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SENATE BILL NO. 502
INTRODUCED BY K. TOOLE

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A STATE POWER AUTHORITY AS A WHOLESALE PURCHASER AND SELLER OF ELECTRICITY TO PROVIDE COST-BASED ELECTRICITY TO RESIDENTIAL, AGRICULTURAL, AND SMALL COMMERCIAL CONSUMERS IN MONTANA WITH ELECTRIC LOADS OF LESS THAN 1,000 KILOWATTS PER MONTH; ALLOWING THE AUTHORITY TO BUY OR BUILD ELECTRICAL GENERATION FACILITIES, TRANSMISSION LINES, OR DISTRIBUTION SYSTEMS AND TO ENTER INTO JOINT VENTURES FOR THESE PURPOSES; ALLOWING THE AUTHORITY TO FINANCE ELECTRICAL GENERATION FACILITIES, TRANSMISSION LINES, AND DISTRIBUTION SYSTEMS THROUGH COAL SEVERANCE TAX BONDS AND OTHER REVENUE BONDS; ENABLING THE AUTHORITY TO ESTABLISH AS WELL AS PARTICIPATE IN VARIOUS STATE ENERGY CONSERVATION PROGRAMS; REQUIRING THE AUTHORITY TO ENGAGE IN ENERGY PLANNING ACTIVITIES WITH OTHER STATE AGENCIES; PROHIBITING THE AUTHORITY FROM SELLING TO LARGE CUSTOMERS; RESTRICTING THE SALE OF POWER TO OUT-OF-STATE CUSTOMERS; REQUIRING A DEFAULT SUPPLIER TO PURCHASE POWER FROM THE AUTHORITY IF THE TRANSACTION IS ADVANTAGEOUS TO CUSTOMERS; RAISING THE RATE OF THE WHOLESALE ENERGY TRANSACTION TAX TO PROVIDE SUPPORT FOR THE AUTHORITY; CLARIFYING THAT THE STATE POWER AUTHORITY IS NOT A REGULATED UTILITY; PROVIDING THAT A LARGE CUSTOMER MAY RECEIVE CREDIT AGAINST UNIVERSAL SYSTEM BENEFITS CHARGES BY MAKING CONTRIBUTIONS TO THE AUTHORITY; ADDING A MEMBER TO THE TRANSITION ADVISORY COMMITTEE ON ELECTRIC UTILITY INDUSTRY RESTRUCTURING; AMENDING SECTIONS 15-72-104, 15-72-106, 17-5-701, 69-3-101, 69-8-102, 69-8-210, 69-8-402, 69-8-403, 69-8-416, 69-8-501, 70-30-111, 77-1-301, 90-4-102, 90-4-1003, AND 90-5-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 7] may be cited as the "State Power Authority Act".

1 NEW SECTION. **Section 2. Purpose.** The legislature finds and declares that:

2 (1) reliable and affordable electricity is essential to the health, safety, and economic security of
3 Montana citizens;

4 (2) Montana's residential, agricultural, and small commercial consumers of electrical energy are
5 entitled to cost-based prices for electricity;

6 (3) the most practical and sustainable method of ensuring cost-based electricity in an unregulated
7 supply market is to enable a responsible public body to act as a wholesale provider of electrical energy to
8 distribution utilities within the state;

9 (4) because the fuels and technologies used to generate and transmit electricity are closely related
10 to environmental quality, a wholesale provider of electricity acting on behalf of Montana consumers must
11 take into account the benefits of acquiring or producing electrical energy derived from renewable energy
12 resources; and

13 (5) it is in the public interest that a state power authority have the ability to:

14 (a) purchase electricity from any supplier in the wholesale market for the purpose of providing
15 reliable, cost-based power exclusively to certain Montana consumers;

16 (b) construct, acquire, or enter into joint ventures to construct or acquire electrical generation
17 facilities that will provide cost-based power to small consumers in Montana;

18 (c) sell electricity to a default supplier and to any municipal, cooperative utility, or investor-owned
19 utility that serves Montana customers;

20 (d) contract with public or private entities for the operation and maintenance of state-owned
21 power facilities; and

22 (e) encourage and support energy conservation to mitigate consumer costs and detrimental
23 impacts on the environment.

24

25 NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 7], unless the context
26 requires otherwise, the following definitions apply:

27 (1) "Cost-based" means the price charged to a distribution services provider is sufficient to meet
28 the operating costs of the state power authority and to ensure timely repayment of bonds issued on behalf
29 of or any other debt incurred by the state power authority.

30 (2) "Default supplier" means a distribution services provider or a person that has received a default

1 supplier license from the public service commission.

2 (3) "Department" means the department of natural resources and conservation established in
3 2-15-3301.

4 (4) "Small consumer" means a residential, agricultural, or commercial customer of a distribution
5 services provider that has an individual load that is less than 1,000 kilowatts per month on average, as
6 determined by an accounting of the customer's consumption in the previous calendar year.

7 (5) "State power authority" or "authority" means the citizen board established in [section 4].

8

9 **NEW SECTION. Section 4. State power authority -- board composition -- procedures.** (1) There
10 is a state power authority consisting of a seven-member citizen board appointed by the governor with the
11 consent of the senate.

12 (2) In selecting the members, the governor shall:

13 (a) consider each prospective member's knowledge and understanding of the structural and
14 financial dimensions of the electrical energy sector of the state economy;

15 (b) ensure that two of the members broadly represent, as evidenced by their background,
16 experience, and livelihood, the following categories of electrical energy consumption:

17 (i) irrigated agriculture;

18 (ii) small commercial enterprise; and

19 (iii) residential; and

20 (c) choose an at-large member with academic or business credentials that indicate the person has
21 substantial experience in energy markets in the region of the western states.

22 (3) The members shall elect the presiding officer and vice presiding officer by majority vote.

