_____ BILL NO. _____

INTRODUCED BY _____
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: “AN ACT GENERALLY REVISING ENERGY GENERATION LAWS; REVISING THE "MONTANA RENEWABLE POWER PRODUCTION AND RURAL ECONOMIC DEVELOPMENT ACT"; REQUIRING ELECTRIC PUBLIC UTILITIES AND COMPETITIVE ELECTRICITY SUPPLIERS TO GRADUALLY INCREASE PROCUREMENT OF RENEWABLE SOURCES TO 80% BY 2035; REQUIRING ELECTRIC UTILITIES TO MEET WITH GOVERNMENTAL ENTITIES REQUESTING ADDITIONAL RENEWABLE ENERGY TO DETERMINE HOW THE PUBLIC UTILITY WILL ALLOCATE RENEWABLE ENERGY TO MEET THE STANDARD AND REQUESTS FOR ADDITIONAL PROCUREMENT; ALLOWING PRE-2005 HYDROELECTRIC GENERATION TO BE INCLUDED AS RENEWABLE IF TOTAL RENEWABLE GENERATION INCLUDING THAT FROM HYDROELECTRIC GENERATION IS 80%; ALLOWING RENEWABLE ENERGY CREDITS OR CREDITS AND RENEWABLE ELECTRICITY OUTPUT TO BE USED TO MEET THE STANDARD; REVISING RENEWABLE ENERGY PROCUREMENT REQUIREMENTS; GRANTING THE PUBLIC SERVICE COMMISSION RULEMAKING AUTHORITY; ESTABLISHING TIMELINES FOR RENEWABLE ENERGY PROCUREMENT PLANS; REQUIRING THE PUBLIC SERVICE COMMISSION TO ESTABLISH COST CAPS FOR THE RENEWABLE ENERGY STANDARD; PROVIDING DIRECTION ON COST CAPS; PROVIDING FOR NEIGHBORHOOD RENEWABLE ENERGY FACILITIES; REQUIRING RURAL ELECTRIC COOPERATIVES TO POLL MEMBERS ON ADOPTION OF RENEWABLE ENERGY STANDARDS; ESTABLISHING REQUIREMENTS FOR A COOPERATIVE POLL; REQUIRING RURAL ELECTRIC COOPERATIVES TO PURCHASE RENEWABLE ENERGY IF DIRECTED BY MEMBERS; ESTABLISHING COST CAPS FOR RURAL ELECTRIC COOPERATIVE RENEWABLE ENERGY STANDARDS; REQUIRING THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE TO CONDUCT CERTAIN STUDIES; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO CERTIFY CERTAIN RENEWABLE RESOURCES; PROVIDING RULEMAKING AUTHORITY; PROVIDING DEFINITIONS; AMENDING SECTIONS 5-5-230, 69-3-2003, 69-3-2004, 69-3-2005, 69-3-2006, 69-3-2008, AND 90-4-1202, MCA; REPEALING SECTION 69-3-2007, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.”

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

NEW SECTION. **Section 1. Cost caps -- retail rates.** (1) (a) The commission shall establish a maximum retail rate impact for each public utility and competitive electricity supplier required to meet the standards established in 69-3-2004(2) and (3).

(b) The retail rate impact may not increase the total electric bill to each customer by more than 2% annually for equal usages of electricity.

(c) The retail rate impact must be determined net of new eligible renewable resources of electricity supply from energy resources that are not eligible renewable resources and are reasonably available at the time of the determination.

(2) Unless it is set by the commission and subject to the maximum retail rate impact permitted by this section, a public utility or competitive electricity supplier may determine the price paid for renewable energy credits from customer-generators as defined in 69-8-103 or from small customer-generators, noncustomer-generators, or small noncustomer-generators. The public utility or competitive electricity supplier may not discriminate in determining the price paid for renewable energy credits.

