

HOUSE BILL NO. 632

INTRODUCED BY D. MOOD, BECK, COCCHIARELLA, DOHERTY, GILLAN, MCGEE, SLITER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE ELECTRIC UTILITY INDUSTRY RESTRUCTURING AND CUSTOMER CHOICE LAWS; ~~PROVIDING TAX RELIEF FOR A PUBLIC UTILITY OR OTHER ELECTRICITY SUPPLIER THAT SELLS ELECTRICITY AT LIFELINE RATES;~~ DEFINING "LIFELINE RATES RATE"; ~~ALLOWING THE PUBLIC SERVICE COMMISSION TO IMMEDIATELY ADJUST RATES UPWARD IN THE PUBLIC INTEREST;~~ CLARIFYING THAT THE PUBLIC SERVICE COMMISSION RETAINS AUTHORITY OVER THE PRICE OF ELECTRICITY UNTIL A FINAL TRANSITION PLAN IS APPROVED BY THE COMMISSION; CLARIFYING THAT THE COMMISSION'S AUTHORITY TO SET JUST AND REASONABLE RATES FOR DEFAULT SUPPLY IS A CONTINUING OBLIGATION; REQUIRING THE COMMISSION TO COMMENCE A PROCEEDING TO PROVIDE JUST AND REASONABLE RATES; REQUIRING THE COMMISSION TO ADOPT A TEMPORARY LIFELINE RATES RATE FOR ~~COMMERCIAL OR INDUSTRIAL LARGE CUSTOMERS UNDER SECTION 69-8-201(1)(A)~~ WHO HAVE CHOSEN AN ELECTRICITY SUPPLIER UNDER TITLE 69, CHAPTER 8, MCA; AMENDING SECTIONS ~~15-31-113,~~ 69-8-103, 69-8-201, 69-8-210, 69-8-211, AND 69-8-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, ~~A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE.~~"

WHEREAS, THE 1997 LEGISLATURE APPROVED SENATE BILL No. 390, WHICH PLACED MONTANA ON THE ROAD TO CUSTOMER CHOICE, WITH THE GOAL OF EVENTUALLY ALLOWING MARKET FORCES TO PROVIDE LOWER PRICES FOR MONTANA ELECTRICITY CONSUMERS THAN COULD BE ACHIEVED THROUGH GOVERNMENT REGULATION; AND

WHEREAS, THE 1997 LEGISLATURE HAD NO WAY OF ANTICIPATING RECENT EVENTS AND CONDITIONS THAT HAVE PRODUCED EXTRAORDINARILY HIGH ELECTRICITY PRICES IN THE WESTERN UNITED STATES, INCLUDING ~~THE UNWILLINGNESS OF THE STATE OF CALIFORNIA TO BUILD POWER PLANTS TO SERVE THAT STATE'S SURGING POWER DEMANDS,~~ SEVERE DROUGHT CONDITIONS IN THE NORTHWEST THAT HAVE SUBSTANTIALLY REDUCED HYDROELECTRIC GENERATION; AND RAPID INCREASES IN NATURAL GAS PRICES THAT HAVE INFLATED ELECTRICITY COSTS FROM GAS-FIRED PLANTS; AND

WHEREAS, SENATE BILL No. 390 CONTAINED CERTAIN PROVISIONS INTENDED TO PROTECT MONTANA ELECTRICITY CONSUMERS IN THE EVENT THAT COMPETITION DID NOT PROVE ADEQUATE TO PROVIDE REASONABLE ELECTRICITY PRICES; AND

1 WHEREAS, THE MONTANA LEGISLATURE HAS NOW CONCLUDED THAT THE MONTANA PUBLIC SERVICE
 2 COMMISSION HAS THE AUTHORITY TO IMMEDIATELY ESTABLISH A LIFELINE RATE FOR THAT PORTION OF GENERATION THAT
 3 SERVED LARGE CUSTOMERS IN MONTANA IN 1998 AND SHOULD ESTABLISH JUST AND REASONABLE RATES TO CONTINUE
 4 REGULATION FOR ALL CUSTOMERS UNTIL THE PUBLIC SERVICE COMMISSION APPROVES A TRANSITION PLAN FOR A PUBLIC
 5 UTILITY THAT HAS ELECTED TO FILE A TRANSITION PLAN.