23 (4) Members of the authority shall serve staggered 4-year terms. The governor shall designate
24 two of the initial members to serve 2-year terms and three of the initial members to serve 3-year terms.
25 Vacancies must be filled by appointment for the unexpired term. A member may not serve more than two
26 consecutive terms.

27 (5) The authority shall meet at least twice a year and may meet more frequently as required by
28 circumstances or at the request of any two or more members of the authority.

29 (6) Decisions of the authority require a simple majority of the whole membership.

30 (7) The authority is attached to the department for administrative purposes, and the department

1 shall provide staff support and a liaison between the authority and other state or federal agencies.

2

3 NEW SECTION. **Section 5. Powers and duties.** (1) The state power authority may:

4 (a) purchase electrical energy from any wholesale power supplier, on a contractual basis, without
5 limitation on the duration of any contract, to meet the aggregated load requirements of small consumers
6 in the service territory of a distribution services provider in Montana;

7 (b) purchase electrical generation facilities, transmission lines, or distribution systems in the state;

8 (c) enter into joint ventures with any municipality, cooperative, investor-owned utility, or any other
9 public or licensed private entity in Montana for the purpose of financing the construction of an electrical
10 generation facility, electric transmission lines, or an electrical energy distribution system;

11 (d) request that the legislature approve coal severance tax bonds, in accordance with 17-5-702,
12 or revenue bonds, in accordance with 17-5-720, to be issued by the board of examiners pursuant to
13 17-5-706 for the purpose of:

14 (i) constructing electrical generation facilities in the state; or

15 (ii) establishing and maintaining energy conservation programs designed to reduce or otherwise
16 modify consumer demand for electricity;

17 (e) sell electrical energy to any distribution services provider in the state;

18 (f) participate in a regional transmission organization established in response to or in compliance
19 with an order of the federal energy regulatory commission;

20 (g) obtain a lease on the oil, gas, and geothermal resources appurtenant to state land pursuant
21 to Title 77, chapter 3, except that the authority is exempt for the annual rental required in 77-3-423;

22 (h) obtain a lease on state land for the purpose of siting a wind, solar, geothermal, or other
23 renewable resource project;

24 (i) apply for and obtain a grant or loan issued by the department under the provisions of 90-4-109;

25 (j) participate with any municipality in an electrical energy generation project as provided in Title
26 90, chapter 5, part 1;

27 (k) exercise the power of eminent domain as provided in [section 8]; and

28 (l) in conjunction with the department of environmental quality, as provided in Title 90, chapter
29 4, part 1, establish and maintain energy conservation programs that are designed to reduce or otherwise
30 modify electrical energy consumption.

1 (2) The state power authority shall:

2 (a) subsequent to the purchase of power from the wholesale market or the generation of power
3 from an in-state generation facility, offer cost-based electrical energy to a default supplier and, to the
4 extent possible, after the default supplier has exercised the option to purchase electrical energy from the
5 authority under the provisions of 69-8-416, to any municipal, cooperative utility, or investor-owned utility
6 in the state;

7 (b) engage in an energy planning process in cooperation with the department, the department of
8 environmental quality, the consumer counsel, the pacific northwest power planning council, and the public
9 service commission to ensure that information regarding regional as well as in-state electrical energy
10 supply and demand balances and other relevant factors is accurate and up-to-date and to provide the basis
11 for prudential decisions affecting programs, policies, and expenditures in the arenas of:

12 (i) energy conservation;

13 (ii) electrical energy generated by renewable energy resources;

14 (iii) technological innovations in the energy arena;

15 (iv) the structure of local, state, and regional markets for electrical energy supply; and

16 (v) the reliability and adequacy of electrical transmission capacity within the state and within the
17 geographic area of a regional transmission organization that includes utilities and federal power marketing
18 administrations operating in Montana;

19 (c) cooperate with the alternative energy and energy conservation research development and
20 demonstration program as provided in 90-4-103; and

21 (d) for an electrical generation facility or certain electric transmission lines, submit to the
22 department of environmental quality the required information and fees and obtain from the department of
23 environmental quality the required certificate of environmental compatibility pursuant to Title 75, chapter
24 20.

25 (3) The state power authority may not:

26 (a) except in an instance when a default supplier or any other distribution utility or small consumer
27 rejects a sale offer from the authority, sell electrical energy to any entity outside the boundaries of
28 Montana; or

29 (b) provide cost-based electrical energy to any entity that does not:

30 (i) serve small consumers; and

1 (ii) have an administrative mechanism that the authority finds suitable to ensure that cost-based
2 electrical energy purchased from the authority is not sold to any customer that is not a small consumer.

3

4 NEW SECTION. **Section 6. Interagency cooperation.** (1) State agencies shall cooperate with the
5 state power authority in the planning of electrical energy purchases or the permitting or constructing of
6 electrical generation facilities.

7 (2) Within the limits of available resources, state agencies shall provide scientific, economic, and
8 other relevant data requested by the state power authority.

9 (3) The department and the department of environmental quality shall establish a working group
10 to assist the authority in fulfilling its purposes and to coordinate energy planning and conservation
11 programs as provided by law.

12

13 NEW SECTION. **Section 7. Funding -- special revenue account.** (1) There is a state power
14 authority special revenue account within the state special revenue fund established in 17-2-102.

15 (2) Revenue derived from the wholesale energy transaction tax pursuant to 15-72-106 must be
16 deposited into this account.

17 (3) The revenue received under this section must be used to:

18 (a) meet the administrative costs of the state power authority; and

19 (b) to the extent possible, supplement the authority's other financial offers, incentives, and
20 endeavors pursuant to [sections 5 and 6].

21 (4) The authority may also receive financial contributions from large customers as defined in
22 69-8-103 that qualify as credits against universal systems benefits charges as provided in 69-8-402.

