

1 HOUSE BILL NO. 475

2 INTRODUCED BY M. MCNALLY

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A COMPETITIVE SOLICITATION PROCESS FOR
5 PUBLIC UTILITIES SEEKING PREAPPROVAL; REQUIRING A PUBLIC UTILITY SEEKING PREAPPROVAL
6 TO ACQUIRE, CONSTRUCT, OR PURCHASE AN ELECTRICITY SUPPLY RESOURCE TO CONDUCT A
7 COMPETITIVE SOLICITATION PROCESS APPROVED BY THE PUBLIC SERVICE COMMISSION;
8 ESTABLISHING THE REQUIREMENTS OF A COMPETITIVE SOLICITATION PROCESS; ESTABLISHING
9 COMMISSION REQUIREMENTS FOR REVIEW AND APPROVAL OR REJECTION OF A COMPETITIVE
10 SOLICITATION PROCESS; ALLOWING A PUBLIC UTILITY TO REQUEST A WAIVER FOR THE COMPETITIVE
11 SOLICITATION PROCESS; ESTABLISHING THE PROCESS FOR REQUESTING A WAIVER; ESTABLISHING
12 COMMISSION REQUIREMENTS FOR GRANTING A WAIVER; ALLOWING FOR A TECHNICAL CONFERENCE
13 TO REVIEW WAIVER REQUESTS; AMENDING SECTIONS 69-1-114, 69-8-419, AND 69-8-421, MCA; AND
14 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17
18 NEW SECTION. **Section 1. Competitive solicitation process required -- exception.** (1) (a) Except
19 as provided in subsection (6), a public utility that intends to seek approval by the commission pursuant to
20 69-8-421 for the acquisition, construction, or purchase of an electricity supply resource as defined in 69-8-103
21 shall conduct a commission-approved competitive solicitation process.

22 (b) A public utility may not prohibit a qualifying small power production facility as defined by 69-3-601
23 or another utility or supplier that owns an electricity supply resource or intends to construct an electricity supply
24 resource to participate in a competitive solicitation process.

25 (c) A competitive solicitation process includes the use of a third-party administrator selected by the public
26 utility to open, consider, and evaluate bids submitted pursuant to a solicitation.

27 (2) A public utility that plans to conduct a competitive solicitation process shall submit the following
28 information to the commission:

29 (a) a description of the competitive solicitation process that the public utility will use and proof of
30 compliance with subsection (1)(b), if applicable;

1 (b) a completed proposal soliciting an electricity supply resource; and

2 (c) any other information the commission requires.

3 (3) (a) If the commission receives information from a public utility pursuant to subsection (2), the
4 commission shall accept public comment on the information. To allow for public comment, the commission may
5 hold a public hearing.

6 (b) The commission may select and retain a person or organization to act as an independent monitor
7 for a competitive solicitation process. For the purposes of this section, an independent monitor is to be treated
8 as an independent consultant or advisory service in accordance with 69-8-421(10).

9 (c) The independent monitor may assist the commission by:

10 (i) providing comments on the consistency of the competitive solicitation process with industry standards
11 and the commission's criteria;

12 (ii) monitoring and observing the competitive solicitation process, paying particular attention to the public
13 utility's evaluation of electricity supply resources that will result in utility ownership of the resource, to ensure that
14 the utility conducts a fair and proper process in accordance with industry standards and commission criteria;

15 (iii) notifying the utility on a timely basis of any discrepancies observed in the process and resolving any
16 differences of opinion; and

17 (iv) preparing a closing report regarding the consistency of the process, including selection and
18 notification of electricity supply resources taking part in the solicitation process based on industry standards and
19 commission criteria.

20 (4) (a) Except as provided in subsection (4)(b), within 60 days of receiving the information required
21 pursuant to subsection (2) the commission shall:

22 (i) approve a proposed competitive solicitation process that meets the requirements of subsections (2)
23 and (5);

24 (ii) suggest modifications to a proposed competitive solicitation process in order to meet the requirements
25 of subsections (2) and (5); or

26 (iii) reject a proposed competitive solicitation process.

