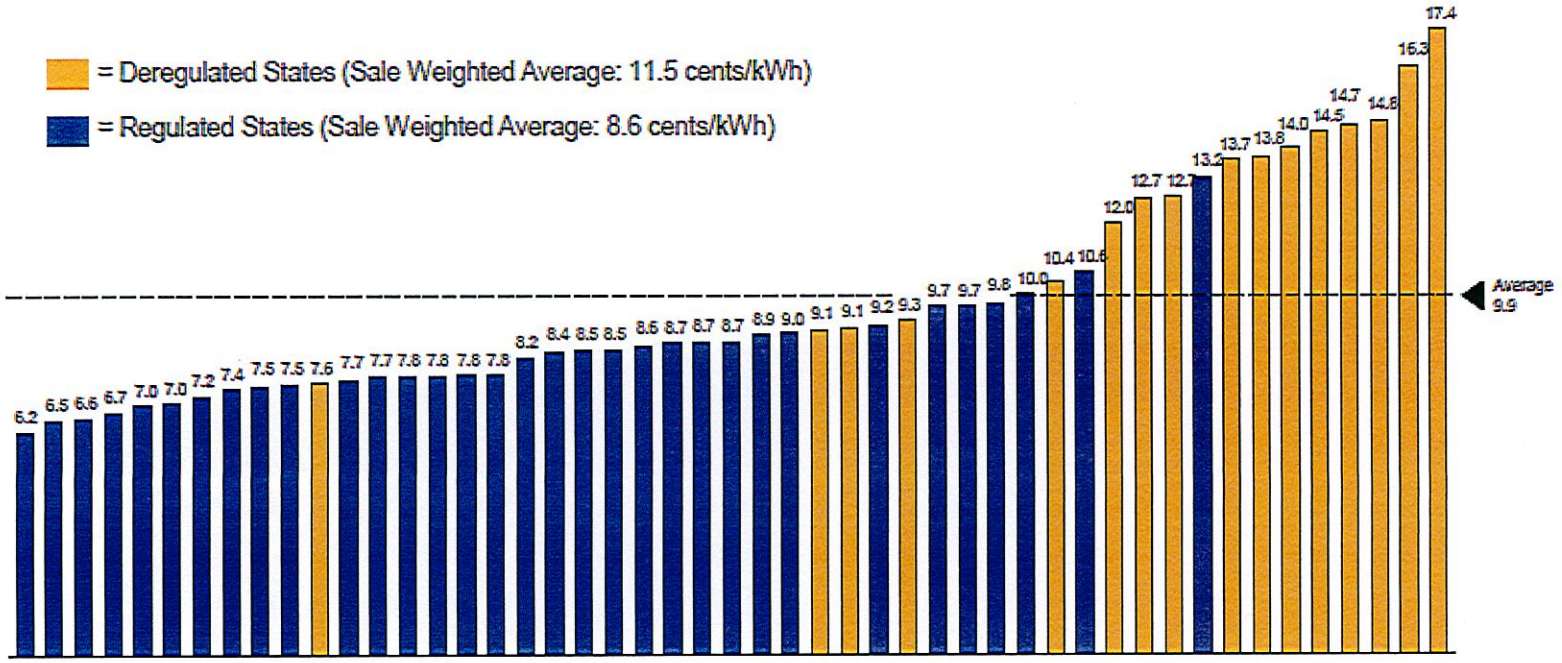
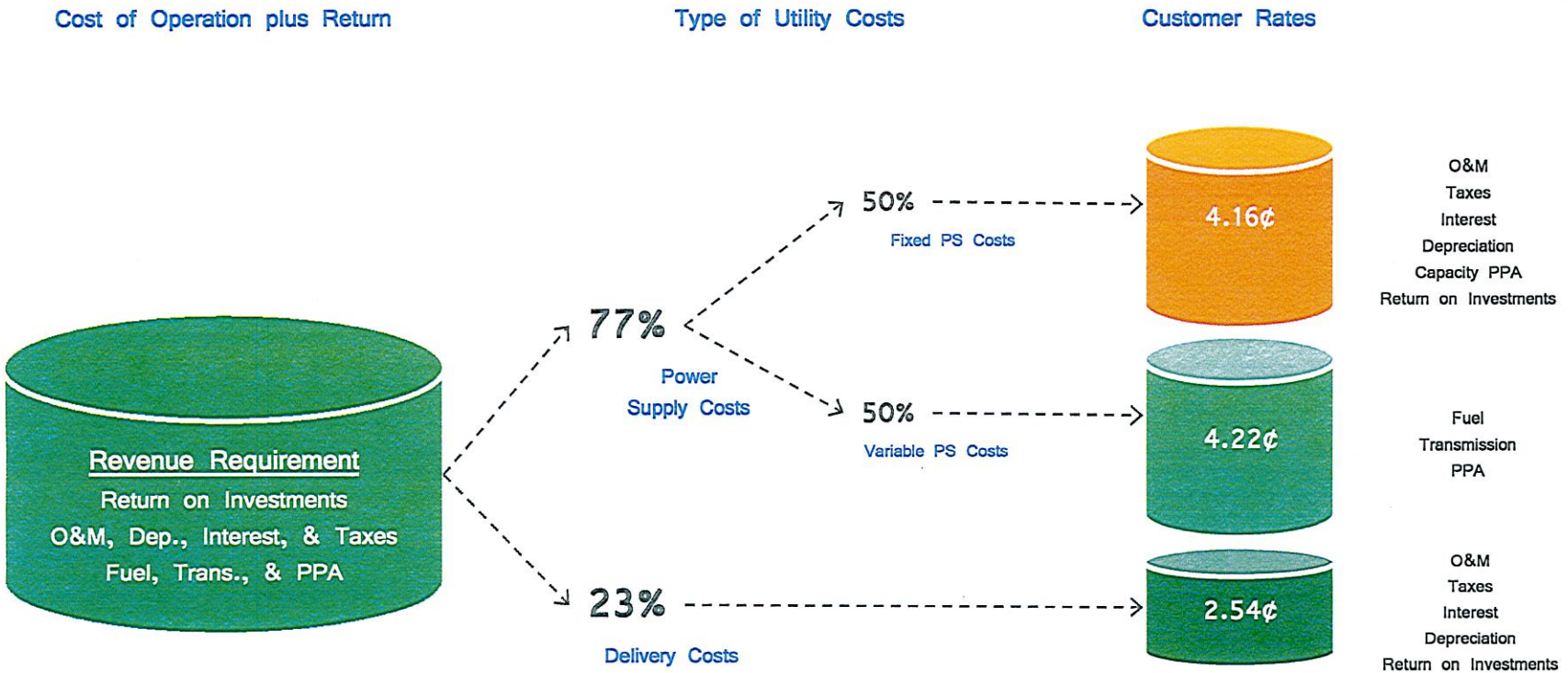
2010 Average Retail Prices
(cents / kWh)



Source: Energy Information Administration Form 826 Sale and Revenue Spreadsheet

Electric Revenue Requirements

Consumers Energy
Count on Us

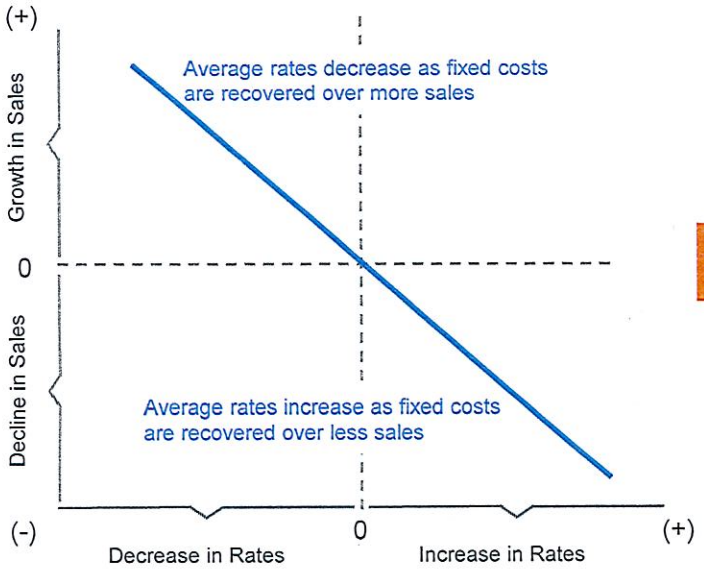


FIXED COSTS ARE NOT REDUCED WHEN CUSTOMERS TAKE ROA SERVICE

Impacts of Raising ROA: Rate Impacts

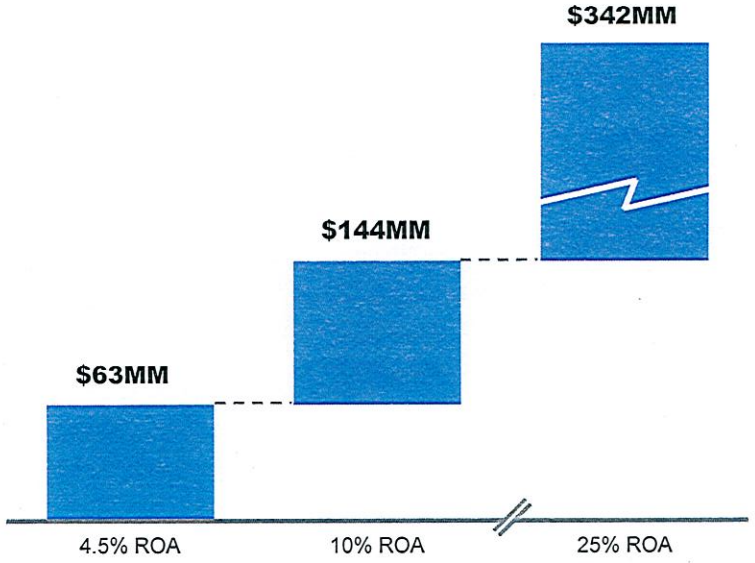
Consumers Energy
Count on Us

Correlation between Sales Growth and Average Electric Rates (economies of scale)



More than 50% of the Consumers Energy's power supply rates recover fixed costs

Cost Impacts to Bundled Customers from Increased Sales Migration to Electric Choice



$13-$15 million of fixed costs shifted to remaining bundled customers for every 1% decrease in sales

2008 Energy Laws are working for Michigan

Consumers Energy
Count on Us

- PA 286 reserved 10 percent of the electric market for alternative suppliers.
- New law functioning as designed: Providing energy certainty to encourage utilities to make job creating investments and to protect customers from price spikes
- Alternative Energy Suppliers: Primarily out-of-state power brokers with limited to no investment in Michigan
- Consumers Energy committed to Michigan here for the long run

	Consumers Energy	AES
Obligation to Serve All Customers	Yes	No
Energy Prices Regulated by MPSC	Yes	No
Generation Assets in Michigan	Yes	Limited
Pay Michigan Property Taxes	Yes	Limited
Contract Oversight by MPSC	Yes	No
Shut Off Protection	Yes	No
Low Income Protection	Yes	No
EO Programs Required	Yes	No
RPS Required	Yes	Limited – REC Purchase
Michigan Based	Yes	Limited

Act No. 286
Public Acts of 2008
Approved by the Governor
October 6, 2008
Filed with the Secretary of State
October 6, 2008
EFFECTIVE DATE: October 6, 2008

STATE OF MICHIGAN
94TH LEGISLATURE
REGULAR SESSION OF 2008

Introduced by Reps. Accavitti, Angerer, Mayes, Hopgood, Gaffney, LaJoy and Hune

ENROLLED HOUSE BILL No. 5524

AN ACT 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 sections 6a, 10, 10a, 10b, 10d, 10g, 10p, 10r, 10x, and 10y (MCL 460.6a, 460.10, 460.10a, 460.10b, 460.10d, 460.10g, 460.10p, 460.10r, 460.10x, and 460.10y), section 6a as amended by 1992 PA 37, sections 10, 10b, 10p, 10r, 10x, and 10y as added by 2000 PA 141, section 10a as amended by 2004 PA 88, section 10d as amended by 2002 PA 609, and section 10g as amended by 2001 PA 48, and by adding sections 4a, 6q, 6s, 10dd, and 11.

The People of the State of Michigan enact:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Except as otherwise provided in this subsection, if the commission fails to reach a final decision with respect to a completed petition or application to increase or decrease utility rates within the 12-month period following the filing

of the completed petition or application, the petition or application is considered approved. If a utility makes any significant amendment to its filing, the commission has an additional 12 months from the date of the amendment to reach a final decision on the petition or application. If the utility files for an extension of time, the commission shall extend the 12-month period by the amount of additional time requested by the utility.

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

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

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

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

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

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

maintenance costs that the electric utility is required to pay to the merchant plant as reasonably and prudently incurred costs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(12) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) Electric transmission options for the electric utility.

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

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

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

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

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

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

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

(d) To ensure that all persons in this state are afforded safe, reliable electric power at a reasonable rate.

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

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

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

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

(b) Set forth procedures necessary to administer and allocate the amount of load that will be allowed to be served by alternative electric suppliers, through the use of annual energy allotments awarded on a calendar year basis, and shall provide, among other things, that existing customers who are taking electric service from an alternative electric supplier at a facility on the effective date of the amendatory act that added this subdivision shall be given an allocated annual energy allotment for that service at that facility, that customers seeking to expand usage at a facility served through an alternative electric supplier will be given next priority, with the remaining available load, if any, allocated on a first-come first-served basis. The procedures shall also provide how customer facilities will be defined for the purpose of assigning the annual energy allotments to be allocated under this section. The commission shall not allocate additional annual energy allotments at any time when the total annual energy allotments for the utility's distribution service territory is greater than 10% of the utility's weather-adjusted retail sales in the calendar year preceding the date of allocation. If the sales of a utility are less in a subsequent year or if the energy usage of a customer receiving electric service from an alternative electric supplier exceeds its annual energy allotment for that facility, that customer shall not be forced to purchase electricity from a utility, but may purchase electricity from an alternative electric supplier for that facility during that calendar year.

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

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

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

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

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

provided by the utility or the utility's affiliated entities. The code of conduct established under this subsection shall also be applicable to electric utilities and alternative electric suppliers consistent with section 10, this section, and sections 10b through 10cc.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) Except as otherwise provided in this section, the code of conduct with respect to an appliance service program shall not require a utility to form a separate affiliate or division to operate an appliance service program, impose further

restrictions on the sharing of employees, vehicles, equipment, office space, and other facilities, or require the utility to provide other providers of appliance repair service with access to utility employees, vehicles, equipment, office space, or other facilities.

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

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

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

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

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

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

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

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

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

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

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

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

(16) The commission shall authorize rates that will ensure that an electric utility that offered retail open access service from 2002 through the effective date of the amendatory act that added this subsection fully recovers its restructuring costs and any associated accrued regulatory assets. This includes, but is not limited to, implementation costs, stranded costs, and costs authorized pursuant to section 10d(4) as it existed prior to the effective date of the amendatory act that added this subsection, that have been authorized for recovery by the commission in orders issued prior to the effective date of the amendatory act that added this subsection. The commission shall approve surcharges that will ensure full recovery of all such costs within 5 years of the effective date of the amendatory act that added this subsection.

(17) As used in subsections (1) and (15):

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

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

Sec. 10b. (1) The commission shall establish rates, terms, and conditions of electric service that promote and enhance the development of new generation, transmission, and distribution technologies.

(2) No later than 1 year from June 5, 2000, each electric utility shall file an application with the commission to unbundle its existing commercial and industrial rate schedules and separately identify and charge for their discrete services. No earlier than 1 year from June 5, 2000, the commission may order the electric utility to file an application to unbundle existing residential rate schedules. The commission may allow the unbundled rates to be expressed on residential billings in terms of percentages in order to simplify residential billing. The commission shall allow recovery by electric utilities of all just and reasonable costs incurred by electric utilities to implement and administer the provisions of this subsection.

(3) The orders issued under this act shall include, but are not limited to, the providing of reliable and lower cost competitive rates for all customers in this state.

(4) An electric utility is obligated, with commission oversight, to provide standby generation service for open access load on a best efforts basis until December 31, 2001 or the date established under section 10d(2) as it existed prior to the effective date of the amendatory act that added this sentence, whichever is later. The pricing for the electric generation standby service is equal to the retail market price of comparable standby service allowed under subsection (5). An electric utility is not required to interrupt firm off-system sales or firm service customers to provide standby generation service. Until the date established under section 10d(2) as it existed prior to the effective date of the amendatory act that added this sentence, standby generation service shall continue to be provided to nonopen access customers under regulated tariffs.

(5) The methodology for identifying the retail market price for electric generation service to be applied under this section shall be determined by the commission based upon market indices commonly relied upon in the electric generation industry, adjusted as appropriate to reflect retail market prices in the relevant market.

Sec. 10d. (1) If an electric utility serving less than 1,000,000 retail customers in this state as of May 1, 2000 issues securitization bonds as allowed under this act, it 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.

(2) The commission shall take the necessary steps to ensure that all electrical power generating facilities in this state comply with all rules, regulations, and standards of the federal environmental protection agency regarding mercury emissions.

(3) A covered utility may apply to the commission to recover enhanced security costs for an electric generating facility through a security recovery factor. If the commission action under subsection (5) is approval of a security recovery factor, the covered utility may recover those enhanced security costs.

(4) The commission shall require that notice of the application filed under subsection (3) be published by the covered utility within 30 days from the date the application was filed. The initial hearing by the commission shall be held within 20 days of the date the notice was published in newspapers of general circulation in the service territory of the covered utility.

(5) The commission may issue an order approving, rejecting, or modifying the security recovery factor. If the commission issues an order approving a security recovery factor, that order shall be issued within 120 days of the initial hearing required under subsection (4). In determining the security recovery factor, the commission shall only include costs that the commission determines are reasonable and prudent and that are jurisdictionally assigned to retail customers of the covered utility in this state. The costs included shall be net of any proceeds that have been or will be received from another source, including, but not limited to, any applicable insurance settlements received by the covered utility or any grants or other emergency relief from federal, state, or local governmental agencies for the purpose of defraying enhanced security costs. In its order, the commission shall designate a period for recovery of enhanced security costs, including a reasonable return on the unamortized balance, over a period not to exceed 5 years. The security recovery factor shall not be less than zero.

(6) No later than February 18, 2003, the commission shall by order prescribe the form for the filing of an application for a security recovery factor under subsection (3). If the commission or its designee determines that a filing is incomplete, it shall notify the covered utility within 10 days of the filing.

(7) Records or other information supplied by the covered utility in an application for recovery of security costs under subsection (3) that describe security measures, including, but not limited to, emergency response plans, risk planning

documents, threat assessments, domestic preparedness strategies, and other plans for responding to acts of terrorism are not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall be treated as confidential by the commission.

(8) The commission shall issue protective orders as are necessary to protect the information found by the commission to be confidential under this section.

(9) As used in this section:

(a) "Act of terrorism" means a willful and deliberate act that is all of the following:

(*i*) An act that would be a violent felony under the laws of this state, whether or not committed in this state.

(*ii*) An act that the person knows or has reason to know is dangerous to human life.

(*iii*) An act that is intended to intimidate or coerce a civilian population or influence or affect the conduct of government or a unit of government through intimidation or coercion.

(b) "Covered utility" means an electric utility with 1,000,000 or more retail customers in this state as of May 1, 2000 or an electric utility subject to the rate provisions of commission orders in case numbers U-11181-R and U-12204.

(c) "Enhanced security costs" means reasonable and prudent costs of new and enhanced security measures incurred before January 1, 2006 for an electric generating facility by a covered utility that are required by federal or state regulatory security requirements issued after September 11, 2001 or determined to be necessary by the commission to provide reasonable security from an act of terrorism. Enhanced security costs include increases in the cost of insurance that are attributable to an increased terror related risk and the costs of maintaining or restoring electric service as the result of an act of terrorism.

(d) "Security recovery factor" means an unbundled charge for all retail customers, except for customers of alternative electric suppliers, to recover enhanced security costs that have been approved by the commission.

Sec. 10g. (1) As used in sections 10 through 10bb:

(a) "Alternative electric supplier" means a person selling electric generation service to retail customers in this state. Alternative electric supplier does not include a person who physically delivers electricity directly to retail customers in this state. An alternative electric supplier is not a public utility.

(b) "Commission" means the Michigan public service commission created in section 1.

(c) "Electric utility" means that term as defined in section 2 of the electric transmission line certification act, 1995 PA 30, MCL 460.562.

(d) "Independent transmission owner" means an independent transmission company as that term is defined in section 2 of the electric transmission line certification act, 1995 PA 30, MCL 460.562.

(e) "Merchant plant" means electric generating equipment and associated facilities with a capacity of more than 100 kilowatts located in this state that are not owned and operated by an electric utility.

