

HOUSE BILL NO. 407

INTRODUCED BY K. PETERSON

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A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT PUBLIC UTILITIES PROVIDING NATURAL GAS OR ELECTRICAL ENERGY SERVICE AND THAT NATURAL GAS OR ELECTRICAL ENERGY TRANSMISSION OR DISTRIBUTION SERVICES PROVIDERS FUNCTIONALLY SEPARATE THE SUPPLY, TRANSMISSION, AND DISTRIBUTION OF NATURAL GAS AND ELECTRICAL ENERGY FROM APPLIANCE MERCHANDISING AND SERVICING."

WHEREAS, public utilities providing natural gas or electrical energy services and natural gas or electrical energy transmission or distribution services providers have an established customer base in areas served, an established workforce, administration system for providing regulated services, and guaranteed revenue for providing those services; and

WHEREAS, the established customer base, workforce, administrative system, and guaranteed revenue related to regulated services create an inherent competitive advantage when the public utility or transmission or distribution services provider furnishes unregulated services, such as appliance merchandising, service, and repair, in competition with private appliance merchandisers and service providers; and

WHEREAS, requiring the functional separation of appliance merchandising and servicing from the supply, transmission, and distribution of natural gas or electrical energy could best protect against cross-subsidization that is unfair to competitors and ratepayers.

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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NEW SECTION. **Section 1. Purpose.** The purpose of [sections 1 through 6] is to:

(1) prevent regulated public utilities providing natural gas or electrical energy services and natural gas or electrical energy transmission or distribution services providers from including merchandising and servicing of appliances in the calculation of the revenue requirement for energy, transmission, or distribution prices; and

(2) reduce competitive advantages or disadvantages in the area of appliance merchandising and



1 servicing among private contractors, public utilities, and transmission or distribution services providers.

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3 **NEW SECTION. Section 2. Definitions.** As used in [sections 1 through 6], the following definitions

4 apply:

5 (1) "Cost of service" means the costs that a public utility providing natural gas or electrical energy
6 services or a natural gas or electrical energy transmission or distribution services provider incurs in
7 providing services regulated by the commission.

8 (2) "Functionally separate subsidiary" means the entity created as a result of the public utility's
9 or transmission or distribution services provider's functional separation of the supply, transmission, and
10 distribution of natural gas or electrical energy from appliance merchandising and service.

11 (3) "Merchandising" means the sale of new, used, or remanufactured appliances and comprises
12 all activities incident to the sale, including advertising, promotion, delivery, appliance removal, installation,
13 initial setup and adjustment, ductwork, ventilation, and wiring.

14 (4) "Servicing" means:

15 (a) the maintenance and repair of nonutility services, including safety inspections, pilot lighting,
16 cleaning, adjustments, and installations of new mechanical parts that are not part of routine or emergency
17 responses;

18 (b) business safety inspections; or

19 (c) energy efficiency audits.

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21 **NEW SECTION. Section 3. Public utility appliance merchandising and servicing -- prohibition --**

22 **exception.** (1) Except as provided in subsection (2), a public utility providing natural gas or electrical
23 energy service or a natural gas or electrical energy transmission or distribution services provider may not
24 merchandise or service household natural gas or electrical appliances.

25 (2) A public utility or a transmission or distribution services provider may engage in appliance
26 merchandising or servicing that involves only minor repairs, maintenance, or adjustments that have been
27 identified and determined necessary as a result of the normal course of a business safety inspection, an
28 energy efficiency audit, or a routine or emergency response if the merchandising and servicing activities
29 are provided through a functionally separate subsidiary.

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1 NEW SECTION. **Section 4. Functional separation -- requirements.** (1) A public utility providing
2 natural gas or electrical energy services or a natural gas or electrical energy transmission or distribution
3 services providers offering appliance merchandising and servicing shall file a plan with the commission to
4 create a functionally separate subsidiary. The plan must include:

5 (a) the structure of the functionally separate subsidiary; and

6 (b) the amount of royalty paid to the public utility or transmission or distribution services provider
7 or, if a royalty payment is not made, the reason for nonpayment.

8 (2) A public utility or a transmission or distribution services provider may not include the costs
9 associated with appliance merchandising or servicing in the cost of service for rate purposes.

10 (3) The commission shall monitor the public utility's or the transmission or distribution services
11 provider's compliance with subsection (2) by requiring regular audits.

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13 NEW SECTION. **Section 5. Prohibited business practices.** A public utility providing natural gas
14 or electrical energy services or a natural gas or electrical energy transmission and distribution services
15 provider may not:

16 (1) provide advertising space in billing statements or other literature to the functionally separate
17 subsidiary unless the same offer and terms are made available to competing providers;

18 (2) solicit or persuade customers to conduct business with a functionally separate subsidiary;

19 (3) promote a functionally separate subsidiary over competing providers;

20 (4) provide a functionally separate subsidiary with customer information when the customer places
21 an order for regulated services; or

22 (5) offer preferential treatment to a functionally separate subsidiary to the detriment of competing
23 providers.

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25 NEW SECTION. **Section 6. Remedy for noncompliance.** If the commission finds that a public
26 utility providing natural gas or electrical energy services or a natural gas or electrical energy transmission
27 or distribution services provider has violated a provision of [sections 1 through 6], the commission may
28 order that the cost associated with appliance merchandising or servicing be removed from the cost of
29 service for rate purposes.

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