

1 SENATE BILL NO. 26

2 INTRODUCED BY G. JERGESON

3 BY REQUEST OF THE PUBLIC SERVICE COMMISSION

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE GRADUATED RENEWABLE ENERGY
6 STANDARD BY CHANGING DEADLINES AND CLARIFYING COMPLIANCE REQUIREMENTS; AMENDING
7 THE DEFINITION OF "RENEWABLE ENERGY CREDIT"; EXTENDING THE TIME FOR FILING COMPLIANCE
8 REPORTS; REQUIRING ALL ELECTRICITY SUPPLIERS TO FILE ANNUAL REPORTS WITH THE PUBLIC
9 SERVICE COMMISSION; AMENDING SECTIONS 69-3-2003, 69-3-2004, 69-3-2005, AND 90-3-1003, MCA;
10 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."
11

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
13

14 **Section 1.** Section 69-3-2003, MCA, is amended to read:

15 **"69-3-2003. Definitions.** As used in this part, unless the context requires otherwise, the following
16 definitions apply:

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

21 (2) "Balancing authority" means a transmission system control operator who balances electricity supply
22 and load at all times to meet transmission system operating criteria and to provide reliable electric service to
23 customers.

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

29 (4) "Community renewable energy project" means an eligible renewable resource that:

30 (a) is interconnected on the utility side of the meter in which local owners have a controlling interest and

1 that is less than or equal to 25 megawatts in total calculated nameplate capacity; or

2 (b) is owned by a public utility and has less than or equal to 25 megawatts in total nameplate capacity.

3 (5) (a) "Competitive electricity supplier" means ~~any person, corporation, or governmental entity~~ an
4 electricity supplier that is selling electricity to small customers ~~at retail rates in the state of Montana and that is~~
5 ~~not a public utility or cooperative.~~

6 (b) The term does not include governmental entities selling electricity produced only by facilities
7 generating less than 250 kilowatts that were in operation prior to 1990.

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

10 (7) "Cooperative utility" means:

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

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

13 (8) "Dispatch ability" means the ability of either a balancing authority or the owner of an electric
14 generating resource to rapidly start, stop, increase, or decrease electricity production from that generating
15 resource in order to respond to the balancing authority's need to match supply resources to loads on the
16 transmission system.

17 (9) "Electric generating resource" means any plant or equipment used to generate electricity by any
18 means.

19 (10) "Electricity supplier" means any person, corporation, or governmental entity that:

20 (a) sells electricity to customers at retail rates in this state; and

21 (b) is not a public utility or a cooperative utility.

22 ~~(10)~~(11) "Eligible renewable resource" means a facility either located within Montana or delivering
23 electricity from another state into Montana that commences commercial operation after January 1, 2005, and that
24 produces has been certified by the commission according to rules adopted pursuant to 69-3-2006(2)(b) as
25 producing electricity from one or more of the following sources:

26 (a) wind;

27 (b) solar;

28 (c) geothermal;

29 (d) water power, in the case of a hydroelectric project that:

30 (i) does not require a new appropriation, diversion, or impoundment of water and that has a nameplate

