

1 SENATE BILL NO. 45

2 INTRODUCED BY KEANE, ARNTZEN AND ARTHUN

3 BY REQUEST OF THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DEFINITION OF "ELIGIBLE RENEWABLE
6 RESOURCE" TO INCLUDE HYDROELECTRIC PROJECT EXPANSIONS; PROVIDING THE PUBLIC SERVICE
7 COMMISSION WITH RULEMAKING AUTHORITY WITH RESPECT TO HYDROELECTRIC PROJECT
8 EXPANSIONS; AND AMENDING SECTIONS 69-3-2003 AND 69-3-2006, MCA; ~~AND PROVIDING AN~~
9 ~~IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."~~

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12
13 **Section 1.** Section 69-3-2003, MCA, is amended to read:
14 **"69-3-2003. Definitions.** As used in this part, unless the context requires otherwise, the following
15 definitions apply:

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

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

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

28 (4) "Community renewable energy project" means an eligible renewable resource that:
29 (a) is interconnected on the utility side of the meter in which local owners have a controlling interest and
30 that is less than or equal to 25 megawatts in total calculated nameplate capacity; or

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

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

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

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

9 (7) "Cooperative utility" means:

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

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

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

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

18 (10) "Eligible renewable resource" means a facility either located within Montana or delivering electricity
19 from another state into Montana that commences commercial operation after January 1, 2005, or a hydroelectric
20 project expansion referred to in subsection (10)(d)(iii), and that any of which produces electricity from one or more
21 of the following sources:

22 (a) wind;

23 (b) solar;

24 (c) geothermal;

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

26 (i) does not require a new appropriation, diversion, or impoundment of water and that has a nameplate
27 rating of 10 megawatts or less; ~~or~~

28 (ii) is installed at an existing reservoir or on an existing irrigation system that does not have hydroelectric
29 generation as of April 16, 2009, and has a nameplate capacity of 15 megawatts or less; or

30 (iii) is an expansion of an existing hydroelectric project that COMMENCES CONSTRUCTION AND increases

1 ~~existing generation capacity on or after December 31, 2010. The eligible renewable resource includes only the~~
 2 ~~proportion of actual hourly generation resulting from the expansion based on the ratio of added capacity to the~~
 3 ~~total capacity of the expanded hydroelectric project. If the total capacity of the expanded hydroelectric project~~
 4 ~~subsequently changes, the ratio of added capacity to the total capacity of the hydroelectric project must be~~
 5 ~~recalculated~~ [THE EFFECTIVE DATE OF THIS ACT]. ENGINEERING ESTIMATES OF THE AVERAGE INCREMENTAL GENERATION
 6 FROM THE INCREASE IN EXISTING GENERATION CAPACITY MUST BE SUBMITTED TO THE COMMISSION FOR REVIEW. THE
 7 COMMISSION SHALL DETERMINE AN AVERAGE ANNUAL INCREMENTAL GENERATION THAT WILL CONSTITUTE THE ELIGIBLE
 8 RENEWABLE RESOURCE FROM THE CAPACITY EXPANSION, SUBJECT TO FURTHER REVISION BY THE COMMISSION IN THE
 9 EVENT OF SIGNIFICANT CHANGES IN STREAM FLOW OR DAM OPERATION.

- 10 (e) landfill or farm-based methane gas;
- 11 (f) gas produced during the treatment of wastewater;
- 12 (g) low-emission, nontoxic biomass based on dedicated energy crops, animal wastes, or solid organic
 13 fuels from wood, forest, or field residues, except that the term does not include wood pieces that have been
 14 treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chroma-arsenic;
- 15 (h) hydrogen derived from any of the sources in this subsection (10) for use in fuel cells;
- 16 (i) the renewable energy fraction from the sources identified in subsections (10)(a) through (10)(j) of
 17 electricity production from a multiple-fuel process with fossil fuels; and
- 18 (j) compressed air derived from any of the sources in this subsection (10) that is forced into an
 19 underground storage reservoir and later released, heated, and passed through a turbine generator.
- 20 (11) "Local owners" means:
- 21 (a) Montana residents;
- 22 (b) general partnerships of which all partners are Montana residents;
- 23 (c) business entities organized under the laws of Montana that:
- 24 (i) have less than \$50 million of gross revenue;
- 25 (ii) have less than \$100 million of assets; and
- 26 (iii) have at least 50% of the equity interests, income interests, and voting interests owned by Montana
 27 residents;
- 28 (d) Montana nonprofit organizations;
- 29 (e) Montana-based tribal councils;
- 30 (f) Montana political subdivisions or local governments;

