



AN ACT INCREASING THE TIME THE PUBLIC SERVICE COMMISSION HAS TO ACT ON A PETITION FROM A UTILITY OR QUALIFYING SMALL POWER PRODUCTION FACILITY; ALLOWING ELECTRICITY FROM AN ELIGIBLE RENEWABLE RESOURCE PURCHASED BY A PUBLIC UTILITY FROM A QUALIFYING SMALL POWER PRODUCTION FACILITY TO BE USED TO OFFSET REQUIREMENTS OF THE RENEWABLE RESOURCE STANDARD; AMENDING SECTIONS 69-3-603 AND 69-3-2004, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A CONTINGENT TERMINATION DATE.

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

**Section 1.** Section 69-3-603, MCA, is amended to read:

**"69-3-603. (Temporary) Required sale of electricity under rates and conditions prescribed by commission.** (1) If a qualifying small power production facility and a utility are unable to mutually agree to a contract for the sale of electricity or a price for the electricity to be purchased by the utility, the commission shall require the utility to purchase the electricity under rates and conditions established under the provisions of subsection (2).

(2) The commission shall determine the rates and conditions of the contract upon petition of a qualifying small power production facility or a utility or during a rate proceeding involving the review of rates paid by a utility for electricity purchased from a qualifying small power production facility. The commission shall render a decision within ~~420~~ 180 days of receipt of the petition or before the completion of the rate proceeding. The rates and conditions of the determination ~~shall~~ must be made according to the standards prescribed in 69-3-604. (Repealed on occurrence of contingency--secs. 1, 3, Ch. 284, L. 2003.)"

**Section 2.** Section 69-3-2004, MCA, is amended to read:

**"69-3-2004. Renewable resource standard -- administrative penalty -- waiver.** (1) Except as provided in 69-3-2007 and subsections (11) and (12) of this section, a graduated renewable energy standard is established for public utilities and competitive electricity suppliers as provided in subsections (2) through (4) of this section.

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

(3) (a) ~~In~~ Except as provided in subsection (5)(c)(i), in each compliance year beginning January 1, 2010, through December 31, 2014, each public utility and competitive electricity supplier shall procure a minimum of 10% of its retail sales of electrical energy in Montana from eligible renewable resources.

(b) ~~As~~ Except as provided in subsection (5)(c)(ii), 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~~ Except as provided in subsection (5)(c)(i), in the compliance year beginning January 1, 2015, and in each succeeding compliance year, each public utility and competitive electricity supplier shall procure a minimum of 15% of its retail sales of electrical energy in Montana from eligible renewable resources.

(b) (i) ~~As~~ Except as provided in subsection (5)(c)(ii), 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 or competitive electricity supplier shall, for any given compliance year, calculate its procurement requirement based on the public utility's or competitive electricity supplier'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.

(c) (i) The standards established in subsections (3) and (4) are reduced annually by the amount of energy delivered to a utility by a qualifying small power production facility, as defined in 69-3-601, that is also

an eligible renewable resource.

(ii) The standards established in subsections (3)(b) and (4)(b)(i) are reduced annually by the quantity of nameplate capacity of a qualifying small power production facility, as defined in 69-3-601, that is also an eligible renewable resource under contract to deliver electricity to a utility.

(6) A public utility or competitive electricity supplier 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 or competitive electricity supplier may ~~only~~ use only:

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

(c) If a public utility purchases both the electricity and renewable energy credits from a qualifying small power production facility, the acquisition must be treated as a community renewable energy project pursuant to subsections (3)(b) and (4)(b)(i).

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

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

(9) If a public utility or competitive electricity supplier exceeds a standard established in subsections (2) through (4) in any compliance year, the public utility or competitive electricity supplier 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 subsections (11) and (12), if a public utility or competitive electricity supplier

is unable to meet the standards established in subsections (2) through (4) in any compliance year, that public utility or competitive electricity supplier shall pay an administrative penalty, assessed by the commission, of \$10 for each megawatt hour of renewable energy credits that the public utility or competitive electricity supplier 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 or competitive electricity supplier 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 or competitive electricity supplier 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 competitive electricity supplier; 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 or competitive electricity supplier has undertaken all reasonable steps to mitigate the reliability concerns.

(12) (a) Retail sales made by a competitive electricity supplier according to prices, terms, and conditions of a written contract executed prior to April 25, 2007, are exempt from the standards in subsections (2) through (4).

(b) The exemption provided for in subsection (12)(a) is terminated upon modification after April 25, 2007, of the prices, terms, or conditions in a written contract."

**Section 3. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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

**Section 5. Applicability.** [This act] applies to contracts entered into and rates established after [the effective date of this act].

**Section 6. Termination.** [Sections 1 and 2] terminate on the effective date of the repeal of 16 U.S.C. 824a-3.

- END -

I hereby certify that the within bill,  
SB 0403, originated in the Senate.

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Secretary of the Senate

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2009.

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2009.

SENATE BILL NO. 403

INTRODUCED BY GEBHARDT, LEWIS, LASLOVICH, A. NOONAN, KLOCK

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