6

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

8

9 ~~Section 1. Section 15-31-113, MCA, is amended to read:~~

10 ~~"15-31-113. Gross income and net income. (1) The term Except as provided in subsection (4),~~
 11 ~~"gross income" means all income recognized in determining the corporation's gross income for federal~~
 12 ~~income tax purposes and:~~

13 ~~(a) including:~~

14 ~~(i) interest exempt from federal income tax and exempt interest dividends as defined in section~~
 15 ~~852(b)(5) of the Internal Revenue Code of 1986, as that section may be amended or renumbered;~~

16 ~~(ii) the portion of gain from a liquidation of the reporting corporation not recognized for federal~~
 17 ~~corporate income tax purposes pursuant to sections 331 through 337 of the Internal Revenue Code, as~~
 18 ~~those sections may be amended or renumbered, attributable to stockholders, either individual or corporate,~~
 19 ~~not subject to Montana income or license tax under Title 15, chapter 30 or chapter 31, as appropriate,~~
 20 ~~on the gain passing through to the stockholders pursuant to federal law; and~~

21 ~~(b) excluding gain recognized for federal tax purposes as a shareholder of a liquidating corporation~~
 22 ~~pursuant to sections 331 through 337 of the Internal Revenue Code, as those sections may be amended~~
 23 ~~or renumbered, when the gain is required to be recognized by the liquidating corporation pursuant to~~
 24 ~~subsection (1)(a)(ii) of this section.~~

25 ~~(2) The term "net income" means the gross income of the corporation less the deductions set~~
 26 ~~forth in 15-31-114.~~

27 ~~(3) A corporation is not exempt from the corporation license tax unless specifically provided for~~
 28 ~~under 15-31-101(3) or 15-31-102. Any corporation not subject to or liable for federal income tax but not~~
 29 ~~exempt from the corporation license tax under 15-31-101(3) or 15-31-102 shall compute gross income~~
 30 ~~for corporation license tax purposes in the same manner as a corporation that is subject to or liable for~~

1 federal income tax according to the provisions for determining gross income in the federal Internal Revenue
2 Code in effect for the taxable year.

3 ~~———— (4) (a) Gross income does not include income from the sale of electricity for lifeline rates A LIFELINE
4 RATE under 69-8-403 by a public utility or other electricity supplier as defined in 69-8-103 if that public
5 utility or other electricity supplier is subject to the tax provided in this chapter.~~

6 ~~———— (b) The exclusion from gross income allowed under subsection (4)(a) also applies to a limited
7 liability partnership if the limited liability partnership satisfies the conditions in subsection (4)(a)."~~

8

9 **Section 1.** Section 69-8-103, MCA, is amended to read:

10 **"69-8-103. Definitions.** As used in this chapter, unless the context requires otherwise, the
11 following definitions apply:

12 (1) "Aggregator" or "market aggregator" means an entity, licensed by the commission, that
13 aggregates retail customers, purchases ~~electric~~ electrical energy, and takes title to ~~electric~~ electrical energy
14 as an intermediary for sale to retail customers.

15 (2) "Assignee" means any entity, including a corporation, partnership, board, trust, or financing
16 vehicle, to which a utility assigns, sells, or transfers, other than as security, all or a portion of the utility's
17 interest in or right to transition property. The term also includes an entity, corporation, public authority,
18 partnership, trust, or financing vehicle to which an assignee assigns, sells, or transfers, other than as
19 security, the assignee's interest in or right to transition property.

20 (3) "Board" means the board of investments created by 2-15-1808.

21 (4) "Broker" or "marketer" means an entity, licensed by the commission, that acts as an agent
22 or intermediary in the sale and purchase of ~~electric~~ electrical energy but that does not take title to ~~electric~~
23 electrical energy.

24 (5) "Cooperative utility" means:

25 (a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

26 (b) an existing municipal electric utility as of May 2, 1997.

27 (6) "Customer" or "consumer" means a retail electric customer or consumer. The university of
28 Montana, pursuant to 20-25-201(1), and Montana state university, pursuant to 20-25-201(2), are each
29 considered a single retail electric customer or consumer with a single individual load.

30 (7) "Customer-generator" means a user of a net metering system.

1 (8) "Default supplier" means a distribution services provider or a person that has received a default
2 supplier license from the commission.

3 (9) "Distribution facilities" means those facilities by and through which electricity is received from
4 a transmission services provider and distributed to the customer and that are controlled or operated by a
5 distribution services provider.

6 (10) "Distribution services provider" means a utility owning distribution facilities for distribution
7 of electricity to the public.

8 (11) "Electricity supplier" means any person, including aggregators, market aggregators, brokers,
9 and marketers, offering to sell electricity to retail customers in the state of Montana.

10 (12) "Financing order" means an order of the commission adopted in accordance with 69-8-503
11 that authorizes the imposition and collection of fixed transition amounts and the issuance of transition
12 bonds.

13 (13) (a) "Fixed transition amounts" means those nonbypassable rates or charges, including but not
14 limited to:

15 (i) distribution;

16 (ii) connection;

17 (iii) disconnection; and

18 (iv) termination rates and charges that are authorized by the commission in a financing order to
19 permit recovery of transition costs and the costs of recovering, reimbursing, financing, or refinancing the
20 transition costs and of acquiring transition property through a plan approved by the commission in the
21 financing order, including the costs of issuing, servicing, and retiring transition bonds.

22 (b) If requested by the utility in the utility's application for a financing order, fixed transition
23 amounts must include nonbypassable rates or charges to recover federal and state taxes in which the
24 transition cost recovery period is modified by the transactions approved in the financing order.