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

(g) "Renewable energy source" means energy generated by solar, wind, geothermal, biomass, including waste-to-energy and landfill gas, or hydroelectric.

(2) A school district aggregating electricity for school properties or an exclusive aggregator for public or private school properties is not an electric utility or a public utility for the purpose of that aggregation.

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

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

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

(a) That the acquiring entity or persons hire a sufficient number of nonsupervisory employees to safely and reliably operate and maintain the station, division, or unit by making offers of employment to the nonsupervisory workforce of the electric utility's division, business unit, generating station, or generating unit.

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

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

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

(4) The electric utility shall offer a transition plan to those employees who are not offered jobs by the entity because the entity has a need for fewer workers. If there is litigation concerning the sale, or other transfer of ownership of the electric utility's divisions, business units, generating stations, or generating units, the 30-month period under subsection (3) begins on the date the acquiring entity or persons take control or management of the divisions, business units, generating stations, or generating units of the electric utility.

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

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

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

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

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

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

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

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

(e) Recommendations for statutory changes that would be necessary to enable the commission to properly monitor and enforce standards to optimize power plant generating cost efficiency and minimize power quality disturbances. These recommendations shall include recommendations to provide methods to ensure that this state can obtain optimal and cost-effective end-use customer power quality to attract economic development and investment into the state.

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

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

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

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

(c) Ensure that the most cost-effective means of addressing power quality disturbances are promoted for each utility, including consideration of the installation of equipment or adoption of operating practices at the end-user's location.

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

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

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

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

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

(14) As used in this section, "jurisdictional utility" or "jurisdictional entity" means jurisdictional regulated utility as that term is defined in section 6q.

Sec. 10r. (1) The commission shall establish minimum standards for the form and content of all disclosures, explanations, or sales information disseminated by a person selling electric service to ensure that the person provides adequate, accurate, and understandable information about the service that enables a customer to make an informed decision relating to the source and type of electric service purchased. The standards shall be developed to do all of the following:

(a) Not be unduly burdensome.

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

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

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

(a) The average fuel mix, including categories for oil, gas, coal, solar, hydroelectric, wind, biofuel, nuclear, solid waste incineration, biomass, and other fuel sources. If a source fits into the other category, the specific source must be disclosed. A regional average, determined by the commission, may be used only for that portion of the electricity purchased by the customer for which the fuel mix cannot be discerned. For the purposes of this subdivision, "biomass" means dedicated crops grown for energy production and organic waste.

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

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

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

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

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

(5) The commission shall establish the Michigan renewables energy program. The program shall be designed to inform customers in this state of the availability and value of using renewable energy generation and the potential of reduced pollution. The program shall also be designed to promote the use of existing renewable energy sources and encourage the development of new facilities.

(6) Within 2 years of the effective date of the amendatory act that added this subsection, the commission shall conduct a study and report to the governor and the house and senate standing committees with oversight of public utilities issues on the advisability of separating electric distribution and generation within electric utilities, taking into account the costs, benefits, efficiencies to be gained or lost, effects on customers, effects on reliability or quality of service, and other factors which the commission determines are appropriate. The report shall include, but is not limited

to, the advisability of locating within separate departments of the utility the personnel responsible for the day-to-day management of electric distribution and generation and maintaining separate books and records for electric distribution and generation.

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

(8) Within 270 days of the effective date of the amendatory act that added this subsection, each electric utility regulated by the commission shall file with the commission a plan for utilizing dispatchable customer-owned distributed generation within the context of its integrated resource planning process. Included in the utility's filing shall be proposals for enrolling and compensating customers for the utility's right to dispatch at-will the distributed generation assets owned by those customers and provisions requiring the customer to maintain these assets in a dispatchable condition. If an electric utility already has programs addressing the subject of the filing required under this subsection, the utility may refer to and take credit for those existing programs in its proposed plan.

Sec. 10x. (1) Any retail customer of a cooperative with a peak load of 1 megawatt or greater shall be provided the opportunity to choose an alternative electric supplier subject to the provisions in section 10a.

(2) The commission shall not require a cooperative electric utility or an independent investor-owned utility with fewer than 60 employees to maintain separate facilities, operations, or personnel, used to deliver electricity to retail customers, provide retail electric service, or to be an alternative electric supplier.

(3) Any debt service recovery charge, or other charge approved by the commission for a cooperative electric utility serving primarily at wholesale may, upon application by its member cooperative or cooperatives, be assessed by and collected through its member cooperative or cooperatives.

(4) The commission shall not prohibit a cooperative electric utility from metering and billing its customers for electric services provided by the cooperative electric utility.

Sec. 10y. (1) The governing body of a municipally owned utility shall determine whether it will permit retail customers receiving delivery service from the municipally owned utility the opportunity of choosing an alternative electric supplier, subject to the implementation of rates, charges, terms, and conditions referred to in subsection (5).

(2) Except with the written consent of the municipally owned utility, a person shall not provide delivery service or customer account service to a retail customer that was receiving that service from a municipally owned utility as of June 5, 2000, or is receiving the service from a municipally owned utility. For purposes of this subsection, "customer" means the building or facilities served rather than the individual, association, partnership, corporation, governmental body, or any other entity taking service.

(3) With respect to any electric utility regarding delivery service to customers located outside of the municipal boundaries of the municipality that owns the utility, a governing body of a municipally owned utility may elect to operate in compliance with R 460.3411 of the Michigan administrative code, as in effect on June 5, 2000. However, compliance with R 460.3411(13) of the Michigan administrative code is not required for the municipally owned utility. Concurrent with the filing of an election under this subsection with the commission, the municipally owned utility shall serve a copy of the election on the electric utility. Beginning 30 days after service of the copy of the election, the electric utility shall, as to the electing municipally owned utility, be subject to the terms of R 460.3411 of the Michigan administrative code as in effect on June 5, 2000. The commission shall decide disputes arising under this subsection subject to judicial review and enforcement.

(4) A municipally owned utility and an electric utility that provides delivery service in the same municipality as the municipally owned utility may enter into a written agreement to define the territorial boundaries of each utility's delivery service area and any other terms and conditions as necessary to provide delivery service. The agreement is not effective unless approved by the governing body of the municipally owned utility and the commission. The governing body of the municipally owned utility and the commission shall annually review and supervise compliance with the terms of the agreement. At the request of a party to the agreement, disputes arising under the agreement shall be decided by the commission subject to judicial review and enforcement.

(5) If the governing body of a municipally owned utility establishes a program to permit any of its customers the opportunity to choose an alternative electric supplier, the governing body of the municipally owned utility shall have exclusive jurisdiction to do all of the following:

(a) Set delivery service rates applicable to services provided by the municipally owned utility that shall not be unduly discriminatory.

(b) Determine the amount and types of, and recovery mechanism for, stranded and transition costs that will be charged.

(c) Establish rules, terms of access, and conditions that it considers appropriate for the implementation of a program to allow customers the opportunity of choosing an alternative electric supplier.

(6) Complaints alleging unduly discriminatory rates or other noncompliance arising under subsection (5) shall be filed in the circuit court for the county in which the municipally owned utility is located.

(7) This section does not prevent or limit a municipally owned utility from selling electricity at wholesale. A municipally owned utility selling at wholesale is not considered to be an alternative electric supplier and is not subject to regulation by the commission.

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

(9) Contracts or other records pertaining to the sale of electricity by a municipally owned utility that are in the possession of a public body and that contain specific pricing or other confidential or proprietary information may be exempted from public disclosure requirements by the governing body of a municipally owned utility. Upon a showing of good cause, disclosure subject to appropriate confidentiality provisions may be ordered by a court or the commission.

(10) This section does not affect the validity of the order relating to the terms and conditions of service in the Traverse City area that was issued August 25, 1994, by the commission at the request of consumers power company and the light and power board of the city of Traverse City.

(11) As provided in section 6, the commission does not have jurisdiction over a municipally owned utility.

(12) As used in this section:

(a) "Delivery service" means the providing of electric transmission or distribution to a retail customer.

(b) "Municipality" means any city, village, or township.

(c) "Customer account services" means billing and collection, provision of a meter, meter maintenance and testing, meter reading, and other administrative activity associated with maintaining a customer account.

(13) In the event that an entity purchases 1 or more divisions or business units, or generating stations or generating units, of a municipal electric utility, the acquiring entity's contract and agreements with the selling municipality shall require all of the following for a period of at least 30 months:

(a) That the acquiring entity or persons hires a sufficient number of employees to safely and reliably operate and maintain the station, division, or unit by first making offers of employment to the workforce of the municipal electric utility's division, business unit, or generating unit.

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

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

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

(e) An acquiring entity is exempt from the obligations in this subsection if the selling municipality transfers all displaced municipal electric utility employees to positions of employment within the municipality at no less than the wage rates and substantially equivalent fringe benefits and terms and conditions of employment that are in effect at the time of transfer. The wage rates and substantially equivalent fringe benefits and terms and conditions of employment shall continue for at least 30 months from the time of the transfer unless the employees, or where applicable collective bargaining representative, and the municipality mutually agree to different terms and conditions of the employment within that 30-month period.

Sec. 10dd. For the fiscal year ending September 30, 2009, there is appropriated to the commission from the assessments imposed under 1972 PA 299, MCL 460.111 to 460.120, the amount of $2,500,000.00 to hire 25.0 full-time equated positions to implement the provisions of the amendatory act that added this section.

Sec. 11. (1) This subsection applies beginning January 1, 2009. Except as otherwise provided in this subsection, the commission shall phase in electric rates equal to the cost of providing service to each customer class over a period of 5 years from the effective date of the amendatory act that added this section. If the commission determines that the rate impact on industrial metal melting customers will exceed the 2.5% limit in subsection (2), the commission may

phase in cost-based rates for that class over a longer period. The cost of providing service to each customer class shall be based on the allocation of production-related and transmission costs based on using the 50-25-25 method of cost allocation. The commission may modify this method to better ensure rates are equal to the cost of service if this method does not result in a greater amount of production-related and transmission costs allocated to primary customers.

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

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

(4) Notwithstanding any other provision of this section, the commission shall establish rate schedules which ensure that public and private schools, universities, and community colleges are charged retail electric rates that reflect the actual cost of providing service to those customers. Not later than 90 days after the effective date of the amendatory act that added this section, electric utilities regulated under this section shall file with the commission tariffs to ensure that public and private schools, universities, and community colleges are charged electric rates as provided in this subsection.

(5) Subsections (1) to (4) apply only to electric utilities with 1,000,000 or more retail customers in this state.

(6) This subsection applies beginning January 1, 2009. The commission shall approve rates equal to the cost of providing service to customers of electric utilities serving less than 1,000,000 retail customers in this state. The rates shall be approved by the commission in each utility's first general rate case filed after passage of the amendatory act that added this section. If, in the judgment of the commission, the impact of imposing cost of service rates on customers of a utility would have a material impact, the commission may approve an order that implements those rates over a suitable number of years. The commission shall ensure that any impact on rates due to the cost of service requirement in this subsection is not more than 2.5% per year.

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

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 213 of the 94th Legislature is enacted into law.

This act is ordered to take immediate effect.

Richard J. Brown

Clerk of the House of Representatives

Carol Morey Viventi

Secretary of the Senate

Approved _____

_____

Governor

CLEAN, RENEWABLE, AND EFFICIENT ENERGY ACT
Act 295 of 2008

AN ACT to require certain providers of electric service to establish renewable energy programs; to require certain providers of electric or natural gas service to establish energy optimization programs; to authorize the use of certain energy systems to meet the requirements of those programs; to provide for the approval of energy optimization service companies; to provide for certain charges on electric and natural gas bills; to promote energy conservation by state agencies and the public; to create a wind energy resource zone board and provide for its power and duties; to authorize the creation and implementation of wind energy resource zones; to provide for expedited transmission line siting certificates; to provide for a net metering program and the responsibilities of certain providers of electric service and customers with respect to net metering; to provide for fees; to prescribe the powers and duties of certain state agencies and officials; to require the promulgation of rules and the issuance of orders; and to provide for civil sanctions, remedies, and penalties.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

The People of the State of Michigan enact:

PART 1.
GENERAL PROVISIONS

460.1001 Short title; purpose of act.

Sec. 1. (1) This act shall be known and may be cited as the "clean, renewable, and efficient energy act".

(2) The purpose of this act is to promote the development of clean energy, renewable energy, and energy optimization through the implementation of a clean, renewable, and energy efficient standard that will cost-effectively do all of the following:

(a) Diversify the resources used to reliably meet the energy needs of consumers in this state.

(b) Provide greater energy security through the use of indigenous energy resources available within the state.

(c) Encourage private investment in renewable energy and energy efficiency.

(d) Provide improved air quality and other benefits to energy consumers and citizens of this state.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1003 Definitions; A to C.

Sec. 3. As used in this act:

(a) "Advanced cleaner energy" means electricity generated using an advanced cleaner energy system.

(b) "Advanced cleaner energy credit" means a credit certified under section 43 that represents generated advanced cleaner energy.

(c) "Advanced cleaner energy system" means any of the following:

(*i*) A gasification facility.

(*ii*) An industrial cogeneration facility.

(*iii*) A coal-fired electric generating facility if 85% or more of the carbon dioxide emissions are captured and permanently geologically sequestered.

(*iv*) An electric generating facility or system that uses technologies not in commercial operation on the effective date of this act.

(d) "Affiliated transmission company" means that term as defined in the electric transmission line certification act, 1995 PA 30, MCL 460.562.

(e) "Applicable regional transmission organization" means a nonprofit, member-based organization governed by an independent board of directors that serves as the federal energy regulatory commission-approved regional transmission organization with oversight responsibility for the region that includes the provider's service territory.

(f) "Biomass" means any organic matter that is not derived from fossil fuels, that can be converted to usable fuel for the production of energy, and that replenishes over a human, not a geological, time frame, including, but not limited to, all of the following:

(*i*) Agricultural crops and crop wastes.

(*ii*) Short-rotation energy crops.

(*iii*) Herbaceous plants.

(*iv*) Trees and wood, but only if derived from sustainably managed forests or procurement systems, as defined in section 261c of the management and budget act, 1984 PA 431, MCL 18.1261c.

(*v*) Paper and pulp products.

(*vi*) Precommercial wood thinning waste, brush, or yard waste.

(*vii*) Wood wastes and residues from the processing of wood products or paper.

(*viii*) Animal wastes.

(*ix*) Wastewater sludge or sewage.

(*x*) Aquatic plants.

(*xi*) Food production and processing waste.

(*xii*) Organic by-products from the production of biofuels.

(g) "Board" means the wind energy resource zone board created under section 143.

(h) "Carbon dioxide emissions benefits" means that the carbon dioxide emissions per megawatt hour of electricity generated by the advanced cleaner energy system are at least 85% less or, for an integrated gasification combined cycle facility, 70% less than the average carbon dioxide emissions per megawatt hour of electricity generated from all coal-fired electric generating facilities operating in this state on January 1, 2008.

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

(j) "Customer meter" means an electric meter of a provider's retail customer. Customer meter does not include a municipal water pumping meter or additional meters at a single site that were installed specifically to support interruptible air conditioning, interruptible water heating, net metering, or time-of-day tariffs.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1005 Definitions; E, F.

Sec. 5. As used in this act:

(a) "Electric provider", subject to sections 21(1), 23(1), and 25(1), means any of the following:

(*i*) Any person or entity that is regulated by the commission for the purpose of selling electricity to retail customers in this state.

(*ii*) A municipally-owned electric utility in this state.

(*iii*) A cooperative electric utility in this state.

(*iv*) Except as used in subpart B of part 2, an alternative electric supplier licensed under section 10a of 1939 PA 3, MCL 460.10a.

(b) "Eligible electric generator" means that a methane digester or renewable energy system with a generation capacity limited to the customer's electric need and that does not exceed the following:

(*i*) For a renewable energy system, 150 kilowatts of aggregate generation at a single site.

(*ii*) For a methane digester, 550 kilowatts of aggregate generation at a single site.

(c) "Energy conservation" means the reduction of customer energy use through the installation of measures or changes in energy usage behavior. Energy conservation does not include the use of advanced cleaner energy systems.

(d) "Energy efficiency" means a decrease in customer consumption of electricity or natural gas achieved through measures or programs that target customer behavior, equipment, devices, or materials without reducing the quality of energy services.

(e) "Energy optimization", subject to subdivision (f), means all of the following:

(*i*) Energy efficiency.

(*ii*) Load management, to the extent that the load management reduces overall energy usage.

(*iii*) Energy conservation, but only to the extent that the decreases in the consumption of electricity produced by energy conservation are objectively measurable and attributable to an energy optimization plan.

(f) Energy optimization does not include electric provider infrastructure projects that are approved for cost recovery by the commission other than as provided in this act.

(g) "Energy optimization credit" means a credit certified pursuant to section 87 that represents achieved energy optimization.

(h) "Energy optimization plan" or "EO plan" means a plan under section 71.

(i) "Energy optimization standard" means the minimum energy savings required to be achieved under section 77.

(j) "Energy star" means the voluntary partnership among the United States department of energy, the

United States environmental protection agency, product manufacturers, local utilities, and retailers to help promote energy efficient products by labeling with the energy star logo, educate consumers about the benefits of energy efficiency, and help promote energy efficiency in buildings by benchmarking and rating energy performance.

(k) "Federal approval" means approval by the applicable regional transmission organization or other federal energy regulatory commission approved transmission planning process of a transmission project that includes the transmission line. Federal approval may be evidenced in any of the following manners:

(*i*) The proposed transmission line is part of a transmission project included in the applicable regional transmission organization's board-approved transmission expansion plan.

(*ii*) The applicable regional transmission organization has informed the electric utility, affiliated transmission company, or independent transmission company that a transmission project submitted for an out-of-cycle project review has been approved by the applicable regional transmission organization, and the approved transmission project includes the proposed transmission line.

(*iii*) If, after the effective date of this act, the applicable regional transmission organization utilizes another approval process for transmission projects proposed by an electric utility, affiliated transmission company, or independent transmission company, the proposed transmission line is included in a transmission project approved by the applicable regional transmission organization through the approval process developed after the effective date of this act.

(*iv*) Any other federal energy regulatory commission approved transmission planning process for a transmission project.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1007 Definitions; G to M.

Sec. 7. As used in this act:

(a) "Gasification facility" means a facility located in this state that uses a thermochemical process that does not involve direct combustion to produce synthesis gas, composed of carbon monoxide and hydrogen, from carbon-based feedstocks (such as coal, petroleum coke, wood, biomass, hazardous waste, medical waste, industrial waste, and solid waste, including, but not limited to, municipal solid waste, electronic waste, and waste described in section 11514 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.11514) and that uses the synthesis gas or a mixture of the synthesis gas and methane to generate electricity for commercial use. Gasification facility includes the transmission lines, gas transportation lines and facilities, and associated property and equipment specifically attributable to such a facility. Gasification facility includes, but is not limited to, an integrated gasification combined cycle facility and a plasma arc gasification facility.

(b) "Incremental costs of compliance" means the net revenue required by an electric provider to comply with the renewable energy standard, calculated as provided under section 47.

(c) "Independent transmission company" means that term as defined in section 2 of the electric transmission line certification act, 1995 PA 30, MCL 460.562.

(d) "Industrial cogeneration facility" means a facility that generates electricity using industrial thermal energy or industrial waste energy.

(e) "Industrial thermal energy" means thermal energy that is a by-product of an industrial or manufacturing process and that would otherwise be wasted. For the purposes of this subdivision, industrial or manufacturing process does not include the generation of electricity.

(f) "Industrial waste energy" means exhaust gas or flue gas that is a by-product of an industrial or manufacturing process and that would otherwise be wasted. For the purposes of this subdivision, industrial or manufacturing process does not include the generation of electricity.

(g) "Integrated gasification combined cycle facility" means a gasification facility that uses a thermochemical process, including high temperatures and controlled amounts of air and oxygen, to break substances down into their molecular structures and that uses exhaust heat to generate electricity.

(h) "LEED" means the leadership in energy and environmental design green building rating system developed by the United States green building council.

(i) "Load management" means measures or programs that target equipment or devices to result in decreased peak electricity demand such as by shifting demand from a peak to an off-peak period.

(j) "Modified net metering" means a utility billing method that applies the power supply component of the full retail rate to the net of the bidirectional flow of kilowatt hours across the customer interconnection with the utility distribution system, during a billing period or time-of-use pricing period. A negative net metered

quantity during the billing period or during each time-of-use pricing period within the billing period reflects net excess generation for which the customer is entitled to receive credit under section 177(4). Standby charges for modified net metering customers on an energy rate schedule shall be equal to the retail distribution charge applied to the imputed customer usage during the billing period. The imputed customer usage is calculated as the sum of the metered on-site generation and the net of the bidirectional flow of power across the customer interconnection during the billing period. The commission shall establish standby charges for modified net metering customers on demand-based rate schedules that provide an equivalent contribution to utility system costs.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1009 Definitions; N to Q.