27 (b) The commission may extend the time to a date that provides the commission with adequate time to
28 analyze the information provided in accordance with subsection (2). The time may not be extended by more than
29 90 days.

30 (5) A competitive solicitation process may not be approved unless the commission determines that the

1 competitive solicitation process is in the public interest. The commission shall make the determination by
2 considering:

- 3 (a) whether the proposed competitive solicitation will result in the acquisition, production, and delivery
4 of electricity at the lowest reasonable cost to a public utility's retail customers located in Montana;
5 (b) long-term and short-term impacts;
6 (c) risk;
7 (d) reliability;
8 (e) financial impacts on the public utility; and
9 (f) other factors determined by the commission to be relevant.

10 (6) A public utility that receives a waiver in accordance with [section 2] is not required to conduct a
11 commission-approved competitive solicitation process for the acquisition, construction, or purchase of an
12 electricity supply resource.

13
14 **NEW SECTION. Section 2. Waiver of requirement for competitive solicitation or approval.** (1) A
15 public utility may request a waiver from the requirements of [section 1].

16 (2) An application for waiver must include:

- 17 (a) the basis for each waiver requested;
18 (b) whether the request is time-sensitive;
19 (c) why the waiver is in the public interest; and
20 (d) any other information required by the commission.

21 (3) A public utility requesting a waiver shall:

- 22 (a) file a verified waiver application with the commission; and
23 (b) provide an electronic and paper copy of the verified application, including all associated exhibits and
24 attachments, to the consumer counsel.

25 (4) (a) Except as provided in subsections (10)(b) and (11), upon receipt of a verified application, the
26 commission shall, within 2 business days following receipt of the application, provide public notice of a technical
27 conference.

28 (b) Notice of the conference must be:

- 29 (i) published on the commission website; and
30 (ii) posted in the relevant geographic area.

- 1 (c) (i) Except as provided in subsections (4)(c)(ii), (10)(b), and (11), the conference must be held within
2 14 calendar days of the commission's receipt of the application.
- 3 (ii) The conference may not be held until at least 7 calendar days after the commission's receipt of the
4 application.
- 5 (5) (a) At the technical conference, a public utility shall:
- 6 (i) provide adequate documentation to support the verified application; and
7 (ii) respond to questions posed by the commission and other interested persons.
- 8 (b) Transcripts of the technical conference must be kept.
- 9 (6) (a) The commission may engage independent engineering, financial, and management consultants
10 or advisory services and charge a fee to the public utility in accordance with 69-8-421(10) in evaluating a waiver
11 application.
- 12 (b) A utility shall respond to questions posed by a consultant or advisor.
- 13 (7) Except as provided in subsections (10)(b) and (11), within 7 calendar days of the technical
14 conference, a consultant, advisor, or any interested person may file comments with the commission concerning
15 the verified application.
- 16 (8) Except as provided in subsections (10)(b) and (11), within 7 calendar days of the submission of
17 comments pursuant to subsection (7), the commission shall make a determination in accordance with subsection
18 (9) and issue a written decision:
- 19 (a) granting the waiver;
20 (b) granting the waiver with conditions; or
21 (c) denying the waiver.
- 22 (9) The commission shall grant the waiver if the commission determines the waiver is in the public
23 interest because:
- 24 (a) an emergency exists that outweighs the need for a competitive solicitation process;
25 (b) a time-limited commercial or technical opportunity exists that provides value to the public utility's
26 customers; or
27 (c) other factors are presented to the commission demonstrating that a waiver is in the public interest.
- 28 (10) (a) Confidential or trade secret information included in a verified application, in a technical
29 conference, or in comments filed on the verified application must be clearly identified as confidential by the person
30 or entity providing the comments. The information is subject to the terms of a protective order issued by the

1 commission.

2 (b) The commission may extend the time provided for in this section to consider a petition for a protective
3 order.

4 (c) A protective order must prohibit the use of confidential information for competitive purposes.

5 (11) (a) Except as provided in subsection (11)(b), the commission:

6 (i) shall take action and schedule proceedings as soon as reasonably practicable if the public utility
7 demonstrates circumstances demanding urgency; and

8 (ii) shorten or lengthen the time established if the commission determines a change is necessary.