25 (14) "Functionally separate" means a utility's separation of the utility's electricity supply,
26 transmission, distribution, and unregulated retail energy services assets and operations.

27 (15) "Interested person" means a retail electricity customer, the consumer counsel established in
28 5-15-201, the commission, or a utility.

29 (16) "Large customer" means, for universal system benefits programs purposes, a customer with
30 an individual load greater than a monthly average of 1,000 kilowatt demand in the previous calendar year

1 for that individual load.

2 ~~(17)~~ (17) "Lifeline ~~rates~~ RATE" means AN emergency, temporary ~~rates that are~~ RATE adopted for the
3 ~~express purpose of allowing commercial or industrial~~ LARGE customers ~~without~~ UNDER 69-8-201(1)(A) WHO
4 HAVE CHOSEN AN ELECTRICITY SUPPLIER UNDER TITLE 69, CHAPTER 8, TO OBTAIN an affordable supply of electricity
5 as of May 1, 2001, to remain in operation or to recommence operations once suspended UNTIL THE
6 COMMISSION ESTABLISHES JUST AND REASONABLE RATES FOR GENERATION PURSUANT TO 69-8-403(1).

7 ~~(17)~~(18) "Local governing body" means a local board of trustees of a rural electric cooperative.

8 ~~(18)~~(19) "Low-income customer" means those energy consumer households and families with
9 incomes at or below industry-recognized levels that qualify those consumers for low-income energy-related
10 assistance.

11 ~~(19)~~(20) "Net metering" means measuring the difference between the electricity distributed to and
12 the electricity generated by a customer-generator that is fed back to the distribution system during the
13 applicable billing period.

14 ~~(20)~~(21) "Net metering system" means a facility for the production of ~~electric~~ electrical energy
15 that:

16 (a) uses as its fuel solar, wind, or hydropower;

17 (b) has a generating capacity of not more than 50 kilowatts;

18 (c) is located on the customer-generator's premises;

19 (d) operates in parallel with the distribution services provider's distribution facilities; and

20 (e) is intended primarily to offset part or all of the customer-generator's requirements for
21 electricity.

22 ~~(21)~~(22) "Nonbypassable rates or charges" means rates or charges that are approved by the
23 commission and imposed on a customer to pay the customer's share of transition costs or universal
24 system benefits programs costs even if the customer has physically bypassed either the utility's
25 transmission or distribution facilities.

26 ~~(22)~~(23) "Pilot program" means a program using a representative sample of residential and small
27 commercial customers to assist in developing and offering customer choice of electricity supply for all
28 residential and commercial customers.

29 ~~(23)~~(24) "Public utility" means any electric utility regulated by the commission pursuant to Title
30 69, chapter 3, on May 2, 1997, including the public utility's successors or assignees TO ANY BUSINESS

1 COMPONENT OF THE ELECTRIC UTILITY THAT GENERATES, TRANSMITS, OR DISTRIBUTES ELECTRICAL ENERGY.

2 ~~(24)~~(25) "Qualifying load" means, for payments and credits associated with universal system
3 benefits programs, all nonresidential demand-metered accounts of a large customer within the utility's
4 service territory in which the customer qualifies as a large customer.

5 ~~(25)~~(26) "Small customer" means a residential customer or a small commercial customer who has
6 an individual account with an average monthly demand in the previous calendar year of less than 100
7 kilowatts or a new commercial customer with an estimated average monthly demand of less than 100
8 kilowatts of a public utility distribution services provider that has opened access on its distribution system
9 pursuant to Title 35, chapter 19, or this chapter.

10 ~~(26)~~(27) "Transition bondholder" means a holder of transition bonds, including trustees, collateral
11 agents, and other entities acting for the benefit of that holder.

12 ~~(27)~~(28) "Transition bonds" means any bond, debenture, note, interim certificate, collateral, trust
13 certificate, or other evidence of indebtedness or ownership issued by the board or other transition bonds
14 issuer that is secured by or payable from fixed transition amounts or transition property. Proceeds from
15 transition bonds must be used to recover, reimburse, finance, or refinance transition costs and to acquire
16 transition property.

17 ~~(28)~~(29) "Transition charge" means a nonbypassable rate or charge to be imposed on a customer
18 to pay the customer's share of transition costs.

19 ~~(29)~~(30) "Transition cost recovery period" means the period beginning on July 1, 1998, and ending
20 when a utility customer does not have any liability for payment of transition costs.