- 1 (g) Montana-based cooperatives other than cooperative utilities; or
- 2 (h) any combination of the individuals or entities listed in subsections (11)(a) through (11)(g).
- 3 (12) "Nonspinning reserve" means offline generation that can be ramped up to capacity and synchronized
- 4 to the grid within 10 minutes and that is needed to maintain system frequency stability during emergency
- 5 conditions, unforeseen load swings, and generation disruptions.
- 6 (13) "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter
- 7 3, on January 1, 2005, including the public utility's successors or assignees.
- 8 (14) "Renewable energy credit" means a tradable certificate of proof of 1 megawatt hour of electricity
- 9 generated by an eligible renewable resource that is tracked and verified by the commission and includes all of
- 10 the environmental attributes associated with that 1 megawatt-hour unit of electricity production.
- 11 (15) "Seasonality" means the degree to which an electric generating resource is capable of producing
- 12 electricity in each of the seasons of the year.
- 13 (16) "Small customer" means a retail customer that has an individual load with an average monthly
- 14 demand of less than 5,000 kilowatts.
- 15 (17) "Spinning reserve" means the online reserve capacity that is synchronized to the grid system and
- 16 immediately responsive to frequency control and that is needed to maintain system frequency stability during
- 17 emergency conditions, unforeseen load swings, and generation disruptions.
- 18 (18) "Total calculated nameplate capacity" means the calculation of total nameplate capacity of the
- 19 community renewable energy project and other eligible renewable resources that are:
- 20 (a) located within 5 miles of the project;
- 21 (b) constructed within the same 12-month period; and
- 22 (c) under common ownership."

- 23
- 24 **Section 2.** Section 69-3-2006, MCA, is amended to read:
- 25 **"69-3-2006. Commission authority -- rulemaking authority.** (1) The commission has the authority to
- 26 generally implement and enforce the provisions of this part.
- 27 (2) The commission shall adopt rules before June 1, 2006, to:
- 28 (a) select a renewable energy credit tracking system to verify compliance with this part;
- 29 (b) establish a system by which renewable resources become certified as eligible renewable resources;
- 30 (c) define the process by which waivers from full compliance with this part may be granted;

1 (d) establish procedures under which contracts for eligible renewable resources and renewable energy
2 credits may receive advanced approval;

3 (e) define the requirements governing renewable energy procurement plans and annual reports; and

4 (f) generally implement and enforce the provisions of this part.

5 (3) The commission may adopt rules to ensure that the calculation of energy generation and the
6 renewable energy credits for eligible renewable resources under 69-3-2003(10)(d)(iii) reflects the actual electrical
7 production from the expansion as typically reduced by seasonal water conditions."

8
9 NEW SECTION. Section 3. Notification to tribal governments. The secretary of state shall send a
10 copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
11 Chippewa tribe.

12
13 COORDINATION SECTION. SECTION 4. COORDINATION INSTRUCTION. IF BOTH SENATE BILL NO. 31 AND
14 [THIS ACT] ARE PASSED AND APPROVED, THEN [SECTION 5 OF SENATE BILL NO. 31] IS VOID. IF BOTH SENATE BILL NO.
15 31 AND [THIS ACT] ARE PASSED AN APPROVED AND IF BOTH CONTAIN A SECTION THAT AMENDS 69-3-2003, THE SECTIONS
16 AMENDING 69-3-2003 ARE VOID AND 69-3-2003 MUST BE AMENDED AS FOLLOWS:

17 **"69-3-2003. Definitions.** As used in this part, unless the context requires otherwise, the following
18 definitions apply:

