

HOUSE BILL NO. 681

INTRODUCED BY DRISCOLL, OLSON

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PROVISIONS OF THE MONTANA RENEWABLE POWER
5 PRODUCTION AND RURAL ECONOMIC DEVELOPMENT ACT; DEFINING THE TERM "~~COMPETITIVE~~
6 ~~ELECTRICITY SUPPLIER~~" TERMS; APPLYING CERTAIN PROVISIONS OF THE MONTANA RENEWABLE
7 POWER PRODUCTION AND RURAL ECONOMIC DEVELOPMENT ACT TO COMPETITIVE ELECTRICITY
8 SUPPLIERS; AMENDING SECTIONS 69-8-1003, 69-8-1004, ~~AND~~ 69-8-1005, AND 69-8-1007, MCA; AND
9 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

12
13 **Section 1.** Section 69-8-1003, MCA, is amended to read:

14 **"69-8-1003. Definitions.** As used in this part, unless the context requires otherwise, the following
15 definitions apply:

16 (1) "Ancillary services" means services or tariff provisions related to generation and delivery of electric
17 power other than simple generation, transmission, or distribution. Ancillary services related to transmission
18 services include energy losses, energy imbalances, scheduling and dispatching, load following, system
19 protection, and reactive power.

20 (2) "Common ownership" means the same or substantially similar persons or entities that maintain a
21 controlling interest in more than one community renewable energy project even if the ownership shares differ
22 between two community renewable energy projects. Two community renewable energy projects may not be
23 considered to be under common ownership simply because the same entity provided debt or equity or both debt
24 and equity to both projects.

25 (3) "Community renewable energy project" means an eligible renewable resource that is interconnected
26 on the utility side of the meter in which local owners have a controlling interest and that is less than or equal to
27 5 megawatts in total calculated nameplate capacity.

28 (4) "Competitive electricity supplier" means any person, corporation, or governmental entity that is selling
29 electricity to retail customers SMALL CUSTOMERS AT RETAIL RATES in the state of Montana and that is not a public
30 utility or cooperative.



1 ~~(4)~~(5) "Compliance year" means each calendar year beginning January 1 and ending December 31,
2 starting in 2008, for which compliance with this part must be demonstrated.

3 ~~(5)~~(6) "Cooperative utility" means:

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

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

6 ~~(6)~~(7) "Eligible renewable resource" means a facility either located within Montana or delivering electricity
7 from another state into Montana that commences commercial operation after January 1, 2005, and that produces
8 electricity from one or more of the following sources:

9 (a) wind;

10 (b) solar;

11 (c) geothermal;

12 (d) water power, in the case of a hydroelectric project that does not require a new appropriation,
13 diversion, or impoundment of water and that has a nameplate rating of 10 megawatts or less;

14 (e) landfill or farm-based methane gas;

15 (f) gas produced during the treatment of wastewater;

16 (g) low-emission, nontoxic biomass based on dedicated energy crops, animal wastes, or solid organic
17 fuels from wood, forest, or field residues, except that the term does not include wood pieces that have been
18 treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chroma-arsenic;

19 (h) hydrogen derived from any of the sources in this subsection ~~(6)~~ (7) for use in fuel cells; and

20 (i) the renewable energy fraction from the sources identified in subsections ~~(6)~~(a) (7)(a) through ~~(6)~~(h)
21 (7)(h) of electricity production from a multiple-fuel process with fossil fuels.

22 ~~(7)~~(8) "Local owners" means:

23 (a) Montana residents or entities composed of Montana residents;

24 (b) Montana small businesses;

25 (c) Montana nonprofit organizations;

26 (d) Montana-based tribal councils;

27 (e) Montana political subdivisions or local governments;

28 (f) Montana-based cooperatives other than cooperative utilities; or

29 (g) any combination of the individuals or entities listed in subsections ~~(7)~~(a) (8)(a) through ~~(7)~~(f) (8)(f).

30 ~~(8)~~(9) "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter

1 3, on January 1, 2005, including the public utility's successors or assignees.

2 ~~(9)~~(10) "Renewable energy credit" means a tradable certificate of proof of 1 megawatt hour of electricity
3 generated by an eligible renewable resource that is tracked and verified by the commission and includes all of
4 the environmental attributes associated with that 1 megawatt-hour unit of electricity production.

5 (11) "SMALL CUSTOMER" MEANS A RETAIL CUSTOMER THAT HAS AN INDIVIDUAL LOAD WITH AN AVERAGE MONTHLY
6 DEMAND OF LESS THAN 5,000 KILOWATTS.

7 ~~(10)~~~~(11)~~(12) "Total calculated nameplate capacity" means the calculation of total nameplate capacity of
8 the community renewable energy project and other eligible renewable resources that are:

- 9 (a) located within 5 miles of the project;
10 (b) constructed within the same 12-month period; and
11 (c) under common ownership."
12

13 **Section 2.** Section 69-8-1004, MCA, is amended to read:

14 **"69-8-1004. Renewable resource standard -- administrative penalty -- waiver.** (1) Except as provided
15 in 69-8-1007 and ~~subsection~~ SUBSECTIONS (11) AND (12) of this section, a graduated renewable energy standard
16 is established for public utilities and competitive electricity suppliers as provided in subsections (2) through (4)
17 of this section.