21 ~~(30)~~(31) "Transition costs" means:

22 (a) a public utility's net verifiable generation-related and electricity supply costs, including costs
23 of capital, that become unrecoverable as a result of the implementation of this chapter or of federal law
24 requiring retail open access or customer choice;

25 (b) those costs that include but are not limited to:

26 (i) regulatory assets and deferred charges that exist because of current regulatory practices and
27 can be accounted for up to the effective date of the commission's final order regarding a public utility's
28 transition plan and conservation investments made prior to universal system benefits charge
29 implementation;

30 (ii) nonutility and utility power purchase contracts, including qualifying facility contracts;

1 (iii) existing generation investments and supply commitments or other obligations incurred before
2 May 2, 1997, and costs arising from these investments and commitments;

3 (iv) the costs associated with renegotiation or buyout of the existing nonutility and utility power
4 purchase contracts, including qualifying facilities and all costs, expenses, and reasonable fees related to
5 issuing transition bonds; and

6 (v) the costs of refinancing and retiring of debt or equity capital of the public utility and associated
7 federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit
8 customers.

9 ~~(31)~~(32) "Transition period" means the period beginning on July 1, 1998, and ending on July 1,
10 ~~2002~~ 2004, unless otherwise extended pursuant to this chapter, during which utilities may phase in
11 customer choice of electricity supplier.

12 ~~(32)~~(33) "Transition property" means the property right created by a financing order, including
13 without limitation the right, title, and interest of a utility, assignee, or other issuer of transition bonds to
14 all revenue, collections, claims, payments, money, or proceeds of or arising from or constituting fixed
15 transition amounts that are the subject of a financing order, including those nonbypassable rates and other
16 charges and fixed transition amounts that are authorized by the commission in the financing order to
17 recover transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition
18 costs and acquiring transition property, including the costs of issuing, servicing, and retiring transition
19 bonds. Any right that a utility has in the transition property before the utility's sale or transfer or any other
20 right created under this section or created in the financing order and assignable under this chapter or
21 assignable pursuant to a financing order is only a contract right.

22 ~~(33)~~(34) "Transmission facilities" means those facilities that are used to provide transmission
23 services as determined by the federal energy regulatory commission and the commission.

24 (35) "Transmission services provider" means a person controlling or operating transmission
25 facilities.

26 ~~(35)~~(36) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed
27 on a customer to pay the customer's share of universal system benefits programs costs.

28 ~~(36)~~(37) "Universal system benefits programs" means public purpose programs for:

29 (a) cost-effective local energy conservation;

30 (b) low-income customer weatherization;

- 1 (c) renewable resource projects and applications, including those that capture unique social and
 2 energy system benefits or that provide transmission and distribution system benefits;
 3 (d) research and development programs related to energy conservation and renewables;
 4 (e) market transformation designed to encourage competitive markets for public purpose programs;
 5 and
 6 (f) low-income energy assistance.

7 ~~(37)~~(38) "Utility" means any public utility or cooperative utility."
 8

9 **SECTION 2. SECTION 69-8-201, MCA, IS AMENDED TO READ:**

10 **"69-8-201. Public utility -- transition to customer choice -- waiver.** (1) A public utility shall, except
 11 as provided in this section, adhere to the following deadlines:

12 (a) ~~On~~ Subject to subsection (6), on or before July 1, 1998, all customers with individual loads
 13 greater than 1,000 kilowatts and for loads of the same customer with individual loads at a meter greater
 14 than 300 kilowatts that aggregate to 1,000 kilowatts or greater must have the opportunity to choose an
 15 electricity supplier.

16 (b) Subject to subsection (2), and as soon as is administratively feasible but before July 1, 2002,
 17 all other public utility customers must have the opportunity to choose an electricity supplier.

18 (2) (a) Except as provided for in subsection (4), the commission may determine that additional time
 19 is necessary for customers identified in subsection (1)(b); however, the implementation of full customer
 20 choice may not be delayed beyond July 1, 2004.

21 (b) A determination by the commission that additional time is necessary for subsection (1)(b)
 22 customers must be made at least 60 days in advance of the scheduled date and must be based on one
 23 or more of the following considerations:

- 24 (i) implementation would not be administratively feasible;
 25 (ii) implementation would materially affect the reliability of the electric system; or
 26 (iii) Montana customers or electricity suppliers would be disadvantaged due to lack of a competitive
 27 electricity supply market.

28 (3) The commission shall designate the public utility or one or more default suppliers to provide
 29 regulated default service for those small customers of a public utility that are not being served by a
 30 competitive electricity supplier and those customers who elect to receive service from the default supplier.

1 ~~The transition advisory committee shall review and address the need for continued default supply service~~
 2 ~~and make recommendation to the 57th legislature.~~

3 (4) Except as provided in 69-5-101, 69-5-102, 69-5-104 through 69-5-112, and 69-8-402, a
 4 public utility currently doing business in Montana as part of a single integrated multistate operation, no
 5 portion of which lies within the basin of the Columbia River, may:

6 (a) defer compliance with this chapter until a time that the public utility can reasonably implement
 7 customer choice in the state of the public utility's primary service territory, except that the public utility
 8 shall file a transition plan pursuant to 69-8-202 to provide transition to customer choice on or before July
 9 1, 2002, and must have completed the transition period to customer choice by July 1, 2006; and

10 (b) petition the commission to delay the public utility's transition plan filing until July 1, 2004.