23

24 NEW SECTION. **Section 8. Condemnation of existing natural gas and electric utilities.** (1) The
25 legislature finds and declares that:

26 (a) natural gas and electrical energy have become basic and irreplaceable necessities that impact
27 the public health, safety, and welfare of all Montana citizens; and

28 (b) in order to provide consistently affordable natural gas and electrical energy at a high level of
29 customer service, it is in the interest of the public to allow a governmental entity to condemn privately
30 owned natural gas and electric utilities when the governmental entity can meet the test established for

1 determining public interest provided in subsection (3).

2 (2) When condemning a natural gas or electrical energy utility, the governmental entity shall follow
3 the laws for condemnation as outlined in Title 70, chapter 30, except as provided in subsection (3).

4 (3) For the purposes of meeting the requirements of 70-30-111 and in determining if the taking
5 of a natural gas or electrical energy utility is in the public interest, the court may consider:

6 (a) the governmental entity's fitness and ability to manage and operate the natural gas or electrical
7 energy utility;

8 (b) the effects on economic activity resulting from the proposed change of ownership;

9 (c) the effect, if any, on competing public uses and consumers;

10 (d) the benefit to the public in general from the utility project as opposed to the impacts on the
11 social and economic conditions of the people living in the vicinity of the utility project and the entity that
12 currently owns the natural gas or electrical energy utility;

13 (e) effects on public health, safety, and welfare and the environment;

14 (f) public sentiment concerning governmental ownership of the natural gas or electrical energy
15 utility;

16 (g) the effect on rates paid by the consumer;

17 (h) any improvement in the quality of service to the ultimate consumer; and

18 (i) other factors that the court considers relevant.

19

20 **Section 9.** Section 15-72-104, MCA, is amended to read:

21 **"15-72-104. Wholesale energy transaction tax -- rate of tax -- exemptions -- cost recovery.** (1) (a)

22 Except as provided in subsection (3), a wholesale energy transaction tax is imposed upon electricity
23 transmitted within the state as provided in this section. The tax is imposed at a rate of ~~0.015~~ 0.030 cent
24 per kilowatt hour of electricity transmitted by a transmission services provider in the state.

25 (b) For electricity produced in the state for delivery outside of the state, the taxpayer is the person
26 owning or operating the electrical generation facility producing the electricity. The transmission services
27 provider shall collect the tax from the person based upon the kilowatt hours introduced onto transmission
28 lines from the electrical generation facility. The amount of kilowatt hours subject to tax must be reduced
29 by 5% to compensate for transmission line losses.

30 (c) For electricity produced in the state for delivery within the state, the taxpayer is the distribution

1 services provider. The transmission services provider shall collect the tax based upon the amount of
2 kilowatt hours of electricity delivered to the distribution services provider. The taxpayer may apply for a
3 refund for overpayment of taxes pursuant to 15-72-116.

4 (d) For electricity produced outside the state for delivery inside the state, the taxpayer is the
5 distribution services provider. The transmission services provider shall collect the tax based upon the
6 amount of kilowatt hours of electricity delivered to the distribution services provider.

7 (e) For electricity delivered to a distribution services provider that is a rural electric cooperative
8 for delivery to purchasers that have opted for customer choice under the provisions of Title 69, chapter
9 8, part 3, the taxpayer is the distribution services provider. The transmission services provider shall collect
10 the tax based on the amount of kilowatt hours of electricity delivered to the distribution services provider
11 that is attributable to customers that have opted for customer choice.

12 (f) For electricity delivered to a distribution services provider that prior to May 2, 1999, was
13 owned by a public utility as defined in 69-3-101, the tax is imposed on the successor distribution services
14 provider. The transmission services provider shall collect the tax based upon the amount of kilowatt hours
15 of electricity delivered to the distribution services provider.

16 (2) (a) If more than one transmission services provider transmits electricity, the last transmission
17 services provider transmitting or delivering the electricity shall collect the tax.

18 (b) If the transmission services provider is an agency of the United States government, the
19 distribution services provider receiving the electricity shall self-assess the tax subject to the provisions of
20 this part.

21 (c) If an electrical generation facility located within the state produces electricity for sale inside
22 and outside the state, sales within the state are considered to have come from electricity produced within
23 the state for purposes of the tax imposed by this section.

24 (3) (a) Electricity transmitted through the state that is not produced or delivered in the state is
25 exempt from the tax imposed by this section.

26 (b) Electricity produced in the state by an agency of the of the United States government for
27 delivery outside of the state is exempt from the tax imposed by this section.

28 (c) Electricity delivered to a distribution services provider that is the state power authority, a
29 municipal utility described in 69-8-103(5)(b), or a rural electric cooperative organized under the provisions
30 of Title 35, chapter 18, is exempt from the tax imposed by this section.

1 (d) Electricity delivered to a purchaser that receives its power directly from a transmission or
 2 distribution facility owned by an entity of the United States government on or before May 2, 1997, or
 3 electricity that is transmitted exclusively on transmission or distribution facilities owned by an entity of
 4 the United States government on or before May 2, 1997, is exempt from the tax imposed by this section.

5 [(e) Electricity delivered by a distribution services provider to a customer with loads of 1,000
 6 kilowatts or greater that was first served by a public utility after December 31, 1996, is exempt from the
 7 tax imposed by this section, provided that the customer purchases the electricity pursuant to a contract
 8 or contracts that establish the purchase price or prices of electricity. The exemption allowed by this
 9 subsection (3)(e) does not apply to electricity purchased under a renewal or extension of an existing
 10 contract or existing contracts.]

11 (4) A distribution services provider is allowed to recover the tax imposed by this section and the
 12 administrative costs to comply with this part in its rates. (Bracketed language terminates January 1,
 13 2003--sec. 40, Ch. 556, L. 1999.)"