18 (2) In each compliance year beginning January 1, 2008, through December 31, 2009, each public utility
19 and competitive electricity supplier shall procure a minimum of 5% of its retail sales of electrical energy in
20 Montana from eligible renewable resources.

21 (3) (a) In each compliance year beginning January 1, 2010, through December 31, 2014, each public
22 utility and competitive electricity supplier shall procure a minimum of 10% of its retail sales of electrical energy
23 in Montana from eligible renewable resources.

24 (b) As part of their compliance with subsection (3)(a), public utilities shall purchase both the renewable
25 energy credits and the electricity output from community renewable energy projects that total at least 50
26 megawatts in nameplate capacity.

27 (c) Public utilities shall proportionately allocate the purchase required under subsection (3)(b) based on
28 each public utility's retail sales of electrical energy in Montana in the calendar year 2009.

29 (4) (a) In the compliance year beginning January 1, 2015, and in each succeeding compliance year, each
30 public utility and competitive electricity supplier shall procure a minimum of 15% of its retail sales of electrical

1 energy in Montana from eligible renewable resources.

2 (b) (i) As part of their compliance with subsection (4)(a), public utilities shall purchase both the renewable
3 energy credits and the electricity output from community renewable energy projects that total at least 75
4 megawatts in nameplate capacity.

5 (ii) In meeting the standard in subsection (4)(b)(i), a public utility may include purchases made under
6 subsection (3)(b).

7 (c) Public utilities shall proportionately allocate the purchase required under subsection (4)(b) based on
8 each public utility's retail sales of electrical energy in Montana in the calendar year 2014.

9 (5) (a) In complying with the standards required under subsections (2) through (4), a public utility or
10 competitive electricity supplier shall, for any given compliance year, calculate its procurement requirement based
11 on the public utility's or competitive electricity supplier's previous year's sales of electrical energy to retail
12 customers in Montana.

13 (b) The standard in subsections (2) through (4) must be calculated on a delivered-energy basis after
14 accounting for any line losses.

15 (6) A public utility or competitive electricity supplier has until 3 months following the end of each
16 compliance year to purchase renewable energy credits for that compliance year.

17 (7) (a) In order to meet the standard established in subsections (2) through (4), a public utility or
18 competitive electricity supplier may only use:

19 (i) electricity from an eligible renewable resource in which the associated renewable energy credits have
20 not been sold separately;

21 (ii) renewable energy credits created by an eligible renewable resource purchased separately from the
22 associated electricity; or

23 (iii) any combination of ~~electrical energy procured under~~ subsections (7)(a)(i) and (7)(a)(ii).

24 (b) A public utility or competitive electricity supplier may not resell renewable energy credits and count
25 those sold credits against the public utility's or the competitive electricity supplier's obligation to meet the
26 standards established in subsections (2) through (4).

27 (c) Renewable energy credits sold through a voluntary service such as the one provided for in
28 69-8-210(4) may not be applied against a public utility's or competitive electricity supplier's obligation to meet the
29 standards established in subsections (2) through (4).

30 (8) Nothing in this part limits a public utility or competitive electricity supplier from exceeding the

1 standards established in subsections (2) through (4).

2 (9) If a public utility or competitive electricity supplier exceeds a standard established in subsections (2)
3 through (4) in any compliance year, the public utility or competitive electricity supplier may carry forward the
4 amount by which the standard was exceeded to comply with the standard in either or both of the 2 subsequent
5 compliance years. The carryforward may not be double-counted.

6 (10) Except as provided in ~~subsection (11)~~ SUBSECTIONS (11) AND (12), if a public utility OR COMPETITIVE
7 ELECTRICITY SUPPLIER is unable to meet the standards established in subsections (2) through (4) in any
8 compliance year, that public utility OR COMPETITIVE ELECTRICITY SUPPLIER shall pay an administrative penalty,
9 assessed by the commission, of \$10 for each megawatt hour of renewable energy credits that the public utility
10 OR COMPETITIVE ELECTRICITY SUPPLIER failed to procure. A public utility may not recover this penalty in electricity
11 rates. Money generated from these penalties must be deposited in the universal low-income energy assistance
12 fund established in 69-8-412(1)(a).

13 (11) A public utility OR COMPETITIVE ELECTRICITY SUPPLIER may petition the commission for a short-term
14 waiver from full compliance with the standards in subsections (2) through (4) and the penalties levied under
15 subsection (10). The petition must demonstrate that the:

16 (a) public utility OR COMPETITIVE ELECTRICITY SUPPLIER has undertaken all reasonable steps to procure
17 renewable energy credits under long-term contract, but full compliance cannot be achieved either because
18 renewable energy credits cannot be procured or for other legitimate reasons that are outside the control of the
19 public utility OR COMPETITIVE ELECTRICITY SUPPLIER; or

20 (b) integration of additional eligible renewable resources into the electrical grid will clearly and
21 demonstrably jeopardize the reliability of the electrical system and that the public utility OR COMPETITIVE
22 ELECTRICITY SUPPLIER has undertaken all reasonable steps to mitigate the reliability concerns.