Sec. 9. As used in this act:

(a) "Natural gas provider" means an investor-owned business engaged in the sale and distribution of natural gas within this state whose rates are regulated by the commission. However, as used in subpart B of part 2, natural gas provider does not include an alternative gas supplier licensed under section 9b of 1939 PA 3, MCL 460.9b.

(b) "Plasma arc gasification facility" means a gasification facility that uses a plasma torch to break substances down into their molecular structures.

(c) "Provider" means an electric provider or a natural gas provider.

(d) "PURPA" means the public utility regulatory policies act of 1978, Public Law 95-617.

(e) "Qualifying small power production facility" means that term as defined in 16 USC 824a-3.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1011 Definitions; R.

Sec. 11. As used in this act:

(a) "Renewable energy" means electricity generated using a renewable energy system.

(b) "Renewable energy capacity portfolio" means the number of megawatts calculated under section 27(2) for a particular year.

(c) "Renewable energy contract" means a contract to acquire renewable energy and the associated renewable energy credits from 1 or more renewable energy systems.

(d) "Renewable energy credit" means a credit granted pursuant to section 41 that represents generated renewable energy.

(e) "Renewable energy credit portfolio" means the sum of the renewable energy credits achieved by a provider for a particular year.

(f) "Renewable energy credit standard" means a minimum renewable energy portfolio required under section 27.

(g) "Renewable energy generator" means a person that, together with its affiliates, has constructed or has owned and operated 1 or more renewable energy systems with combined gross generating capacity of at least 10 megawatts.

(h) "Renewable energy plan" or "plan", means a plan approved under section 21 or 23 or found to comply with this act under section 25, with any amendments adopted under this act.

(i) "Renewable energy resource" means a resource that naturally replenishes over a human, not a geological, time frame and that is ultimately derived from solar power, water power, or wind power. Renewable energy resource does not include petroleum, nuclear, natural gas, or coal. A renewable energy resource comes from the sun or from thermal inertia of the earth and minimizes the output of toxic material in the conversion of the energy and includes, but is not limited to, all of the following:

(*i*) Biomass.

(*ii*) Solar and solar thermal energy.

(*iii*) Wind energy.

(*iv*) Kinetic energy of moving water, including all of the following:

(A) Waves, tides, or currents.

(B) Water released through a dam.

(*v*) Geothermal energy.

(*vi*) Municipal solid waste.

(*vii*) Landfill gas produced by municipal solid waste.

(j) "Renewable energy standard" means the minimum renewable energy capacity portfolio, if applicable, and the renewable energy credit portfolio required to be achieved under section 27.

(k) "Renewable energy system" means a facility, electricity generation system, or set of electricity generation systems that use 1 or more renewable energy resources to generate electricity. Renewable energy system does not include any of the following:

(*i*) A hydroelectric pumped storage facility.

(*ii*) A hydroelectric facility that uses a dam constructed after the effective date of this act unless the dam is a repair or replacement of a dam in existence on the effective date of this act or an upgrade of a dam in existence on the effective date of this act that increases its energy efficiency.

(*iii*) An incinerator unless the incinerator is a municipal solid waste incinerator as defined in section 11504 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.11504, that was brought into service before the effective date of this act, including any of the following:

(A) Any upgrade of such an incinerator that increases energy efficiency.

(B) Any expansion of such an incinerator before the effective date of this act.

(C) Any expansion of such an incinerator on or after the effective date of this act to an approximate design rated capacity of not more than 950 tons per day pursuant to the terms of a final request for proposals issued on or before October 1, 1986.

(*l*) "Revenue recovery mechanism" means the mechanism for recovery of incremental costs of compliance established under section 21.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1013 Definitions; S to W.

Sec. 13. As used in this act:

(a) "Site" means a contiguous site, regardless of the number of meters at that site. A site that would be contiguous but for the presence of a street, road, or highway shall be considered to be contiguous for the purposes of this subdivision.

(b) "Transmission line" means all structures, equipment, and real property necessary to transfer electricity at system bulk supply voltage of 100 kilovolts or more.

(c) "True net metering" means a utility billing method that applies the full retail rate to the net of the bidirectional flow of kilowatt hours across the customer interconnection with the utility distribution system, during a billing period or time-of-use pricing period. A negative net metered quantity during the billing period or during each time-of-use pricing period within the billing period reflects net excess generation for which the customer is entitled to receive credit under section 177(4).

(d) "Utility system resource cost test" means a standard that is met for an investment in energy optimization if, on a life cycle basis, the total avoided supply-side costs to the provider, including representative values for electricity or natural gas supply, transmission, distribution, and other associated costs, are greater than the total costs to the provider of administering and delivering the energy optimization program, including net costs for any provider incentives paid by customers and capitalized costs recovered under section 89.

(e) "Wind energy conversion system" means a renewable energy system that uses 1 or more wind turbines to generate electricity and has a nameplate capacity of 100 kilowatts or more.

(f) "Wind energy resource zone" or "wind zone" means an area designated by the commission under section 147.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

PART 2.
ENERGY STANDARDS

SUBPART A.
RENEWABLE ENERGY

460.1021 Electric providers; regulation of rates by commission; applicability of section; filing of proposed renewable energy plan; requirements; establishment of nonvolumetric

mechanism; revenue recovery mechanism; agreement with customer to participate in commission-approved voluntary renewable energy program; reserve funds; contested case hearing on proposed plan; approval; determination; initial approval; review; amendment; rejection of proposed plan or amendment.

Sec. 21. (1) This section applies only to electric providers whose rates are regulated by the commission.

(2) Each electric provider shall file a proposed renewable energy plan with the commission within 90 days after the commission issues a temporary order under section 171. The proposed plan shall meet all of the following requirements:

(a) Describe how the electric provider will meet the renewable energy standards.

(b) Specify whether the number of megawatt hours of electricity used in the calculation of the renewable energy credit portfolio will be weather-normalized or based on the average number of megawatt hours of electricity sold by the electric provider annually during the previous 3 years to retail customers in this state. Once the plan is approved by the commission, this option shall not be changed.

(c) Include the expected incremental cost of compliance with the renewable energy standards for a 20-year period beginning when the plan is approved by the commission.

(d) For an electric provider that had 1,000,000 or more retail customers in this state on January 1, 2008, describe the bidding process to be used by the electric provider under section 33. The description shall include measures to be employed in the preparation of requests for proposals and the handling and evaluation of proposals received to ensure that any bidder that is an affiliate of the electric utility is not afforded a competitive advantage over any other bidder and that each bidder, including any bidder that is an affiliate of the electric provider, is treated in a fair and nondiscriminatory manner.

(3) The proposed plan shall establish a nonvolumetric mechanism for the recovery of the incremental costs of compliance within the electric provider's customer rates. The revenue recovery mechanism shall not result in rate impacts that exceed the monthly maximum retail rate impacts specified under section 45. The revenue recovery mechanism is subject to adjustment under sections 47(4) and 49. A customer participating in a commission-approved voluntary renewable energy program under an agreement in effect on the effective date of this act shall not incur charges under the revenue recovery mechanism unless the charges under the revenue recovery mechanism exceed the charges the customer is incurring for the voluntary renewable energy program. In that case, the customer shall only incur the difference between the charge assessed under the revenue recovery mechanism and the charges the customer is incurring for the voluntary renewable energy program. The limitation on charges applies only during the term of the agreement, not including automatic agreement renewals, or until 1 year after the effective date of this act, whichever is later. Before entering an agreement with a customer to participate in a commission-approved voluntary renewable energy program and before the last automatic monthly renewal of such an agreement that will occur less than 1 year after the effective date of this act, an electric provider shall notify the customer that the customer will be responsible for the full applicable charges under the revenue recovery mechanism and under the voluntary renewable energy program as provided under this subsection.

(4) If proposed by the electric provider in its proposed plan, the revenue recovery mechanism shall result in an accumulation of reserve funds in advance of expenditure and the creation of a regulatory liability that accrues interest at the average short-term borrowing rate available to the electric provider during the appropriate period. If proposed by the electric provider in its proposed plan, the commission shall establish a minimum balance of accumulated reserve funds for the purposes of section 47(4).

(5) The commission shall conduct a contested case hearing on the proposed plan filed under subsection (2), pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. If a renewable energy generator files a petition to intervene in the contested case in the manner prescribed by the commission's rules for interventions generally, the commission shall grant the petition. Subject to subsections (6) and (10), after the hearing and within 90 days after the proposed plan is filed with the commission, the commission shall approve, with any changes consented to by the electric provider, or reject the plan.

(6) The commission shall not approve an electric provider's plan unless the commission determines both of the following:

(a) That the plan is reasonable and prudent. In making this determination, the commission shall take into consideration projected costs and whether or not projected costs included in prior plans were exceeded.

(b) That the life-cycle cost of renewable energy acquired or generated under the plan less the projected life-cycle net savings associated with the provider's energy optimization plan does not exceed the expected life-cycle cost of electricity generated by a new conventional coal-fired facility. In determining the expected life-cycle cost of electricity generated by a new conventional coal-fired facility, the commission shall consider data from this state and the states of Ohio, Indiana, Illinois, Wisconsin, and Minnesota, including, if

applicable, the life-cycle costs of the renewable energy system and new conventional coal-fired facilities. When determining the life-cycle costs of the renewable energy system and new conventional coal-fired facilities, the commission shall use a methodology that includes, but is not limited to, consideration of the value of energy, capacity, and ancillary services. The commission shall also consider other costs such as transmission, economic benefits, and environmental costs, including, but not limited to, greenhouse gas constraints or taxes. In performing its assessment, the commission may utilize other available data, including national or regional reports and data published by federal or state governmental agencies, industry associations, and consumer groups.

(7) An electric provider shall not begin recovery of the incremental costs of compliance within its rates until the commission has approved its proposed plan.

(8) Every 2 years after initial approval of a plan under subsection (5), the commission shall review the plan. The commission shall conduct a contested case hearing on the plan pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The annual renewable cost reconciliation under section 49 for that year may be joined with the overall plan review in the same contested case hearing. Subject to subsections (6) and (10), after the hearing, the commission shall approve, with any changes consented to by the electric provider, or reject the plan and any proposed amendments to the plan.

(9) If an electric provider proposes to amend its plan at a time other than during the biennial review process under subsection (8), the electric provider shall file the proposed amendment with the commission. If the proposed amendment would modify the revenue recovery mechanism, the commission shall conduct a contested case hearing on the amendment pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The annual renewable cost reconciliation under section 49 may be joined with the plan amendment in the same contested case proceeding. Subject to subsections (6) and (10), after the hearing and within 90 days after the amendment is filed, the commission shall approve, with any changes consented to by the electric provider, or reject the plan and the proposed amendment or amendments to the plan.

(10) If the commission rejects a proposed plan or amendment under this section, the commission shall explain in writing the reasons for its determination.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides:
"Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."
In subsection (2), the reference to "section 171" evidently should read "section 191".

460.1023 Alternative electric suppliers and cooperative electric utilities; applicability of section; filing of proposed renewable energy plan; requirements; public comment; initial approval; review; amendment; rejection of proposed plan or amendment.

Sec. 23. (1) This section applies only to alternative electric suppliers and cooperative electric utilities that have elected to become member-regulated under the electric cooperative member-regulation act, 2008 PA 167, MCL 460.31 to 460.39.

(2) Each alternative electric supplier or cooperative electric utility shall file a proposed renewable energy plan with the commission within 90 days or 120 days, respectively, after the commission issues a temporary order under section 171. The proposed plan shall meet all of the following requirements:

(a) Describe how the electric provider will meet the renewable energy standards.

(b) Specify whether the number of megawatt hours of electricity used in the calculation of the renewable energy portfolio will be weather-normalized or based on the average number of megawatt hours of electricity sold by the electric provider annually during the previous 3 years to retail customers in this state. Once the plan is approved by the commission, this option shall not be changed.

(3) The commission shall provide an opportunity for public comment on the proposed plan filed under subsection (2). After the opportunity for public comment and within 90 days after the proposed plan is filed with the commission, the commission shall approve, with any changes consented to by the electric provider, or reject the plan.

(4) Every 2 years after initial approval of a plan under subsection (3), the commission shall review the plan. The commission shall provide an opportunity for public comment on the plan. After the opportunity for public comment, the commission shall approve, with any changes consented to by the electric provider, or reject any proposed amendments to the plan.

(5) If an electric provider proposes to amend its plan at a time other than during the biennial review process under subsection (4), the electric provider shall file the proposed amendment with the commission. The commission shall provide an opportunity for public comment on the amendment. After the opportunity for public comment and within 90 days after the amendment is filed, the commission shall approve, with any

changes consented to by the electric provider, or reject the amendment.

(6) If the commission rejects a proposed plan or amendment under this section, the commission shall explain in writing the reasons for its determination.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides:
"Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."
In subsection (2), the reference to "section 171" evidently should read "section 191".

460.1025 Municipally-owned electric utilities; applicability of section; filing of renewable energy plan; requirements; public comment; initial approval; review; amendment; determination of noncompliance.

Sec. 25. (1) This section applies only to municipally-owned electric utilities.

(2) Each electric provider shall file a proposed renewable energy plan with the commission within 120 days after the commission issues a temporary order under section 171. Two or more electric providers that each serve fewer than 15,000 customers may file jointly. The proposed plan shall meet all of the following requirements:

(a) Describe how the provider will meet the renewable energy standards.

(b) Specify whether the number of megawatt hours of electricity used in the calculation of the renewable energy credit portfolio will be weather-normalized or based on the average number of megawatt hours of electricity sold by the electric provider annually during the previous 3 years to retail customers in this state. Once the commission determines that the proposed plan complies with this act, this option shall not be changed.

(c) Include the expected incremental cost of compliance with the renewable energy standards.

(d) Describe the manner in which the provider will allocate costs.

(3) Subject to subsection (6), the commission shall provide an opportunity for public comment on the proposed plan filed under subsection (2). After the applicable opportunity for public comment and within 90 days after the proposed plan is filed with the commission, the commission shall determine whether the proposed plan complies with this act.

(4) Every 2 years after the commission initially determines under subsection (3) that a renewable energy plan complies with this act, the commission shall review the plan. Subject to subsection (6), the commission shall provide an opportunity for public comment on the plan. After the applicable opportunity for public comment, the commission shall determine whether any amendment to the plan proposed by the provider complies with this act. The proposed amendment is adopted if the commission determines that it complies with this act.

(5) If a provider proposes to amend its renewable energy plan at a time other than during the biennial review process under subsection (4), the provider shall file the proposed amendment with the commission. Subject to subsection (6), the commission shall provide an opportunity for public comment on the amendment. After the applicable opportunity for public comment and within 90 days after the amendment is filed, the commission shall determine whether the proposed amendment to the plan complies with this act. The proposed amendment is adopted if the commission determines that it complies with this act.

(6) The commission need not provide an opportunity for public comment under subsection (3), (4), or (5) if the governing body of the provider has already provided an opportunity for public comment and filed the comments with the commission.

(7) If the commission determines that a proposed plan or amendment under this section does not comply with this act, the commission shall explain in writing the reasons for its determination.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides:
"Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."
In subsection (2), the reference to "section 171" evidently should read "section 191".

460.1027 Electric utility with 1,000,000 or more retail customers; renewable energy capacity portfolio; renewable energy credit portfolio; standards; substitution of energy optimization credits, advanced cleaner energy credits, or combination; rates.

Sec. 27. (1) Subject to sections 31 and 45, and in addition to the requirements of subsection (3), an electric provider that is an electric utility with 1,000,000 or more retail customers in this state as of January 1, 2008 shall achieve a renewable energy capacity portfolio of not less than the following:

(a) For an electric provider with more than 1,000,000 but less than 2,000,000 retail electric customers in this state on January 1, 2008, a renewable energy capacity portfolio of 200 megawatts by December 31, 2013

and 500 megawatts by December 31, 2015.

(b) For an electric provider with more than 2,000,000 retail electric customers in this state on January 1, 2008, a renewable energy capacity portfolio of 300 megawatts by December 31, 2013 and 600 megawatts by December 31, 2015.

(2) An electric provider's renewable energy capacity portfolio shall be calculated by adding the following:

(a) The nameplate capacity in megawatts of renewable energy systems owned by the electric provider that were not in commercial operation before the effective date of this act.

(b) The capacity in megawatts of renewable energy that the electric provider is entitled to purchase under contracts that were not in effect before the effective date of this act.

(3) Subject to sections 31 and 45, an electric provider shall achieve a renewable energy credit portfolio as follows:

(a) In 2012, 2013, 2014, and 2015, a renewable energy credit portfolio based on the sum of the following:

(*i*) The number of renewable energy credits from electricity generated in the 1-year period preceding the effective date of this act that would have been transferred to the electric provider pursuant to section 35(1), if this act had been in effect during that 1-year period.

(*ii*) The number of renewable energy credits equal to the number of megawatt hours of electricity produced or obtained by the electric provider in the 1-year period preceding the effective date of this act from renewable energy systems for which recovery in electric rates was approved on the effective date of this act.

(*iii*) Renewable energy credits in an amount calculated as follows:

(A) Taking into account the number of renewable energy credits under subparagraphs (*i*) and (*ii*), determine the number of additional renewable energy credits that the electric provider would need to reach a 10% renewable energy portfolio in that year.

(B) Multiply the number under sub-subparagraph (A) by 20% for 2012, 33% for 2013, 50% for 2014, and 100% for 2015.

(b) In 2016 and each year thereafter, maintain a renewable energy credit portfolio that consists of at least the same number of renewable energy credits as were required in 2015 under subdivision (a).

(4) An electric provider's renewable energy credit portfolio shall be calculated as follows:

(a) Determine the number of renewable energy credits used to comply with this subpart during the applicable year.

(b) Divide by 1 of the following at the option of the electric provider as specified in its renewable energy plan:

(*i*) The number of weather-normalized megawatt hours of electricity sold by the electric provider during the previous year to retail customers in this state.

(*ii*) The average number of megawatt hours of electricity sold by the electric provider annually during the previous 3 years to retail customers in this state.

(c) Multiply the quotient under subdivision (b) by 100.

(5) Subject to subsection (6), each electric provider shall meet the renewable energy credit standards with renewable energy credits obtained by 1 or more of the following means:

(a) Generating electricity from renewable energy systems for sale to retail customers.

(b) Purchasing or otherwise acquiring renewable energy credits with or without the associated renewable energy.

(6) An electric provider may substitute energy optimization credits, advanced cleaner energy credits with or without the associated advanced cleaner energy, or a combination thereof for renewable energy credits otherwise required to meet the renewable energy credit standards if the substitution is approved by the commission. However, commission approval is not required to substitute advanced cleaner energy from industrial cogeneration for renewable energy credits. The commission shall not approve a substitution unless the commission determines that the substitution is cost-effective compared to other sources of renewable energy credits and, if the substitution involves advanced cleaner energy credits, that the advanced cleaner energy system provides carbon dioxide emissions benefits. In determining whether the substitution of advanced cleaner energy credits is cost-effective, the commission shall include as part of the costs of the system the environmental costs attributed to the advanced cleaner energy system, including the costs of environmental control equipment or greenhouse gas constraints or taxes. The commission's determinations shall be made after a contested case hearing that includes consultation with the department of environmental quality on the issue of carbon dioxide emissions benefits, if relevant, and environmental costs.

(7) Under subsection (6), energy optimization credits, advanced cleaner energy credits, or a combination thereof shall not be used by a provider to meet more than 10% of the renewable energy credit standards. Advanced cleaner energy from advanced cleaner energy systems in existence on January 1, 2008 shall not be used by a provider to meet more than 70% of this 10% limit. This 10% limit does not apply to advanced

cleaner energy credits from plasma arc gasification.

(8) Substitutions under subsection (6) shall be made at the following rates per renewable energy credit:

(a) One energy optimization credit.

(b) One advanced cleaner energy credit from plasma arc gasification or industrial cogeneration.

(c) Ten advanced cleaner energy credits other than from plasma arc gasification or industrial cogeneration.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1029 Renewable energy system location; requirements.

Sec. 29. (1) Subject to subsection (2), a renewable energy system that is the source of renewable energy credits used to satisfy the renewable energy standards shall be either located outside of this state in the retail electric customer service territory of any provider that is not an alternative electric supplier or located anywhere in this state. For the purposes of this subsection, a retail electric customer service territory shall be considered to be the territory recognized by the commission on January 1, 2008 and any expansion of retail electric customer service territory recognized by the commission after January 1, 2008 under 1939 PA 3, MCL 460.1 to 460.10cc. The commission may also expand a service territory for the purposes of this subsection if a lack of transmission lines limits the ability to obtain sufficient renewable energy from renewable energy systems that meet the location requirement of this subsection.