- 1 rating of 10 megawatts or less; or
- 2 (ii) is installed at an existing reservoir or on an existing irrigation system that does not have hydroelectric
- 3 generation as of April 16, 2009, and has a nameplate capacity of 15 megawatts or less;
- 4 (e) landfill or farm-based methane gas;
- 5 (f) gas produced during the treatment of wastewater;
- 6 (g) low-emission, nontoxic biomass based on dedicated energy crops, animal wastes, or solid organic
- 7 fuels from wood, forest, or field residues, except that the term does not include wood pieces that have been
- 8 treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chroma-arsenic;
- 9 (h) hydrogen derived from any of the sources in this subsection ~~(10)~~ (11) for use in fuel cells;
- 10 (i) the renewable energy fraction from the sources identified in subsections ~~(10)(a) through (10)(j)~~ (11)(a)
- 11 through (11)(j) of electricity production from a multiple-fuel process with fossil fuels; and
- 12 (j) the renewable energy fraction of compressed air derived from any of the sources in this subsection
- 13 ~~(10)~~ (11) that is forced into an underground storage reservoir and later released, heated, and passed through a
- 14 turbine generator.
- 15 ~~(11)~~(12) "Local owners" means:
- 16 (a) Montana residents;
- 17 (b) general partnerships of which all partners are Montana residents;
- 18 (c) business entities organized under the laws of Montana that:
- 19 (i) have less than \$50 million of gross revenue;
- 20 (ii) have less than \$100 million of assets; and
- 21 (iii) have at least 50% of the equity interests, income interests, and voting interests owned by Montana
- 22 residents;
- 23 (d) Montana nonprofit organizations;
- 24 (e) Montana-based tribal councils;
- 25 (f) Montana political subdivisions or local governments;
- 26 (g) Montana-based cooperatives other than cooperative utilities; or
- 27 (h) any combination of the individuals or entities listed in subsections ~~(11)(a) through (11)(g)~~ (12)(a)
- 28 through (12)(g).
- 29 ~~(12)~~(13) "Nonspinning reserve" means offline generation that can be ramped up to capacity and
- 30 synchronized to the grid within 10 minutes and that is needed to maintain system frequency stability during

1 emergency conditions, unforeseen load swings, and generation disruptions.

2 ~~(13)(14)~~ "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter
3 3, on January 1, 2005, including the public utility's successors or assignees.

4 ~~(14)(15)~~ "Renewable energy credit" means ~~a tradable certificate of proof of the environmental attributes~~
5 ~~associated with~~ A TRADEABLE CERTIFICATE OF PROOF OF 1 megawatt hour of electricity generated by an eligible
6 renewable resource that is and, INCLUDING ALL OF THE ENVIRONMENTAL ATTRIBUTES ASSOCIATED WITH THAT 1
7 MEGAWATT-HOUR UNIT OF ELECTRICITY PRODUCTION, THAT IS tracked and verified through a tracking system
8 approved by the commission ~~and includes all of the environmental attributes associated with that 1~~
9 ~~megawatt-hour unit of electricity production~~ according to rules adopted pursuant to 69-3-2006(2)(a).

10 (16) "Renewable energy fraction" means the proportion of electricity output directly attributable to
11 electricity and associated renewable energy credits produced by one of the sources identified in subsections
12 (11)(a) through (11)(j).

13 ~~(15)(17)~~ "Seasonality" means the degree to which an electric generating resource is capable of producing
14 electricity in each of the seasons of the year.

15 ~~(16)(18)~~ "Small customer" means a retail customer that has an individual load with an average monthly
16 demand of less than 5,000 kilowatts.

17 ~~(17)(19)~~ "Spinning reserve" means the online reserve capacity that is synchronized to the grid system
18 and immediately responsive to frequency control and that is needed to maintain system frequency stability during
19 emergency conditions, unforeseen load swings, and generation disruptions.

20 ~~(18)(20)~~ "Total calculated nameplate capacity" means the calculation of total nameplate capacity of the
21 community renewable energy project and other eligible renewable resources that are:

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

25

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

27 **"69-3-2004. Renewable resource standard -- administrative penalty -- waiver.** (1) Except as provided
28 in ~~69-3-2007~~ and 69-3-2007 AND subsections (11) and (12) of this section, a graduated renewable energy
29 standard is established for public utilities and competitive electricity suppliers as provided in subsections (2)
30 through (4) of this section.

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

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

7 (b) Beginning January 1, 2012, as part of their compliance with subsection (3)(a), public utilities shall
8 purchase both the renewable energy credits and the electricity output from community renewable energy projects
9 that total at least 50 megawatts in nameplate capacity.

10 (c) Public utilities shall proportionately allocate the purchase required under subsection (3)(b) based on
11 each public utility's retail sales of electrical energy in Montana in the calendar year 2011.

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

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

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

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

22 (5) (a) In complying with the standards required under subsections (2) ~~through (4), (3)(a), and (4)(a),~~ a
23 public utility or competitive electricity supplier shall, for any given compliance year, calculate its procurement
24 requirement based on ~~the public utility's or competitive electricity supplier's~~ its previous year's sales of electrical
25 energy to retail customers in Montana.