NEW SECTION. **Section 2. Renewable energy requirements -- voluntary participation -- cooperative duties.** (1) (a) Beginning July 1, 2021, the governing body of a cooperative utility as defined in 69-3-2003 shall, once every 4 years, provide a secret mail ballot to each cooperative utility member.

(b) Except as provided in subsection (1)(c), the ballot must be submitted to the cooperative utility members in substantially the following form, but may include other questions:

(i) Shall (insert name of cooperative utility) voluntarily comply with 69-3-2004 of the Montana Renewable Power Production and Rural Economic Development Act in accordance with 69-3-2008 by procuring (insert relevant percentage obtained from 69-3-2004)% of the power used to serve cooperative utility customers from eligible renewable resources by (insert relevant year 5 years from the date of the poll)?

[] YES

[] NO

(ii) As a member of (insert name of cooperative utility), will you commit to purchasing for (insert price) for each kilowatt hour of electricity generated from an eligible renewable resource as defined in 69-3-2003, regardless of what type of electric generation is utilized to serve other members?

[] YES

[] NO

(iii) If you responded "yes" to subsection (1)(b)(ii), what percent of your electricity usage will you commit to purchase that has been generated from an eligible renewable resource as defined in 69-3-2003?

[] 100%

[] 75%

[] 50%

[] 25%

[] other %

(c) If answered in the affirmative by members, a cooperative utility is not required to include the question as provided in subsection (1)(b)(i) as part of a subsequent question submitted to cooperative members.

(d) If by a majority of the mail ballots returned to the cooperative utility the cooperative membership votes to voluntarily comply with 69-3-2004, the governing body of the cooperative utility shall take steps to bring the cooperative utility into compliance.

(2) (a) A cooperative utility shall semiannually mail its customers an offer to purchase, in lieu of power from the cooperative utility's fossil fuel power portfolio, a product composed of or supporting, in whole or in part, power from an eligible renewable resource as defined in 69-3-2003 at, notwithstanding subsection (3)(a) of this section, a price set by a vote of cooperative members.

(b) The semiannual offer may be included in a cooperative utility customer's regular bill.

(c) If a customer purchases a product pursuant to subsection (2)(a) and the cooperative utility is voluntarily complying with standards established in 69-3-2004 and 69-3-2008, the purchases may be used by the cooperative utility in meeting the compliance standards.

(3) (a) Except as provided in subsection (3)(b), the retail rate impact of a cooperative utility's voluntary compliance with 69-3-2004 and 69-3-2008 may not increase the total electric bill to each customer by

more than 2% annually for equal usages of electricity.

(b) Subject to ratification by a majority of those voting at a cooperative annual meeting, or by a majority of the mail ballots on the question returned to the cooperative members, the governing body of a cooperative utility may agree by a majority vote to exceed the retail rate impact provided for in subsection (3)(a).

(4) If a governing board of a cooperative utility that is a member of a generation and transmission cooperative as defined in 35-18-318, or other wholesale energy supplier, requests that the generation and transmission cooperative or wholesale energy supplier offer the member cooperative utility the opportunity to purchase its load ratio share of the generation and transmission cooperative's electricity supply or wholesale energy supply from an eligible renewable resource, the generation and transmission cooperative or wholesale energy supplier shall accommodate the member cooperative utility's request, if provided for under the energy procurement contract or other relationship between the entities. The request must comply with 35-18-318 in requests involving generation and transmission cooperatives. Requests may be enforced at the discretion of a court through a motion by a board member of the requesting cooperative for an affirmative injunction compelling compliance.

(5) (a) If a cooperative utility's members are limited in their ability to acquire eligible renewable resources by a contract with a wholesale generator, the cooperative utility shall acquire the amount allowed by the contract or other relationship that fulfills or partially fulfills member requests.

(b) Contracts with a cooperative utility consenting to voluntarily comply with 69-3-2004(2) or (3) are subject to 69-3-2004(13).

