

SENATE BILL No. 954

February 4, 2004, Introduced by Senators BROWN, CROPSEY, BARCIA, VAN
WOERKOM, McMANUS, ALLEN, GOSCHKA, KUIPERS, GARCIA and JELINEK and
referred to the Committee on Agriculture, Forestry and Tourism.

A bill to amend 1939 PA 3, entitled

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

by amending section 10a (MCL 460.10a), as amended by 2003 PA 214,
and by adding section 10dd.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 10a. (1) ~~No later than January 1, 2002, the~~ **The**
2 commission shall issue orders establishing the rates, terms, and
3 conditions of service that allow all retail customers of an
4 electric utility or provider to choose an alternative electric
5 supplier. The orders shall provide for full recovery of a
6 utility's net stranded costs and implementation costs as
7 determined by the commission.

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

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

1 (4) ~~Within 180 days after June 5, 2000, the~~ **The** commission
2 shall establish a code of conduct that shall apply to all
3 electric utilities. The code of conduct shall include, but is
4 not limited to, measures to prevent cross-subsidization,
5 information sharing, and preferential treatment, between a
6 utility's regulated and unregulated services, whether those
7 services are provided by the utility or the utility's affiliated
8 entities. The code of conduct established under this subsection
9 shall also be applicable to electric utilities and alternative
10 electric suppliers consistent with section 10, this section, and
11 sections 10b through 10cc.

12 (5) ~~Before December 31, 2003, the~~ **The** commission shall
13 extend the temporary waiver for appliance service plans granted
14 in case no. U-12134 issued February 20, 2003, to July 1, 2004,
15 subject to the conditions imposed by that order. The enactment
16 of this subsection shall not be deemed to prejudice, delay, or
17 affect any pending legal case or legal proceeding.

18 (6) The orders issued by the commission before June 5, 2000
19 that allow customers of an electric utility to choose an
20 alternative electric supplier, including orders that determine
21 and authorize recovery of net stranded costs and implementation
22 costs and that confirm any voluntary commitments of electric
23 utilities, are in compliance with this act and enforceable by the
24 commission. An electric utility that has not had voluntary
25 commitments to provide customer choice previously approved by
26 orders of the commission shall file a restructuring plan to allow
27 customers to choose an alternative electric supplier no later

1 than the date ordered by the commission. The plan shall propose
2 a methodology to determine the electric utility's net stranded
3 costs and implementation costs.

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

11 (a) Electricity generated and consumed at ~~an industrial site~~
12 ~~or contiguous industrial site or single commercial establishment~~
13 ~~or single residence~~ **1 or more contiguous industrial sites,**
14 **commercial establishments, agricultural operations, or personal**
15 **residences** without the use of an electric utility's transmission
16 and distribution system.

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

24 (c) A site or facility with load existing on June 5, 2000
25 that is divided by an inland body of water or by a public
26 highway, road, or street but that otherwise meets this definition
27 meets the contiguous requirement of this subdivision regardless

1 of whether self-service power was being generated on June 5,
2 2000.

3 (d) A commercial or industrial facility, **agricultural**
4 **operation**, or ~~single~~ residence that meets the requirements of
5 subdivision (a) or (b) meets this definition whether or not the
6 generation facility is owned by an entity different from the
7 owner of the commercial or industrial site, **agricultural**
8 **operation**, or ~~single~~ residence.

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

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

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

27 (i) For at least 90 days during the period from January 1,

1 1996 to October 1, 1999, supplied by self-service power, but only
2 to the extent of the capacity reserved or load served by
3 self-service power during the period.

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

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

24 (10) The commission shall, after a contested case proceeding,
25 issue annually an order approving for each electric utility a
26 true-up adjustment to reconcile any overcollections or
27 undercollections of the preceding 12 months to ensure the

1 recovery of all amounts of net stranded costs. The rates for
2 customers remaining with an incumbent electric utility will not
3 be affected by the true-up process under this subsection. The
4 commission shall review the electric utility's stranded cost
5 recovery charges and securitization charges implemented for the
6 preceding 12 months, and adjust the stranded cost recovery
7 charge, by way of supplemental surcharges or credits, to allow
8 the netting of stranded costs.

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

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

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

17 (c) Any other method the commission considers appropriate.

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

24 (13) After the time period described in section 10d(2), the
25 rates for retail customers that remain with or leave and later
26 return to the incumbent electric utility shall be determined in
27 the same manner as the rates were determined before the effective

1 date of this section.

2 Sec. 10dd. (1) As used in this section:

3 (a) "Eligible electric generator" means a system for the
4 generation of electricity that is fueled by a renewable fuel or a
5 fuel cell, with a generation capacity limited to the customer's
6 electric need. An eligible generation system shall not to exceed
7 100 kw.

8 (b) "Renewable fuel" means solar, hydroelectric, wind,
9 biofuel, or biomass. For the purposes of this subdivision:

10 (i) "Biofuel" means a fuel that is comprised of a minimum of
11 75%, by volume, of a gas or liquid which is made from biomass.

12 (ii) "Biomass" means dedicated crops grown for energy
13 production and organic waste.

14 (c) "Methane digester electric generating system" means a
15 system that generates electricity through the production and
16 recovery of biogas from the anaerobic microbial digestion of
17 animal or food waste.

