



AN ACT REVISING THE REQUIREMENTS FOR GRANTING A WAIVER FOR NONCOMPLIANCE WITH THE GRADUATED RENEWABLE ENERGY STANDARD; AMENDING SECTIONS 69-3-2004, 69-3-2005, AND 69-3-2006, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

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

Section 1. Waiver. A public utility may petition the commission for a waiver, in whole or in part, of not more than 3 compliance years subject to renewal upon application to the commission, of the renewable energy standards required pursuant to 69-3-2004(2) and (3) for compliance years after 2011 if the public utility can show that the procurement of electricity from renewable energy resources or renewable energy credits will result in adverse customer impacts.

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, [section 1], and subsections ~~(41) and (42)~~ (10) through (13) of this section, a graduated renewable energy standard is established for public utilities and competitive electricity suppliers as provided in subsections ~~(2) through (4)~~ and (3) 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)~~(2) (a) 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) Beginning January 1, 2012, as part of their compliance with subsection ~~(3)(a)~~ (2)(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)~~ (2)(b) based on each public utility's retail sales of electrical energy in Montana in the calendar year 2011.

~~(4)(3)~~ (a) 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 part of their compliance with subsection ~~(4)(a)~~ (3)(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)~~ (3)(b)(i), a public utility may include purchases made under subsection ~~(3)(b)~~ (2)(b).

(c) Public utilities shall proportionately allocate the purchase required under subsection ~~(4)(b)~~ (3)(b) based on each public utility's retail sales of electrical energy in Montana in the calendar year 2014.

~~(5)(4)~~ (a) In complying with the standards required under subsections (2) ~~through (4)~~ and (3), 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)~~ and (3) must be calculated on a delivered-energy basis after accounting for any line losses.

~~(6)(5)~~ 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)(6)~~ (a) In order to meet the standard established in subsections (2) ~~through (4)~~ and (3), a public utility or competitive electricity supplier 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)~~ (6)(a)(i) and (6)(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)~~ and (3).

(c) 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)~~ and (3).

~~(8)~~(7) Nothing in this part limits a public utility or competitive electricity supplier from exceeding the standards established in subsections (2) ~~through (4)~~ and (3).

~~(9)~~(8) If a public utility or competitive electricity supplier exceeds a standard established in subsections (2) ~~through (4)~~ and (3) 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)~~(9) Except as provided in [section 1] and subsections (11) and (12) (10) through (13) of this section, if a public utility or competitive electricity supplier is unable to meet the standards established in subsections (2) ~~through (4)~~ and (3) 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)~~(10) (a) ~~A~~ Except as provided in subsection (12), a public utility or competitive electricity supplier may, in accordance with subsection (11), petition the commission for a short-term waiver from full compliance with the standards in subsections (2) through (4) and (3) and the penalties levied under subsection (10) (9). The petition must demonstrate that the:

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

~~(b)~~(ii) 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; or

(iii) public utility or competitive electricity supplier has undertaken all reasonable steps to procure renewable energy credits and electricity from an eligible renewable resource, but the cost exceeds the caps provided for in 69-3-2007.

(b) For the purposes of this subsection (10) "reasonable price" means a price that does not exceed 5% of the retail electricity supply rate of the public utility or competitive electricity supplier.

(11) A public utility or competitive electricity supplier may apply for a waiver pursuant to subsection (10) at any time, and the waiver must be granted for a period of not more than 3 compliance years subject to renewal upon application to the commission.

(12) A public utility or competitive electricity supplier may not petition the commission for a waiver pursuant to subsection (10) if the public utility or competitive electricity supplier has insufficient renewable energy credits to comply with subsections (2) and (3) because the public utility or competitive electricity supplier sold renewable energy credits to another party that would otherwise have been used by the public utility or competitive electricity supplier to meet the requirements of subsections (2) and (3).

~~(12)~~(13) (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)~~ and (3).

(b) The exemption provided for in subsection ~~(12)(a)~~ (13)(a) is terminated upon modification after April 25, 2007, of the prices, terms, or conditions in a written contract."

Section 3. Section 69-3-2005, MCA, is amended to read:

"69-3-2005. Procurement -- cost recovery -- reporting. (1) In meeting the requirements of this part, a public utility shall:

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

(b) consider the importance of geographically diverse rural economic development when procuring renewable energy credits; and

(c) consider the importance of dispatch ability, seasonality, and other attributes of the eligible renewable resource contained in the commission's supply procurement rules when considering the procurement of renewable energy or renewable energy credits.

(2) A public utility that intends to enter into contracts of less than 10 years in duration shall demonstrate to the commission that these contracts will provide a lower long-term cost of meeting the standard established in 69-3-2004.

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

(b) Contracts signed for projects located in Montana must require all contractors to pay the standard prevailing rate of wages for heavy construction, as provided in 18-2-414, during the construction phase of the project.

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

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

- (a) June 1, 2013, for the standard required in ~~69-3-2004(4)~~ 69-3-2004(3); and
- (b) any additional future dates as required by the commission.

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

(7) For the purpose of implementing this part, the commission has regulatory authority over competitive electricity suppliers."

Section 4. Section 69-3-2006, MCA, is amended to read:

"69-3-2006. Commission authority -- rulemaking authority. (1) The commission has the authority to generally implement and enforce the provisions of this part.

(2) The commission shall adopt rules ~~before June 1, 2006,~~ to:

- (a) select a renewable energy credit tracking system to verify compliance with this part;
- (b) establish a system by which renewable resources become certified as eligible renewable resources;
- (c) define the process by which waivers from full compliance with this part may be granted in accordance with 69-3-2004(10) through (12);
- (d) define the process by which waivers from full or partial compliance with this part may be granted in accordance with [section 1];
- (~~d~~)(e) establish procedures under which contracts for eligible renewable resources and renewable energy credits may receive advanced approval;
- (~~e~~)(f) define the requirements governing renewable energy procurement plans and annual reports; and
- (~~f~~)(g) generally implement and enforce the provisions of this part."

Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 69, chapter 3, part 20, and the provisions of Title 69, chapter 3, part 20, apply to [section 1].

Section 6. 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 7. Effective date. [This act] is effective on passage and approval.

Section 8. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to the compliance year beginning January 1, 2011.

- END -

I hereby certify that the within bill,
SB 0330, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2011.

Speaker of the House

Signed this _____ day
of _____, 2011.

SENATE BILL NO. 330
INTRODUCED BY E. WALKER

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