NEW SECTION. **Section 3. Certification of certain biomass -- department of natural resources and conservation.** The department of natural resources and conservation shall certify low-emission, nontoxic biomass as described in 69-3-2003 for use by a public utility or competitive electricity supplier to meet the requirements of 69-3-2004.

Section 4. Section 5-5-230, MCA, is amended to read:

"**5-5-230. Energy and telecommunications interim committee -- annual reports and future study**

requirements. (1) The energy and telecommunications interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the department of public service regulation and the public service commission.

(2) (a) In consultation with electricity transmission system operators responsible for balancing Montana electricity loads and resources and other interested entities and citizens, the energy and telecommunications interim committee shall issue a report in accordance with 5-11-210 that meets the requirements of subsection (2)(b) to the legislature on July 1, 2022, July 1, 2026, and July 1, 2030.

(b) The report required in subsection (2)(a) must include:

(i) a review of the requirements in 69-3-2004, with a focus on technologies, forecasts, existing transmission, environmental protection, public safety, affordability, and electricity transmission and distribution system reliability to determine whether:

(A) implementing the targets to be achieved before the next report is technically feasible; and

(B) a public utility is able to provide reliable electric service while implementing the targets to be achieved before the next report;

(ii) an evaluation of:

(A) the anticipated financial costs and benefits to electric utilities in implementing 69-3-2004 to be achieved before the next report; and

(B) the impacts and benefits to customer electricity bills to ensure that implementing the targets to be achieved before the next report will not cause the cost of electric service to increase more than the limit set pursuant to [section 1]; and

(iii) identification of the barriers to, and benefits of, achieving the requirements in 69-3-2004.

(3) During both the 2029 to 2030 and 2031 to 2032 interims, the committee shall review and evaluate the effect that climate change is having on the state and the world and make recommendations to the legislature concerning whether the requirements provided for in 69-3-2004 should be increased."

Section 5. Section 69-3-2003, MCA, is amended to read:

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

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

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

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

(4) "Community renewable energy project" means an eligible renewable resource that is less than or equal to 25 megawatts in total calculated nameplate capacity, and:

(a) is interconnected on the utility side of the meter in which local owners have a controlling interest ~~and that is less than or equal to 25 megawatts in total calculated nameplate capacity~~; ~~or~~

(b) is a project installed and commissioned prior to July 1, 2021, that is owned by a public utility ~~and has less than or equal to 25 megawatts in total nameplate capacity.~~;

(c) is interconnected on the customer side of the meter and is located on property owned by the same person who owns the eligible renewable resource; or

(d) is interconnected on the customer side of the meter; and

(i) is leased; and

(ii) is located on property owned by the lessee or lessor pursuant to a lease-purchase agreement that meets the requirements of this section.

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

(b) The term does not include governmental entities selling electricity produced only by facilities

generating less than 250 kilowatts that were in operation prior to 1990.

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

(7) "Cooperative utility" means:

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

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

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

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

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

(a) wind;

(b) solar;

(c) geothermal;

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

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

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

(iii) is an expansion of an existing hydroelectric project that commences construction and increases existing generation capacity on or after October 1, 2013. Engineering estimates of the average incremental generation from the increase in existing generation capacity must be submitted to the commission for review. The commission shall determine an average annual incremental generation that will constitute the eligible

renewable resource from the capacity expansion, subject to further revision by the commission in the event of significant changes in stream flow or dam operation.

(iv) meets the requirements of 69-3-2004(4) to become an eligible renewable resource.

