

1 SENATE BILL NO. 164

2 INTRODUCED BY J. KEANE

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING CERTAIN PUBLIC UTILITIES FROM THE MONTANA
5 RENEWABLE POWER PRODUCTION AND RURAL ECONOMIC DEVELOPMENT ACT; MODIFYING
6 STANDARDS FOR THE PURPOSE OF ADMINISTERING COMMUNITY RENEWABLE ENERGY PROJECT
7 REQUIREMENTS; REDUCING THE COMMUNITY RENEWABLE ENERGY PROJECT REQUIREMENT;
8 AMENDING SECTIONS 69-3-2003 AND 69-3-2004, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE
9 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, and that produces
20 electricity from one or more of the following sources:

21 (a) wind;

22 (b) solar;

23 (c) geothermal;

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

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

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

29 (e) landfill or farm-based methane gas;

30 (f) gas produced during the treatment of wastewater;

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

4 (h) hydrogen derived from any of the sources in this subsection (10) for use in fuel cells;

5 (i) the renewable energy fraction from the sources identified in subsections (10)(a) through (10)(h) and
6 (10)(j) of electricity production from a multiple-fuel process with fossil fuels; and

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

9 (11) "Local owners" means:

10 (a) Montana residents;

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

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

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

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

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

17 (d) Montana nonprofit organizations;

18 (e) Montana-based tribal councils;

19 (f) Montana political subdivisions or local governments;

20 (g) Montana-based cooperatives other than cooperative utilities; or

21 (h) any combination of the individuals or entities listed in subsections (11)(a) through (11)(g).

22 (12) "Nonspinning reserve" means offline generation that can be ramped up to capacity and synchronized
23 to the grid within 10 minutes and that is needed to maintain system frequency stability during emergency
24 conditions, unforeseen load swings, and generation disruptions.

25 (13) (a) "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter
26 3, on January 1, 2005, including the public utility's successors or assignees.

27 (b) The term does not include an electric utility that for any given compliance year, served 50 or fewer
28 retail customers in Montana during the previous year.

29 (14) "Renewable energy credit" means a tradable certificate of proof of 1 megawatt hour of electricity
30 generated by an eligible renewable resource that is tracked and verified by the commission and includes all of

1 the environmental attributes associated with that 1 megawatt-hour unit of electricity production.

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

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

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

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

11 (a) located within 5 miles of the project;

12 (b) constructed within the same 12-month period; and

13 (c) under common ownership."
14

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

16 **"69-3-2004. Renewable resource standard -- administrative penalty -- waiver.** (1) Except as provided
17 in 69-3-2007 and subsections (11) and (12) of this section, a graduated renewable energy standard is established
18 for public utilities and competitive electricity suppliers as provided in subsections (2) through (4) of this section.

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

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

25 (b) ~~Beginning~~ Except as provided in subsection (3)(d) beginning January 1, 2012, as part of their
26 compliance with subsection (3)(a), public utilities shall purchase both the renewable energy credits and the
27 electricity output from community renewable energy projects that total at least 50 megawatts in nameplate
28 capacity.

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

1 (d) After [the effective date of this act], as part of their compliance with subsection (3)(a), public utilities
2 shall purchase both the renewable energy credits and the electricity output from community renewable energy
3 projects in an amount that is no greater than their proportionate share calculated in accordance with subsection
4 (3)(b) for the compliance year beginning January 1, 2012.

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

8 (b) (i) As part of their compliance with subsection (4)(a), public utilities shall purchase both the renewable
9 energy credits and the electricity output from community renewable energy projects that total at least ~~75~~ 73
10 megawatts in nameplate capacity.

11 (ii) In meeting the standard in subsection (4)(b)(i), a public utility may include purchases made under
12 ~~subsection~~ subsections (3)(b) and (3)(d).

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

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

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

22 (6) A public utility or competitive electricity supplier has until 3 months following the end of each
23 compliance year to purchase renewable energy credits for that compliance year.

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

26 (i) electricity from an eligible renewable resource in which the associated renewable energy credits have
27 not been sold separately;

28 (ii) renewable energy credits created by an eligible renewable resource purchased separately from the
29 associated electricity; or

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

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

4 (c) Renewable energy credits sold through a voluntary service such as the one provided for in
5 69-8-210(2) may not be applied against a public utility's or competitive electricity supplier's obligation to meet the
6 standards established in subsections (2) through (4).

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

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

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

19 (11) A public utility or competitive electricity supplier may petition the commission for a short-term waiver
20 from full compliance with the standards in subsections (2) through (4) and the penalties levied under subsection
21 (10). The petition must demonstrate that the:

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

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

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

1 (4).

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

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5 NEW SECTION. **Section 3. Saving clause.** [This act] does not affect rights and duties that matured,
6 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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

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

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- END -