11 (5) Upon a request from a public utility with fewer than 50 customers, the commission shall waive
 12 compliance with the requirements of 69-8-104, 69-8-202 through 69-8-204, 69-8-208 through 69-8-211,
 13 69-8-402, and this section.

14 (6) A customer who chose an electricity supplier prior to July 1, 2001, may make an election
 15 prior to October 1, 2001, to receive the customer's electricity from the default supplier. A customer who
 16 chose an electricity supplier prior to July 1, 2001, and who chooses to receive the customer's electricity
 17 from the default supplier pursuant to this subsection is bound by the election and may not again elect to
 18 choose an electricity supplier other than the default supplier."

19

20 **Section 3.** Section 69-8-210, MCA, is amended to read:

21 **"69-8-210. Public utilities -- electricity supply.** (1) Consistent with the provisions of 69-8-403,
 22 the commission retains authority over the price of RATES, TOLLS, AND CHARGES FOR electricity supply paid by
 23 customers of Montana utilities A PUBLIC UTILITY THAT HAS FILED A TRANSITION PLAN until a final transition plan
 24 is approved by the commission. The commission's authority and duty to set just and reasonable rates for
 25 electricity supply costs paid by customers OF A DEFAULT SUPPLIER is a continuing obligation.

26 (2) On the effective date of a final commission order implementing a public utility's transition plan
 27 pursuant to 69-8-202, the public utility shall remove its generation assets from the rate base.

28 ~~(2)(3)~~ During the transition period, the commission ~~may~~ shall establish ~~cost-based prices for~~
 29 ~~electricity supply service for customers that do not have a choice of electricity supply service or that have~~
 30 ~~not yet chosen an electricity supplier~~ just and reasonable rates for THE GENERATION OF ELECTRICITY SUPPLIED

1 TO all customers ~~of a~~ REQUESTING THAT SERVICE FROM ANY public utility that has filed a transition plan. In
 2 establishing those rates, the commission shall consider the following factors:

3 (a) cost of production;

4 (b) reasonable rate of return;

5 (c) market considerations; and

6 (d) ~~the ability of customers to pay~~ OTHER FACTORS THAT THE COMMISSION CONSIDERS RELEVANT TO THE
 7 DETERMINATION OF JUST AND REASONABLE RATES.

8 (4) IF THE TRANSITION PERIOD IS EXTENDED, THE CUSTOMERS' DISTRIBUTION SERVICES PROVIDER SHALL:

9 (A) EXTEND ANY COST-BASED CONTRACT WITH THE DISTRIBUTION SERVICES PROVIDER'S AFFILIATE SUPPLIER FOR
 10 A TERM OF NOT MORE THAN 3 YEARS; OR

11 (B) PURCHASE ELECTRICITY FROM THE MARKET; AND

12 (C) USE A MECHANISM THAT RECOVERS ELECTRICITY SUPPLY COSTS IN RATES TO ENSURE THAT THOSE COSTS
 13 ARE FULLY RECOVERED.

14 ~~(3) If the transition period is extended, then the customers' distribution services provider shall:~~

15 ~~—— (a) extend any cost-based contract with the distribution services provider's affiliate supplier for~~
 16 ~~a term not more than 3 years; or~~

17 ~~—— (b) purchase electricity from the market; and~~

18 ~~—— (c) use a mechanism that recovers electricity supply costs in rates to ensure that those costs are~~
 19 ~~fully recovered.~~

20 ~~(4)(5)~~ If a public utility intends to be an electricity supplier through an unregulated division, then
 21 the public utility must be licensed as an electricity supplier pursuant to 69-8-404.

22 (6) A PUBLIC UTILITY SHALL OFFER ITS CUSTOMERS AN OPPORTUNITY TO PURCHASE A SEPARATELY MARKETED
 23 PRODUCT COMPOSED OF POWER FROM RENEWABLE RESOURCES. THIS PRODUCT MAY BE PRICED DIFFERENTLY FROM THE
 24 STANDARD ELECTRICITY PRODUCT AUTHORIZED IN THIS SECTION. FOR THE PURPOSES OF THIS SECTION, "RENEWABLE
 25 RESOURCES" MEANS WIND, SOLAR, OR GEOTHERMAL RESOURCES."

26

27 **Section 4.** Section 69-8-211, MCA, is amended to read:

28 **"69-8-211. Public utilities -- transition costs and charges -- rate moratorium.** (1) Subject to the
 29 provisions of this section, the commission shall allow recovery of the following categories of transition
 30 costs:

1 (a) the unmitigable costs of qualifying facility contracts, including reasonable buyout or buydown
2 costs, for which the contract price of generation is above the market price for generation;

3 (b) the unmitigable costs of energy supply-related regulatory assets and deferred charges that exist
4 because of current regulatory practices and that can be accounted for up to the effective date of the
5 commission's final order regarding a public utility's transition plan, including costs, expenses, and
6 reasonable fees related to issuing of transition bonds;

7 (c) the unmitigable transition costs related to public utility-owned generation and other power
8 purchase contracts, except that recovery of those costs is limited to the amount accruing during the first
9 4 years after the commission enters an order pursuant to 69-8-202(3); and

10 (d) other transition costs as may qualify for recovery under this section.