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

28 (6) A public utility or competitive electricity supplier has until ~~3~~ 4 months following the end of each
29 compliance year to ~~purchase renewable energy credits for that compliance year~~ meet the standards established
30 in subsections (2) through (4) or to petition the commission for a short-term waiver from full or partial compliance

1 pursuant to subsection (11).

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

4 (i) electricity from an eligible renewable resource ~~in which the associated~~ and the ASSOCIATED renewable
5 energy credits ~~have not been sold separately~~ THAT HAVE NOT BEEN SOLD SEPARATELY;

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

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

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

12 (c) Renewable energy credits sold through a voluntary service such as the one provided for in
13 69-8-210(2) may not be applied against a public utility's or competitive electricity supplier's obligation to meet the
14 standards established in subsections (2) through (4).

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

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

21 (10) Except as provided in subsections (11) and (12), if a public utility or competitive electricity supplier
22 is unable to meet the standards established in subsections (2) through (4) in any compliance year, ~~that public~~
23 ~~utility or competitive electricity supplier~~ it shall pay an administrative penalty, assessed by the commission, of \$10
24 for each megawatt hour of renewable energy credits that ~~the public utility or competitive electricity supplier~~ it failed
25 to procure. A public utility may not recover this penalty in electricity rates. Money generated from these penalties
26 must be deposited in the universal low-income energy assistance fund established in 69-8-412(1)(b).

27 (11) A Within 4 months following the end of each compliance year, a public utility or competitive electricity
28 supplier may petition the commission for a short-term waiver from full or partial compliance with the standards
29 in subsections (2) through (4) and the penalties levied under subsection (10). The petition must demonstrate that
30 the:

1 ~~_____~~(a) public utility or competitive electricity supplier has undertaken all reasonable steps to procure
 2 renewable energy credits under long-term contract, but full compliance cannot be achieved either because:

3 (a) renewable energy credits cannot be procured; ~~or for~~

4 ~~(b) full compliance would cause the public utility or competitive electricity supplier to exceed the cost~~
 5 ~~caps in 69-3-2007;~~

6 ~~(c)(B)~~ other legitimate reasons exist that are outside the control of the public utility or competitive
 7 electricity supplier; or

8 ~~(b)(d)(C)~~ integration of additional eligible renewable resources into the electrical grid will clearly and
 9 demonstrably jeopardize the reliability of the electrical system and ~~that~~ the public utility or competitive electricity
 10 supplier has undertaken all reasonable steps to mitigate the reliability concerns.

11 (12) (a) Retail sales made by a competitive electricity supplier according to prices, terms, and conditions
 12 of a written contract executed prior to April 25, 2007, are exempt from the standards in subsections (2) through
 13 (4).

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

16

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

18 **"69-3-2005. Procurement -- cost recovery -- reporting.** (1) In meeting the requirements of this part,
 19 a public utility shall:

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

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

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

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

30 (3) (a) Contracts signed for projects located in Montana must require all contractors to give preference

1 to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the
2 projects if the Montana residents have substantially equal qualifications to those of nonresidents.

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

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

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

14 (a) June 1, 2013, for the standard required in 69-3-2004(4); and

15 (b) any additional future dates as required by the commission.

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

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

21

22 **Section 4.** Section 90-3-1003, MCA, is amended to read:

23 **"90-3-1003. Research and commercialization account -- use.** (1) The research and commercialization
24 account provided for in 90-3-1002 is statutorily appropriated, as provided in 17-7-502, to the board of research
25 and commercialization technology, provided for in 2-15-1819, for the purposes provided in this section.

26 (2) The establishment of the account in 90-3-1002 is intended to enhance the economic growth
27 opportunities for Montana and constitute a public purpose.

28 (3) The account may be used only for:

29 (a) loans that are to be used for research and commercialization projects to be conducted at research
30 and commercialization centers located in Montana;

1 (b) grants that are to be used for production agriculture research, development, and commercialization
2 projects, clean coal research and development projects, or renewable resource research and development
3 projects to be conducted at research and commercialization centers located in Montana;

4 (c) matching funds for grants from nonstate sources that are to be used for research and
5 commercialization projects to be conducted at research and commercialization centers located in Montana;

6 (d) the Montana food and agricultural development program provided for in 80-11-901; or

7 (e) administrative costs that are incurred by the board in carrying out the provisions of this part.

