

HOUSE BILL NO. 483

INTRODUCED BY E. FRANKLIN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING STRUCTURAL AND LEGAL SEPARATION BETWEEN
5 A PUBLIC UTILITY THAT IS ENGAGED IN GENERATION, TRANSMISSION, OR DISTRIBUTION OF
6 ELECTRICAL POWER OR NATURAL GAS AND AN AFFILIATE COMPANY THAT PROVIDES
7 MERCHANDISING AND SERVICING OF APPLIANCES; ESTABLISHING CERTAIN REQUIREMENTS FOR
8 THE INTERACTION BETWEEN A PUBLIC UTILITY AND AN AFFILIATE COMPANY THAT PROVIDES
9 UNREGULATED BUSINESS SERVICES; PROVIDING AN EMERGENCY SERVICE EXCEPTION; AND
10 PROVIDING AN EFFECTIVE DATE."

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

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14 NEW SECTION. Section 1. Definitions. As used in [sections 1 through 4], unless the context requires
15 otherwise, the following definitions apply:

16 (1) "Affiliate company" means any structurally separate and legally distinct company of a public utility
17 that engages in unregulated merchandising and servicing of appliances.

18 (2) "Appliance" includes but is not limited to:

19 (a) hot air furnaces;

20 (b) air conditioners;

21 (c) hot water systems;

22 (d) hot water heaters; and

23 (e) any other appliances that are used to heat, ventilate, or cool a residence or a commercial or
24 industrial building.

25 (3) "Emergency service" means minor repairs to provide heat, cooling, or electricity to a residence or
26 business when the loss of heat, cooling, or electricity may cause immediate harm to public health, safety, and
27 welfare.

28 (4) "Merchandising" means the sale or lease of new, used, or remanufactured appliances and
29 comprises all activities incident to the sale or lease, including but not limited to:

30 (a) advertising;

- 1 (b) promotion;
2 (c) delivery;
3 (d) appliance removal;
4 (e) installation;
5 (f) initial setup and adjustment;
6 (g) ductwork;
7 (h) plumbing;
8 (i) ventilation; and
9 (j) wiring.

10 (5) "Public utility" means a public utility, as defined for this chapter, that engages in the generation,
11 transmission, or distribution of electricity or natural gas.

12 (6) "Servicing" means appliance maintenance and repair that are not part of an emergency service
13 response, as provided in [section 4].

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15 **NEW SECTION. Section 2. Structural separation.** Except as provided in [section 4], a public utility
16 shall conduct its unregulated merchandising and servicing of appliances subject to the provisions of [sections
17 1 through 4] only from an affiliate company that is structurally separate and legally distinct from the public utility.

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19 **NEW SECTION. Section 3. Requirements of public utility and affiliate company.** (1) An affiliate
20 company:

21 (a) shall maintain books, records, and accounts that must be separate from the books, records, and
22 accounts that are maintained by the public utility;

23 (b) must have separate officers and employees from the public utility; and

24 (c) may not obtain credit under any arrangement that would permit a creditor, upon default, to have
25 recourse to the assets of the public utility.

26 (2) A public utility shall maintain sufficient records to allow for an audit of the transactions between the
27 public utility and its affiliate company. The commission may require a public utility to initiate, at the public utility's
28 expense, an audit of the transactions between the public utility and its affiliate company performed by an
29 independent third party. The public utility shall allow the commission access to the books, records, or other
30 documents of the public utility or affiliate company that may be needed to conduct the commission's

1 investigations and proceedings.

2 (3) In its dealings with an affiliate company, a public utility may not:

3 (a) use its status as a monopoly franchise to confer upon its affiliate company any unfair competitive
4 advantage. The public utility shall conduct all transactions with an affiliate company on an arm's-length basis
5 and shall account for all transactions in accordance with generally accepted accounting principles, with any of
6 the transactions reduced to writing and available for inspection by the appropriate state regulatory authorities.

7 (b) cross-subsidize or shift any costs of an affiliate company's operations to its regulated public utility
8 operations or sell, transfer, or provide the benefit of, or permit the use of or access to, equipment, tangible or
9 intangible assets, or services, including labor, of the public utility unless the transfer, provision, or other use is
10 fully compensated by the affiliate company and the transaction avoids foregoing revenue or creating an unfair
11 competitive advantage over nonaffiliate competitors other than when specifically permitted by law or by order
12 of the commission;

13 (c) provide information or consultation to an affiliate company or other entity within the existing corporate
14 structure regarding a potential business arrangement between that affiliate company or other entity within the
15 existing corporate structure and a potential customer;

16 (d) refer a customer or potential customer to an affiliate company or other entity within the existing
17 corporate structure or steer a potential customer away from a competitor;

18 (e) provide a customer or potential customer with advice or assistance regarding the selection of or
19 relationship with an affiliate company or other entity within the existing corporate structure;

20 (f) share personnel, including its skilled labor, with an affiliate company, make temporary personnel
21 assignments to or intermittent personnel rotations with its affiliate company, or otherwise use movement of
22 personnel as a means of creating a competitive advantage over nonaffiliate competitors;

23 (g) share information obtained by the public utility engaged in generation, transmission, or distribution
24 of electrical power or natural gas in the course of conducting its regulated business directly or indirectly with its
25 affiliate company or other entities within the existing corporate structure without the written consent of the
26 customer; or

27 (h) interfere in any manner in the contractual relationship between a nonaffiliate competitor and its
28 customers.

29 (4) (a) If a public utility provides services, products, or property, including intangible property, to an
30 affiliate company, compensation must be based on the higher of fully allocated costs or the market price.

1 (b) If an affiliate company provides services, products, or property to a public utility, compensation must
2 be based on the lower of fully allocated costs or the market price.

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4 NEW SECTION. Section 4. Emergency service exception. [Sections 1 through 4] do not prevent a
5 public utility from providing electrical and natural gas emergency services.

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7 NEW SECTION. Section 5. Codification instruction. [Sections 1 through 4] are intended to be
8 codified as an integral part of Title 69, chapter 3, part 2, and the provisions of Title 69, chapter 3, part 2, apply
9 to [sections 1 through 4].

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11 NEW SECTION. Section 6. Effective date. [This act] is effective July 1, 2003.

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