

Testimony
PSC Chair Greg Jergeson
In opposition to
Senate Bill No. 178, Introduced by K. Gebhardt
January 20, 2009

Chairman Black and members of the Committee:

Contested cases before the Montana Public Service Commission involving Qualifying Facilities (QFs) are frequently the most contentious, complicated and frustrating proceedings the PSC must contend with. We applaud Senator Gebhardt for his sincere efforts to develop a level of clarity for this process with this piece of legislation. However, the PSC has voted 4 to 1 to oppose SB 178, as written, because, ironically, it is likely to further complicate, rather than simplify and clarify, a process already fraught with dispute and contention.

Reasons for PSC opposition:

- Section 4, new subparagraph (4): The requirement that the PSC, when setting QF rates, must consider the value of dispatch ability, seasonality and geographic diversity of QF power production facility is problematic for these reasons:
 - It is prejudiced and incomplete. It is prejudiced because it is not an explicit equal standard to which a utility's own resources would be subject. It is incomplete because there are numerous other criteria that also should be and are considered by the PSC when setting QF rates and on which this amendment is silent. Therefore, the amendment also appears inconsistent with the Montana Integrated Least Cost Resource Planning and Acquisition Act (See 69-3-1201, MCA et seq).
 - The bill's definitions of dispatch ability, geographic diversity and seasonality (in Section 1) are not competitively neutral because they apply only to QFs and not to all supply resources, including those that a utility owns and/or has contract rights to purchase.
 - The existing provision at Section 4, subparagraph (3) already requires the PSC to consider the availability and reliability of the electricity produced by a QF. Singling out in new subparagraph (4) just three resource attributes (dispatch ability, seasonality and geographic diversity) for special consideration out of much broader spectrum of resource attributes is unnecessary and redundant, and would result in the PSC giving unwarranted weight to those three attributes when setting QF rates.
 - It is inappropriate to insert provisions intended to address NorthWestern Energy's transmission concerns into Montana's "mini-PURPA" statute, which generally mirrors the federal PURPA law that encourages QF development and which is related to electricity supply, not transmission.

- The amendment at Section 4, new subparagraph (6), raises several issues:
 - The requirement that a QF contract must include the utility's acquisition of renewable energy credits (RECs), when applicable, is adverse to the free exchange of such RECs in a free market. There is no apparent need for the amendment and if a utility highly values the RECs it can offer to buy them at higher than market prices. The meaning of "when applicable" is not clearly spelled out, which could lead to disputes over interpretation.
 - The provision that would permit the PSC to adjust rates to be paid by the utility to the QF to take into account the value of the RECs is entirely inconsistent with Section 69-3-604(3), MCA, that requires the PSC when setting QF rates to consider only the availability and the reliability of the electricity produced. There is no known way to include the value of a REC into cost estimates for either KWh or KW rates, the two products for which QFs have historically been compensated.
- New Section 5, Saving Clause, and New Section 7, Applicability, contradict each other. If a PSC QF proceeding has begun before the effective date of this bill (and there is as a matter of fact a pending QF case at the PSC), then, according to New Section 5, this bill will not affect that proceeding. However, that provision is contradicted by New Section 7 because it says this bill applies to contracts or rates established after the effective date of this bill. Application of this bill to contracts or rates established after the bill's effective date will certainly affect PSC QF proceedings that have begun (but are not yet completed) prior to the effective date.