14

15 **Section 10.** Section 15-72-106, MCA, is amended to read:

16 **"15-72-106. Collection of wholesale energy transaction tax -- disposition of revenue.** (1) A
 17 transmission services provider shall collect the tax imposed under 15-72-104 from the taxpayer and pay
 18 the tax collected to the department. If the transmission services provider collects a tax in excess of the
 19 tax imposed by 15-72-104, both the tax and the excess must be remitted to the department.

20 (2) A self-assessing distribution services provider is subject to the provisions of this part.

21 (3) ~~The~~ Except as provided in subsection (4), the wholesale energy transaction tax collected under
 22 this part must be deposited in the general fund.

23 (4) An amount sufficient to fund the activities of the state power authority, as determined by the
 24 authority, but not to exceed 25% of the total wholesale energy transaction tax collected under this part
 25 must be deposited in the state special revenue account provided in [section 7]."

26

27 **Section 11.** Section 17-5-701, MCA, is amended to read:

28 **"17-5-701. State of Montana coal severance tax bonds.** This part provides for the issuance of
 29 state of Montana coal severance tax bonds (also referred to as coal severance tax bonds in this part) to:

30 (1) finance renewable resource projects in the state designed to provide, during and after

1 extensive coal mining, a healthy economy, the alleviation of social and economic impacts created by coal
 2 development, the provision of cost-based electricity to small consumers, as defined in [section 3], and a
 3 clean and healthful environment for present and future generations; and

4 (2) finance loans to local governments for infrastructure projects under Title 90, chapter 6, part
 5 7."

6

7 **Section 12.** Section 69-3-101, MCA, is amended to read:

8 **"69-3-101. Meaning of term "public utility".** (1) ~~The~~ Except as provided in subsection (2)(d), the
 9 term "public utility", ~~within the meaning of~~ for the purposes of this chapter, ~~shall embrace~~ means every
 10 corporation, both public and private, company, individual, association of individuals, their lessees, trustees,
 11 or receivers appointed by any court ~~whatsoever, that now or hereafter may~~ own, operate, or control any
 12 plant or equipment, any part of a plant or equipment, or any water right within the state for the
 13 production, delivery, or furnishing for or to other persons, firms, associations, or corporations, private or
 14 municipal:

15 (a) heat;

16 (b) street-railway service;

17 (c) light;

18 (d) power in any form or by any agency;

19 (e) except as provided in chapter 7, water for business, manufacturing, household use, or
 20 sewerage service, whether within the limits of municipalities, towns, and villages or elsewhere;

21 (f) regulated telecommunications service.

22 (2) The term "public utility" does not include:

23 (a) privately owned and operated water, sewer, or combination systems that do not serve the
 24 public;

25 (b) county or consolidated city and county water or sewer districts as defined in Title 7, chapter
 26 13, parts 22 and 23; ~~or~~

27 (c) a person exempted from regulation as a public utility as provided in 69-3-111; or

28 (d) the state power authority as defined in [section 3]."

29

30 **Section 13.** Section 69-8-102, MCA, is amended to read:

1 **"69-8-102. Legislative findings and policy.** The legislature finds and declares the following:

2 (1) The generation and sale of electricity is becoming a competitive industry.

3 (2) Montana customers should have the freedom to choose their supplier of electricity and related
4 services in a competitive market as soon as administratively feasible. Affording this opportunity serves the
5 public interest.

6 (3) The interests of Montana consumers should be protected and the financial integrity of electrical
7 utilities should be fostered.

8 (4) The public interest requires the continued protection of consumers through:

9 (a) licensure of electricity suppliers;

10 (b) provision of information to consumers regarding electricity supply service;

11 (c) provision of a process for investigating and resolving complaints;

12 (d) continued funding for public purpose programs for:

13 (i) cost-effective local energy conservation;

14 (ii) low-income customer weatherization;

15 (iii) renewable resource projects and applications;

16 (iv) research and development programs related to energy conservation and renewables;

17 (v) market transformation; and

18 (vi) low-income energy assistance;

19 (e) assurance of service reliability and quality; ~~and~~

20 (f) access to cost-based electrical energy from a state power authority or a federal power
21 marketing agency; and

22 ~~(f)~~(g) prevention of anticompetitive and abusive activities.

23 (5) A utility in the state of Montana may not be advantaged or disadvantaged in the competitive
24 electricity supply market, including the consideration of the existence of universal system benefits
25 programs and the comparable level of funding for those programs throughout the regions neighboring
26 Montana."

27

28 **Section 14.** Section 69-8-210, MCA, is amended to read:

29 **"69-8-210. Public utilities -- electricity supply.** (1) On the effective date of a commission order
30 implementing a public utility's transition plan pursuant to 69-8-202, the public utility shall remove its

1 generation assets from the rate base.

2 (2) During the transition period, the commission may establish cost-based prices for electricity
3 supply service for customers that do not have a choice of electricity supply service or that have not yet
4 chosen an electricity supplier.

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

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

8 (b) purchase electricity from ~~the market~~ the state power authority, if and when the authority offers
9 a contract for cost-based electricity that is advantageous to the small consumers served by the distribution
10 services provider, or, if an advantageous contract is not available from the state power authority, from the
11 market; and

12 (c) use a mechanism that recovers electricity supply costs in rates to ensure that those costs are
13 fully recovered.

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

16

17 **Section 15.** Section 69-8-402, MCA, is amended to read:

18 **"69-8-402. Universal system benefits programs.** (1) Universal system benefits programs are
19 established for the state of Montana to ensure continued funding of and new expenditures for energy
20 conservation, renewable resource projects and applications, and low-income energy assistance during the
21 transition period and into the future.