(2) The renewable energy system location requirements in subsection (1) do not apply if 1 or more of the following requirements are met:

(a) The renewable energy system is a wind energy conversion system and the electricity generated by the wind energy system, or the renewable energy credits associated with that electricity, is being purchased under a contract in effect on January 1, 2008. If the electricity and associated renewable energy credits purchased under such a contract are used by an electric provider to meet renewable energy requirements established after January 1, 2008 by the legislature of the state in which the wind energy conversion system is located, the electric provider may, for the purpose of meeting the renewable energy credit standard under this act, obtain, by any means authorized under section 27, up to the same number of replacement renewable energy credits from any other wind energy conversion systems located in that state. This subdivision shall not be utilized by an alternative electric supplier unless the alternative electric supplier was licensed in this state on January 1, 2008. Renewable energy credits from a renewable energy system under a contract with an alternative electric supplier under this subdivision shall not be used by another electric provider to meet its requirements under this part.

(b) The renewable energy system is a wind energy conversion system that was under construction or operational and owned by an electric provider on January 1, 2008. This subdivision shall not be utilized by an alternative electric supplier.

(c) The renewable energy system is a wind energy conversion system that includes multiple wind turbines, at least 1 of the wind turbines meets the location requirements of this section, and the remaining wind turbines are within 15 miles of a wind turbine that is part of that wind energy conversion system and that meets the location requirements of this section.

(d) Before January 1, 2008, an electric provider serving not more than 75,000 retail electric customers in this state filed an application for a certificate of authority for the renewable energy system with a state regulatory commission in another state that is also served by the electric provider. However, renewable energy credits shall not be granted under this subdivision for electricity generated using more than 10.0 megawatts of nameplate capacity of the renewable energy system.

(e) Electricity generated from the renewable energy system is sold by a not-for-profit entity located in Indiana or Wisconsin to a municipally-owned electric utility in this state or cooperative electric utility in this state under a contract in effect on January 1, 2008, and the electricity is not being used to meet another state's standard for renewable energy.

(f) Electricity generated from the renewable energy system is sold by a not-for-profit entity located in Ohio to a municipally-owned electric utility in this state under a contract approved by resolution of the governing body of the municipally-owned electric utility by January 1, 2008, and the electricity is not being used to meet another state's standard for renewable energy. However, renewable energy credits shall not be granted for electricity generated using more than 13.4 megawatts of nameplate capacity of the renewable energy system.

(g) All of the following requirements are met:

(*i*) The renewable energy system is a wind energy system, is interconnected to the electric provider's transmission system, and is located in a state in which the electric provider has service territory.

(*ii*) The electric provider competitively bid any contract for engineering, procurement, or construction of

the renewable energy system, if the electric provider owns the renewable energy system, or for purchase of the renewable energy and associated renewable energy credits from the renewable energy system, if the provider does not own the renewable energy system, in a process open to renewable energy systems sited in this state.

(*iii*) The renewable energy credits from the renewable energy system are only used by that electric provider to meet the renewable energy standard.

(*iv*) The electric provider is not an alternative electric supplier.

(3) Advanced cleaner energy systems that are the source of the advanced cleaner energy credits used under section 27 shall be either located outside this state in the service territory of any electric provider that is not an alternative electric supplier or located anywhere in this state.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1031 Extensions of 2015 renewable energy standard deadline; establishment of revised renewable energy standard; compliance; "good cause" defined.

Sec. 31. (1) Upon petition by an electric provider, the commission may for good cause grant 2 extensions of the 2015 renewable energy standard deadline under section 27. Each extension shall be for up to 1 year.

(2) If 2 extensions of the 2015 renewable energy standard deadline have been granted to an electric provider under subsection (1), upon subsequent petition by the electric provider at least 3 months before the expiration of the second extended deadline, the commission shall, after consideration of prior extension requests under this section and for good cause, establish a revised renewable energy standard attainable by the electric provider. If the electric provider achieves the revised renewable energy standard, the provider is considered to be in compliance with this subpart.

(3) An electric provider that makes a good faith effort to spend the full amount of incremental costs of compliance as outlined in its approved renewable energy plan and that complies with its approved plan, subject to any approved extensions or revisions, shall be considered to be in compliance with this subpart.

(4) As used in this section, "good cause" includes, but is not limited to, the electric provider's inability, as determined by the commission, to meet a renewable energy standard because of a renewable energy system feasibility limitation including, but not limited to, any of the following:

(a) Renewable energy system site requirements, zoning, siting, land use issues, permits, including environmental permits, any certificate of need process under section 6s of 1939 PA 3, MCL 460.6s, or any other necessary governmental approvals that effectively limit availability of renewable energy systems, if the electric provider exercised reasonable diligence in attempting to secure the necessary governmental approvals. For purposes of this subdivision, "reasonable diligence" includes, but is not limited to, submitting timely applications for the necessary governmental approvals and making good faith efforts to ensure that the applications are administratively complete and technically sufficient.

(b) Equipment cost or availability issues including electrical equipment or renewable energy system component shortages or high costs that effectively limit availability of renewable energy systems.

(c) Cost, availability, or time requirements for electric transmission and interconnection.

(d) Projected or actual unfavorable electric system reliability or operational impacts.

(e) Labor shortages that effectively limit availability of renewable energy systems.

(f) An order of a court of competent jurisdiction that effectively limits the availability of renewable energy systems.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1033 Electric provider with 1,000,000 or more retail customers; obtaining renewable energy credits to meet standard in 2015; exception; submission of contract for approval.

Sec. 33. (1) Subject to subsections (2) and (3), an electric provider that had 1,000,000 or more retail customers in this state on January 1, 2008 shall obtain the renewable energy credits that are necessary to meet the renewable energy credit standard in 2015 and thereafter as follows:

(a) At the electric provider's option, up to but no more than 50% of the renewable energy credits shall be from any of the following:

(*i*) Renewable energy systems that were developed by and are owned by the electric provider. An electric provider shall competitively bid any contract for engineering, procurement, or construction of any new renewable energy systems described in this subdivision. However, an electric provider may consider

unsolicited proposals presented to it by a renewable energy system developer outside of a competitive bid process. If the provider determines that such an unsolicited proposal provides opportunities that may not otherwise be available or commercially practical, the provider may enter into a contract with the developer.

(*ii*) Renewable energy systems that were developed by 1 or more third parties pursuant to a contract with the electric provider under which the ownership of the renewable energy system may be transferred to the electric provider, but only after the renewable energy system begins commercial operation. Any such contract shall be executed after a competitive bidding process conducted pursuant to guidelines issued by the commission. However, an electric provider may consider unsolicited proposals presented to it by a renewable energy system developer outside of a competitive bid process. If the provider determines that such an unsolicited proposal provides opportunities that may not otherwise be available or commercially practical, the provider may enter into a contract with the developer. An affiliate of the electric provider may submit a proposal in response to a request for proposals, subject to the code of conduct under section 10a(4) of 1939 PA 3, MCL 460.10a, and the sanctions for violation of the code under section 10c of 1939 PA 3, MCL 460.10c.

(b) At least 50% of the renewable energy credits shall be from renewable energy contracts that do not require transfer of ownership of the applicable renewable energy system to the electric provider or from contracts for the purchase of renewable energy credits without the associated renewable energy. A renewable energy contract or contract for the purchase of renewable energy credits under this subdivision shall be executed after a competitive bidding process conducted pursuant to guidelines issued by the commission. However, an electric provider may consider unsolicited proposals presented to it outside of a competitive bid process by a renewable energy system developer that is not affiliated with the electric provider. If the provider determines that such an unsolicited proposal provides opportunities that may not otherwise be available or commercially practical, the provider may enter into a contract with the developer. The contract is subject to review and approval by the commission under section 21. An electric provider or its affiliate may not submit a proposal in response to its own request for proposals under this subdivision. If an electric provider selects a bid other than the lowest price conforming bid from a qualified bidder, the electric provider shall promptly notify the commission. The commission shall determine in the manner provided under section 37 whether the electric provider had good cause for selecting that bid. If the commission determines that the electric provider did not have good cause, the commission shall disapprove the contract.

(2) Subsection (1) does not apply to either of the following:

(a) Renewable energy credits that are transferred to the electric provider pursuant to section 35(1).

(b) Renewable energy credits that are produced or obtained by the electric provider from renewable energy systems for which recovery in electric rates was approved as of the effective date of this act, including renewable energy credits resulting from biomass co-firing of electric generation facilities in existence on the effective date of this act, except to the extent the number of megawatt hours of electricity annually generated by biomass co-firing exceeds the number of megawatt hours generated during the 1-year period immediately preceding the effective date of this act.

(3) An electric provider shall submit a contract entered into pursuant to subsection (1) to the commission for review and approval. If the commission approves the contract, it shall be considered to be consistent with the electric provider's renewable energy plan. The commission shall not approve a contract based on an unsolicited proposal unless the commission determines that the unsolicited proposal provides opportunities that may not otherwise be available or commercially practical.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section **1**. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1035 Resale of renewable energy under PURPA; investor-owned electric utility with less than 20,000 customers, a municipally-owned electric utility, or cooperative electric utility; resale under power purchase agreement or existing agreements; determination of number of renewable energy credits.

Sec. 35. (1) If an electric provider obtains renewable energy for resale to retail or wholesale customers under an agreement under PURPA, ownership of the associated renewable energy credits shall be as provided by the PURPA agreement. If the PURPA agreement does not provide for ownership of the renewable energy credits, then:

(a) Except to the extent that a separate agreement governs under subdivision (b), for the duration of the PURPA agreement, for every 5 renewable energy credits associated with the renewable energy, ownership of 4 of the renewable energy credits is transferred to the electric provider with the renewable energy, and ownership of 1 renewable energy credit remains with the qualifying small power production facility.

(b) If a separate agreement in effect on January 1, 2008 provides for the ownership of the renewable attributes of the generated electricity, the separate agreement shall govern until January 1, 2013 or until expiration of the separate agreement, whichever occurs first.

(2) If an investor-owned electric utility with less than 20,000 customers, a municipally-owned electric utility, or cooperative electric utility obtains all or substantially all of its electricity for resale under a power purchase agreement or agreements in existence on the effective date of this act, ownership of any associated renewable energy credits shall be considered to be transferred to the electric provider purchasing the electricity. The number of renewable energy credits associated with the purchased electricity shall be determined by multiplying the total number of renewable energy credits associated with the total power supply of the seller during the term of the agreement by a fraction, the numerator of which is the amount of energy purchased under the agreement or agreements and the denominator of which is the total power supply of the seller during the term of the agreement. This subsection does not apply unless 1 or more of the following occur:

(a) The seller and the electric provider purchasing the electricity agree that this subsection applies.

(b) For a seller that is an investor-owned electric utility whose rates are regulated by the commission, the commission reduces the number of renewable energy credits required under the renewable energy credit standard for the seller by the number of renewable energy credits to be transferred to the electric provider purchasing the electricity under this subsection.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1037 Renewable energy contract without associated renewable energy; determination of compliance with retail rate impact limits.

Sec. 37. If, after the effective date of this act, an electric provider whose rates are regulated by the commission enters a renewable energy contract or a contract to purchase renewable energy credits without the associated renewable energy, the commission shall determine whether the contract provides reasonable and prudent terms and conditions and complies with the retail rate impact limits under section 45. In making this determination, the commission shall consider the contract price and term. If the contract is a renewable energy contract, the commission shall also consider at least all of the following:

(a) The cost to the electric provider and its customers of the impacts of accounting treatment of debt and associated equity requirements imputed by credit rating agencies and lenders attributable to the renewable energy contract. The commission shall use standard rating agency, lender, and accounting practices for electric utilities in determining these costs, unless the impacts for the electric provider are known.

(b) Subject to section 45, the life-cycle cost of the renewable energy contract to the electric provider and customers including costs, after expiration of the renewable energy contract, of maintaining the same renewable energy output in megawatt hours, whether by purchases from the marketplace, by extension or renewal of the renewable energy contract, or by the electric provider purchasing the renewable energy system and continuing its operation.

(c) Electric provider and customer price and cost risks if the renewable energy systems supporting the renewable energy contract move from contracted pricing to market-based pricing after expiration of the renewable energy contract.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1039 Granting 1 renewable energy credit for each megawatt hour of electricity generated from renewable energy system; conditions; granting Michigan incentive renewable energy credits; expiration.

Sec. 39. (1) Except as otherwise provided in section 35(1), 1 renewable energy credit shall be granted to the owner of a renewable energy system for each megawatt hour of electricity generated from the renewable energy system, subject to all of the following:

(a) If a renewable energy system uses both a renewable energy resource and a nonrenewable energy resource to generate electricity, the number of renewable energy credits granted shall be based on the percentage of the electricity generated from the renewable energy resource.

(b) A renewable energy credit shall not be granted for renewable energy generated from a municipal solid waste incinerator to the extent that the renewable energy was generated by operating the incinerator in excess of the greater of the following, as applicable:

(*i*) The incinerator's nameplate capacity rating on January 1, 2008.

(*ii*) If the incinerator is expanded after the effective date of this act to an approximate continuous design rated capacity of not more than 950 tons per day pursuant to the terms of a final request for proposals issued not later than October 1986, the nameplate capacity rating required to accommodate that expansion.

(c) A renewable energy credit shall not be granted for renewable energy the renewable attributes of which are used by an electric provider in a commission-approved voluntary renewable energy program.

(2) Subject to subsection (3), the following additional renewable energy credits, to be known as Michigan incentive renewable energy credits, shall be granted under the following circumstances:

(a) 2 renewable energy credits for each megawatt hour of electricity from solar power.

(b) 1/5 renewable energy credit for each megawatt hour of electricity generated from a renewable energy system, other than wind, at peak demand time as determined by the commission.

(c) 1/5 renewable energy credit for each megawatt hour of electricity generated from a renewable energy system during off-peak hours, stored using advanced electric storage technology or a hydroelectric pumped storage facility, and used during peak hours. However, the number of renewable energy credits shall be calculated based on the number of megawatt hours of renewable energy used to charge the advanced electric storage technology or fill the pumped storage facility, not the number of megawatt hours actually discharged or generated by discharge from the advanced energy storage facility or pumped storage facility.

(d) 1/10 renewable energy credit for each megawatt hour of electricity generated from a renewable energy system constructed using equipment made in this state as determined by the commission. The additional credit under this subdivision is available for the first 3 years after the renewable energy system first produces electricity on a commercial basis.

(e) 1/10 renewable energy credit for each megawatt hour of electricity from a renewable energy system constructed using a workforce composed of residents of this state as determined by the commission. The additional credit under this subdivision is available for the first 3 years after the renewable energy system first produces electricity on a commercial basis.

(3) A renewable energy credit expires at the earliest of the following times:

(a) When used by an electric provider to comply with its renewable energy credit standard.

(b) When substituted for an energy optimization credit under section 77.

(c) Three years after the end of the month in which the renewable energy credit was generated.

(4) A renewable energy credit associated with renewable energy generated within 120 days after the start of a calendar year may be used to satisfy the prior year's renewable energy standard and expires when so used.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1041 Renewable energy credits; trade, sale, or transfer; demonstration of compliance; establishment of energy credit certification and tracking program; use not required in state.

Sec. 41. (1) Renewable energy credits may be traded, sold, or otherwise transferred.

(2) An electric provider is responsible for demonstrating that a renewable energy credit used to comply with a renewable energy credit standard is derived from a renewable energy source and that the electric provider has not previously used or traded, sold, or otherwise transferred the renewable energy credit.

(3) The same renewable energy credit may be used by an electric provider to comply with both a federal standard for renewable energy and the renewable energy standard under this subpart. An electric provider that uses a renewable energy credit to comply with another state's standard for renewable energy shall not use the same renewable energy credit to comply with the renewable energy credit standard under this subpart.

(4) The commission shall establish a renewable energy credit certification and tracking program. The certification and tracking program may be contracted to and performed by a third party through a system of competitive bidding. The program shall include all of the following:

(a) A process to certify renewable energy systems, including all existing renewable energy systems operating on the effective date of this act, as eligible to receive renewable energy credits.

(b) A process for verifying that the operator of a renewable energy system is in compliance with state and federal law applicable to the operation of the renewable energy system when certification is granted. If a renewable energy system becomes noncompliant with state or federal law, renewable energy credits shall not be granted for renewable energy generated by that renewable energy system during the period of noncompliance.

(c) A method for determining the date on which a renewable energy credit is generated and valid for transfer.

(d) A method for transferring renewable energy credits.

(e) A method for ensuring that each renewable energy credit transferred under this act is properly accounted for under this act.

(f) If the system is established by the commission, allowance for issuance, transfer, and use of renewable energy credits in electronic form.

(g) A method for ensuring that both a renewable energy credit and an advanced cleaner energy credit are not awarded for the same megawatt hour of energy.

(5) A renewable energy credit purchased from a renewable energy system in this state is not required to be used in this state.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1043 Granting 1 advanced cleaner energy credit for each megawatt hour of electricity generated from advanced cleaner energy system; expiration; trade, sale, or transfer; establishment of advanced cleaner energy credit certification and tracking program; use not required in state.

Sec. 43. (1) One advanced cleaner energy credit shall be granted to the owner of an advanced cleaner energy system for each megawatt hour of electricity generated from the advanced cleaner energy system. However, if an advanced cleaner energy system uses both an advanced cleaner energy technology and an energy technology that is not an advanced cleaner energy technology to generate electricity, the number of advanced cleaner energy credits granted shall be based on the percentage of the electricity generated from the advanced cleaner energy technology. If a facility or system, such as a gasification facility using biomass as feedstock, qualifies as both an advanced cleaner energy system and a renewable energy system, at the owner's option, either an advanced cleaner energy credit or a renewable energy credit, but not both, may be granted for any given megawatt hour of electricity generated by the facility or system.

(2) An advanced cleaner energy credit expires at the earliest of the following times:

(a) When substituted for a renewable energy credit under section 27 or an energy optimization credit under section 77.

(b) 3 years after the end of the month in which the advanced cleaner energy credit was generated.

(3) Advanced cleaner energy credits may be traded, sold, or otherwise transferred.

(4) The commission shall establish an advanced cleaner energy credit certification and tracking program. The certification and tracking program may be contracted to and performed by a third party through a system of competitive bidding. The program shall include all of the following:

(a) A process to certify advanced cleaner energy systems, including all existing advanced cleaner energy systems operating on the effective date of this act, as eligible to receive advanced cleaner energy credits.

(b) A process for verifying that the operator of an advanced cleaner energy system is in compliance with state and federal law applicable to the operation of the advanced cleaner energy system when certification is granted. If an advanced cleaner energy system becomes noncompliant with state or federal law, advanced cleaner energy credits shall not be granted for advanced cleaner energy generated by that advanced cleaner energy system during the period of noncompliance.

(c) A method for determining the date on which an advanced cleaner energy credit is generated and valid for transfer.

(d) A method for transferring advanced cleaner energy credits.

(e) A method for ensuring that each advanced cleaner energy credit transferred is properly accounted for.

(f) Allowance for issuance, transfer, and use of advanced cleaner energy credits in electronic form.

(g) A method for ensuring that both a renewable energy credit and an advanced cleaner energy credit are not awarded for the same megawatt hour of electricity.

(5) An advanced cleaner energy credit purchased from an advanced cleaner energy system in this state is not required to be used in this state.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1045 Charges for electric provider's tariffs that permit recovery of incremental costs of compliance; calculation; report to residential customer in billing statement; values; determining long-term, life-cycle, levelized costs of building and operating and acquiring nonrenewable electric generating capacity and energy.

Sec. 45. (1) For an electric provider whose rates are regulated by the commission, the commission shall determine the appropriate charges for the electric provider's tariffs that permit recovery of the incremental cost of compliance subject to the retail rate impact limits set forth in subsection (2).

(2) An electric provider shall recover the incremental cost of compliance with the renewable energy standards by an itemized charge on the customer's bill for billing periods beginning not earlier than 90 days after the commission approves the electric provider's renewable energy plan under section 21 or 23 or determines under section 25 that the plan complies with this act. An electric provider shall not comply with the renewable energy standards to the extent that, as determined by the commission, recovery of the incremental cost of compliance will have a retail rate impact that exceeds any of the following:

(a) $3.00 per month per residential customer meter.

(b) $16.58 per month per commercial secondary customer meter.

(c) $187.50 per month per commercial primary or industrial customer meter.

(3) The retail rate impact limits of subsection (2) apply only to the incremental costs of compliance and do not apply to costs approved for recovery by the commission other than as provided in this act.

(4) The incremental cost of compliance shall be calculated for a 20-year period beginning with approval of the renewable energy plan and shall be recovered on a levelized basis.