23 (12) (A) RETAIL SALES MADE BY A COMPETITIVE ELECTRICITY SUPPLIER MADE ACCORDING TO PRICES, TERMS,
24 AND CONDITIONS OF A WRITTEN CONTRACT EXECUTED PRIOR TO [THE EFFECTIVE DATE OF THIS ACT] ARE EXEMPT FROM
25 THE STANDARDS IN SUBSECTIONS (2) THROUGH (4).

26 (B) THE EXEMPTION PROVIDED FOR IN SUBSECTION (12)(A) IS TERMINATED UPON MODIFICATION AFTER [THE
27 EFFECTIVE DATE OF THIS ACT] OF THE PRICES, TERMS, OR CONDITIONS IN A WRITTEN CONTRACT."

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29 **Section 3.** Section 69-8-1005, MCA, is amended to read:

30 **"69-8-1005. Procurement -- cost recovery -- reporting.** (1) In meeting the requirements of this part,

1 a public utility ~~or competitive electricity supplier~~ shall:

2 (a) conduct renewable energy solicitations under which the public utility offers to purchase renewable
3 energy credits, either with or without the associated electricity, under contracts of at least 10 years in duration;
4 and

5 (b) consider the importance of geographically diverse rural economic development when procuring
6 renewable energy credits.

7 (2) A public utility ~~or competitive electricity supplier~~ that intends to enter into contracts of less than 10
8 years in duration shall demonstrate to the commission that these contracts will provide a lower long-term cost
9 of meeting the standard established in 69-8-1004.

10 (3) (a) Contracts signed for projects located in Montana must require all contractors to give preference
11 to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the
12 projects if the Montana residents have substantially equal qualifications to those of nonresidents.

13 (b) Contracts signed for projects located in Montana must require all contractors to pay the standard
14 prevailing rate of wages for heavy construction, as provided in 18-2-401(13)(a), during the construction phase
15 of the project.

16 (4) All contracts signed by a public utility to meet the requirements of this part are eligible for advanced
17 approval under procedures established by the commission. Upon advanced approval by the commission, these
18 contracts are eligible for cost recovery from ratepayers, except that nothing in this part limits the commission's
19 ability to subsequently, in any future cost-recovery proceeding, inquire into the manner in which the public utility
20 has managed the contract and to disallow cost recovery if the contract was not reasonably administered.

21 (5) A public utility ~~or competitive electricity supplier~~ shall submit renewable energy procurement plans
22 to the commission in accordance with rules adopted by the commission. The plans must be submitted to the
23 commission on or before:

24 (a) January 1, 2007, for the standard required in 69-8-1004(2);

25 (b) June 1, 2008, for the standard required in 69-8-1004(3);

26 (c) June 1, 2013, for the standard required in 69-8-1004(4); and

27 (d) any additional future dates as required by the commission.

28 (6) A public utility ~~or competitive electricity supplier~~ shall submit annual reports, in a format to be
29 determined by the commission, demonstrating compliance with this part for each compliance year. The reports
30 must be filed by March 1 of the year following the compliance year.

1 (7) FOR THE PURPOSE OF IMPLEMENTING THIS PART, THE COMMISSION HAS REGULATORY AUTHORITY OVER
2 COMPETITIVE ELECTRICITY SUPPLIERS."

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4 **SECTION 4. SECTION 69-8-1007, MCA, IS AMENDED TO READ:**

5 **"69-8-1007. Cost caps.** (1) A public utility that has restructured pursuant to Title 69, chapter 8, is not
6 obligated to take electricity from an eligible renewable resource unless the eligible renewable resource has
7 demonstrated through a competitive bidding process that the total cost of electricity from that eligible resource,
8 including the associated cost of ancillary services necessary to manage the transmission grid and firm the
9 resource, is less than or equal to bids for the equivalent quantity of power over the equivalent contract term from
10 other electricity suppliers.

11 (2) A public utility that has not restructured pursuant to Title 69, chapter 8, is not obligated to take
12 electricity from an eligible renewable resource unless the cost per kilowatt hour of the generation from the
13 renewable resource does not exceed by more than 15% the cost of power from any other alternate generating
14 resource available to the public utility.

15 (3) A competitive electricity supplier is not obligated to take electricity from an eligible renewable
16 resource unless the total cost of the electricity from that eligible renewable resource, including ancillary services,
17 is less than or equal to a cost cap determined by the commission based on:

18 (a) the cost of alternate power supplies available to the competitive electricity supplier; and

19 (b) the cost caps applicable to other utilities under this section."

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21 **NEW SECTION. Section 5. Effective date.** [This act] is effective on passage and approval.

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