11 (2) Transition costs as determined by the commission upon an affirmative showing by a public
12 utility must meet the following requirements:

13 (a) Transition costs must reflect all reasonable mitigation by the public utility, including but not
14 limited to good faith efforts to renegotiate contracts, buying out or buying down contracts, and refinancing
15 through transition bonds.

16 (b) The value of all generation-related assets and liabilities and electricity supply costs must be
17 reasonably demonstrable and must be considered on a net basis, and methods for determining value must
18 include but are not limited to:

19 (i) estimating future market values of electricity and ancillary services provided by the assets;

20 (ii) appraisal by independent third-party professionals; or

21 (iii) a competitive bid sale. A sale by a public utility of its generation assets to a successor or
22 assignee does not relieve either the public utility or its successor or assignee of ~~its~~ THE obligation to serve
23 customers at just and reasonable rates.

24 (c) Investments and power purchase contracts must have been previously allowed in rates or, if
25 not previously in rates, must be determined to be used and useful to ratepayers in connection with the
26 commission's approval of the utility's transition plan.

27 (d) Unless otherwise provided for in this chapter, only costs related to existing investments and
28 power purchase contracts identified in subsection (2)(c) and costs arising from those investments and
29 power purchase contracts may be included as transition costs.

30 (3) (a) On commission approval of the amount of a public utility's transition costs, those costs

1 must be recovered through the imposition of a transition charge.

2 (b) A transition charge may not be collected from customers for:

3 (i) new or additional loads of 1,000 kilowatts or greater that were first served by the public utility
4 after December 31, 1996; or

5 (ii) loads served by that customer's own generation.

6 (c) Subject to commission approval, a utility and a customer may agree to alter the customer's
7 transition charge payment schedule. Public utilities may file with the commission tariffs for electric service
8 rates that foster economic development or retention of existing customers within the state, including
9 generally available rate schedules. Transition charges are the only charges that may be imposed upon a
10 customer class to recover transition costs under this section. A separate exit fee may not be charged.

11 (4) Transition charges must be imposed within a transition cost recovery period approved by the
12 commission on a case-by-case basis. Except for transition costs recovered under subsection (1)(c),
13 categories of transition costs may have varying transition cost recovery periods.

14 (5) Approval of transition costs and collection of those transition costs through transition charges
15 is a settlement of all transition costs claims by a public utility. A public utility seeking to recover transition
16 costs through any means not authorized by this chapter may not collect transition charges with respect
17 to these transition costs.

18 (6) Except as provided in subsection (7), public utilities shall implement a rate moratorium during
19 the transition period as follows:

20 (a) From July 1, 1998, through June 30, 2000, public utilities may not charge rates higher than
21 those rates in effect on July 1, 1998.

22 (b) From July 1, 2000, through June 30, 2002, and only for those customers subject to the
23 provisions of 69-8-201(1)(b), public utilities may not increase that increment of rates normally allocated
24 to electric supply-related costs above the increment associated with electric supply-related costs reflected
25 in rates in effect on July 1, 1998. Beginning on July 1, 2000, public utilities may propose increases to
26 those increments of rates normally allocated to transmission and distribution costs.

27 (7) Excepted from the provisions of subsection (6) are:

28 (a) increased costs related to universal system benefits programs greater than those currently in
29 rates, including the treatment of universal system benefits program costs as an expense;

30 (b) increased costs necessary to implement full customer choice, including but not limited to

1 metering, billing, and technology. Those costs must be recovered from the customers on whose behalf the
2 increased costs are incurred.

3 (c) subject to commission approval, an extraordinary event resulting in either:

4 (i) a 4% annual revenue requirement increase from July 1, 1998, through June 30, 2000; or

5 (ii) an 8% power supply-related annual revenue requirement increase from July 1, 2000, through
6 June 30, 2002;

7 (d) the increase or decrease in the annual state and local property tax expense that has occurred
8 since May 2, 1997;^z

9 ~~———— (E) AN INCREASE IN RATES REFLECTING THE COMMISSION'S DETERMINATION THAT A GRADUAL UPWARD~~
10 ~~ADJUSTMENT BASED ON JUST AND REASONABLE CRITERIA SET FORTH IN 69-8-210(3) IS IN THE PUBLIC INTEREST.~~

11 (8) Notwithstanding subsections (6) and (7), during the transition period, public utilities may not
12 charge rates or collect costs that include costs reallocated to transition costs at a level higher than the
13 public utility would reasonably expect to recover in rates had the current regulatory system remained
14 intact.