8 (4) At least \$195,000 of the account funds must be distributed on an annual basis to the department of
9 agriculture to support and administer the Montana food and agricultural development program provided for in
10 80-11-901.

11 (5) (a) At least 30% of the account funds approved for research and commercialization projects must
12 be directed toward projects that enhance clean coal research and development or renewable resource research
13 and development.

14 (b) If the board is not in receipt of a qualified application for a project to enhance clean coal research and
15 development or renewable resource research and development, subsection (5)(a) does not apply.

16 (6) An applicant for a grant shall provide matching funds from nonstate sources equal to 25% of total
17 project costs. The requirement to provide matching funds is a qualifier, but not a criterion, for approval of a grant.

18 (7) The board shall establish policies, procedures, and criteria that achieve the objectives in its research
19 and commercialization strategic plan for the awarding of grants and loans. The criteria must include:

20 (a) the project's potential to diversify or add value to a traditional basic industry of the state's economy;

21 (b) whether the project shows promise for enhancing technology-based sectors of Montana's economy
22 or promise for commercial development of discoveries;

23 (c) whether the project employs or otherwise takes advantage of existing research and commercialization
24 strengths within the state's public university and private research establishment;

25 (d) whether the project involves a realistic and achievable research project design;

26 (e) whether the project develops or employs an innovative technology;

27 (f) verification that the project activity is located within the state;

28 (g) whether the project's research team possesses sufficient expertise in the appropriate technology area
29 to complete the research objective of the project;

30 (h) verification that the project was awarded based on its scientific merits, following review by a

1 recognized federal agency, philanthropic foundation, or other private funding source; and

2 (i) whether the project includes research opportunities for students.

3 (8) The board shall direct the state treasurer to distribute funds for approved projects. Unallocated
4 interest and earnings from the account must be retained in the account. Repayments of loans and any
5 agreements authorizing the board to take a financial right to licensing or royalty fees paid in connection with the
6 transfer of technology from a research and commercialization center to another nonstate organization or
7 ownership of corporate stock in a private sector organization must be deposited in the account.

8 (9) The board shall refer grant applications to external peer review groups. The board shall compile a
9 list of persons willing to serve on peer review groups for purposes of this section. The peer review group shall
10 review the application and make a recommendation to the board as to whether the application for a grant should
11 be approved. The board shall review the recommendation of the peer review group and either approve or deny
12 a grant application.

13 (10) The board shall identify whether a grant or loan is to be used for basic research, applied research,
14 or some combination of both. For the purposes of this section, "applied research" means research that is
15 conducted to attain a specific benefit or solve a practical problem and "basic research" means research that is
16 conducted to uncover the basic function or mechanism of a scientific question.

17 (11) For the purposes of this section:

18 (a) "clean coal research and development" means research and development of projects that would
19 advance the efficiency, environmental performance, and cost-competitiveness of using coal as an energy source
20 well beyond the current level of technology used in commercial service;

21 (b) "renewable resource research and development" means research and development that would
22 advance:

23 (i) the use of any of the sources of energy listed in ~~69-3-2003(10)~~ 69-3-2003(11) to produce electricity;
24 and

25 (ii) the efficiency, environmental performance, and cost-competitiveness of using renewable resources
26 as an energy source well beyond the current level of technology used in commercial service."

27
28 **NEW SECTION. Section 5. Saving clause.** [This act] does not affect rights and duties that matured,
29 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

30

1 NEW SECTION. **Section 6. Severability.** If a part of [this act] is invalid, all valid parts that are severable
2 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part
3 remains in effect in all valid applications that are severable from the invalid applications.

4

5 NEW SECTION. **Section 7. Effective date.** [This act] is effective on passage and approval.

6

7 NEW SECTION. **Section 8. Retroactive applicability.** [This act] applies retroactively, within the
8 meaning of 1-2-109, to the compliance year beginning January 1, 2013.

9

- END -