(5) In its billing statements for a residential customer, each provider shall report to the residential customer all of the following in a format consistent with other information on the customer bill:

(a) An itemized monthly charge, expressed in dollars and cents, collected from the customer for implementing the renewable energy program requirements of this act. In the first bill issued after the close of the previous year, an electric provider shall notify each residential customer that the customer may be entitled to an income tax credit to offset some of the annual amounts collected for the renewable energy program.

(b) An itemized monthly charge, expressed in dollars and cents, collected from the customer for implementing the energy optimization program requirements of this act.

(c) An estimated monthly savings, expressed in dollars and cents, for that customer to reflect the reductions in the monthly energy bill produced by the energy optimization program under this act.

(d) An estimated monthly savings, expressed in dollars and cents, for that customer to reflect the long-term, life-cycle, levelized costs of building and operating new conventional coal-fired electric generating power plants avoided under this act as determined by the commission.

(e) The website address at which the commission's annual report under section 51 is posted.

(6) For the first year of the programs under this part, the values reported under subsection (5) shall be estimates by the commission. The values in following years shall be based on the provider's actual customer experiences. If the provider is unable to provide customer-specific information under subsection (5)(b) or (c), it shall instead specify the state average itemized charge or savings, as applicable, for residential customers. The provider shall make this calculation based on a method approved by the commission.

(7) In determining long-term, life-cycle, levelized costs of building and operating and acquiring nonrenewable electric generating capacity and energy for the purpose of subsection (5)(d), the commission shall consider historic and predicted costs of financing, construction, operation, maintenance, fuel supplies, environmental protection, and other appropriate elements of energy production. For purposes of this comparison, the capacity of avoided new conventional coal-fired electric generating facilities shall be expressed in megawatts and avoided new conventional coal-fired electricity generation shall be expressed in megawatt hours. Avoided costs shall be measured in cents per kilowatt hour.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1047 Cost of service to be recovered by electric provider; recovery of incremental costs of compliance; calculation; modification of revenue recovery mechanism; excess costs; refund to customer classes; certain actual costs considered as costs of service.

Sec. 47. (1) Subject to the retail rate impact limits under section 45, the commission shall consider all actual costs reasonably and prudently incurred in good faith to implement a commission-approved renewable energy plan by an electric provider whose rates are regulated by the commission to be a cost of service to be recovered by the electric provider. Subject to the retail rate impact limits under section 45, an electric provider whose rates are regulated by the commission shall recover through its retail electric rates all of the electric provider's incremental costs of compliance during the 20-year period beginning when the electric provider's plan is approved by the commission and all reasonable and prudent ongoing costs of compliance during and after that period. The recovery shall include, but is not limited to, the electric provider's authorized rate of return on equity for costs approved under this section, which shall remain fixed at the rate of return and debt

to equity ratio that was in effect in the electric provider's base rates when the electric provider's renewable energy plan was approved.

(2) Incremental costs of compliance shall be calculated as follows:

(a) Determine the sum of the following costs to the extent those costs are reasonable and prudent and not already approved for recovery in electric rates as of the effective date of this act:

(*i*) Capital, operating, and maintenance costs of renewable energy systems or advanced cleaner energy systems, including property taxes, insurance, and return on equity associated with an electric provider's renewable energy systems or advanced cleaner energy systems, including the electric provider's renewable energy portfolio established to achieve compliance with the renewable energy standards and any additional renewable energy systems or advanced cleaner energy systems, that are built or acquired by the electric provider to maintain compliance with the renewable energy standards during the 20-year period beginning when the electric provider's plan is approved by the commission.

(*ii*) Financing costs attributable to capital, operating, and maintenance costs of capital facilities associated with renewable energy systems or advanced cleaner energy systems used to meet the renewable energy standard.

(*iii*) Costs that are not otherwise recoverable in rates approved by the federal energy regulatory commission and that are related to the infrastructure required to bring renewable energy systems or advanced cleaner energy systems used to achieve compliance with the renewable energy standards on to the transmission system, including interconnection and substation costs for renewable energy systems or advanced cleaner energy systems used to meet the renewable energy standard.

(*iv*) Ancillary service costs determined by the commission to be necessarily incurred to ensure the quality and reliability of renewable energy or advanced cleaner energy used to meet the renewable energy standards, regardless of the ownership of a renewable energy system or advanced cleaner energy technology.

(*v*) Except to the extent the costs are allocated under a different subparagraph, all of the following:

(A) The costs of renewable energy credits purchased under this act.

(B) The costs of contracts described in section 33(1).

(*vi*) Expenses incurred as a result of state or federal governmental actions related to renewable energy systems or advanced cleaner energy systems attributable to the renewable energy standards, including changes in tax or other law.

(*vii*) Any additional electric provider costs determined by the commission to be necessarily incurred to ensure the quality and reliability of renewable energy or advanced cleaner energy used to meet the renewable energy standards.

(b) Subtract from the sum of costs not already included in electric rates determined under subdivision (a) the sum of the following revenues:

(*i*) Revenue derived from the sale of environmental attributes associated with the generation of renewable energy or advanced cleaner energy systems attributable to the renewable energy standards. Such revenue shall not be considered in determining power supply cost recovery factors under section 6j of 1939 PA 3, MCL 460.6j.

(*ii*) Interest on regulatory liabilities.

(*iii*) Tax credits specifically designed to promote renewable energy or advanced cleaner energy.

(*iv*) Revenue derived from the provision of renewable energy or advanced cleaner energy to retail electric customers subject to a power supply cost recovery clause under section 6j of 1939 PA 3, MCL 460.6j, of an electric provider whose rates are regulated by the commission. After providing an opportunity for a contested case hearing for an electric provider whose rates are regulated by the commission, the commission shall annually establish a price per megawatt hour. In addition, an electric provider whose rates are regulated by the commission may at any time petition the commission to revise the price. In setting the price per megawatt hour under this subparagraph, the commission shall consider factors including, but not limited to, projected capacity, energy, maintenance, and operating costs; information filed under section 6j of 1939 PA 3, MCL 460.6j; and information from wholesale markets, including, but not limited to, locational marginal pricing. This price shall be multiplied by the sum of the number of megawatt hours of renewable energy and the number of megawatt hours of advanced cleaner energy used to maintain compliance with the renewable energy standard. The product shall be considered a booked cost of purchased and net interchanged power transactions under section 6j of 1939 PA 3, MCL 460.6j. For energy purchased by such an electric provider under a renewable energy contract or advanced cleaner energy contract, the price shall be the lower of the amount established by the commission or the actual price paid and shall be multiplied by the number of megawatt hours of renewable energy or advanced cleaner energy purchased. The resulting value shall be considered a booked cost of purchased and net interchanged power under section 6j of 1939 PA 3, MCL 460.6j.

(*v*) Revenue from wholesale renewable energy sales and advanced cleaner energy sales. Such revenue shall not be considered in determining power supply cost recovery factors under section 6j of 1939 PA 3, MCL 460.6j.

(*vi*) Any additional electric provider revenue considered by the commission to be attributable to the renewable energy standards.

(*vii*) Any revenues recovered in rates for renewable energy costs that are included under subdivision (a).

(3) The commission shall authorize an electric provider whose rates are regulated by the commission to spend in any given month more to comply with this act and implement an approved renewable energy plan than the revenue actually generated by the revenue recovery mechanism. An electric provider whose rates are regulated by the commission shall recover its commission approved pre-tax rate of return on regulatory assets during the appropriate period. An electric provider whose rates are regulated by the commission shall record interest on regulatory liabilities at the average short-term borrowing rate available to the electric provider during the appropriate period. Any regulatory assets or liabilities resulting from the recovery costs of renewable energy or advanced cleaner energy attributable to renewable energy standards through the power supply cost recovery clause under section 6j of 1939 PA 3, MCL 460.6j, shall continue to be reconciled under that section.

(4) If an electric provider's incremental costs of compliance in any given month during the 20-year period beginning when the electric provider's plan is approved by the commission are in excess of the revenue recovery mechanism as adjusted under section 49 and in excess of the balance of any accumulated reserve funds, subject to the minimum balance established under section 21, the electric provider shall immediately notify the commission. The commission shall promptly commence a contested case hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, and modify the revenue recovery mechanism so that the minimum balance is restored. However, if the commission determines that recovery of the incremental costs of compliance would otherwise exceed the maximum retail rate impacts specified under section 45, it shall set the revenue recovery mechanism for that electric provider to correspond to the maximum retail rate impacts. Excess costs shall be accrued and deferred for recovery. Not later than the expiration of the 20-year period beginning when the electric provider's plan is approved by the commission, for an electric provider whose rates are regulated by the commission, the commission shall determine the amount of deferred costs to be recovered under the revenue recovery mechanism and the recovery period, which shall not extend more than 5 years beyond the expiration of the 20-year period beginning when the electric provider's plan is approved by the commission. The recovery of excess costs shall be proportional to the retail rate impact limits in section 45 for each customer class. The recovery of excess costs alone, or, if begun before the expiration of the 20-year period, in combination with the recovery of incremental costs of compliance under the revenue recovery mechanism, shall not exceed the retail rate impact limits of section 45 for each customer class.

(5) If, at the expiration of the 20-year period beginning when the electric provider's plan is approved by the commission, an electric provider whose rates are regulated by the commission has a regulatory liability, the refund to customer classes shall be proportional to the amounts paid by those customer classes under the revenue recovery mechanism.

(6) After achieving compliance with the renewable energy standard for 2015, the actual costs reasonably and prudently incurred to continue to comply with this subpart both during and after the conclusion of the 20-year period beginning when the electric provider's plan is approved by the commission shall be considered costs of service. The commission shall determine a mechanism for an electric provider whose rates are regulated by the commission to recover these costs in its retail electric rates, subject to the retail rate impact limits in section 45. Remaining and future regulatory assets shall be recovered consistent with subsections (2) and (3) and section 49.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1049 Renewable cost reconciliation; commencement; contested case proceeding; discovery; modifications of revenue recovery mechanism; reconciliation of revenues with amounts actually expensed and projected; duties of commission; interest accrual.

Sec. 49. (1) This section applies only to an electric provider whose rates are regulated by the commission. Concurrent with the submission of each report under section 51, the commission shall commence an annual proceeding, to be known as a renewable cost reconciliation, for each electric provider whose rates are regulated by the commission. The renewable cost reconciliation proceeding shall be conducted as a contested case pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Reasonable

discovery shall be permitted before and during the reconciliation proceeding to assist in obtaining evidence concerning reconciliation issues including, but not limited to, the reasonableness and prudence of expenditures and the amounts collected pursuant to the revenue recovery mechanism.

(2) At the renewable cost reconciliation, an electric provider may propose any necessary modifications of the revenue recovery mechanism to ensure the electric provider's recovery of its incremental cost of compliance with the renewable energy standards.

(3) The commission shall reconcile the pertinent revenues recorded and the allowance for the nonvolumetric revenue recovery mechanism with the amounts actually expensed and projected according to the electric provider's plan for compliance. The commission shall consider any issue regarding the reasonableness and prudence of expenses for which customers were charged in the relevant reconciliation period. In its order, the commission shall do all of the following:

(a) Make a determination of an electric provider's compliance with the renewable energy standards, subject to section 31.

(b) Adjust the revenue recovery mechanism for the incremental costs of compliance. The commission shall ensure that the retail rate impacts under this renewable cost reconciliation revenue recovery mechanism do not exceed the maximum retail rate impacts specified under section 45. The commission shall ensure that the recovery mechanism is projected to maintain a minimum balance of accumulated reserve so that a regulatory asset does not accrue.

(c) Establish the price per megawatt hour for renewable energy and advanced cleaner energy capacity and for renewable energy and advanced cleaner energy to be recovered through the power supply cost recovery clause under section 6j of 1939 PA 3, MCL 460.6j, as outlined in section 47(2)(b)(*iv*).

(d) Adjust, if needed, the minimum balance of accumulated reserve funds established under section 21.

(4) If an electric provider has recorded a regulatory liability in any given month during the 20-year period beginning when the electric provider's plan is approved by the commission, interest on the regulatory liability balance shall be accrued at the average short-term borrowing rate available to the electric provider during the appropriate period, and shall be used to fund incremental costs of compliance incurred in subsequent periods within the 20-year period beginning when the electric provider's plan is approved by the commission.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1051 Compliance with renewable energy standards; submission of annual report by each electric provider; information; submission of report summary to customers of certain electric utilities; monitoring reports; submission of report to legislative committees; maintenance of report by department of enregy, labor, and economic growth.

Sec. 51. (1) By a time determined by the commission, each electric provider shall submit to the commission an annual report that provides information relating to the actions taken by the electric provider to comply with the renewable energy standards. Concurrently, a municipally-owned electric utility shall submit a copy of the report to the governing body of the municipally-owned electric utility, and a cooperative electric utility shall submit a copy of the report to its board of directors.

(2) An annual report under subsection (1) shall include all of the following information:

(a) The amount of electricity and renewable energy credits that the electric provider generated or acquired from renewable energy systems during the reporting period and the amount of renewable energy credits that the electric provider acquired, sold, traded, or otherwise transferred during the reporting period.

(b) The amount of electricity that the electric provider generated or acquired from advanced cleaner energy systems pursuant to this act during the reporting period.

(c) The capacity of each renewable energy system and advanced cleaner energy system owned, operated, or controlled by the electric provider, the total amount of electricity generated by each renewable energy system or advanced cleaner energy system during the reporting period, and the percentage of that total amount of electricity from each renewable energy system that was generated directly from renewable energy.

(d) Whether, during the reporting period, the electric provider began construction on, acquired, or placed into operation a renewable energy system or advanced cleaner energy system.

(e) Expenditures made in the past year and anticipated future expenditures to comply with this subpart.

(f) Any other information that the commission determines necessary.

(3) Concurrent with the submission of each report under subsection (1), a municipally-owned electric utility shall submit a summary of the report to its customers in their bills with a bill insert and to its governing body. If, together with the summary required under this subsection, a municipally-owned electric utility submits to its residential customers the information required pursuant to section 45(5) for the year covered by

the summary under this subsection, the municipally-owned electric utility shall be considered to be in compliance with the itemized billing requirements of section 45(2) and the reporting requirements of section 45(5) for that year. Concurrent with the submission of each report under subsection (1), a cooperative electric utility shall submit a summary of the report to its members in a periodical issued by an association of rural electric cooperatives and to its board of directors. A municipally-owned electric utility or cooperative electric provider shall make a copy of the report available at its office and shall post a copy of the report on its website. A summary under this section shall indicate that a copy of the report is available at the office or website.

(4) The commission shall monitor reports submitted under subsection (1) and ensure that actions taken under this act by electric providers serving customers in the same distribution territory do not create an unfair competitive advantage for any of those electric providers.

(5) By February 15, 2011 and each year thereafter, the commission shall submit to the standing committees of the senate and house of representatives with primary responsibility for energy and environmental issues a report that does all of the following:

(a) Summarizes data collected under this section.

(b) Discusses the status of renewable energy and advanced cleaner energy in this state and the effect of this subpart and subpart B on electricity prices.

(c) For each of the different types of renewable energy sold at retail in this state, specifies the difference between the cost of the renewable energy and the cost of electricity generated from new conventional coal-fired electric generating facilities.

(d) Discusses how the commission is fulfilling the requirements of subsection (4).

(e) Evaluates whether this subpart has been cost-effective.

(f) Provides a comparison of the cost effectiveness of the methods of an electric utility with 1,000,000 or more retail customers in this state as of January 1, 2008 obtaining renewable energy credits under the options described in section 33.

(g) Describes the impact of this subpart on employment in this state. The commission shall consult with other appropriate agencies of the department of energy, labor, and economic growth in the development of this information.

(h) Describes the effect of the percentage limits under section 27(7) on the development of advanced cleaner energy.

(i) Makes any recommendations the commission may have concerning amendments to this subpart, including changes in the percentage limits under section 27(7), or changes in the definition of renewable energy resource or renewable energy system to reflect environmentally preferable technology.

(6) The department of energy, labor, and economic growth shall maintain on the department's website a copy of the commission's most recent report under subsection (5).

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008;—Am. 2010, Act 174, Imd. Eff. Sept. 30, 2010.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1053 Failure to meet renewable energy credit standard by deadline; civil action; contested case; final order.

Sec. 53. (1) If an electric provider whose rates are regulated by the commission fails to meet a renewable energy credit standard by the applicable deadline, subject to any extensions under section 31, both of the following apply:

(a) The electric provider shall purchase sufficient renewable energy credits necessary to meet the renewable energy credit standard.

(b) The electric provider shall not recover from its ratepayers the cost of purchasing renewable energy credits under subdivision (a) if the commission finds that the electric provider did not make a good faith effort to meet the renewable energy standard, subject to any extensions under section 31.

(2) The attorney general or any customer of a cooperative electric utility that has elected to become member-regulated under the electric cooperative member-regulation act, 2008 PA 167, MCL 460.31 to 460.39, may commence a civil action for injunctive relief against such a cooperative electric utility if the electric provider fails to meet the applicable requirements of this subpart or an order issued or rule promulgated under this subpart.

(3) An action under subsection (2) shall be commenced in the circuit court for the circuit in which the principal office of the cooperative electric utility that has elected to become member-regulated is located. An action shall not be filed under subsection (2) unless the prospective plaintiff has given the prospective defendant and the commission at least 60 days' written notice of the prospective plaintiff's intent to sue, the

basis for the suit, and the relief sought. Within 30 days after the prospective defendant receives written notice of the prospective plaintiff's intent to sue, the prospective defendant and plaintiff shall meet and make a good faith attempt to determine if there is a credible basis for the action. If both parties agree that there is a credible basis for the action, the prospective defendant shall take all reasonable and prudent steps necessary to comply with the applicable requirements of this subpart within 90 days of the meeting.

(4) In issuing a final order in an action brought under subsection (2), the court may award costs of litigation, including reasonable attorney and expert witness fees, to the prevailing or substantially prevailing party.

(5) Upon receipt of a complaint by an alternative electric supplier's customer or on the commission's own motion, the commission may conduct a contested case to review allegations that the alternative electric supplier has violated this subpart or an order issued or rule promulgated under this subpart. If the commission finds, after notice and hearing, that an alternative electric supplier has violated this subpart or an order issued or rule promulgated under this subpart, the commission shall do 1 or more of the following:

(a) Revoke the license of the alternative electric supplier.

(b) Issue a cease and desist order.

(c) Order the alternative electric supplier to pay a civil fine of not less than $5,000.00 or more than $50,000.00 for each violation.

(6) Upon receipt of a complaint by any customer of a municipally-owned electric utility or upon the commission's own motion, the commission may review allegations that the municipally-owned electric utility has violated this subpart or an order issued or rule promulgated under this subpart. If the commission finds, after notice and hearing, that a municipally-owned electric utility has violated this subpart or an order issued or rule promulgated under this subpart, the commission shall advise the attorney general. The attorney general may commence a civil action for injunctive relief against the municipally-owned electric utility in the circuit court for the circuit in which the principal office of the municipally-owned electric utility is located.

(7) In issuing a final order in an action brought under subsection (6), the court may award costs of litigation, including reasonable attorney and expert witness fees, to the prevailing or substantially prevailing party.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

SUBPART B.
ENERGY OPTIMIZATION

460.1071 Proposed energy optimization plan; filing; time period; goal; combining with renewable energy plan; provisions; limitation on expenditures.

Sec. 71. (1) A provider shall file a proposed energy optimization plan with the commission within the following time period:

(a) For a provider whose rates are regulated by the commission, 90 days after the commission enters a temporary order under section 171.

(b) For a cooperative electric utility that has elected to become member-regulated under the electric cooperative member regulation act, 2008 PA 167, MCL 460.31 to 460.39, or a municipally-owned electric utility, 120 days after the commission enters a temporary order under section 171.

(2) The overall goal of an energy optimization plan shall be to reduce the future costs of provider service to customers. In particular, an EO plan shall be designed to delay the need for constructing new electric generating facilities and thereby protect consumers from incurring the costs of such construction. The proposed energy optimization plan shall be subject to approval in the same manner as an electric provider's renewable energy plan under subpart A. A provider may combine its energy optimization plan with its renewable energy plan.

(3) An energy optimization plan shall do all of the following:

(a) Propose a set of energy optimization programs that include offerings for each customer class, including low income residential. The commission shall allow providers flexibility to tailor the relative amount of effort devoted to each customer class based on the specific characteristics of their service territory.

(b) Specify necessary funding levels.

(c) Describe how energy optimization program costs will be recovered as provided in section 89(2).

(d) Ensure, to the extent feasible, that charges collected from a particular customer rate class are spent on energy optimization programs for that rate class.