15 (9) Public utilities shall apply savings resulting under 69-8-503 toward the rate moratorium
16 pursuant to subsection (6).

17 (10) During the ~~4-year~~ ~~6-YEAR~~ 4-YEAR transition period, public utilities may accelerate the
18 amortization of accumulated deferred investment tax credits associated with transmission, distribution,
19 and the general plant as an adjustment to earnings if electric earnings fall below 9.5% earned return on
20 average equity. The public utility may include the flow through of investment tax credits so that the public
21 utility's earned return on equity is maintained at 9.5%. Accumulated deferred investment tax credits
22 amortized under this subsection may not be reflected in operating income for ratemaking purposes.

23 (11) The commission shall issue the accounting orders necessary to align rate moratorium timing
24 and requirements to actual transition bonds savings."

25

26 **Section 5.** Section 69-8-403, MCA, is amended to read:

27 **"69-8-403. Commission authority -- rulemaking authority.** (1) Within 7 days of [the effective date
28 of this act] the commission shall immediately commence a proceeding to provide just and reasonable rates
29 to all Montana consumers FOR THE GENERATION OF ELECTRICITY SUPPLIED TO ALL CUSTOMERS OF A PUBLIC UTILITY
30 THAT HAS FILED A TRANSITION PLAN, taking into consideration the cost of production, a REASONABLE rate of

1 ~~return analysis, the customer's ability to pay, and, market conditions, as warranted, and OTHER FACTORS~~
 2 ~~THAT THE COMMISSION DETERMINES ARE RELEVANT, IN ORDER TO provide a rate that allows all public utility~~
 3 ~~customers to have access to affordable energy.~~

4 ~~—— (2) Within 7 days of [the effective date of this act], the commission shall adopt temporary lifeline~~
 5 ~~rates for all commercial or industrial customers currently unable to purchase power at an affordable price~~
 6 ~~who request this rate determination. The lifeline rate must be set at a price that is based on consideration~~
 7 ~~of data regarding operation costs from those commercial or industrial customers currently without an~~
 8 ~~affordable price of electricity. The lifeline rates must expire as soon as the commission enters an interim~~
 9 ~~order provided for in subsection (3).~~

10 (2) WITHIN 30 DAYS OF [THE EFFECTIVE DATE OF THIS ACT], THE COMMISSION SHALL ADOPT A TEMPORARY
 11 LIFELINE RATE FOR ALL LARGE CUSTOMERS UNDER ~~69-8-201(1)(A)~~ WHO HAVE CHOSEN AN ELECTRICITY SUPPLIER UNDER
 12 TITLE 69, CHAPTER 8, WHO REQUEST THIS RATE CLASSIFICATION FOR A SUPPLY OF ELECTRICITY, THE PRICE OF WHICH
 13 DOES NOT EXCEED 150% OF THE PRICE OF THE SUPPLY COMPONENT OF THE OTHERWISE APPLICABLE REGULATED TARIFFED
 14 RATE FOR THAT CLASS OF CUSTOMER. IN ORDER TO BE ELIGIBLE FOR A LIFELINE RATE, A LARGE CUSTOMER SHALL
 15 DEMONSTRATE TO THE COMMISSION THAT THE CUSTOMER EARNED NO MORE THAN AN 8% RETURN ON EQUITY ON THE
 16 CUSTOMER'S MONTANA OPERATION IN THE PREVIOUS 12 MONTHS. THE LIFELINE RATE MUST EXPIRE AS SOON AS THE
 17 COMMISSION ISSUES THE INTERIM ORDER PROVIDED FOR IN SUBSECTION (3). IN ADDITION TO ANY OTHER REQUIREMENTS
 18 THAT THE COMMISSION MAY IMPOSE, IN ORDER TO BE ELIGIBLE FOR A LIFELINE RATE, CUSTOMERS UNDER ~~69-8-201(1)(A)~~
 19 WHO HAVE CHOSEN AN ELECTRICITY SUPPLIER UNDER TITLE 69, CHAPTER 8, THAT REQUEST A LIFELINE RATE
 20 CLASSIFICATION SHALL AGREE TO REPAY, UNDER PROCEDURES ESTABLISHED BY THE COMMISSION, ANY DIFFERENCE
 21 BETWEEN THE LIFELINE RATE AND THE INTERIM RATE ESTABLISHED BY THE COMMISSION PURSUANT TO SUBSECTION (3).
 22 IF THE LIFELINE RATE IS GREATER THAN THE INTERIM RATE, THE COMMISSION SHALL ESTABLISH PROCEDURES TO REIMBURSE
 23 THOSE CUSTOMERS UNDER ~~69-8-201(1)(A)~~ WHO HAVE CHOSEN AN ELECTRICITY SUPPLIER UNDER TITLE 69, CHAPTER
 24 8, THAT RECEIVED A LIFELINE RATE.