(e) landfill gas, and anaerobically digested waste biogas or other farm-based methane gas;

(f) gas produced during the treatment of wastewater;

(g) low-emission, nontoxic biomass based on dedicated energy crops, animal wastes, or solid organic fuels from wood, forest, or field residues, including wood pieces that have been treated with chemical preservatives, such as creosote, pentachlorophenol, or copper-chrome arsenic, ~~and that are used at a facility that has a nameplate capacity of 5 megawatts or less~~ limited to small diameter timber not to exceed 8 inches, timber killed by bark beetles, or woody vegetation removed from river basins or watersheds in the state, provided that these resources are from facilities certified by the department of natural resources and conservation to:

(i) be of appropriate scale to have sustainable feedstock in the near vicinity;

(ii) have zero life cycle carbon emissions; and

(iii) meet scientifically determined restoration, sustainability, and soil nutrient principles;

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

(i) the renewable energy fraction from:

(i) the sources identified in this subsection (10) of electricity production from a multiple-fuel process with fossil fuels;

(ii) flywheel storage as defined in 15-6-157(4)(d);

(iii) hydroelectric pumped storage as defined in 15-6-157(4)(e); or

(iv) other energy storage technologies, including but not limited to:

~~(iv)~~(A) batteries; ~~and~~

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

(C) fuel cells that do not use fossil fuels to create electricity.

(11) "Government entity" means a city, county, consolidated city-county, school district, state agency, unit of the Montana university system, tribal government, or federal government entity.

(12) "Interested entity" means "interested person" as defined in 69-8-103, plus a taxpayer defraying, through the taxpayer's property tax bill, part or all of the cost of providing electric service to any government entity.

(13) (a) "Lease-purchase agreement" means an agreement between the lessor and a lessee establishing the terms for the lessee's eventual ownership of an eligible renewable resource before or at the end of the lease period. For the purposes of this subsection (13):

(i) a lessor is an owner of an eligible renewable resource; and

(ii) either a lessor or a lessee owns the property where the eligible renewable resource is located.

(b) The agreement must include a specific dollar amount by which the lessee or the lessee's successor may, at each time the right to purchase or otherwise terminate under the agreement may be exercised, exercise a right to purchase:

(i) the eligible renewable resource; and

(ii) the property where the eligible renewable resource is located, if the property is not already owned by the lessee.

(c) Unless both parties mutually agree, the terms of the lease-purchase agreement may not be determined after a lease is signed.

(d) If a public utility is the lessor, this subsection (13) also applies to transactions entered into pursuant to part 6 of this chapter, and the sale price of the eligible renewable resource may not exceed the original plant cost of the eligible renewable resource infrastructure less depreciation of that original cost based on revenue received by the utility to recoup the original cost, plus salvage value.

(e) The term does not include a community renewable energy project or a neighborhood renewable energy facility agreement.

~~(11)~~(14) "Local owners" means:

(a) Montana residents;

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

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

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

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

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

(d) Montana nonprofit organizations;

(e) Montana-based tribal councils;

(f) Montana political subdivisions or local governments;

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

(h) any combination of the individuals or entities listed in subsections ~~(11)(a) through (11)(g)~~ (14)(a) through (14)(g).

(15) "Neighborhood renewable energy facility" means a community renewable energy project that:

(a) is more than 50 kilowatts of generating capacity in size;

(b) is connected to a public utility's distribution or transmission system in association with a meter that can record the cumulative kilowatt hours produced by the neighborhood renewable energy facility;

(c) produces electricity for which two or more neighborhood energy facility customers within the same public utility service territory receive an on-bill credit from the public utility for renewable energy produced by the neighborhood renewable energy facility;

(d) unless it demonstrates to the commission that a different percentage should apply, has a minimum of 3% of the neighborhood energy facility system capacity assigned to reduce the electricity bill of the public utility's low-income customers as defined in 69-8-103;

(e) has all of its neighborhood renewable energy facility customers living within 2 miles of each other and within 10 miles from the neighborhood renewable energy facility;

(f) has all of its neighborhood renewable energy facility customers and the neighborhood renewable energy facility connected to the same public utility; and

(g) pays all workers involved in construction of the facility, nonconstruction services, and apprenticeship services at the facility no less than the prevailing wage established under 18-2-411 through 18-2-419 while giving hiring preference to Montana residents as required by 69-3-2005(3)(a).

(16) "Neighborhood renewable energy facility customer" means a public utility retail customer or customer-generator as defined in 69-8-103, or a small customer receiving an on-bill credit for electricity generated by a neighborhood renewable energy facility.