(e) Demonstrate that the proposed energy optimization programs and funding are sufficient to ensure the

achievement of applicable energy optimization standards.

(f) Specify whether the number of megawatt hours of electricity or decatherms or MCFs of natural gas used in the calculation of incremental energy savings under section 77 will be weather-normalized or based on the average number of megawatt hours of electricity or decatherms or MCFs of natural gas sold by the provider annually during the previous 3 years to retail customers in this state. Once the plan is approved by the commission, this option shall not be changed.

(g) Demonstrate that the provider's energy optimization programs, excluding program offerings to low income residential customers, will collectively be cost-effective.

(h) Provide for the practical and effective administration of the proposed energy optimization programs. The commission shall allow providers flexibility in designing their energy optimization programs and administrative approach. A provider's energy optimization programs or any part thereof, may be administered, at the provider's option, by the provider, alone or jointly with other providers, by a state agency, or by an appropriate experienced nonprofit organization selected after a competitive bid process.

(i) Include a process for obtaining an independent expert evaluation of the actual energy optimization programs to verify the incremental energy savings from each energy optimization program for purposes of section 77. All such evaluations shall be subject to public review and commission oversight.

(4) Subject to subsection (5), an energy optimization plan may do 1 or more of the following:

(a) Utilize educational programs designed to alter consumer behavior or any other measures that can reasonably be used to meet the goals set forth in subsection (2).

(b) Propose to the commission measures that are designed to meet the goals set forth in subsection (1) and that provide additional customer benefits.

(5) Expenditures under subsection (4) shall not exceed 3% of the costs of implementing the energy optimization plan.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides:
"Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."
In subdivisions (a) and (b) of subsection (1), the references to "section 171" evidently should read "section 191".

460.1073 Energy optimization plan; approval by commission.

Sec. 73. (1) A provider's energy optimization plan shall be filed, reviewed, and approved or rejected by the commission and enforced subject to the same procedures that apply to a renewable energy plan.

(2) The commission shall not approve a proposed energy optimization plan unless the commission determines that the EO plan meets the utility system resource cost test and is reasonable and prudent. In determining whether the EO plan is reasonable and prudent, the commission shall review each element and consider whether it would reduce the future cost of service for the provider's customers. In addition, the commission shall consider at least all of the following:

(a) The specific changes in customers' consumption patterns that the proposed EO plan is attempting to influence.

(b) The cost and benefit analysis and other justification for specific programs and measures included in a proposed EO plan.

(c) Whether the proposed EO plan is consistent with any long-range resource plan filed by the provider with the commission.

(d) Whether the proposed EO plan will result in any unreasonable prejudice or disadvantage to any class of customers.

(e) The extent to which the EO plan provides programs that are available, affordable, and useful to all customers.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1075 Energy optimization plan; exceeding standard; authorization for commensurate financial incentive; payment; limitation.

Sec. 75. An energy optimization plan of a provider whose rates are regulated by the commission may authorize a commensurate financial incentive for the provider for exceeding the energy optimization performance standard. Payment of any financial incentive authorized in the EO plan is subject to the approval of the commission. The total amount of a financial incentive shall not exceed the lesser of the following amounts:

(a) 25% of the net cost reductions experienced by the provider's customers as a result of implementation of

the energy optimization plan.

(b) 15% percent of the provider's actual energy efficiency program expenditures for the year.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides:
"Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."
In subdivision (b), "15% percent" evidently should read "15%".

460.1077 Energy savings; minimum energy optimization standards to be met by natural gas provider; determination of incremental energy savings; calculations; basis; substitution; limitations.

Sec. 77. (1) Except as provided in section 81 and subject to the sales revenue expenditure limits in section 89, an electric provider's energy optimization programs under this subpart shall collectively achieve the following minimum energy savings:

(a) Biennial incremental energy savings in 2008-2009 equivalent to 0.3% of total annual retail electricity sales in megawatt hours in 2007.

(b) Annual incremental energy savings in 2010 equivalent to 0.5% of total annual retail electricity sales in megawatt hours in 2009.

(c) Annual incremental energy savings in 2011 equivalent to 0.75% of total annual retail electricity sales in megawatt hours in 2010.

(d) Annual incremental energy savings in 2012, 2013, 2014, and 2015 and, subject to section 97, each year thereafter equivalent to 1.0% of total annual retail electricity sales in megawatt hours in the preceding year.

(2) If an electric provider uses load management to achieve energy savings under its energy optimization plan, the minimum energy savings required under subsection (1) shall be adjusted by an amount such that the ratio of the minimum energy savings to the sum of maximum expenditures under section 89 and the load management expenditures remains constant.

(3) A natural gas provider shall meet the following minimum energy optimization standards using energy efficiency programs under this subpart:

(a) Biennial incremental energy savings in 2008-2009 equivalent to 0.1% of total annual retail natural gas sales in decatherms or equivalent MCFs in 2007.

(b) Annual incremental energy savings in 2010 equivalent to 0.25% of total annual retail natural gas sales in decatherms or equivalent MCFs in 2009.

(c) Annual incremental energy savings in 2011 equivalent to 0.5% of total annual retail natural gas sales in decatherms or equivalent MCFs in 2010.

(d) Annual incremental energy savings in 2012, 2013, 2014, and 2015 and, subject to section 97, each year thereafter equivalent to 0.75% of total annual retail natural gas sales in decatherms or equivalent MCFs in the preceding year.

(4) Incremental energy savings under subsection (1) or (3) for the 2008-2009 biennium or any year thereafter shall be determined for a provider by adding the energy savings expected to be achieved during a 1-year period by energy optimization measures implemented during the 2008-2009 biennium or any year thereafter under any energy efficiency programs consistent with the provider's energy efficiency plan.

(5) For purposes of calculations under subsection (1) or (3), total annual retail electricity or natural gas sales in a year shall be based on 1 of the following at the option of the provider as specified in its energy optimization plan:

(a) The number of weather-normalized megawatt hours or decatherms or equivalent MCFs sold by the provider to retail customers in this state during the year preceding the biennium or year for which incremental energy savings are being calculated.

(b) The average number of megawatt hours or decatherms or equivalent MCFs sold by the provider during the 3 years preceding the biennium or year for which incremental energy savings are being calculated.

(6) For any year after 2012, an electric provider may substitute renewable energy credits associated with renewable energy generated that year from a renewable energy system constructed after the effective date of this act, advanced cleaner energy credits other than credits from industrial cogeneration using industrial waste energy, load management that reduces overall energy usage, or a combination thereof for energy optimization credits otherwise required to meet the energy optimization performance standard, if the substitution is approved by the commission. The commission shall not approve a substitution unless the commission determines that the substitution is cost-effective and, if the substitution involves advanced cleaner energy credits, that the advanced cleaner energy system provides carbon dioxide emissions benefits. In determining whether the substitution of advanced cleaner energy credits is cost-effective compared to other available energy optimization measures, the commission shall consider the environmental costs related to the advanced

cleaner energy system, including the costs of environmental control equipment or greenhouse gas constraints or taxes. The commission's determinations shall be made after a contested case hearing that includes consultation with the department of environmental quality on the issue of carbon dioxide emissions benefits, if relevant, and environmental costs.

(7) Renewable energy credits, advanced cleaner energy credits, load management that reduces overall energy usage, or a combination thereof shall not be used by a provider to meet more than 10% of the energy optimization standard. Substitutions for energy optimization credits shall be made at the following rates per energy optimization credit:

(a) 1 renewable energy credit.

(b) 1 advanced cleaner energy credit from plasma arc gasification.

(c) 4 advanced cleaner energy credits other than from plasma arc gasification.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1079 Advanced cleaner energy systems; location.

Sec. 79. Advanced cleaner energy systems that are the source of the advanced cleaner energy credits used under section 77 shall be either located outside this state in the service territory of any electric provider that is not an alternative electric supplier or located anywhere in this state.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1081 Applicability of section to certain electric providers; establishment of alternative energy optimization standards; petition.

Sec. 81. (1) This section applies to electric providers that meet both of the following requirements:

(a) Serve not more than 200,000 customers in this state.

(b) Had average electric rates for residential customers using 1,000 kilowatt hours per month that are less than 75% of the average electric rates for residential customers using 1,000 kilowatt hours per month for all electric utilities in this state, according to the January 1, 2007, "comparison of average rates for MPSC-regulated electric utilities in Michigan" compiled by the commission.

(2) Beginning 2 years after a provider described in subsection (1) begins implementation of its energy optimization plan, the provider may petition the commission to establish alternative energy optimization standards. The petition shall identify the efforts taken by the provider to meet the electric provider energy optimization standards and demonstrate why the energy optimization standards cannot reasonably be met with energy optimization programs that are collectively cost-effective. If the commission finds that the petition meets the requirements of this subsection, the commission shall revise the energy optimization standards as applied to that electric provider to a level that can reasonably be met with energy optimization programs that are collectively cost-effective.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1083 Energy optimization credit; grant; expiration; carrying forward excess credits.

Sec. 83. (1) One energy optimization credit shall be granted to a provider for each megawatt hour of annual incremental energy savings achieved through energy optimization.

(2) An energy optimization credit expires as follows:

(a) When used by a provider to comply with its energy optimization performance standard.

(b) When substituted for a renewable energy credit under section 27.

(c) As provided in subsection (3).

(3) If a provider's incremental energy savings in the 2008-2009 biennium or any year thereafter exceed the applicable energy optimization standard, the associated energy optimization credits may be carried forward and applied to the next year's energy optimization standard. However, all of the following apply:

(a) The number of energy optimization credits carried forward shall not exceed 1/3 of the next year's standard. Any energy optimization credits carried forward to the next year shall expire that year. Any remaining energy optimization credits shall expire at the end of the year in which the incremental energy savings were achieved, unless substituted, by an electric provider, for renewable energy credits under section 27.

(b) Energy optimization credits shall not be carried forward if, for its performance during the same biennium or year, the provider accepts a financial incentive under section 75. The excess energy optimization credits shall expire at the end of the year in which the incremental energy savings were achieved, unless substituted, by an electric provider, for renewable energy credits under section 27.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1085 Energy optimization credit not transferable; program for transferability of credits; recommendations.

Sec. 85. (1) An energy optimization credit is not transferable to another entity.

(2) The commission, in the 2011 report under section 97, shall make recommendations concerning a program for transferability of energy optimization credits.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1087 Certification and tracking program.

Sec. 87. The commission shall establish an energy optimization credit certification and tracking program. The certification and tracking program may be contracted to and performed by a third party through a system of competitive bidding. The program shall include all of the following:

(a) A determination of the date after which energy optimization must be achieved to be eligible for an energy optimization credit.

(b) A method for ensuring that each energy optimization credit substituted for a renewable energy credit under section 27 or carried forward under section 83 is properly accounted for.

(c) If the system is established by the commission, allowance for issuance and use of energy optimization credits in electronic form.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1089 Recovery of costs; limitation; capitalization costs; funding level for low income residential programs; authorization of natural gas provider to implement revenue decoupling mechanism; limitation on expenditures of total utility retail sales revenues; percentages.

Sec. 89. (1) The commission shall allow a provider whose rates are regulated by the commission to recover the actual costs of implementing its approved energy optimization plan. However, costs exceeding the overall funding levels specified in the energy optimization plan are not recoverable unless those costs are reasonable and prudent and meet the utility system resource cost test. Furthermore, costs for load management undertaken pursuant to an energy optimization plan are not recoverable as energy optimization program costs under this section, but may be recovered as described in section 95.

(2) Under subsection (1), costs shall be recovered from all natural gas customers and from residential electric customers by volumetric charges, from all other metered electric customers by per-meter charges, and from unmetered electric customers by an appropriate charge, applied to utility bills as an itemized charge.

(3) For the electric primary customer rate class customers of electric providers and customers of natural gas providers with an aggregate annual natural gas billing demand of more than 100,000 decatherms or equivalent MCFs for all sites in the natural gas utility's service territory, the cost recovery under subsection (1) shall not exceed 1.7% of total retail sales revenue for that customer class. For electric secondary customers and for residential customers, the cost recovery shall not exceed 2.2% of total retail sales revenue for those customer classes.

(4) Upon petition by a provider whose rates are regulated by the commission, the commission shall authorize the provider to capitalize all energy efficiency and energy conservation equipment, materials, and installation costs with an expected economic life greater than 1 year incurred in implementing its energy optimization plan, including such costs paid to third parties, such as customer rebates and customer incentives. The provider shall also propose depreciation treatment with respect to its capitalized costs in its energy optimization plan, and the commission shall order reasonable depreciation treatment related to these capitalized costs. A provider shall not capitalize payments made to an independent energy optimization program administrator under section 91.

(5) The established funding level for low income residential programs shall be provided from each customer rate class in proportion to that customer rate class's funding of the provider's total energy optimization programs. Charges shall be applied to distribution customers regardless of the source of their electricity or natural gas supply.

(6) The commission shall authorize a natural gas provider that spends a minimum of 0.5% of total natural gas retail sales revenues, including natural gas commodity costs, in a year on commission-approved energy optimization programs to implement a symmetrical revenue decoupling true-up mechanism that adjusts for sales volumes that are above or below the projected levels that were used to determine the revenue requirement authorized in the natural gas provider's most recent rate case. In determining the symmetrical revenue decoupling true-up mechanism utilized for each provider, the commission shall give deference to the proposed mechanism submitted by the provider. The commission may approve an alternative mechanism if the commission determines that the alternative mechanism is reasonable and prudent. The commission shall authorize the natural gas provider to decouple rates regardless of whether the natural gas provider's energy optimization programs are administered by the provider or an independent energy optimization program administrator under section 91.

(7) A natural gas provider or an electric provider shall not spend more than the following percentage of total utility retail sales revenues, including electricity or natural gas commodity costs, in any year to comply with the energy optimization performance standard without specific approval from the commission:

(a) In 2009, 0.75% of total retail sales revenues for 2007.

(b) In 2010, 1.0% of total retail sales revenues for 2008.

(c) In 2011, 1.5% of total retail sales revenues for 2009.

(d) In 2012 and each year thereafter, 2.0% of total retail sales revenues for the 2 years preceding.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1091 Alternative compliance payment.

Sec. 91. (1) Except for section 89(6), sections 71 to 89 do not apply to a provider that pays the following percentage of total utility sales revenues, including electricity or natural gas commodity costs, each year to an independent energy optimization program administrator selected by the commission:

(a) In 2009, 0.75% of total retail sales revenues for 2007.

(b) In 2010, 1.0% of total retail sales revenues for 2008.

(c) In 2011, 1.5% of total retail sales revenues for 2009.

(d) In 2012 and each year thereafter, 2.0% of total retail sales revenues for the 2 years preceding.

(2) An alternative compliance payment received from a provider by the energy optimization program administrator under subsection (1) shall be used to administer energy efficiency programs for the provider. Money unspent in a year shall be carried forward to be spent in the subsequent year.

(3) The commission shall allow a provider to recover an alternative compliance payment under subsection (1). This cost shall be recovered from residential customers by volumetric charges, from all other metered customers by per-meter charges, and from unmetered customers by an appropriate charge, applied to utility bills.

(4) An alternative compliance payment under subsection (1) shall only be used to fund energy optimization programs for that provider's customers. To the extent feasible, charges collected from a particular customer rate class and paid to the energy optimization program administrator under subsection (1) shall be devoted to energy optimization programs and services for that rate class.

(5) Money paid to the energy optimization program administrator under subsection (1) and not spent by the administrator that year shall remain available for expenditure the following year, subject to the requirements of subsection (4).

(6) The commission shall select a qualified nonprofit organization to serve as an energy optimization program administrator under this section, through a competitive bid process.

(7) The commission shall arrange for a biennial independent audit of the energy optimization program administrator.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1093 Self-directed energy optimization plan.

Sec. 93. (1) An eligible electric customer is exempt from charges the customer would otherwise incur as an

electric customer under section 89 or 91 if the customer files with its electric provider and implements a self-directed energy optimization plan as provided in this section.

(2) Subject to subsection (3), an electric customer is not eligible under subsection (1) unless it is a commercial or industrial electric customer and meets all of the following requirements:

(a) In 2009 or 2010, the customer must have had an annual peak demand in the preceding year of at least 2 megawatts at each site to be covered by the self-directed plan or 10 megawatts in the aggregate at all sites to be covered by the plan.

(b) In 2011, 2012, or 2013, the customer or customers must have had an annual peak demand in the preceding year of at least 1 megawatt at each site to be covered by the self-directed plan or 5 megawatts in the aggregate at all sites to be covered by the plan.

(c) In 2014 or any year thereafter, the customer or customers must have had an annual peak demand in the preceding year of at least 1 megawatt in the aggregate at all sites to be covered by the self-directed plan.

(3) The eligibility requirements of subsection (2) do not apply to a commercial or industrial customer that installs or modifies an electric energy efficiency improvement under a property assessed clean energy program pursuant to the property assessed clean energy act.

(4) The commission shall by order establish the rates, terms, and conditions of service for customers related to this subpart.

(5) The commission shall by order do all of the following:

(a) Require a customer to utilize the services of an energy optimization service company to develop and implement a self-directed plan. This subdivision does not apply to a customer that had an annual peak demand in the preceding year of at least 2 megawatts at each site to be covered by the self-directed plan or 10 megawatts in the aggregate at all sites to be covered by the self-directed plan.

(b) Provide a mechanism to recover from customers under subdivision (a) the costs for provider level review and evaluation.

(c) Provide a mechanism to cover the costs of the low income energy optimization program under section 89.

(6) All of the following apply to a self-directed energy optimization plan under subsection (1):

(a) The self-directed plan shall be a multiyear plan for an ongoing energy optimization program.

(b) The self-directed plan shall provide for aggregate energy savings that each year meet or exceed the energy optimization standards based on the electricity purchases in the previous year for the site or sites covered by the self-directed plan.

(c) Under the self-directed plan, energy optimization shall be calculated based on annual electricity usage. Annual electricity usage shall be normalized so that none of the following are included in the calculation of the percentage of incremental energy savings:

(*i*) Changes in electricity usage because of changes in business activity levels not attributable to energy optimization.

(*ii*) Changes in electricity usage because of the installation, operation, or testing of pollution control equipment.

(d) The self-directed plan shall specify whether electricity usage will be weather-normalized or based on the average number of megawatt hours of electricity sold by the electric provider annually during the previous 3 years to retail customers in this state. Once the self-directed plan is submitted to the provider, this option shall not be changed.

(e) The self-directed plan shall outline how the customer intends to achieve the incremental energy savings specified in the self-directed plan.

(7) A self-directed energy optimization plan shall be incorporated into the relevant electric provider's energy optimization plan. The self-directed plan and information submitted by the customer under subsection (10) are confidential and exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. Projected energy savings from measures implemented under a self-directed plan shall be attributed to the relevant provider's energy optimization programs for the purposes of determining annual incremental energy savings achieved by the provider under section 77 or 81, as applicable.

(8) Once a customer begins to implement a self-directed plan at a site covered by the self-directed plan, that site is exempt from energy optimization program charges under section 89 or 91 and is not eligible to participate in the relevant electric provider's energy optimization programs.

(9) A customer implementing a self-directed energy optimization plan under this section shall annually submit to the customer's electric provider a brief report documenting the energy efficiency measures taken under the self-directed plan during the previous year, and the corresponding energy savings that will result. The report shall provide sufficient information for the provider and the commission to monitor progress toward the goals in the self-directed plan and to develop reliable estimates of the energy savings that are being

achieved from self-directed plans. The customer report shall indicate the level of incremental energy savings achieved for the year covered by the report and whether that level of incremental energy savings meets the goal set forth in the customer's self-directed plan. If a customer submitting a report under this subsection wishes to amend its self-directed plan, the customer shall submit with the report an amended self-directed plan. A report under this subsection shall be accompanied by an affidavit from a knowledgeable official of the customer that the information in the report is true and correct to the best of the official's knowledge and belief. If the customer has retained an independent energy optimization service company, the requirements of this subsection shall be met by the energy optimization service company.

(10) An electric provider shall provide an annual report to the commission that identifies customers implementing self-directed energy optimization plans and summarizes the results achieved cumulatively under those self-directed plans. The commission may request additional information from the electric provider. If the commission has sufficient reason to believe the information is inaccurate or incomplete, it may request additional information from the customer to ensure accuracy of the report.

(11) If the commission determines after a contested case hearing that the minimum energy optimization goals under subsection (6)(b) have not been achieved at the sites covered by a self-directed plan, in aggregate, the commission shall order the customer or customers collectively to pay to this state an amount calculated as follows:

(a) Determine the proportion of the shortfall in achieving the minimum energy optimization goals under subsection (6)(b).

(b) Multiply the figure under subdivision (a) by the energy optimization charges from which the customer or customers collectively were exempt under subsection (1).

