

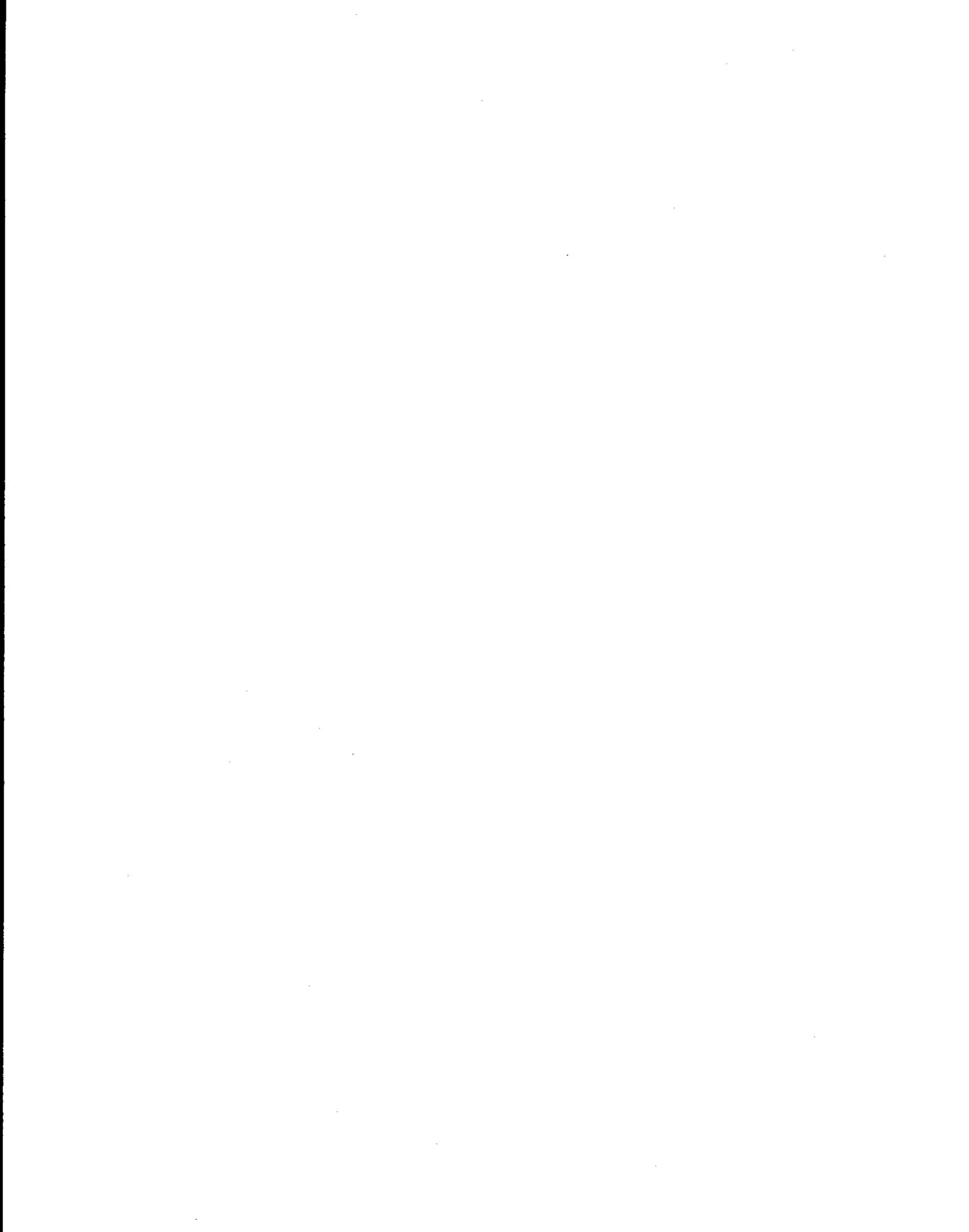
Montana State Legislature

Exhibit Number:

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**TESTIMONY IN OPPOSITION TO HB 389
REVISING LAWS RELATED TO DEFAULT SUPPLY SERVICE FOR
ELECTRICITY**

**Greg Jergeson
Chairman, Montana PSC
January 26, 2005**

The Commission agrees that the default supplier should be able to invest in generation under certain circumstances. This will expand the array of options for developing the best possible portfolio of default supply resources to serve the public interest. However, the Commission believes that any such investment must be subject to strict regulatory oversight in order to ensure a process that is truly fair and transparent, and in which an investment in generation by the default supplier competes with other sources of supply for the default portfolio

If the intent of the bill is to specifically authorize the default supplier to invest in generation assets, that could be accomplished by the proposed Section 5 (which amends Section 69-8-419, MCA) and Section 8 (which provides an effective date). The Commission urges the Committee to ensure that the rule-making authority in Section 69-8-419, MCA, is appropriate.

House Bill 389 unnecessarily goes beyond providing a default supplier with an option to invest in, acquire, or lease plant or equipment used for the production of electricity. Because of the potential consequences to ratepayers and other market participants of those extensions, the Commission opposes this bill in its current form.

The Commission strongly opposes Section 6 of the bill. The Commission urges the Legislature to avoid a prescriptive approach to regulation. Section 6 is a prescriptive section that the Commission believes unduly inhibits its ability to protect the public interest. The advanced-approval portion of this section, paragraphs (1) through (4), transfers all risks associated with the investment in or acquisition of plant or equipment to the ratepayers. The advanced-approval section basically requires the Commission to

make a decision on an unknown. The Commission could be required to process an application for advanced-approval of an investment based on the default supplier's estimate of the ultimate cost of acquiring and rate-basing generation plant. Although these costs can be estimated, experience with construction of generating plants is replete with examples of cost overruns. Advanced-approval would require the Commission to authorize the purchase of a pig-in-a-poke. This bill would make the ratepayers responsible for any cost overruns.

Paragraph 5 of Section 6 changes the normal test for inclusion of an investment in rate base and could require ratepayers to pay for investments for which they never receive any benefit. Traditionally, the decision to include investment in rate base involves multiple tests and considerations within the important actually used and useful standard.

Paragraph 5 mandates the Commission use a single "prudence" standard and measure the prudence of an investment at the time it is made. Prudence is typically associated with expenses, not rate base. Further, additions to rate base are made in a general rate case in which all expenses incurred by a utility are examined to determine their reasonableness and necessity and in which rates are designed so that each customer class pays its fair share. Paragraph 5 provides a potential short circuit of this procedure by suggesting that additions to rate base can be authorized in a limited default-supply cost-recovery proceeding. The prescriptive approach of Section 6 eliminates the protections provided by the traditional regulation.

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