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

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

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

- 1 (4) "Community renewable energy project" means an eligible renewable resource that:
- 2 (a) is interconnected on the utility side of the meter in which local owners have a controlling interest and
- 3 that is less than or equal to 25 megawatts in total calculated nameplate capacity; or
- 4 (b) is owned by a public utility and has less than or equal to 25 megawatts in total nameplate capacity.
- 5 (5) (a) "Competitive electricity supplier" means any person, corporation, or governmental entity that is
- 6 selling electricity to small customers at retail rates in the state of Montana and that is not a public utility or
- 7 cooperative.
- 8 (b) The term does not include governmental entities selling electricity produced only by facilities
- 9 generating less than 250 kilowatts that were in operation prior to 1990.
- 10 (6) "Compliance year" means each calendar year beginning January 1 and ending December 31, starting
- 11 in 2008, for which compliance with this part must be demonstrated.
- 12 (7) "Cooperative utility" means:
- 13 (a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or
- 14 (b) an existing municipal electric utility as of May 2, 1997.
- 15 (8) "Dispatch ability" means the ability of either a balancing authority or the owner of an electric
- 16 generating resource to rapidly start, stop, increase, or decrease electricity production from that generating
- 17 resource in order to respond to the balancing authority's need to match supply resources to loads on the
- 18 transmission system.
- 19 (9) "Electric generating resource" means any plant or equipment used to generate electricity by any
- 20 means.
- 21 (10) (a) "Eligible renewable resource" means a facility either located within Montana or delivering
- 22 electricity from another state into Montana that commences commercial operation after January 1, 2005, is a
- 23 hydroelectric project referred to in subsection (10)(a)(iv)(C), or is a hydroelectric project expansion referred to
- 24 in subsection (10)(a)(iv)(D), and that any of which produces electricity from one or more of the following sources:
- 25 ~~(a)~~(i) wind;
- 26 ~~(b)~~(ii) solar;
- 27 ~~(c)~~(iii) geothermal;
- 28 ~~(d)~~(iv) except as provided in subsection (10)(b) water power, in the case of a hydroelectric project that:
- 29 ~~(f)~~(A) does not require a new appropriation, diversion, or impoundment of water and that has a nameplate
- 30 rating of 10 megawatts or less; or

1 ~~(ii)~~(B) is installed at an existing reservoir or on an existing irrigation system that does not have
2 hydroelectric generation as of April 16, 2009, and has a nameplate capacity of 15 megawatts or less;

3 (C) commences commercial operation in Montana on or after January 1, 2013, and is not an expansion
4 under subsection (10)(a)(iv)(D); or

5 (D) is an expansion of a hydroelectric project that commences construction and increases existing
6 generation capacity on or after [the effective date of this act]. Engineering estimates of the average incremental
7 generation from the increase in existing generation capacity must be submitted to the commission for review. The
8 commission shall determine an average annual incremental generation that will constitute the eligible renewable
9 resource from the capacity expansion, subject to further revision by the commission in the event of significant
10 changes in streamflow or dam operation.

11 ~~(e)~~(v) landfill or farm-based methane gas;

12 ~~(f)~~(vi) gas produced during the treatment of wastewater;

13 ~~(g)~~(vii) low-emission, nontoxic biomass based on dedicated energy crops, animal wastes, or solid organic
14 fuels from wood, forest, or field residues, except that the term does not include wood pieces that have been
15 treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chroma-arsenic;

16 ~~(h)~~(viii) hydrogen derived from any of the sources in this subsection ~~(40)~~ (10)(a) for use in fuel cells;

17 ~~(i)~~(ix) the renewable energy fraction from the sources identified in ~~subsections (10)(a) through (10)(j)~~ this
18 subsection (10)(a) of electricity production from a multiple-fuel process with fossil fuels; and

19 ~~(j)~~(x) compressed air derived from any of the sources in this subsection ~~(40)~~ (10)(a) that is forced into
20 an underground storage reservoir and later released, heated, and passed through a turbine generator.

21 (b) The term does not include federal hydroelectric projects located in Montana or delivering electricity
22 from another state into Montana.

23 (11) "Local owners" means:

24 (a) Montana residents;

25 (b) general partnerships of which all partners are Montana residents;

26 (c) business entities organized under the laws of Montana that:

27 (i) have less than \$50 million of gross revenue;

28 (ii) have less than \$100 million of assets; and

29 (iii) have at least 50% of the equity interests, income interests, and voting interests owned by Montana
30 residents;

- 1 (d) Montana nonprofit organizations;
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 5 (h) any combination of the individuals or entities listed in subsections (11)(a) through (11)(g).

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 7 to the grid within 10 minutes and that is needed to maintain system frequency stability during emergency
 8 conditions, unforeseen load swings, and generation disruptions.

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 10 3, on January 1, 2005, including the public utility's successors or assignees.

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 12 generated by an eligible renewable resource that is tracked and verified by the commission and includes all of
 13 the environmental attributes associated with that 1 megawatt-hour unit of electricity production.

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 15 electricity in each of the seasons of the year.

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

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

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

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

26

27 ~~NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.~~

28

29 ~~NEW SECTION. Section 5. Retroactive applicability. [This act] applies retroactively, within the~~
 30 ~~meaning of 1-2-109, to the compliance year beginning January 1, 2013.~~

31

- END -