22 (2) Beginning January 1, 1999, 2.4% of each utility's annual retail sales revenue in Montana for
23 the calendar year ending December 31, 1995, is established as the initial funding level for universal system
24 benefits programs. To collect this amount of funds on an annualized basis in 1999, the commission shall
25 establish rates for utilities subject to its jurisdiction and the governing boards of cooperatives shall establish
26 rates for the cooperatives. Except as provided in subsection (7), these universal system benefits charge
27 rates must remain in effect until July 1, 2003.

28 (a) The recovery of all universal system benefits programs costs imposed pursuant to this section
29 is authorized through the imposition of a universal system benefits charge assessed at the meter for each
30 local utility system customer as provided in this section.

1 (b) Utilities must receive credit toward annual funding requirements for a utility's internal programs
2 or activities that qualify as universal system benefits programs, including those portions of expenditures
3 for the purchase of power that are for the acquisition or support of renewable energy, conservation-related
4 activities, or low-income energy assistance, and for large customers' programs or activities as provided
5 in subsection (7). The department of revenue shall review claimed credits of the utilities and large
6 customers pursuant to 69-8-414.

7 (c) A utility's distribution services provider at which the sale of power for final end use occurs is
8 the utility that receives credit for the universal system benefits programs expenditure.

9 (d) A customer's distribution services provider shall collect universal system benefits funds less
10 any allowable credits.

11 (e) For a utility to receive credit for low-income related expenditures, the activity must have taken
12 place in Montana.

13 (f) If a utility's or a large customer's credit for internal activities does not satisfy the annual
14 funding provisions of subsection (2), then the utility shall make a payment to the universal system benefits
15 fund established in 69-8-412 for any difference.

16 (3) Cooperative utilities may collectively pool their statewide credits to satisfy their annual funding
17 requirements for universal system benefits programs and low-income energy assistance.

18 (4) A utility's transition plan must describe how the utility proposes to provide for universal system
19 benefits programs, including the methodologies, such as cost-effectiveness and need determination, used
20 to measure the utility's level of contribution to each program.

21 (5) A utility's minimum annual funding requirement for low-income energy and weatherization
22 assistance is established at 17% of the utility's annual universal system benefits funding level and is
23 inclusive within the overall universal system benefits funding level.

24 (a) A utility must receive credit toward the utility's low-income energy assistance annual funding
25 requirement for the utility's internal low-income energy assistance programs or activities.

26 (b) If a utility's credit for internal activities does not satisfy its annual funding requirement, then
27 the utility shall make a payment for any difference to the universal low-income energy assistance fund
28 established in 69-8-412.

29 (6) An individual customer may not bear a disproportionate share of the local utility's funding
30 requirements, and a sliding scale must be implemented to provide a more equitable distribution of program

1 costs.

2 (7) (a) A large customer:

3 (i) shall pay a universal system benefits programs charge with respect to the large customer's
4 qualifying load equal to the lesser of:

5 (A) \$500,000, less the large customer credits provided for in this subsection (7); or

6 (B) the product of 0.9 mills per kilowatt hour multiplied by the large customer's total kilowatt hour
7 purchases, less large customer credits with respect to that qualifying load provided for in this subsection
8 (7);

9 (ii) must receive credit toward that large customer's universal system benefits charge for financial
10 contributions to the state power authority or internal expenditures and activities that qualify as a universal
11 system benefits programs expenditure, and these financial contributions or internal expenditures must
12 include but not be limited to:

13 (A) expenditures that result in a reduction in the consumption of electrical energy in the large
14 customer's facility or among the small consumers supplied or directly served by the state power authority;
15 and

16 (B) those portions of expenditures for the purchase of power at retail or wholesale that are for the
17 acquisition or support of renewable energy or conservation-related activities.

18 (b) Large customers making these expenditures must receive a credit against the large customer's
19 universal system benefits charge, except that any of those amounts expended in a calendar year that
20 exceed that large customer's universal system benefits charge for the calendar year must be used as a
21 credit against those charges in future years until the total amount of those expenditures has been credited
22 against that large customer's universal system benefits charges.

23 (8) A public utility shall prepare and submit an annual summary report of the public utility's
24 activities relating to all universal system benefits programs to the commission, the department of revenue,
25 and the transition advisory committee provided for in 69-8-501. A cooperative utility shall prepare and
26 submit annual summary reports of activities to the cooperative utility's respective local governing body,
27 the statewide cooperative utility office, and the transition advisory committee. The statewide cooperative
28 utility office shall prepare and submit an annual summary report of the activities of individual cooperative
29 utilities, including a summary of the pooling of statewide credits, as provided in subsection (3), to the
30 department of revenue and to the transition advisory committee. The annual report of a public utility or

1 of the statewide cooperative utility office must include but is not limited to:

2 (a) the types of internal utility and customer programs being used to satisfy the provisions of this
3 chapter;

4 (b) the level of funding for those programs relative to the annual funding requirements prescribed
5 in subsection (2); and

6 (c) any payments made to the statewide funds in the event that internal funding was below the
7 prescribed annual funding requirements.

8 (9) A utility or large customer filing for a credit shall develop and maintain appropriate
9 documentation to support the utility's or the large customer's claim for the credit.

10 (10) (a) A large customer claiming credits for a calendar year shall submit an annual summary
11 report of its universal system benefits programs activities and expenditures to the department of revenue
12 and to the large customer's utility. The annual report of a large customer must identify each qualifying
13 project or expenditure for which it has claimed a credit and the amount of the credit. Prior approval by the
14 department of revenue or the utility is not required, except as provided in subsection (10)(b).

15 (b) If a large customer claims a credit that the department of revenue disallows in whole or in part,
16 the large customer is financially responsible for the disallowance. A large customer and the large
17 customer's utility may mutually agree that credits claimed by the large customer be first approved by the
18 utility. If the utility approves the large customer credit, the utility may be financially responsible for any
19 subsequent disallowance."