(17) "Neighborhood renewable energy facility owner" means a local owner that owns a neighborhood renewable energy facility.

(18) "Noncustomer-generator" means an entity that is not a customer of the public utility that is producing eligible renewable resource electricity.

~~(12)~~(19) "Nonspinning reserve" means offline generation that can be ramped up to capacity and synchronized to the grid within 10 minutes and that is needed to maintain system frequency stability during emergency conditions, unforeseen load swings, and generation disruptions.

(20) "On-bill credit" means a credit of kilowatt hours applied to a neighborhood renewable energy facility customer's or public utility customer's account by a public utility to offset the consumption of electrical energy.

~~(13)~~(21) "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on January 1, 2005, including the public utility's successors or assignees.

~~(14)~~(22) "Renewable energy credit" means a tradable certificate of proof of 1 megawatt hour of electricity, or less, generated by an eligible renewable resource that is tracked and verified by the commission and includes all of the environmental attributes associated with that ~~1 megawatt-hour~~ unit of electricity production.

~~(15)~~(23) "Renewable energy fraction" means the proportion of electricity output directly attributable to electricity and associated renewable energy credits produced by one of the sources identified in subsection (10).

~~(16)~~(24) "Seasonality" means the degree to which an electric generating resource is capable of producing electricity in each of the seasons of the year.

~~(17)~~(25) "Small customer" means a retail customer that has an individual load with an average monthly demand of less than 5,000 kilowatts.

(26) "Small customer-generator" means a small customer who is net metered as defined in 69-8-103 or connected to a public utility grid and producing eligible renewable resource electricity without being net metered.

(27) "Small noncustomer" means a person located in the state who is not a small customer who also has an individual electricity load with an average monthly demand of less than 5,000 kilowatts.

(28) "Small noncustomer-generator" means a small noncustomer who is producing eligible renewable resource electricity.

~~(18)~~(29) "Spinning reserve" means the online reserve capacity that is synchronized to the grid system and immediately responsive to frequency control and that is needed to maintain system frequency stability during emergency conditions, unforeseen load swings, and generation disruptions.

~~(19)~~(30) "Total calculated nameplate capacity" means the calculation of total nameplate capacity of the community renewable energy project and other eligible renewable resources that are:

(a) located within ~~5~~ 10 miles of the project;

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

(c) under common ownership."

Section 6. Section 69-3-2004, MCA, is amended to read:

"**69-3-2004. Renewable resource standard -- administrative penalty -- waiver.** (1) Except as provided in ~~69-3-2007~~ [section 1] and subsections ~~(11) through (14)~~ (12) through (15) of this section, a graduated renewable energy standard is established for public utilities and competitive electricity suppliers as provided in subsections (2) ~~through (4)~~, (3), and (5) of this section.

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

~~(3) (a) In each compliance year beginning January 1, 2010, through December 31, 2014, each public utility and competitive electricity supplier, except as provided in subsections (13) and (14), shall procure a minimum of 10% of its retail sales of electrical energy in Montana from eligible renewable resources.~~

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

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

~~(4)~~(2) (a) In ~~the~~ each compliance year beginning January 1, 2015, ~~and in each succeeding~~

~~compliance year,~~ through December 31, 2020, each public utility and competitive electricity supplier, except as provided in subsections ~~(13) and (14)~~ (14) and (15), shall procure a minimum of 15% of its retail sales of electrical energy in Montana from eligible renewable resources.

(b) (i) As part of their compliance with ~~subsection (4)(a)~~ subsections (2)(a) and (3), public utilities shall purchase renewable energy credits or both the renewable energy credits and the electricity output in accordance with subsection (5) from ~~community renewable energy projects~~ entities provided for in subsection (5) that total:

(A) at least 75 megawatts in nameplate capacity; and

(B) for each compliance period beginning in 2021 through the compliance periods established for each year in subsection (3), at least an additional 15% of the cumulative calculated nameplate renewable energy capacity added during that compliance period.

