HOUSE BILL NO. 758

INTRODUCED BY K. KERNS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO ENERGY; REVISING THE DEFINITION OF "QUALIFYING SMALL POWER PRODUCTION FACILITY"; ELIMINATING CERTAIN STANDARDS FOR DETERMINING QUALIFYING FACILITY RATES; REVISING FEE REQUIREMENTS FOR NET METERING CUSTOMER-GENERATORS; CLARIFYING NET METERING SAFETY REQUIREMENTS; CLARIFYING THE TERM "ELIGIBLE RENEWABLE RESOURCE"; CLARIFYING THE RENEWABLE RESOURCE STANDARDS; CLARIFYING RENEWABLE RESOURCE COST LIMIT PROVISIONS; AMENDING SECTIONS 69-3-601, 69-3-604, 69-8-602, 69-8-604, 69-8-1003, 69-8-1004, AND 69-8-1007, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, it is the policy of the State of Montana to promote the use of renewable resources while ensuring that facilities produce renewable energy that is used and useful and provide the greatest benefit to employers and consumers of Montana.

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

Section 1. Section 69-3-601, MCA, is amended to read:

"69-3-601. (Temporary) Definitions. As used in this part, the following definitions apply:

(1) "Commission" means the Montana public service commission.

(2) "Electric cooperative" means a rural electric cooperative organized under the laws of Montana, or a foreign corporation admitted to do business in Montana.

(3) "Qualifying small power production facility" means a facility that:

(a) produces electricity by the use, as a primary energy source, of biomass, waste, water, wind, or other renewable resource, or any combination of those sources; or

(b) produces electricity and useful forms of thermal energy, such as heat or steam, used for industrial, commercial, heating, or cooling purposes through the sequential use of energy known as cogeneration; and

(c) has a power production capacity that together with any other facilities located at the same site is not greater than ~~80~~ 3 megawatts; and

(d) is owned by a person not primarily engaged in the generation or sale of electricity other than electric power from a small power production facility.

(4) "Utility" means any public utility supplying electricity and regulated by the commission. (Repealed on occurrence of contingency--secs. 1, 3, Ch. 284, L. 2003.)"

Section 2. Section 69-3-604, MCA, is amended to read:

"69-3-604. (Temporary) Standards for determination of rates and conditions. (1) The commission shall determine the rates and conditions of the contract for the sale of electricity by a qualifying small power production facility according to the standards in subsections (2) through (5).

(2) Long-term contracts for the purchase of electricity by the utility from a qualifying small power production facility shall be encouraged in order to enhance the economic feasibility of qualifying small power production facilities.

(3) The rates to be paid by a utility for electricity purchased from a qualifying small power production facility shall be established with consideration of the availability and reliability of the electricity produced.

(4) The commission may set these rates by use of any of the following methods that results in the lowest cost:

(a) the avoided cost over the term of the contract;

(b) the cost of production for the qualifying small power production facility plus a just and reasonable return not to exceed 12%; or

(c) any other method that will promote the development of qualifying small power production facilities that ensures that consumers are not charged more than the cost of the default supply less the sum of the cost of ancillary services, reliability services, and necessary upgrades.

(5) The commission may adopt rules further defining the criteria for qualifying small power production facilities, their cost-effectiveness, and other standards. (Repealed on occurrence of contingency--secs. 1, 3, Ch. 284, L. 2003.)"

Section 3. Section 69-8-602, MCA, is amended to read:

"69-8-602. Distribution services provider net metering requirements. A distribution services provider shall:

(1) allow net metering systems to be interconnected using a standard kilowatt-hour meter capable of

registering the flow of electricity in two directions and the time and amount of generation put into the system, unless the commission determines, after appropriate notice and opportunity for comment:

(a) that the use of additional metering equipment to monitor the flow of electricity in each direction is necessary and appropriate for the interconnection of net metering systems~~, after taking into account the benefits and costs of purchasing and installing additional metering equipment~~; and

(b) how the costs of net metering are to be allocated ~~between~~ to the customer-generator ~~and the distribution services provider~~; and

(2) charge the customer-generator a minimum monthly fee that is the same as other customers of the electric utility in the same rate class, as provided in subsection (3). The commission shall determine, after appropriate notice and opportunity for comment if:

(a) the distribution services provider will incur direct costs associated with interconnecting or administering net metering systems that exceed any offsetting benefits associated with these net metering systems; and

(b) public policy is best served by imposing these costs on the customer-generator, rather than allocating these costs among the distribution services provider's entire customer base.