9 (b) A timeframe may not be lengthened solely because a consultant or advisor is unavailable to
10 participate or to complete a recommendation.

11 (12) (a) Any cost recovery requested by a public utility associated with an energy resource for which a
12 waiver is granted is subject to future review by the commission when the public utility files to adjust rates pursuant
13 to 69-3-302.

14 (b) A waiver granted by the commission does not create a presumption that a public utility's acquisition
15 or construction of an energy resource was prudent.

16

17 **Section 3.** Section 69-1-114, MCA, is amended to read:

18 **"69-1-114. Fees.** (1) Each fee charged by the commission must be reasonable.

19 (2) Except for a fee assessed pursuant to 69-3-204(2), 69-8-421(10), [section 1(3)(b)], [section 2(6)], or
20 69-12-423(2), a fee set by the commission may not exceed \$500.

21 (3) All fees collected by the department under 69-8-421(10), [section 1(3)(b)], and [section 2(6)] must
22 be deposited in an account in the special revenue fund. Funds in this account must be used as provided in
23 69-8-421(10), [section 1(3)(b)], and [section 2(6)]."

24

25 **Section 4.** Section 69-8-419, MCA, is amended to read:

26 **"69-8-419. Electricity supply resource planning and procurement -- duties of public utility --**
27 **objectives -- commission rules.** (1) The public utility shall:

28 (a) plan for future electricity supply resource needs;

29 (b) manage a portfolio of electricity supply resources; and

30 (c) procure new electricity supply resources when needed and use a competitive solicitation process.

1 if applicable, in accordance with [section 1].

2 (2) The public utility shall pursue the following objectives in fulfilling its duties pursuant to subsection (1):

3 (a) provide adequate and reliable electricity supply service at the lowest long-term total cost;

4 (b) conduct an efficient electricity supply resource planning and procurement process that evaluates the
5 full range of cost-effective electricity supply and demand-side management options;

6 (c) identify and cost-effectively manage and mitigate risks related to its obligation to provide electricity
7 supply service;

8 (d) use open, fair, and competitive procurement and solicitation processes whenever possible; and

9 (e) provide electricity supply service and related services at just and reasonable rates.

10 (3) ~~By March 31, 2008, the~~ The commission shall adopt rules that guide the electricity supply resource
11 planning and procurement processes used by the public utility and facilitate the achievement of the objectives
12 in subsection (2) by the public utility. The rules must establish:

13 (a) goals, objectives, and guidelines that are consistent with the objectives in subsection (2) for:

14 (i) planning for future electricity supply resource needs;

15 (ii) managing the portfolio of electricity supply resources; ~~and~~

16 (iii) procuring new electricity supply resources; and

17 (iv) conducting competitive solicitation processes in accordance with [sections 1 and 2];

18 (b) standards for the evaluation by the commission of the reasonableness of a power purchase
19 agreement proposed by the public utility; and

20 (c) minimum filing requirements for an application by the public utility for approval of an electricity supply
21 resource."

22

23 **Section 5.** Section 69-8-421, MCA, is amended to read:

24 **"69-8-421. Approval of electricity supply resources.** (1) A public utility that removed its generation
25 assets from its rate base pursuant to this chapter prior to October 1, 2007, may apply to the commission in
26 accordance with [sections 1 and 2] for approval of an electricity supply resource that is not yet procured.

27 (2) Within 45 days of the public utility's submission of an application for approval, the commission shall
28 determine whether or not the application is adequate and in compliance with the commission's minimum filing
29 requirements. If the commission determines that the application is inadequate, it shall explain the deficiencies.

30 (3) The commission shall issue an order within 180 days of receipt of an adequate application for

1 approval of a power purchase agreement from an existing generating resource unless it determines that
2 extraordinary circumstances require additional time.

3 (4) (a) Except as provided in subsections (4)(b) through (4)(d), the commission shall issue an order
4 within 270 days of receipt of an adequate application for approval of a lease, an acquisition of an equity interest
5 in a new or existing plant or equipment used to generate electricity, or a power purchase agreement for which
6 approval would result in construction of a new electric generating resource. The commission may extend the time
7 limit up to an additional 90 days if it determines that extraordinary circumstances require it.