(ii) As each compliance period occurs, the annual purchase requirement of this subsection (2) must be added to purchases previously required by this subsection (2)(b) to determine the cumulative total.

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

(c) Public utilities shall proportionately allocate the purchase required under ~~subsection (4)(b)~~ subsections (2) and (3) based on each public utility's proportion of the total retail sales of electrical energy by public utilities in Montana in the calendar year ~~2014~~ 2020.

(3) Except as provided in subsections (14) and (15), each public utility and competitive electricity supplier, in the compliance year beginning:

(a) January 1, 2022, shall procure a minimum of 22% of its retail sales of electrical energy in the state from eligible renewable resources;

(b) January 1, 2023, and each succeeding compliance year through December 31, 2027, shall procure an additional 6%, incrementally increased each year by 6% and, in combination with electricity from eligible renewable resources required under subsections (2) and (3)(a), totaling at least 28% in 2023, 34% in 2024, 40% in 2025, and 52% in 2027 of its retail sales of electrical energy in the state from eligible renewable resources; and

(c) January 1, 2028, and in each succeeding compliance year through December 31, 2034, shall

procure an additional 4%, incrementally increased each year by 4% and, in combination with electricity from eligible renewable resources required under subsections (2), (3)(a), and (3)(b), totaling at least 60% by December 31, 2029, 80% by December 31, 2034, and each year after, of its retail sales of electrical energy in the state from eligible renewable resources.

(4) (a) After 2024 and in accordance with subsection (8)(d), if it is in compliance with subsections (2) and (3)(a), and in 2023 and 2024 if it is in compliance with subsection (3)(b) without the need for a waiver as part of its compliance with this section, a public utility or competitive electricity supplier may count as an eligible renewable resource a hydroelectric facility that is not otherwise an eligible renewable resource under 69-3-2003 if the annual ouput of electricity, not already counted as coming from an eligible renewable resource, by all hydroelectric facilities owned by the utility or competitive electricity supplier during that compliance year, plus the annual output of renewable electricity required for the public utility or competitive electricity supplier to meet the requirements of 69-3-2004(2) and (3), is equal to or more than 80% of the annual sales of electricity for the public utility or competitive electricity supplier for that compliance year.

(b) If at any time a public utility or competitive electricity supplier's retail sales of electrical energy in the state from eligible renewable resources is required to be more than 80% as provided in subsection (3)(c), in accordance with subsection (8)(d) as part of compliance with this section, a public utility or competitive electricity supplier may only count as an eligible renewable resource for that compliance year electricity produced from a hydroelectric facility that is not otherwise an eligible renewable resource as defined in 69-3-2003 if the annual output of electricity by all hydroelectric facilities, not already counted as coming from an eligible renewable resource, owned by the utility or competitive electricity supplier during that compliance year, plus the annual output of electricity required for the public utility or competitive electricity supplier to meet the increased requirements of 69-3-2004(3) for that compliance year, is equal to or greater than the highest percentage of increase above 80% of the annual sales of electricity for the public utility or competitive electricity supplier required by the future increase.

(c) When calculating electricity output or renewable energy credits generated from hydroelectric facilities, a public utility or competitive electricity supplier may not count electricity or renewable energy credits purchased from hydroelectric facilities not owned by the utility or the competitive electricity supplier unless the hydroelectric facility producing the electricity is an eligible renewable resource as defined in 69-3-2003.

(5) (a) After December 31, 2020, in meeting the standard in subsection (2)(b), a public utility shall include any combination of:

(i) electricity and renewable energy credits purchased from a neighborhood renewable energy facility owner, a neighborhood renewable energy facility customer, a community renewable energy project, a small customer-generator, or a small noncustomer-generator; or

(ii) renewable energy credits purchased from a neighborhood renewable energy facility owner, a neighborhood renewable energy facility customer, a community renewable energy project, a small customer-generator, or a small noncustomer-generator.

