

1 \_\_\_\_\_ BILL NO. \_\_\_\_\_

2 INTRODUCED BY \_\_\_\_\_  
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A PUBLIC UTILITY TO ACCOUNT FOR THE COST  
5 OF CARBON EMISSIONS; PROHIBITING COST RECOVERY FROM RATEPAYERS FOR UNACCOUNTED  
6 CARBON COSTS; AMENDING SECTION 69-8-421, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE  
7 DATE."

8  
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10  
11 **Section 1.** Section 69-8-421, MCA, is amended to read:

12 **"69-8-421. Approval of electricity supply resources.** (1) A public utility that removed its generation  
13 assets from its rate base pursuant to this chapter prior to October 1, 2007, may apply to the commission for  
14 approval of an electricity supply resource that:

- 15 (a) is not yet procured; and
- 16 (b) is subject to a competitive solicitation process when applicable in accordance with 69-3-1207.

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

21 (3) The commission shall issue an order within 180 days of receipt of an adequate application for  
22 approval of a power purchase agreement from an existing generating resource unless it determines that  
23 extraordinary circumstances require additional time.

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

1 (b) If an air quality permit pursuant to Title 75, chapter 2, is required for a new electrical generation  
2 resource or a modification to an existing resource, the commission shall hold the public meetings on the  
3 application for approval in accordance with 69-3-1205(2) at least 30 days after the issuance of the final air  
4 quality permit.

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

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

9 (5) To facilitate timely consideration of an application, the commission may initiate proceedings to  
10 evaluate planning and procurement activities related to a potential resource procurement, if necessary, in  
11 accordance with 69-3-1207 prior to the public utility's submission of an application for approval.

12 (6) An application must include economic modeling that includes reasonable projections of future  
13 carbon emission regulation costs as an operating cost. If the utility fails to assess these costs, these costs may  
14 not be recovered in costs passed on to ratepayers. This does not limit any future determination by the  
15 commission to limit cost recovery for carbon costs.

16 ~~(6)(7)~~ (a) The commission may approve or deny, in whole or in part, an application for approval of an  
17 electricity supply resource.

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

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

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

22 (ii) procurement of the electricity supply resource is consistent with the requirements and objectives in  
23 69-3-201, 69-3-1201 through 69-3-1209, and commission rules.

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

27 (e) When issuing an order for the acquisition of an equity interest or lease in a facility or equipment  
28 that is constructed after January 1, 2007, and that is used to generate electricity that is primarily fueled by

1 natural or synthetic gas, the commission shall require the applicant to implement cost-effective carbon offsets.

2 Expenditures required for cost-effective carbon offsets pursuant to this subsection ~~(6)(e)-(7)(e)~~ are fully

3 recoverable in rates. By March 31, 2008, the commission shall adopt rules for the implementation of this

4 subsection ~~(6)(e)~~ (7)(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

7 ~~(6)(e)-(7)(e)~~ could not be reached.

8 ~~(7)(8)~~ Notwithstanding any provision of this chapter to the contrary, if the commission has issued an

9 order containing the findings required under subsection ~~(6)(e)~~ (7)(c), the commission may not subsequently

10 disallow the recovery of costs related to the approved electricity supply resource based on contrary findings.

11 ~~(8)(9)~~ Until the state or federal government has adopted uniformly applicable statewide standards for

12 the capture and sequestration of carbon dioxide, the commission may not approve an application for the

13 acquisition of an equity interest or lease in a facility or equipment used to generate electricity that is primarily

14 fueled by coal and that is constructed after January 1, 2007, unless the facility or equipment captures and

15 sequesters a minimum of 50% of the carbon dioxide produced by the facility. Carbon dioxide captured by a

16 facility or equipment may be sequestered offsite from the facility or equipment.

17 ~~(9)(10)~~ Nothing limits the commission's ability to subsequently, in any future rate proceeding, inquire

18 into the manner in which the public utility has managed, dispatched, operated, or maintained any resource or

19 managed any power purchase agreement as part of its overall resource portfolio. The commission may

20 subsequently disallow rate recovery for the costs that result from the failure of a public utility to reasonably

21 manage, dispatch, operate, maintain, or administer electricity supply resources in a manner consistent with 69-

22 3-201 and commission rules.

23 ~~(10)(11)~~ The commission shall adopt rules prescribing minimum filing requirements for applications

24 filed pursuant to this part."

25

26 NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

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