(c) Multiply the product under subdivision (b) by a number not less than 1 or greater than 2, as determined by the commission based on the reasons for failure to meet the minimum energy optimization goals.

(12) If a customer has submitted a self-directed plan to an electric provider, the customer, the customer's energy optimization service company, if applicable, or the electric provider shall provide a copy of the self-directed plan to the commission upon request.

(13) By September 1, 2010, following a public hearing, the commission shall establish an approval process for energy optimization service companies. The approval process shall ensure that energy optimization service companies have the expertise, resources, and business practices to reliably provide energy optimization services that meet the requirements of this section. The commission may adopt by reference the past or current standards of a national or regional certification or licensing program for energy optimization service companies. However, the approval process shall also provide an opportunity for energy optimization service companies that are not recognized by such a program to be approved by posting a bond in an amount determined by the commission and meeting any other requirements adopted by the commission for the purposes of this subsection. The approval process for energy optimization service companies shall require adherence to a code of conduct governing the relationship between energy optimization service companies and electric providers.

(14) The department of energy, labor, and economic growth shall maintain on the department's website a list of energy optimization service companies approved under subsection (13).

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008;—Am. 2010, Act 269, Imd. Eff. Dec. 14, 2010.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1095 Duties and authority of commission.

Sec. 95. (1) The commission shall do all of the following:

(a) Promote load management in appropriate circumstances.

(b) Actively pursue increasing public awareness of load management techniques.

(c) Engage in regional load management efforts to reduce the annual demand for energy whenever possible.

(d) Work with residential, commercial, and industrial customers to reduce annual demand and conserve energy through load management techniques and other activities it considers appropriate. The commission shall file a report with the legislature by December 31, 2010 on the effort to reduce peak demand. The report shall also include any recommendations for legislative action concerning load management that the commission considers necessary.

(2) The commission may allow a provider whose rates are regulated by the commission to recover costs for load management undertaken pursuant to an energy optimization plan through base rates as part of a proceeding under section 6 of 1939 PA 3, MCL 460.6, if the costs are reasonable and prudent and meet the utility systems resource cost test.

(3) The commission shall do all of the following:

(a) Promote energy efficiency and energy conservation.

(b) Actively pursue increasing public awareness of energy conservation and energy efficiency.

(c) Actively engage in energy conservation and energy efficiency efforts with providers.

(d) Engage in regional efforts to reduce demand for energy through energy conservation and energy efficiency.

(e) By November 30, 2009, and each year thereafter, submit to the standing committees of the senate and house of representatives with primary responsibility for energy and environmental issues a report on the effort to implement energy conservation and energy efficiency programs or measures. The report may include any recommendations of the commission for energy conservation legislation.

(4) This subpart does not limit the authority of the commission, following an integrated resource plan proceeding and as part of a rate-making process, to allow a provider whose rates are regulated by the commission to recover for additional prudent energy efficiency and energy conservation measures not included in the provider's energy optimization plan if the provider has met the requirements of the energy optimization program.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1097 Compliance with energy optimization standards; reports.

Sec. 97. (1) By a time determined by the commission, each provider shall submit to the commission an annual report that provides information relating to the actions taken by the provider to comply with the energy optimization standards. By that same time, a municipally-owned electric utility shall submit a copy of the report to the governing body of the municipally-owned electric utility, and a cooperative electric utility shall submit a copy of the report to its board of directors.

(2) An annual report under subsection (1) shall include all of the following information:

(a) The number of energy optimization credits that the provider generated during the reporting period.

(b) Expenditures made in the past year and anticipated future expenditures to comply with this subpart.

(c) Any other information that the commission determines necessary.

(3) Concurrent with the submission of each report under subsection (1), a municipally-owned electric utility shall submit a summary of the report to its customers in their bills with a bill insert and to its governing body. Concurrent with the submission of each report under subsection (1), a cooperative electric utility shall submit a summary of the report to its members in a periodical issued by an association of rural electric cooperatives and to its board of directors. A municipally-owned electric utility or cooperative electric provider shall make a copy of the report available at its office and shall post a copy of the report on its website. A summary under this section shall indicate that a copy of the report is available at the office or website.

(4) Not later than 1 year after the effective date of this act, the commission shall submit a report on the potential rate impacts on all classes of customers if the electric providers whose rates are regulated by the commission decouple rates. The report shall be submitted to the standing committees of the senate and house of representatives with primary responsibility for energy and environmental issues. The commission's report shall review whether decoupling would be cost-effective and would reduce the overall consumption of fossil fuels in this state.

(5) By October 1, 2010, the commission shall submit to the committees described in subsection (4) any recommendations for legislative action to increase energy conservation and energy efficiency based on reports under subsection (1), the energy optimization plans approved under section 89, and the commission's own investigation. By March 1, 2013, the commission shall submit to those committees a report on the progress of electric providers in achieving reductions in energy use. The commission may use an independent evaluator to review the submissions by electric providers.

(6) By February 15, 2011 and each year thereafter and by September 30, 2015, the commission shall submit to the committees described in subsection (4) a report that evaluates and determines whether this subpart and subpart A have each been cost-effective and makes recommendations to the legislature. The report shall be combined with any concurrent report by the commission under section 51.

(7) The report required by September 30, 2015 under subsection (6) shall also review the opportunities for additional cost-effective energy optimization programs and make any recommendations the commission may have for legislation providing for the continuation, expansion, or reduction of energy optimization standards. That report shall also include the commission's determinations of all of the following:

(a) The percentage of total energy savings required by the energy optimization standards that have actually

been achieved by each electric provider and by all electric providers cumulatively.

(b) The percentage of total energy savings required by the energy optimization standards that have actually been achieved by each natural gas provider and by all natural gas providers cumulatively.

(c) For each provider, whether that provider's program under this subpart has been cost-effective.

(8) If the commission determines in its report required by September 30, 2015 under subsection (6) or determines subsequently that a provider's energy optimization program under this subpart has not been cost-effective, the provider's program is suspended beginning 180 days after the date of the report or subsequent determination. If a provider's energy optimization program is suspended under this subsection, both of the following apply:

(a) The provider shall maintain cumulative incremental energy savings in megawatt hours or decatherms or equivalent MCFs in subsequent years at the level actually achieved during the year preceding the year in which the commission's determination is made.

(b) The provider shall not impose energy optimization charges in subsequent years except to the extent necessary to recover unrecovered energy optimization expenses incurred under this subpart before suspension of the provider's program.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

SUBPART C.
MISCELLANEOUS

460.1111 Municipally-owned electric utilities; new authority not granted to commission.

Sec. 111. This part does not provide the commission with new authority with respect to municipally-owned electric utilities except to the extent expressly provided in this act.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1113 Pollution control equipment; use of electricity or natural gas in installation, operation, or testing; exemption.

Sec. 113. Notwithstanding any other provision of this part, electricity or natural gas used in the installation, operation, or testing of any pollution control equipment is exempt from the requirements of, and calculations of compliance required under, this part.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

PART 3.
STATE GOVERNMENT ENERGY EFFICIENCY AND CONSERVATION

460.1131 Reduction in state government grid-based energy purchases; goal.

Sec. 131. It is the goal of this state to reduce state government grid-based energy purchases by 25% by 2015, when compared to energy use and energy purchases for the state fiscal year ending September 30, 2002.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1133 Department of management and budget; duties.

Sec. 133. The department of management and budget, after consultation with the energy office in the department of labor and economic growth, shall do all of the following:

(a) Establish a program for energy analyses of each state building that identifies opportunities for reduced energy use, including the cost and energy savings for each such opportunity, and includes a completion schedule. Under the program, the energy star assessment and rating program shall be extended to all buildings owned or leased by this state. An energy analysis of each such building shall be conducted at least every 5 years. Within 1 year after the effective date of this act, an energy analysis shall be conducted of any such building for which an energy analysis was not conducted within 5 years before the effective date of this act. If building or facility modifications are allowed under the terms of a lease, the state shall undertake any recommendations resulting from an energy audit to those facilities if the recommendations will save money.

(b) Examine the cost and benefit of using LEED building code standards when constructing or remodeling a state building.

(c) Before the state leases a building, examine the cost and benefit of leasing a building that meets LEED building codes standards, or remodeling a building to meet such standards. The state shall take into consideration whether a building has historical, architectural, or cultural significance that could be harmed by a lease not being renewed solely based on the building's failure to meet LEED criteria.

(d) Assist each state department in appointing an energy reduction coordinator to work with the department of management and budget and the state energy office to reduce state energy use.

(e) Ensure that, during any renovation or construction of a state building, energy efficient products are used whenever possible and that the state purchases energy efficient products whenever possible.

(f) Implement a program to educate state employees on how to conserve energy. The energy office and the department of management and budget shall update the program every 3 years.

(g) Use more cost-effective lighting technologies, geothermal heat pumps, and other cost-effective technologies to conserve energy.

(h) Reduce state government energy use during peak summer energy use seasons with the goal of achieving reductions beginning in 2010.

(i) Create a web-based system for tracking energy efficiency and energy conservation projects occurring within state government.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

PART 4.

WIND ENERGY RESOURCE ZONE

460.1141 Definitions.

Sec. 141. As used in this part:

(a) "Construction" means any substantial action constituting placement or erection of the foundations or structures supporting a transmission line. Construction does not include preconstruction activity or the addition of circuits to an existing transmission line.

(b) "Route" means real property on or across which a transmission line is constructed or proposed to be constructed.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1143 Wind energy resource zone board; membership.

Sec. 143. Within 60 days after the effective date of this act, the commission shall create the wind energy resource zone board. The board shall consist of 9 members, as follows:

(a) 1 member representing the commission.

(b) 2 members representing the electric utility industry.

(c) 1 member representing alternative electric suppliers.

(d) 1 member representing the attorney general.

(e) 1 member representing the renewable energy industry.

(f) 1 member representing cities and villages.

(g) 1 member representing townships.

(h) 1 member representing independent transmission companies.

(i) 1 member representing a statewide environmental organization.

(j) 1 member representing the public at large.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1145 Wind energy resource zone board; powers, duties, and decision-making authority; report.

Sec. 145. (1) The wind energy resource zone board shall exercise its powers, duties, and decision-making authority under this part independently of the commission.

(2) The board shall do all of the following:

(a) In consultation with local units of government, study all of the following:

(*i*) Wind energy production potential and the viability of wind as a source of commercial energy generation in this state.

(*ii*) Availability of land in this state for potential utilization by wind energy conversion systems.

(b) Conduct modeling and other studies related to wind energy, including studying existing wind energy conversion systems, estimates for additional wind energy conversion system development, and average annual recorded wind velocity levels. The board's studies should include examination of wind energy conversion system requests currently in the applicable regional transmission organization's generator interconnection queue.

(3) Within 240 days after the effective date of this act, issue a proposed report detailing its findings under subsection (2). The board's proposed report shall include the following:

(a) A list of regions in the state with the highest level of wind energy harvest potential.

(b) A description of the estimated maximum and minimum wind generating capacity in megawatts that can be installed in each identified region of this state.

(c) An estimate of the annual maximum and minimum energy production potential for each identified region of this state.

(d) An estimate of the maximum wind generation capacity already in service in each identified region of this state.

(4) The board shall submit a copy of the proposed report under subsection (3) to the legislative body of each local unit of government located in whole or part within any region listed in subsection (3)(a). The legislative body may submit comments to the board on the proposed report within 63 days after the proposed report was submitted to the legislative body. After the deadline for submitting comments on the proposed report, the board shall hold a public hearing on the proposed report. The board may hold a separate public hearing in each region listed under subsection (3)(a). The board shall give written notice of a public hearing under this subsection to the legislative body of each local unit of government located in whole or part within the region or regions that are the subject of the hearing and shall publish the notice in a newspaper of general circulation within the region or regions.

(5) Within 45 days after satisfying the requirements of subsection (4), the board shall issue a final report as described in subsection (3).

(6) After the board issues its report under subsection (5), electric utilities, affiliated transmission companies and independent transmission companies with transmission facilities within or adjacent to regions of this state identified in the board's report shall identify existing or new transmission infrastructure necessary to deliver maximum and minimum wind energy production potential for each of those regions and shall submit this information to the board for its review.

(7) The board is dissolved 90 days after it issues its report under subsection (5).

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1147 Wind energy resource zone; designation; creation; preparation of order; report.

Sec. 147. (1) Based on the board's findings as reported under section 145, the commission shall, through a final order, designate the area of this state likely to be most productive of wind energy as the primary wind energy resource zone and may designate additional wind energy resource zones.

(2) A wind energy resource zone shall be created on land that is entirely within the boundaries of this state and shall encompass a natural geographical area or region of this state. A wind zone shall exclude land that is zoned residential when the board's proposed report is issued under section 145, unless the land is subsequently zoned for nonresidential use.

(3) In preparing its order, the commission shall evaluate projected costs and benefits in terms of the long-term production capacity and long-term needs for transmission. The order shall ensure that the designation of a wind zone does not represent an unreasonable threat to the public convenience, health, and safety and that any adverse impacts on private property values are minimal. In determining the location of a wind zone, the commission shall consider all of the following factors pursuant to the findings of the board:

(a) Average annual wind velocity levels in the region.

(b) Availability of land in the region that may be utilized by wind energy conversion systems.

(c) Existing wind energy conversion systems in the region.

(d) Potential for megawatt output of combined wind energy conversion systems in the region.

(e) Other necessary and appropriate factors as to which findings are required by the commission.

(4) In conjunction with the issuance of its order under subsection (1), the commission shall submit to the legislature a report on the effect that setback requirements and noise limitations under local zoning or other

ordinances may have on wind energy development in wind energy resource zones. The report shall include any recommendations the commission may have for legislation addressing these issues. Before preparing the report, the commission shall conduct hearings in various areas of the state to receive public comment on the report.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1149 Electric utility, affiliated transmission company, or independent transmission company; expedited siting certificate; application; approvals.

Sec. 149. (1) To facilitate the transmission of electricity generated by wind energy conversion systems located in wind energy resource zones, the commission may issue an expedited siting certificate for a transmission line to an electric utility, affiliated transmission company, or independent transmission company as provided in this part.

(2) An electric utility, affiliated transmission company, or independent transmission company may apply to the commission for an expedited siting certificate. An applicant may withdraw an application at any time.

(3) Before filing an application for an expedited siting certificate for a proposed transmission line under this part, an electric utility, affiliated transmission company, or independent transmission company must receive any required approvals from the applicable regional transmission organization for the proposed transmission line.

(4) Sixty days before seeking approval from the applicable regional transmission organization for a transmission line as described in subsection (3), an electric utility, affiliated transmission company, or independent transmission company shall notify the commission in writing that it will seek the approval.

(5) The commission shall represent this state's interests in all proceedings before the applicable regional transmission organization for which the commission receives notice under subsection (4).

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1151 Expedited siting certificate; application; contents.

Sec. 151. An application for an expedited siting certificate shall contain all of the following:

(a) Evidence that the proposed transmission line received any required approvals from the applicable regional transmission organization.

(b) The planned date for beginning construction of the proposed transmission line.

(c) A detailed description of the proposed transmission line, its route, and its expected configuration and use.

(d) Information addressing potential effects of the proposed transmission line on public health and safety.

(e) Information indicating that the proposed transmission line will comply with all applicable state and federal environmental standards, laws, and rules.

(f) A description and evaluation of 1 or more alternate transmission line routes and a statement of why the proposed route was selected.

(g) Other information reasonably required by commission rules.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1153 Notice; conduct of proceeding; determination by commission that requirements are met; precedence; certificate as conclusive and binding; time period for granting or denying certificate.

Sec. 153. (1) Upon applying for a certificate, an electric utility, affiliated transmission company, or independent transmission company shall give public notice in the manner and form the commission prescribes of an opportunity to comment on and participate in a contested case with respect to the application. Notice shall be published in a newspaper of general circulation in the relevant wind energy resource zone within a reasonable time period after an application is provided to the commission and shall be sent to each affected municipality, electric utility, affiliated transmission company, and independent transmission company and each affected landowner on whose property a portion of the proposed transmission line will be constructed. The notice shall be written in plain, nontechnical, and easily understood terms and shall contain a title that includes the name of the electric utility, affiliated transmission company, or independent transmission

company and the words "Notice of Intent to Construct a Transmission Line to Serve a Wind Energy Resource Zone".

(2) The commission shall conduct a proceeding on the application for an expedited siting certificate as a contested case under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Upon receiving an application for a certificate, each affected municipality and each affected landowner shall be granted full intervener status as of right in commission proceedings concerning the proposed transmission lines.

(3) The commission shall grant an expedited siting certificate if it determines that all of the following requirements are met:

(a) The proposed transmission line will facilitate transmission of electricity generated by wind energy conversion systems located in a wind energy resource zone.

(b) The proposed transmission line has received federal approval.

(c) The proposed transmission line does not represent an unreasonable threat to the public convenience, health, and safety.

(d) The proposed transmission line will be of appropriate capability to enable the wind potential of the wind energy resource zone to be realized.

(e) The proposed or alternate route to be authorized by the expedited siting certificate is feasible and reasonable.

(4) If the commission grants an expedited siting certificate for a transmission line under this part, the certificate takes precedence over a conflicting local ordinance, law, rule, regulation, policy, or practice that prohibits or regulates the location or construction of the transmission line. A zoning ordinance or limitation imposed after an electric utility, affiliated transmission company, or independent transmission company files for a certificate shall not limit or impair the transmission line's construction, operation, or maintenance.

(5) In an eminent domain or other related proceeding arising out of or related to a transmission line for which a certificate is issued, a certificate issued under this act is conclusive and binding as to the public convenience and necessity for that transmission line and its compatibility with the public health and safety or any zoning or land use requirements in effect when the application was filed.

(6) The commission has a maximum of 180 days to grant or deny an expedited siting certificate under this section.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1155 Annual report.

Sec. 155. The commission shall make an annual report, summarizing the impact of establishing wind energy resource zones, expedited transmission line siting applications, estimates for future wind generation within wind zones, and recommendations for program enhancements or expansion, to the governor and the legislature on or before the first Monday of March of each year.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1157 Construction of transmission line not prohibited.

Sec. 157. This part does not prohibit an electric utility, affiliated transmission company, or independent transmission company from constructing a transmission line without obtaining an expedited siting certificate.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1159 Commission order subject to review; administration of part.

Sec. 159. (1) A commission order relating to any matter provided for under this part is subject to review as provided in section 26 of 1909 PA 300, MCL 462.26.

(2) In administering this part, the commission has only those powers and duties granted to the commission under this part.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1161 Eminent domain not conferred.

Sec. 161. This part does not confer the power of eminent domain.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

PART 5.
NET METERING

460.1171 "Electric utility" defined.

Sec. 171. As used in this part, "electric utility" means any person or entity whose rates are regulated by the commission for the purpose of selling electricity to retail customers in this state.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1173 Statewide net metering program; establishment; order; rules; 1 percent requirement; selection of participating customers; provisions; maintenance of records.

Sec. 173. (1) The commission shall establish a statewide net metering program by order issued not later than 180 days after the effective date of this act. No later than 180 days after the effective date of this act, the commission shall promulgate rules regarding any time limits on the submission of net metering applications or inspections of net metering equipment and any other matters the commission considers necessary to implement this part. Any rules adopted regarding time limits for approval of parallel operation shall recognize reliability and safety complications including those arising from equipment saturation, use of multiple technologies, and proximity to synchronous motor loads. The program shall apply to all electric utilities and alternative electric suppliers in this state. Except as otherwise provided under this part, customers of any class are eligible to interconnect eligible electric generators with the customer's local electric utility and operate the generators in parallel with the distribution system. The program shall be designed for a period of not less than 10 years and limit each customer to generation capacity designed to meet only the customer's electric needs. The commission may waive the application, interconnection, and installation requirements of this part for customers participating in the net metering program under the commission's March 29, 2005 order in case no. U-14346.

(2) An electric utility or alternative electric supplier is not required to allow for net metering that is greater than 1% of its in-state peak load for the preceding calendar year. The utility or supplier shall notify the commission if its net metering program reaches the 1% requirement under this subsection. The 1% limit under this subsection shall be allocated as follows:

(a) No more than 0.5% for customers with a system capable of generating 20 kilowatts or less.

(b) No more than 0.25% for customers with a system capable of generating more than 20 kilowatts but not more than 150 kilowatts.

(c) No more than 0.25% for customers with a system capable of generating more than 150 kilowatts.

(3) Selection of customers for participation in the net metering program shall be based on the order in which the applications for participation in the net metering program are received by the electric utility or alternative electric supplier.

(4) An electric utility or alternative electric supplier shall not refuse to provide or discontinue electric service to a customer solely for the reason that the customer participates in the net metering program.