20

21 **Section 16.** Section 69-8-403, MCA, is amended to read:

22 **"69-8-403. Commission authority -- rulemaking authority.** (1) Beginning on the effective date of
23 a commission order regarding a public utility's transition plan, the commission shall regulate the public
24 utility's retail transmission and distribution services within the state of Montana, as provided in this
25 chapter, and may not regulate the price of electricity supply except as electricity supply may be procured
26 as provided in this section:

27 (a) by one or more default suppliers for those customers not being served by a competitive
28 supplier; or

29 (b) by the distribution function of a public utility for those customers that are not being served by
30 a competitive electricity supplier as provided by commission rules. During the transition period, those

1 procurements may include a cost-based contract from a supply affiliate or an unregulated division.

2 (2) The commission shall decide if there is workable competition in the electricity supply market
3 by determining whether competition is sufficient to inhibit monopoly pricing or anticompetitive price
4 leadership. In reaching a decision, the commission may not rely solely on market share estimates.

5 (3) The commission shall license electricity suppliers and enforce licensing provisions pursuant to
6 69-8-404.

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

9 (5) The commission shall establish just and reasonable rates through established ratemaking
10 principles for public utility distribution and transmission services and shall regulate these services. The
11 commission may approve rates and charges for electricity distribution and transmission services based on
12 alternative forms of ratemaking such as performance-based ratemaking, on a demonstration by the public
13 utility that the alternative method complies with this chapter, and on the public utility's transition plan.

14 (6) The commission shall certify that a cooperative utility has adopted a transition plan that
15 complies with this chapter. A cooperative utility's transition plan is considered certified 60 days after the
16 cooperative utility files for certification.

17 (7) The commission shall promulgate rules that protect consumers, distribution services providers,
18 and electricity suppliers from anticompetitive and abusive practices.

19 (8) The commission shall license default suppliers and enforce default licensing provisions pursuant
20 to 69-8-416.

21 (9) The commission shall promulgate rules for the licensing of default suppliers on or before
22 December 1, 1999.

23 (10) Until the commission has determined that workable competition has developed for small
24 customers, a default supplier's obligation to serve remains.

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

27 (12) This chapter does not give the commission the authority to:

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

30 (b) compel any change to a cooperative utility's certification filing made pursuant to this chapter;

1 or

2 (c) regulate the state power authority."

3

4 **Section 17.** Section 69-8-416, MCA, is amended to read:

5 **"69-8-416. Default supplier license.** (1) In developing licensing rules for default suppliers,
6 notwithstanding the default supplier's obligation to consider the economic merits of purchasing cost-based
7 electricity from the state power authority before contracting with another supplier, as provided in
8 69-8-210, the commission shall promote and facilitate the development of a competitive market for
9 electricity supply.

10 (2) Default supplier licensing rules must ensure that:

11 (a) a default supplier may not purchase electricity for or sell electricity to commercial or industrial
12 electric consumers having individual accounts with an average monthly demand in the previous calendar
13 year of 100 kilowatts or more or to new commercial or industrial electric consumers having individual
14 accounts with an estimated monthly demand of 100 kilowatts or more;

15 (b) a default supplier may not discount its commission- approved rates to retain or gain customers;

16 (c) a default supplier may not obligate customers to a contractual term or service;

17 (d) federal power marketing administration power or benefits acquired by a default supplier are
18 distributed as widely and equitably as possible among small customers and in a manner that encourages
19 competition;

20 (e) a default supplier, except when the default supplier is the distribution services provider, may
21 not construct, purchase, take, receive, or otherwise acquire or own, hold, equip, maintain, or operate
22 electric generating plants or transmission or distribution lines or systems, except that a default supplier
23 may enter into transmission or distribution agreements for the lease or use of capacity on transmission and
24 distribution systems owned by others to supply electricity to its customers in the state;

25 (f) a default supplier may not offer for sale any products other than electricity supply or provide
26 electricity supply to members or customers other than those residing in the state or sell electricity or
27 otherwise engage in the marketing of electricity on the wholesale market, but may dispose of excess
28 electricity associated with temporary load-energy imbalances.

29 (3) Except as provided in subsection (2)(e), a default supplier may provide only a single electricity
30 supply service to all of its small customers. A default supplier may also offer an additional electricity supply

1 service that includes a component of renewable energy.

2 (4) A default supplier may not offer other supply services unless the default supplier forms a
3 separate entity.

4 (5) Unless a default supplier determines that exercising the option to purchase power from the
5 state power authority will not be advantageous to its customers, a default supplier shall purchase
6 cost-based electricity from the authority if the authority's sale offer is timely and congruent with customer
7 load requirements."

8

9 **Section 18.** Section 69-8-501, MCA, is amended to read:

10 **"69-8-501. Transition advisory committee.** (1) A transition advisory committee on electric utility
11 industry restructuring is created. The transition advisory committee is composed of twelve voting members
12 who are appointed as follows:

13 (a) The speaker of the house shall appoint six members from the house of representatives, not
14 more than three of whom may be from one political party.

15 (b) The president of the senate shall appoint six members from the senate, not more than three
16 of whom may be from one political party.

17 (2) The following entities shall appoint nonvoting advisory representatives to the transition
18 advisory committee:

19 (a) The director of the department of environmental quality shall appoint one department
20 representative.

21 (b) The legislative consumer committee shall appoint one representative.

22 (c) One representative of the cooperative utility industry is appointed as designated by the
23 Montana electrical cooperative association.

24 (d) The public utilities in the state of Montana shall appoint one member.

25 (e) The commission shall appoint one member.