8 (b) If an air quality permit pursuant to Title 75, chapter 2, is required for a new electrical generation
9 resource or a modification to an existing resource, the commission shall hold the public hearing on the application
10 for approval at least 30 days after the issuance of the final air quality permit.

11 (c) If a final air quality permit is not issued within the time limit pursuant to subsection (4)(a), the
12 commission shall extend the time limit in order to comply with subsection (4)(b).

13 (d) The commission may extend the time limit for issuing an order for an additional 60 days following the
14 hearing pursuant to subsection (4)(b).

15 (5) To facilitate timely consideration of an application, the commission may initiate proceedings to
16 evaluate planning and procurement activities related to a potential resource procurement prior to the public utility's
17 submission of an application for approval. Unless a waiver is granted in accordance with [section 2], the
18 commission may require a competitive solicitation process in accordance with [section 1].

19 (6) (a) The commission may approve or deny, in whole or in part, an application for approval of an
20 electricity supply resource.

21 (b) The commission may consider all relevant information known up to the time that the administrative
22 record in the proceeding is closed in the evaluation of an application for approval.

23 (c) A commission order granting approval of an application must include the following findings:

24 (i) approval, in whole or in part, is in the public interest; and

25 (ii) procurement of the electricity supply resource is consistent with the requirements in 69-3-201, the
26 objectives in 69-8-419, and commission rules.

27 (d) The commission order may include a provision for allowable generation assets cost of service when
28 the utility has filed an application for the lease or acquisition of an equity interest in a plant or equipment used to
29 generate electricity.

30 (e) When issuing an order for the acquisition of an equity interest or lease in a facility or equipment that

1 is constructed after January 1, 2007, and that is used to generate electricity that is primarily fueled by natural or
2 synthetic gas, the commission shall require the applicant to implement cost-effective carbon offsets. Expenditures
3 required for cost-effective carbon offsets pursuant to this subsection (6)(e) are fully recoverable in rates. By March
4 31, 2008, the commission shall adopt rules for the implementation of this subsection (6)(e).

5 (f) The commission order may include other findings that the commission determines are necessary.

6 (g) A commission order that denies approval must describe why the findings required in subsection (6)(c)
7 could not be reached.

8 (7) Notwithstanding any provision of this chapter to the contrary, if the commission has issued an order
9 containing the findings required under subsection (6)(c), the commission may not subsequently disallow the
10 recovery of costs related to the approved electricity supply resource based on contrary findings.

11 (8) Until the state or federal government has adopted uniformly applicable statewide standards for the
12 capture and sequestration of carbon dioxide, the commission may not approve an application for the acquisition
13 of an equity interest or lease in a facility or equipment used to generate electricity that is primarily fueled by coal
14 and that is constructed after January 1, 2007, unless the facility or equipment captures and sequesters a
15 minimum of 50% of the carbon dioxide produced by the facility. Carbon dioxide captured by a facility or equipment
16 may be sequestered offsite from the facility or equipment.

17 (9) Nothing limits the commission's ability to subsequently, in any future rate proceeding, inquire into the
18 manner in which the public utility has managed, dispatched, operated, or maintained any resource or managed
19 any power purchase agreement as part of its overall resource portfolio. The commission may subsequently
20 disallow rate recovery for the costs that result from the failure of a public utility to reasonably manage, dispatch,
21 operate, maintain, or administer electricity supply resources in a manner consistent with 69-3-201, 69-8-419, and
22 commission rules.

23 (10) The commission may engage independent engineering, financial, and management consultants or
24 advisory services to evaluate a public utility's electricity supply resource procurement plans and proposed
25 electricity supply resources. The consultants must have demonstrated knowledge and experience with electricity
26 supply procurement and resource portfolio management, modeling, risk management, and engineering practices.
27 The commission shall charge a fee to the public utility to pay for the costs of consultants or advisory services.
28 These costs are recoverable in rates.

29 (11) By March 31, 2008, the commission shall adopt rules prescribing minimum filing requirements for
30 applications filed pursuant to this part."