(5) The program created under subsection (1) shall include all of the following:

(a) Statewide uniform interconnection requirements for all eligible electric generators. The interconnection requirements shall be designed to protect electric utility workers and equipment and the general public.

(b) Net metering equipment and its installation must meet all current local and state electric and construction code requirements. Any equipment that is certified by a nationally recognized testing laboratory to IEEE 1547.1 testing standards and in compliance with UL 1741 scope 1.1A, effective May 7, 2007, and installed in compliance with this part is considered to be eligible equipment. Within the time provided by the commission in rules promulgated under subsection (1) and consistent with good utility practice, protection of electric utility workers, protection of electric utility equipment, and protection of the general public, an electric utility may study, confirm, and ensure that an eligible electric generator installation at the customer's site meets the IEEE 1547 anti-islanding requirements. Utility testing and approval of the interconnection and execution of a parallel operating agreement must be completed prior to the equipment operating in parallel with the distribution system of the utility.

(c) A uniform application form and process to be used by all electric utilities and alternative electric

suppliers in this state. Customers who are served by an alternative electric supplier shall submit a copy of the application to the electric utility for the customer's service area.

(d) Net metering customers with a system capable of generating 20 kilowatts or less qualify for true net metering.

(e) Net metering customers with a system capable of generating more than 20 kilowatts qualify for modified net metering.

(6) Each electric utility and alternative electric supplier shall maintain records of all applications and up-to-date records of all active eligible electric generators located within their service area.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1175 Net metering; application fee; limitation; costs; interconnection requirements.

Sec. 175. (1) An electric utility or alternative electric supplier may charge a fee not to exceed $100.00 to process an application for net metering. A customer with a system capable of generating more than 20 kilowatts shall pay all interconnection costs. A customer with a system capable of generating more than 150 kilowatts shall pay standby costs. The commission shall recognize the reasonable cost for each electric utility and alternative electric supplier to operate a net metering program. For an electric utility with 1,000,000 or more retail customers in this state, the commission shall include in that utility's nonfuel base rates all costs of meeting all program requirements except that all energy costs of the program shall be recovered through the utility's power supply cost recovery mechanism under sections 6j and 6k of 1939 PA 3, MCL 460.6j and 460.6k. For an electric utility with less than 1,000,000 base distribution customers in this state, the commission shall allow that utility to recover all energy costs of the program through the power supply cost recovery mechanism under sections 6j and 6k of 1939 PA 3, MCL 460.6j and 460.6k, and shall develop a cost recovery mechanism for that utility to contemporaneously recover all other costs of meeting the program requirements.

(2) The interconnection requirements of the net metering program shall provide that an electric utility or alternative electric supplier shall, subject to any time requirements imposed by the commission and upon reasonable written notice to the net metering customer, perform testing and inspection of an interconnected eligible electric generator as is necessary to determine that the system complies with all applicable electric safety, power quality, and interconnection requirements. The costs of testing and inspection are considered a cost of operating a net metering program and shall be recovered under subsection (1).

(3) The interconnection requirements shall require all eligible electric generators, alternative electric suppliers, and electric utilities to comply with all applicable federal, state, and local laws, rules, or regulations, and any national standards as determined by the commission.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1177 Customer's energy use in billing period; use of electric meters; credit.

Sec. 177. (1) Electric meters shall be used to determine the amount of the customer's energy use in each billing period, net of any excess energy the customer's generator delivers to the utility distribution system during that same billing period. For a customer with a generation system capable of generating more than 20 kilowatts, the utility shall install and utilize a generation meter and a meter or meters capable of measuring the flow of energy in both directions. A customer with a system capable of generating more than 150 kilowatts shall pay the costs of installing any new meters.

(2) An electric utility serving over 1,000,000 customers in this state may provide its customers participating in the net metering program, at no additional charge, a meter or meters capable of measuring the flow of energy in both directions.

(3) An electric utility serving fewer than 1,000,000 customers in this state shall provide a meter or meters described in subsection (2) to customers participating in the net metering program at cost. Only the incremental cost above that for meters provided by the electric utility to similarly situated nongenerating customers shall be paid by the eligible customer.

(4) If the quantity of electricity generated and delivered to the utility distribution system by an eligible electric generator during a billing period exceeds the quantity of electricity supplied from the electric utility or alternative electric supplier during the billing period, the eligible customer shall be credited by their supplier of electric generation service for the excess kilowatt hours generated during the billing period. The credit shall appear on the bill for the following billing period and shall be limited to the total power supply charges on

that bill. Any excess kilowatt hours not used to offset electric generation charges in the next billing period will be carried forward to subsequent billing periods. Notwithstanding any law or regulation, net metering customers shall not receive credits for electric utility transmission or distribution charges. The credit per kilowatt hour for kilowatt hours delivered into the utility's distribution system shall be either of the following:

(a) The monthly average real-time locational marginal price for energy at the commercial pricing node within the electric utility's distribution service territory, or for net metering customers on a time-based rate schedule, the monthly average real-time locational marginal price for energy at the commercial pricing node within the electric utility's distribution service territory during the time-of-use pricing period.

(b) The electric utility's or alternative electric supplier's power supply component of the full retail rate during the billing period or time-of-use pricing period.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1179 Renewable energy credits.

Sec. 179. An eligible electric generator shall own any renewable energy credits granted for electricity generated under the net metering program created in this part.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1181 Finding of noncompliance; remedies and penalties.

Sec. 181. Upon a complaint or on the commission's own motion, if the commission finds, after notice and hearing, that an electric utility has not complied with a provision or order issued under this part, the commission shall order remedies and penalties as necessary to make whole a customer or other person who has suffered damages as a result of the violation.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

PART 6.
MISCELLANEOUS COMMISSION PROVISIONS

460.1191 Temporary order; issuance; rules.

Sec. 191. (1) Within 60 days after the effective date of this act, the commission shall issue a temporary order implementing this act, including, but not limited to, all of the following:

(a) Formats of renewable energy plans for various categories of electric providers.

(b) Guidelines for requests for proposals under this act.

(2) Within 1 year after the effective date of this act, the commission shall promulgate rules to implement this act pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Upon promulgation of the rules, the order under subsection (1) is rescinded.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1193 Contested case proceeding; intervention; confidential business information.

Sec. 193. (1) Any interested party may intervene in a contested case proceeding under this act as provided in general rules of the commission.

(2) The commission and a provider shall handle confidential business information under this act in a manner consistent with state law and general rules of the commission.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

460.1195 Authority of commission not limited.

Sec. 195. This act does not limit any authority of the commission otherwise provided by law.

History: 2008, Act 295, Imd. Eff. Oct. 6, 2008.

Compiler's note: Enacting section 1 of Act 295 of 2008 provides: "Enacting section 1. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable."

Action Request

Committee: Planning and Policy Committee
Meeting Date: 6/13/2012
Requesting Department: Administrator's Office
Submitted By: Misty Cunningham
Agenda Item: Legal Services Policy

SUGGESTED MOTION:
To approve and forward to the Board of Commissioners the proposed Legal Services Policy for review and comment.

SUMMARY OF REQUEST:
This request is to review the new Legal Services Policy and forward it to the Board of Commissioners for a first and second reading before final approval.

FINANCIAL INFORMATION:

Total Cost: $0.00	General Fund Cost: $0.00	Included in Budget:	☐ Yes	☒ No

If not included in budget, recommended funding source:

ACTION IS RELATED TO AN ACTIVITY WHICH IS:

☐ Mandated	☒ Non-Mandated	☐ New Activity

ACTION IS RELATED TO STRATEGIC PLAN:
Goal: 4: To Continually Improve the County's Organization and Services.

Objective: 1: Review and evaluate the organization, contracts, programs, systems, and services for potential efficiencies.

ADMINISTRATION RECOMMENDATION: ☒ Recommended ☐ Not Recommended ☐ Without Recommendation

County Administrator: Alan G. Vanderberg

Digitally signed by Alan G. Vanderberg
DN: cn=Alan G. Vanderberg, c=US, o=County of Ottawa, ou=Administrator's Office, email=avanderberg@miottawa.org
Reason: I am the author of this document
Date: 2012.06.07 14:11:41 -04'00'

Committee/Governing/Advisory Board Approval Date:

County of Ottawa

LEGAL SERVICES POLICY

I. POLICY

The purpose of this policy is to provide timely, cost efficient, and adequate civil legal services to all Ottawa County ("County") Departments, funding units, officers and employees and to implement MCL §49.73, which empowers the County Board of Commissioners ("Board") to employ an attorney to represent elected county officers, including the sheriff, prosecuting attorney, clerk, treasurer, register of deeds, drain commissioner, and judges of the county district and probate, and circuit courts in civil matters when "neither the prosecuting attorney or county corporation counsel" is able to represent the particular officer.

II. STATUTORY REFERENCES

MCL §49.73

III. COUNTY LEGISLATIVE OR HISTORICAL REFERENCES

Board of Commissioners Resolution Number and Policy Adoption Date:

Board of Commissioner Review Date and Resolution Number:

Name and Date of Last Committee Review:

Last Review by Internal Policy Review Team: May 18, 2012

County of Ottawa

IV. PROCEDURE

A. Purview: Except as provided in Section 1. a. below, this policy shall apply to all civil legal services funded or provided by the County, including those provided at the request of the County elected officials, employees, department heads, employees and the judges of the County district, probate and circuit courts pursuant to MCL §49.73. Collectively, all County departments, activities, funding units, courts, elected officials, officers, employees and other personnel who may request or be eligible for County funded civil legal services in their official capacities are described herein as "Recipients."

1. Corporation Counsel:

a. The County has established the Office of Corporation Counsel to provide internal legal services to all Recipients. Subject to the exceptions identified in Section 1. a. of this Policy, all legal services provided to Recipients must be provided through the Office of Corporation Counsel.

b. Exceptions: This policy shall not apply to the following legal services:

1). Criminal and quasi-criminal prosecution legal services provided by the Prosecuting Attorney.

2). Indigent defense legal services provided to criminal defendants through the trial courts.

3). Litigation and risk management counseling services provided through the Ottawa County, Michigan Insurance Authority.

4). Legal opinions or legal services provided by Associations to which the Recipient belongs.

5). Legal services for special engagements and purposes expressly approved by the County Board of Commissioners

c. Opinions: All Recipients may request a legal opinion from the Office of Corporation Counsel. All Recipients must follow the written legal opinion of Corporation Counsel for official activities and functions regardless of whether or not they requested the legal opinion. If the Recipient is dissatisfied with the opinion of Corporation Counsel, the Recipient may forward a confidential request through the Office of Corporation Counsel to the Board of Commissioners, requesting the latter to engage outside counsel to provide a second opinion. The Board will consult with the Recipient regarding the selection of the counsel to provide the second opinion and the Board will select such counsel in consideration of factors that include but are not limited to, expertise, cost and objectivity. If the Board of Commissioners authorizes

County of Ottawa

a second opinion and that opinion differs from that of Corporation Counsel, the latter will meet with the attorney issuing the second opinion and attempt to resolve the difference of opinion. If they reach a consolidated opinion, the Recipient must adhere to that consolidated opinion. If the opinions do not agree, the elected official or funded trial court judicial Recipient will determine which of the two opinions he or she will follow. In all other instances, the County Administrator will make the decision as to which of the two opinions must be followed.

2. Legal Defense Services: Within twenty-four (24) hours of being served with a summons and complaint pertaining to his or her office or official performance, any employee or elected or appointed official must forward a copy of the all documents served to Corporation Counsel. Upon receipt of a summons and complaint, Corporation Counsel shall promptly contact the County Administrator. Together, they shall make an initial assignment of the defense of the matter to Corporation Counsel, Ottawa County, Michigan Insurance Authority, another insurance carrier or recommend that the Board of Commissioners engage another defense attorney.

3. Other Legal Services:. If a Recipient believes that he or she needs legal counsel related to his or her official performance or the performance of the county funded department, office or activity he or she supervises that cannot be effectively provided by Corporation Counsel, the Recipient shall confer with and submit a written request for legal services to the County Administrator, who will forward the request to the Board of Commissioners, which shall make a decision upon the request as soon as practicable. In unusual circumstances, the Administrator with the approval of the Board Chair may consult with outside civil counsel on County matters.

4. If a Recipient is dissatisfied with the attorney assigned to defend him or her, the Recipient must advise the Board of Commissioners in writing of the nature of the concern and whether or not the individual requests a new assignment. The individual may request a particular attorney, but the Board of Commissioners retains the discretion to determine whether new legal counsel will be provided, and if so, to select such counsel. All Recipients must cooperate with the attorney assigned to defend him or her.

5. No Recipient may employ or retain an attorney or law firm at County expense, except pursuant to this policy and upon the express prior written approval of the Board of Commissioners.

6. Any Recipient who knowingly violates this policy or who pleads guilty or is convicted of a criminal offense in the course of their performance for Ottawa County voluntarily forfeits with respect to that activity, any right under statute, common law, or county policy or procedure to a County funded legal defense and/or indemnification by Ottawa County.

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V. REVIEW PERIOD

The Internal Policy Review Team will review this Policy at least once every two years, and will make recommendations for changes to the Planning & Policy Committee.

Action Request

Committee: Planning and Policy Committee
Meeting Date: 6/13/2012
Requesting Department: Administrator's Office
Submitted By: Misty Cunningham
Agenda Item: Performance Verification Policy

SUGGESTED MOTION:
To approve and forward to the Board of Commissioners the revised Performance Verification Policy (formally Performance Measurement Policy) for review and comment.

SUMMARY OF REQUEST:
County policies require periodic review and updates. This request is to review the revised changes and forward to the Board of Commissioners for a first and second reading before final approval.

FINANCIAL INFORMATION:

Total Cost: $0.00	General Fund Cost: $0.00	Included in Budget:	☐ Yes	☒ No

If not included in budget, recommended funding source:

ACTION IS RELATED TO AN ACTIVITY WHICH IS:

☐ Mandated	☒ Non-Mandated	☐ New Activity

ACTION IS RELATED TO STRATEGIC PLAN:
Goal: 4: To Continually Improve the County's Organization and Services.

Objective: 1: Review and evaluate the organization, contracts, programs, systems, and services for potential efficiencies.

ADMINISTRATION RECOMMENDATION: ☒ Recommended ☐ Not Recommended ☐ Without Recommendation

County Administrator: Alan G. Vanderberg

Digitally signed by Alan G. Vanderberg
DN: cn=Alan G. Vanderberg, c=US, o=County of Ottawa, ou=Administrator's Office, email=avanderberg@miottawa.org
Reason: I am the author of this document
Date: 2012.06.07 14:12:01 -04'00'

Committee/Governing/Advisory Board Approval Date:

County of Ottawa

PERFORMANCE ~~MEASUREMENT~~ VERIFICATION POLICY

I. POLICY

In accordance with the County Board of Commissioner's goal of continually improving the County's organization and services, as well as maximizing financial resources, this policy establishes a system to verify performance and the effective use of taxpayer and other public funds.

The system utilizes a combination of strategic planning, evaluation reports, and performance-based budgeting techniques to assist the Board with making prudent and informed decisions about the allocation of financial resources based on, but not limited to, workload, efficiency, outcomes, and cost. ~~As stewards of public funds, the Ottawa County Board of Commissioners must be accountable for their use. Providing a thorough accounting for the dollars provided and used is important but true accountability also requires the Board to evaluate whether these dollars were used effectively. Performance measures that include output, efficiency, and outcome measures are critical tools in evaluating the effectiveness of County programs.~~

~~The intent of this Policy is to provide for the use of performance measures in County operations.~~

~~To facilitate the County budget process, all programs and activities funded by County dollars and/or accounted for through the County budget must submit performance measurements as part of the budget process. Performance measures will be used so that Administrator can make budget recommendations to the Board of Commissioners, to allow the Board to make informed allocations of fiscal resources, and to provide for the continued improvement of resource allocations.~~

II. STATUTORY REFERENCES

The Board of Commissioners may establish such rules and regulations regarding the business concerns of the County as the Board considers necessary and proper. See: MCL 46.11(m); 46.71, Act 156 of 1851, as amended.

III. COUNTY LEGISLATIVE OR HISTORICAL REFERENCES

Board of Commissioners Policy Adoption Date and Resolution Number: May 27, 2008; 08-123

Board of Commissioners Review Date and Resolution Number: May 13, 2008; 08-110

Name and Date of Last Committee Review: Planning and Policy Committee, May 8, 2008

Last Review by Internal Policy Review Team: May 16, 2012

County of Ottawa

IV. PROCEDURE

A. To facilitate the performance verification system, the Board of Commissioners supports the completion of the following items:~~The Board of Commissioners will support the use of performance measures.~~

1. County Strategic Plan and Business Plan The Board will develop and maintain a Strategic Plan and an Annual Business Plan for the County which will provide strategic direction to departments/divisions as they develop their department performance plans and program evaluation plans.

2.
~~1.~~ Development of department performance plans in order to assist the Board of Commissioners with their decision making during the annual budget allocation process, each department of County government (as defined in Board of Commissioner Rule IV, Section 4.6) are required to develop and maintain a Performance Plan that lists the goals, objectives, target population(s), programs, services, and performance measures of their respective office. The Board of Commissioners requests performance plans from the Circuit, District, and Probate Courts and related departments serving Ottawa County. Each of these Plans will be incorporated into the County's annual performance-based budgeting process.~~The Board will require annual reports from all departments under the control of the Administrator, and request annual reports from the courts and from offices and departments managed by elected officials. These annual reports will include performance measures that reflect the functions performed by each reporting entity.~~
~~As part of the annual budget reporting process, the Administration will incorporate performance measures that support the Ottawa County Strategic Plan as well as tie departmental goals and objectives to the annual budget.~~

a. All performance plans must be reviewed by the Planning and Performance Improvement (PPI) Department and Fiscal Services Department prior to final approval by the County Administrator.

b. Annual performance measurement data (e.g. workload, efficiency, outcomes, and customer service) will be incorporated into Performance Plan(s) by May 1 of each year.

c. The PPI Department will obtain benchmark data from other comparable counties, whenever feasible, to compare the performance and cost of departments of County government and courts.

d. The PPI Department will audit the annual performance measurement data to check for completeness, correctness, and consistency. The PPI Department will also calculate all cost data (e.g. department cost per capita, department

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cost per FTE) for inclusion in the performance plans. Further, the PPI Department will prepare a benchmark analysis report for each department of County government and the courts by utilizing comparable benchmark data.

e. The PPI Department will forward all completed performance plans and benchmark analysis reports to the Fiscal Services Department by June 15 of each year.

f. The completed performance plans and benchmark analysis reports will be utilized by the County Board, County Administration, and the Fiscal Services Department to analyze personnel requests, staffing levels technology initiatives, funding requests, and other budgetary decisions.

3. **Development of Program Evaluation Plans** All programs/services which the County Board and/or County Administrator designate for evaluation must have an evaluation plan completed by the PPI Department. Each plan will include a program outline that defines the goals, objectives, target population(s), and performance measures that will be used to evaluate the program/service, as well as any other materials deemed necessary (e.g. program and data flow analysis, organization and work flow analysis, and data collection tools) to conduct the evaluation.

   a. All evaluation plans must be approved by the PPI Department and County Administrator.

   b. Departments of County government and the courts will provide any and all data that is required for the PPI Department to complete the evaluation of their respective program/service.

   c. Completed evaluations, and any recommendations contained therein, will be used by the County Board and County Administration in the resource allocation process for future funding (e.g. continuation, modification, consolidation, privatization, discontinuation, other).

4. **Annual Reports** The Board will require annual reports from all departments of County government (as defined in Board of Commissioner Rule IV, Section 4.6) and request an annual report from the courts.-These annual reports will include the performance measurement data that are contained in the annual performance plans.

~~B. The Board will emphasize the development of *outcome* measures.~~

County of Ottawa

~~1. In measuring performance, there are three types of indicators most often used. Output measures (e.g., number of tickets written) address the workload of departments, but do not indicate if the department is performing well. Efficiency measures (e.g., percent of payroll checks issued without error) address whether workloads/caseloads are being processed timely and efficiently. Outcome measures (e.g., recidivism) reflect effectiveness and indicate whether we have achieved the goals we set out to accomplish.~~

~~a. As part of their strategic planning process, the Board will include outcome performance measures that link County goals and objectives to results.~~

~~C. The Board will utilize performance measures in the decision-making process.~~

~~1. Once appropriate performance measures are developed, their true potential may be realized. The measures may be used to enhance service delivery, evaluate program performance and results, support new initiatives, communicate program goals and, ultimately, improve program effectiveness.~~

~~a. The Board will utilize performance measures in analyzing personnel requests, technology initiatives, program funding, and other budget decisions.~~

V. REVIEW PERIOD

The Internal Policy Review Team will review this Policy at least once every two years, and will make recommendations for changes to the Planning & Policy Committee.