26 (f) The governor shall appoint the following nonvoting committee members:

27 (i) one representative from the industrial community with an interest in the restructuring of the
28 electric utility industry;

29 (ii) one representative from the nonindustrial retail electric consumer sector;

30 (iii) one representative from organized labor;

1 (iv) one representative from the community comprising environmental and conservation interests;
2 (v) one representative from a low-income program provider;
3 (vi) one representative of Montana's Indian tribes; ~~and~~
4 (vii) one representative of the electric power market industry; and
5 (viii) one member from the department of natural resources and conservation who serves as staff
6 support for the state power authority.

7 (3) In case of a vacancy, a replacement must be selected in the manner of the original
8 appointment.

9 (4) Legislative members are entitled to salary and expenses as provided in 5-2-302.

10 (5) The public service commission, legislative services division, and appropriate state agencies
11 shall provide staff assistance as requested by the committee.

12 (6) Transition advisory committee members must be appointed within 60 days of May 2, 1997,
13 to an initial term expiring on December 31, 1999. Subsequent terms must be for up to 2 years expiring
14 on January 1 of odd-numbered years.

15 (7) The voting members shall select a transition advisory committee presiding officer.

16 (8) The transition advisory committee on electric utility industry restructuring must dissolve on
17 the earlier of either the date that full transition to retail competition is completed or December 31, 2004.

18 (9) The transition advisory committee shall provide an annual report on the status of electric utility
19 restructuring on or before November 1 to the governor, the speaker of the house, the president of the
20 senate, and the commission and shall provide quarterly interim summary reports to the members of the
21 legislature through January 1, 1999.

22 (10) The transition advisory committee shall meet at least quarterly or as often as is necessary to
23 conduct its business.

24 (11) The transition advisory committee shall analyze and report on the transition to effective
25 competition in the competitive electricity supply market. The annual report made in the year 2000 must
26 evaluate specifically the pilot programs for customers with loads under 1,000 kilowatts and must include
27 legislative recommendations, if it appears appropriate, about the best means to further encourage the
28 development of customer choice and meaningful market access for the benefit of smaller customers. The
29 annual report for the year 2000 must also address the need, if any, for additional consumer protection
30 including protection from abusive or anticompetitive practices.

1 (12) The criteria that the transition advisory committee must use to evaluate effective competition
2 in the electricity supply market include but are not limited to the following:

3 (a) the level of demand for power supply choice and the availability of market prices for smaller
4 customers;

5 (b) the existence of sufficient markets and bargaining power to the benefit of smaller customers
6 and the best means to encourage and support the development of sufficient markets;

7 (c) the level of interest among electricity suppliers and the opportunity for electricity suppliers to
8 serve smaller customers; and

9 (d) the existence of the requisite technical and administrative support that enables smaller
10 customers to have choice of electricity supply.

11 (13) The transition advisory committee shall recommend legislation if necessary to promote electric
12 utility restructuring and retail choice of electricity suppliers.

13 (14) The transition advisory committee shall make recommendations to the governor, regarding
14 the implementation of statewide universal system benefits and universal energy assistance funds, in time
15 to allow for those funds to be created on or before January 1, 1999. This may include recommendations
16 regarding the assignment of an existing government agency or private, nonprofit entity as the fund
17 administrator and administration guidelines for the funds, including the means by which funds may be
18 made available for use.

19 (15) The transition advisory committee shall monitor and evaluate the universal system benefits
20 programs and comparable levels of funding for the region and make recommendations to the 58th
21 legislature to adjust the funding level provided for in 69-8-402 to coincide with the related activities of the
22 region at that time.

23 (16) On or before July 1, 2002, the transition advisory committee, in coordination with the
24 commission, shall conduct a reevaluation of the ongoing need for universal system benefits programs and
25 annual funding requirements and shall make recommendations to the 58th legislature regarding the future
26 need for those programs. The determination must focus specifically on the existence of markets to provide
27 for any or all of the universal system benefits programs or whether other means for funding those
28 programs have developed. These recommendations may also address how future reevaluations will be
29 provided for, if necessary.

30 (17) On or before November 1, 2001, the transition advisory committee shall collect information

1 to determine whether Montana utilities or their affiliates have an opportunity to sell electricity to customers
 2 outside of the state of Montana comparable to the opportunity provided pursuant to this chapter to utilities
 3 or their affiliates located outside the state of Montana. That information must be included in the report to
 4 the 58th legislature.

5 (18) On or before November 1, 1998, the transition advisory committee shall make
 6 recommendations to the governor and the legislature regarding the provision of low-income energy
 7 assistance programs in Montana by all energy providers."

8

9 **Section 19.** Section 70-30-111, MCA, is amended to read:

10 **"70-30-111. Facts necessary to be found before condemnation.** ~~Before~~ (1) Except as provided
 11 in subsection (2), before property can be taken, the plaintiff must show by a preponderance of the
 12 evidence that the public interest requires the taking based on the following findings:

13 ~~(1)(a)~~ (a) that the use to which it is to be applied is a use authorized by law;

14 ~~(2)(b)~~ (b) that the taking is necessary to such use;

15 ~~(3)(c)~~ (c) if already appropriated to some public use, that the public use to which it is to be applied
 16 is a more necessary public use;

17 ~~(4)(d)~~ (d) that an effort to obtain the interest sought to be condemned was made by submission of
 18 a written offer and that such offer was rejected.

19 (2) When the state power authority is condemning a natural gas or electrical energy utility, the
 20 authority shall comply with the provisions of [section 8]."

21

22 **Section 20.** Section 77-1-301, MCA, is amended to read:

23 **"77-1-301. Powers and duties of the department.** (1) Under the direction of the board, the
 24 department has charge of the selecting, exchange, classification, appraisal, leasing, management, sale,
 25 or other disposition of the state lands. It shall perform such other duties the board directs, the purpose of
 26 the department demands, or the statutes require.

27 (2) It shall collect and receive all moneys payable to the state through its office as fees, rentals,
 28 royalties, interest, penalties, or payments on mortgages or lands purchased from the state or derived from
 29 any other source. It shall issue a receipt for each cash payment or whenever requested by the payer.