18 (2) The commission shall establish a statewide net metering
19 program not later than July 1, 2004. The program shall apply to
20 all electric utilities and alternative electric suppliers in this
21 state. Except as otherwise provided under this section,
22 customers of any class are eligible to interconnect eligible
23 electric generators with the customer's local electric utility
24 and operate the generators in parallel with the distribution
25 system. The program shall be designed for a period of not less
26 than 10 years and limit each customer to generation capacity
27 designed to meet only the customer's electric needs.

1 (3) Except as otherwise provided under this section, an
2 electric utility or alternative electric supplier is not required
3 to allow for net metering that is greater than 0.5% of their
4 in-state peak load for the preceding calendar year. The utility
5 or supplier shall notify the commission if its net metering
6 program exceeds the 0.5% requirement under this subsection.
7 Selection of customers for participation in the net metering
8 program shall be based on the order in which the applications for
9 participation in the net metering program are received by the
10 electric utility or alternate electric supplier.

11 (4) An electric utility or alternative electric supplier
12 shall not refuse to provide or discontinue electric service to a
13 customer solely for the reason that the customer participates in
14 the net metering program.

15 (5) The program created under subsection (2) shall include
16 all of the following:

17 (a) Statewide uniform interconnection requirements for all
18 eligible electric generators. The interconnection requirements
19 shall be designed to protect electric utility workers and
20 equipment and the general public.

21 (b) The minimum qualifications and a certification process
22 for individuals responsible for the installation of eligible
23 electric generators. An individual shall not install an eligible
24 electric generator unless he or she is certified by the
25 commission as a qualified installer.

26 (c) A uniform application form and process to be used by all
27 electric utilities and alternative electric suppliers in this

1 state. Customers who are served by an alternative electric
2 supplier shall submit a copy of the application to the electric
3 utility for the customer's service area.

4 (d) A requirement that each electric utility and alternative
5 electric supplier shall allow net metering for any methane
6 digester electric generating system regardless of the amount of
7 electricity generated by the system.

8 (6) Each electric utility and alternative electric supplier
9 shall maintain records of all applications and up-to-date records
10 of all eligible electric generators located within their service
11 area.

12 (7) An electric utility or alternative electric supplier may
13 charge an application fee not to exceed \$100.00. Except as
14 otherwise provided under this section, no additional fee or
15 charge may be imposed. The electric utility or alternative
16 electric supplier shall charge a customer participating in the
17 net metering program rates and charges identical to those charged
18 other similarly situated retail customers and shall not charge
19 for additional standby, capacity, interconnection, or other
20 service charge.

21 (8) The interconnection requirements shall provide that an
22 electric utility or alternative electric supplier may, at its own
23 expense and upon reasonable written notice to the net metering
24 customer, perform testing and inspection of an eligible electric
25 generator as is necessary to determine that the system complies
26 with all applicable electric safety, power quality, and
27 interconnection requirements.

1 (9) The interconnection requirements shall require all
2 eligible electric generators, alternative electric suppliers, and
3 electric utilities to comply with all applicable federal and
4 state laws, rules, or regulations and any national standards as
5 determined by the commission.

6 (10) Electric meters shall be used to determine the amount of
7 the customer's use in each billing period, net of any excess
8 energy their generator delivers to the utility distribution
9 system during that same billing period.

10 (11) An electric utility serving over 1,000,000 customers in
11 this state may provide its customers participating in the net
12 metering program, at no additional charge, a meter or meters
13 capable of measuring the flow of energy in both directions.

14 (12) An electric utility serving fewer than 1,000,000
15 customers in this state shall provide the meter or meters to its
16 customers at cost. Only the incremental cost above that for
17 meters provided by the electric utility to similarly situated
18 nongenerating customers shall be paid by the eligible customer.

19 (13) If the quantity of electricity generated by an eligible
20 electric generator during a billing period exceeds the quantity
21 of the customer's usage during the billing period, the eligible
22 customer shall be credited by their supplier of generation
23 service for the excess kilowatt-hours generated during the
24 billing period. The credit shall appear on the bill for the
25 following billing period and determined by 1 of the following:

26 (a) For systems capable of generating less than 10 kilowatts
27 or for eligible electric generators using a meter that measures

1 only the net energy the customer consumes during any billing
2 period, credit shall be at the same rate the customer pays for
3 service from the electric utility or alternative electric
4 supplier.

5 (b) Except as otherwise provided under subdivision (a), for
6 eligible electric generators using time-of-day meters, credit
7 shall be applied for each time-of-day period at their electric
8 utility's average top incremental cost for the billing period of
9 that time-of-day period.

10 (c) Except as otherwise provided under subdivision (a), for
11 eligible electric generators using interval meters, credit shall
12 be applied at the electric utility's top incremental cost for
13 each hour for all kilowatt hours delivered during that hour.

14 (14) The commission may establish a rate for customers
15 participating in the net metering program which includes a basic
16 service charge for transmission and distribution to be paid by
17 the customer each billing period regardless of any excess
18 generation credits.

19 (15) For customers who purchase generation service from an
20 alternative electric supplier, the commission may determine that
21 some portion of the basic service charge required under
22 subsection (14) be paid to the alternative electric supplier.