25 (3) The commission shall enter an interim order no later than November 30, 2001, establishing
 26 just and reasonable rates for all Montana consumers CUSTOMERS OF A UTILITY THAT HAS FILED A TRANSITION
 27 PLAN.

28 (4) The legislature expressly provides the commission discretion to set just and reasonable rates;
 29 FOR ALL CLASSES OF CUSTOMERS OF A PUBLIC UTILITY THAT HAS FILED A TRANSITION PLAN UNTIL THE COMMISSION HAS
 30 ISSUED A FINAL ORDER REGARDING THE UTILITY'S TRANSITION PLAN. ~~and a legal challenge to the interim rate may~~

~~1 not be entertained until a final just and reasonable rate has been established by commission order. The
2 commission shall set a final just and reasonable rate before July 1, 2002, and the interim just and
3 reasonable rate must remain in effect until the final just and reasonable rate becomes effective.~~

4 ~~(1)(5)~~ Beginning on the effective date of a final commission order regarding a public utility's
5 transition plan, the commission shall regulate the public utility's retail transmission and distribution services
6 within the state of Montana, as provided in this chapter, and may not regulate the price of electricity
7 supply except as ~~electricity supply may be procured~~ WHEN ELECTRICITY SUPPLY IS PROCURED as provided in this
8 section:

9 (a) by one or more default suppliers ~~or the successor or assignee of a public utility~~ for those
10 customers ~~not being~~ WHO HAVE NOT EXERCISED AND MAINTAINED THE CHOICE TO BE served by a competitive
11 supplier ~~or those customers unable to obtain an affordable price for electricity supply;~~ or

12 (b) by the distribution function of a public utility for those customers that are not being served by
13 a competitive electricity supplier as provided by commission rules. During the transition period, those
14 procurements may include a cost-based contract from a supply affiliate or an unregulated division.

15 (6) The commission may not give final approval to a transition plan until a final:

16 (A) A just and reasonable rate has been approved by the commission for all customers of a public
17 utility: THAT HAS FILED A TRANSITION PLAN; AND

18 (B)

19 ~~——(2)(7) The~~ The commission may not give final approval to a transition plan unless the commission
20 ~~shall decide if~~ decides there is workable competition in the electricity supply market by determining
21 whether competition is sufficient to inhibit monopoly pricing or anticompetitive price leadership. In reaching
22 a decision, the commission may not rely solely on market share estimates.

23 ~~(3)(8)(7)~~ The commission shall license electricity suppliers and enforce licensing provisions
24 pursuant to 69-8-404.

25 ~~(4)(9)(8)~~ The commission shall promulgate rules that identify the licensees and ensure that the
26 offered electricity supply is provided as offered and is adequate in terms of price, quality, safety, and
27 reliability.

28 ~~(5)(10)(9)~~ The commission shall establish just and reasonable rates through established ratemaking
29 principles for public utility distribution and transmission services and shall regulate these services. The
30 commission may approve rates and charges for electricity distribution and transmission services based on

1 alternative forms of ratemaking such as performance-based ratemaking, on a demonstration by the public
2 utility that the alternative method complies with this chapter, and on the public utility's transition plan.

3 ~~(6)(11)(10)~~ The commission shall certify that a cooperative utility has adopted a transition plan that
4 complies with this chapter. A cooperative utility's transition plan is considered certified 60 days after the
5 cooperative utility files for certification.

6 ~~(7)(12)(11)~~ The commission shall promulgate rules that protect consumers, distribution services
7 providers, and electricity suppliers from anticompetitive and abusive practices.

8 ~~(8)(13)(12)~~ The commission shall license default suppliers and enforce default licensing provisions
9 pursuant to 69-8-416.

10 ~~(9)(14)(13)~~ The commission shall promulgate rules for the licensing of default suppliers on or before
11 December 1, 1999.

12 ~~(10)(15)(14)~~ Until the commission has determined that workable competition has developed for
13 small customers, a default supplier's obligation to serve remains.

14 ~~(11)(16)(15)~~ In addition to promulgating rules expressly provided for in this chapter, the
15 commission may promulgate any other rules necessary to carry out the provision of this chapter.

16 ~~(12)(17)(16)~~ This chapter does not give the commission the authority to:

17 (a) regulate cooperative utilities in any manner other than reviewing certification filings for
18 compliance with this chapter; or

19 (b) compel any change to a cooperative utility's certification filing made pursuant to this chapter."

20

21 NEW SECTION. SECTION 6. SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE
22 SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS
23 APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID
24 APPLICATIONS.

25

26 NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval.

27

28 ~~NEW SECTION. Section 7. Retroactive applicability.~~ [Section 1] applies retroactively, within the
29 meaning of 1-2-109, to the tax year following December 31, 2000.

30

1 ~~NEW SECTION. Section 8. Termination. [Section 1] terminates December 31, 2001.~~

2 - END -