(b) At least half of the renewable energy credits or renewable energy credits coupled with renewable electricity output purchased to meet the requirements of subsection (2)(b) must come from projects that are less than or equal to 3 megawatts in calculated nameplate capacity.

(c) Nothing in this part prevents a person from selling or buying renewable energy credits separately from electricity output or from selling or buying electricity output separately from renewable energy credits.

(d) Unless the commission grants a temporary waiver pursuant to subsection (12), public utilities shall purchase renewable energy credits, or both the renewable energy credits and the electricity output from eligible renewable resources named in 69-3-2003 that total at least 2% of the cumulative calculated nameplate renewable energy capacity required under subsection (3), during each compliance period beginning in 2021.

~~(5)~~(6) (a) In complying with the standards required under subsections (2) ~~through (4)~~, (3), and (5), a public utility or competitive electricity supplier shall, for any given compliance year, calculate its procurement requirement based on the public utility's or competitive electricity supplier's previous year's sales of electrical energy to retail customers in Montana.

(b) The standards in subsections (2) ~~through (4)~~, (3), and (5) must be calculated on a delivered-energy basis after accounting for any line losses.

~~(6)~~(7) A public utility or competitive electricity supplier has until 3 months following the end of each compliance year to purchase renewable energy credits for that compliance year.

~~(7)~~(8) (a) ~~In order to~~ To meet the standards established in subsections (2) ~~through (4)~~, (3), and (5), a public utility or competitive electricity supplier may only use:

(i) electricity from an eligible renewable resource in which the associated renewable energy credits

have not been sold separately;

(ii) renewable energy credits counted only once to meet a compliance standard and created by an eligible renewable resource purchased separately from the associated electricity; or

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

(b) A public utility or competitive electricity supplier may not resell renewable energy credits and count those sold credits against the public utility's or the competitive electricity supplier's obligation to meet the standards established in subsections (2) ~~through (4),~~ (3), and (5).

(c) Renewable energy credits sold through a voluntary service such as the one provided for in 69-8-210(2) may not be applied against a public utility's or competitive electricity supplier's obligation to meet the standards established in subsections (2) ~~through (4~~), (3), and (5).

(d) Renewable energy credits from an eligible renewable resource that are not used by a public utility, competitive electricity supplier, community renewable energy project, or Montana property owner that owns the eligible renewable resource to meet the requirements of this section may be sold to others.

~~(8)~~(9) Nothing in this part limits a public utility or competitive electricity supplier from exceeding the standards established in subsections (2) ~~through (4).~~ and (3).

~~(9)~~(10) If a public utility or competitive electricity supplier exceeds a standard established in subsections (2) ~~through (4)~~ and (3) in any compliance year, the public utility or competitive electricity supplier may carry forward the amount by which the standard was exceeded to comply with the standard in ~~either or both~~ any of the ~~2~~ subsequent compliance years. The carryforward may not be double-counted.

~~(10)~~(11) Except as provided in subsections ~~(11) and (12)~~ (12) and (13), if a public utility or competitive electricity supplier is unable to meet the standards established in subsections (2) ~~through (4),~~ (3), and (5) in any compliance year, that public utility or competitive electricity supplier shall pay an administrative penalty, assessed by the commission, of $10 for each megawatt hour of renewable energy credits that the public utility or competitive electricity supplier failed to procure. A public utility may not recover this penalty in electricity rates. Money generated from these penalties must be deposited in the universal low-income energy assistance fund established in 69-8-412(1)(b).