(3) A customer-generator must be charged a monthly fee based on the costs of distribution and transmission, including the value of reserved capacity, ancillary services, and any additional regulatory costs."

Section 4. Section 69-8-604, MCA, is amended to read:

"69-8-604. Net metering system -- reliability and safety. (1) A net metering system used by a customer-generator must include, at the customer-generator's own expense, all equipment necessary to meet applicable safety, power quality, and interconnection requirements established by the national electrical code, national electrical safety code, institute of electrical and electronic engineers, the United States occupational safety and health administration, and underwriters laboratories.

(2) The commission, after appropriate notice and opportunity for comment, may adopt by rule additional safety, power quality, and interconnection requirements for customer-generators that the commission or the local governing body determines are necessary to protect public safety and net metering system reliability."

Section 5. Section 69-8-1003, MCA, is amended to read:

"69-8-1003. Definitions. As used in this part, unless the context requires otherwise, the following

definitions apply:

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

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

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

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

(5) "Cooperative utility" means:

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

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

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

~~(a)~~(i) wind;

~~(b)~~(ii) solar;

~~(c)~~(iii) geothermal;

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

~~(e)~~(v) landfill or farm-based methane gas;

~~(f)~~(vi) gas produced during the treatment of wastewater;

~~(g)~~(vii) low-emission, nontoxic biomass based on dedicated energy crops, animal wastes, or solid organic fuels from wood, forest, or field residues, except that the term does not include wood pieces that have been

treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chroma-arsenic;

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

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

(b) The term also includes electricity produced from an existing:

(i) qualifying small power production facility as defined in 69-3-601; or

(ii) hydroelectric facility.

(7) "Local owners" means:

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

(b) Montana small businesses;

(c) Montana nonprofit organizations;

(d) Montana-based tribal councils;

(e) Montana political subdivisions or local governments;

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

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

(8) "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on January 1, 2005, including the public utility's successors or assignees.

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

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

(a) located within 5 miles of the project;

(b) constructed within the same 12-month period; and

(c) under common ownership."

Section 6. Section 69-8-1004, MCA, is amended to read:

"69-8-1004. Renewable resource standard -- administrative penalty -- waiver. (1) (a) Except as provided in 69-8-1007 and ~~subsection~~ subsections (1)(b) and (11) of this section, a graduated renewable energy standard is established for public utilities as provided in subsections (2) through (4) of this section.

(b) (i) The graduated renewable energy standards provided in subsections (2) through (4) must give priority to the acquisition of electricity from a water power eligible renewable resource and a premium must be allowed for dispatchable electricity from a water power eligible renewable resource that can be used for firming and governing other eligible renewable resource generation.

(ii) For each graduated renewable energy standard established in subsections (2) through (4), the public utility shall procure 50% of its eligible renewable resources from a facility that produces electricity from water power.

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

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

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

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

(4) (a) In the compliance year beginning January 1, 2015, and in each succeeding compliance year, each public utility shall procure a minimum of 15% of its retail sales of electrical energy in Montana from eligible renewable resources.

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

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

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

(5) (a) In complying with the standards required under subsections (2) through (4), a public utility shall, for any given compliance year, calculate its procurement requirement based on the public utility's previous year's

sales of electrical energy to retail customers in Montana.

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

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

(7) (a) In order to meet the standard established in subsections (2) through (4), a public utility may only use:

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

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

(iii) any combination of subsections (7)(a)(i) and (7)(a)(ii).

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

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

(8) Nothing in this part limits a public utility from exceeding the standards established in subsections (2) through (4).

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

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

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

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

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

Section 7. Section 69-8-1007, MCA, is amended to read:

"69-8-1007. Cost ~~caps~~ limits. (1) A public utility that has restructured pursuant to Title 69, chapter 8, is not obligated to take electricity from an eligible renewable resource unless the eligible renewable resource has a total calculated nameplate capacity of greater than 3 megawatts and has demonstrated through a competitive bidding process that the total cost of electricity from that eligible resource, including the associated cost of ancillary services necessary to manage the transmission grid and firm the resource, is less than or equal to bids for the equivalent quantity of power over the equivalent contract term from other electricity suppliers.

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

NEW SECTION. **Section 8. Effective date.** [This act] is effective on passage and approval.

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