30 (3) The department shall provide administrative and technical support to the state power authority,

1 as provided in [section 4]."

2

3 **Section 21.** Section 90-4-102, MCA, is amended to read:

4 **"90-4-102. Definitions.** As used in this part, the following definitions apply:

5 (1) "Alternative renewable energy source" means a form of energy or matter, such as solar
6 energy, wind energy, or methane from solid waste, that is capable of being converted into forms of energy
7 useful to ~~man~~ humankind, and the technology necessary to make this conversion, when the source
8 is not exhaustible in terms of this planet and when the source or the technology are not in general
9 commercial use.

10 (2) "Department" means the department of environmental quality.

11 (3) "Energy conservation" means reducing waste or dissipation of energy or reducing the amount
12 of energy required to accomplish a given quantity of work through increases in efficiency of energy use,
13 production, or distribution.

14 (4) "Person" means a natural person; a corporation, partnership, or other business entity; an
15 association, trust, or foundation; any educational or scientific institution; or any governmental unit.

16 (5) (a) "State governmental unit" means:

17 (i) the state;

18 (ii) the legislature;

19 (iii) any executive branch department, office, or agency;

20 (iv) the state power authority;

21 ~~(v)~~ (v) the university system; or

22 ~~(vi)~~ (vi) the supreme court or any office of the supreme court.

23 (b) The term does not include:

24 (i) a county, incorporated city, town, or other local governmental unit or a public corporation or
25 district created pursuant to state law; or

26 (ii) any other public body of the state not described in subsection (5)(a)."

27

28 **Section 22.** Section 90-4-1003, MCA, is amended to read:

29 **"90-4-1003. Energy policy development process.** (1) The department and the council, in
30 cooperation with the consumer counsel ~~and~~, the public service commission, and the state power authority,

1 shall maintain a continual process to develop the components of a comprehensive state energy policy.

2 (2) Because of limited state resources and the need to focus intensive effort on specific issues of
3 importance, the development of a comprehensive state energy policy must occur on an incremental basis.
4 As the need arises, the department, in cooperation with the appropriate state agencies and with extensive
5 public involvement, shall identify and recommend to the council specific components of a state energy
6 policy for development under the consensus process described in subsection (3).

7 (3) (a) Upon selection of a specific energy policy component, the council shall assign to a working
8 group composed of representatives of the parties with a stake in that specific component the task of
9 developing consensus recommendations for that component of state energy policy.

10 (b) The working group must include the broadest possible representation of stakeholders in the
11 issues to be included within the specific component of state energy policy.

12 (c) Whenever possible, the working group shall use a consensus process to develop
13 recommendations for a specific energy policy component to be submitted to the council. Recommendations
14 that are not based upon consensus must be so noted by the working group. Upon consideration of the
15 working group's recommendations, the council shall forward its recommendations to the legislature and
16 to the appropriate state agencies for adoption.

17 (d) The department shall:

18 (i) provide staff support to the working group, including policy analysis, data gathering, research,
19 technical analysis, and administrative support;

20 (ii) provide administrative coordination among the appropriate state agencies in the energy policy
21 development process;

22 (iii) prepare reports for and make recommendations to the council; and

23 (iv) consult regularly with the council to coordinate each agency's activities.

24 (4) In carrying out their responsibilities under this section, the department and the council may
25 contract with experts, consultants, and facilitators and may seek funding from a variety of private and
26 public sources for technical and other assistance necessary to accomplish their responsibilities."

27

28 **Section 23.** Section 90-5-101, MCA, is amended to read:

29 **"90-5-101. Definition of terms.** As used in this part, unless the context otherwise requires, the
30 following definitions apply:

1 (1) "Agricultural enterprises" include but are not limited to producing, warehousing, storing,
2 fattening, treating, handling, distributing, or selling farm products or livestock.

3 (2) "Bonds" means bonds, refunding bonds, notes, or other obligations issued by a municipality
4 or county under the authority of this part, including without limitation short-term bonds or notes issued
5 in anticipation of the issuance of long-term bonds or notes.

6 (3) "Governing body" means the board or body in which the general legislative powers of the
7 municipality or county are vested.

8 (4) "Higher education facilities" means any real or personal properties required or useful for the
9 operation of an institution of higher education.

10 (5) "Institution of higher education" means any private, nonprofit corporation or institution within
11 the state of Montana:

12 (a) authorized to provide or operate educational facilities; and

13 (b) providing a program of education beyond the high school level.

14 (6) "Mortgage" means a mortgage or deed of trust or other security device.

15 (7) "Municipality" means any incorporated city or town in the state.

16 (8) "Project" means any land; any building or other improvement; and any other real or personal
17 properties considered necessary in connection with the improvement, whether or not now in existence,
18 which must be suitable for use for commercial, manufacturing, agricultural, or industrial enterprises;
19 recreation or tourist facilities; local, state, and federal governmental facilities; multifamily housing,
20 hospitals, long-term care facilities, community-based facilities for individuals who are persons with
21 developmental disabilities as defined in 53-20-102, or medical facilities; higher education facilities;
22 ~~small-scale hydroelectric production~~ electrical generation facilities ~~with a capacity of 50 megawatts or less;~~
23 and any combination of these projects."

24

25 NEW SECTION. **Section 24. Codification instruction.** (1) [Sections 1 through 7] are intended to
26 be codified as an integral part of Title 69, and the provisions of Title 69 apply to [sections 1 through 7].

27 (2) [Section 8] is intended to be codified as an integral part of Title 70, chapter 30, and the
28 provisions of Title 70, chapter 30, apply to [section 8].

29

30 NEW SECTION. **Section 25. Saving clause.** [This act] does not affect rights and duties that

1 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
2 act].

3

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

5

- END -