~~(11)~~(12) A public utility or competitive electricity supplier may petition the commission for ~~a~~ one short-term waiver for each compliance year from full compliance with the standards in subsections (2) ~~through (4),~~

(3), and (5) and the penalties levied under subsection ~~(10)~~ (11). The petition must demonstrate that ~~the:~~ :

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

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

(c) if the waiver involves the public utility not meeting the requirements of subsection (2)(b), (3), or (5):

(i) the public utility has offered a price for the required energy and renewable energy credits at least equal to the current avoided cost of electricity anticipated to be incurred from any planned new coal-fired or gas-fired electric generating facility, whichever is to be built first;

(ii) the public utility has offered a price for renewable energy credits at least equal to the highest cost the public utility is charging its customers to buy eligible renewable electricity credits;

(iii) the public utility's request for renewable energy must allow for up to 2 years for the renewable energy project to begin generating electricity online;

(iv) the public utility's request for renewable energy must allow for bidding by Montana projects outside of the utility's service area; and

(v) the waiver may not extend for more than 2 years from the year compliance with the standard was not achieved.

~~(12)~~(13) (a) Retail sales made by a competitive electricity supplier according to prices, terms, and conditions of a written contract executed prior to April 25, 2007, are exempt from the standards in subsections (2) ~~through (4).~~, (3), and (5).

(b) The exemption provided for in subsection ~~(12)(a)~~ (13)(a) is terminated upon:

(i) modification after April 25, 2007, of the prices, terms, or conditions in a written contract; or

(ii) extension of the contract.

~~(13)~~(14) A public utility that served 50 or fewer retail customers in Montana on December 31, 2012, is exempt from the requirements of subsections (2) ~~through (4).~~, (3), and (5).

~~(14)~~(15) (a) A competitive electricity supplier with four or fewer small customers in Montana is exempt from the requirements of subsections (2) ~~through (4)~~, (3), and (5).

(b) For the purposes of determining the number of small customers served by a competitive electricity supplier, an entity that purchases electricity for commercial or industrial use and does not resell electricity to others is one small customer regardless of the number of its metered locations.

(16) (a) If a government entity sets a renewable resource standard requiring electricity served to it by a public utility or competitive electricity supplier to exceed the amount of eligible renewable resources required by subsections (2) and (3), the government entity may request that the public utility or competitive electricity supplier meet with the government entity to determine how the renewable resource standard required by the government entity will be met with participation from the following entities, while compliance with the eligible renewable resources required by subsections (2) and (3) is also maintained:

(i) the public utility or competitive electricity supplier;

(ii) the government entity pursuant to net-metered or other eligible renewable resource electricity procured by it or its inhabitants;

(iii) neighborhood renewable energy projects;

(iv) community renewable energy projects; and

(v) procurement of other eligible renewable resources.

(b) Prior to the meeting in accordance with subsection (16)(a), the public utility or competitive electricity supplier shall determine for the calendar year preceding the meeting:

(i) the total amount of electricity in kilowatt hours it supplies to all customers of the public utility;

(ii) the total amount of electricity in kilowatt hours it supplies the government entity;

(iii) if requested by the government entity, the electricity supplied to residents and businesses located within the government entity's geographical area;

(iv) the percentage the amount of electricity in subsection (16)(b)(ii) is of subsection (16)(b)(i);

(v) the percentage the amount of electricity in subsection (16)(b)(iii) is of subsection (16)(b)(i);

(vi) the amount of electricity from eligible renewable resources projected to be required for periods in subsections (2) and (3) to serve the government entity and, if requested, its residents and businesses; and

(vii) by relevant time periods, the additional amount of electricity that must be produced from eligible

renewable resources to provide the eligible renewable resources service requested by the government entity.

(c) When the public utility or competitive electricity supplier has determined the amount of additional eligible renewable resources in excess of the requirements in subsection (2) and (3) that will be needed to comply with the request of the government entity, the public utility or competitive electricity supplier shall procure the additional eligible renewable resources and allocate them to serve the government entity and, if specified by the government entity, the residents of that entity.

(d) In determining the amount of eligible renewable resources required under subsection (16)(c), the utility or competitive electricity supplier may count renewable energy credits not already included in meeting its obligations under subsections (2) and (3), if the utility has procured those credits.

(e) After 2024, in determining the amount of eligible renewable resources required under subsection (16)(c), the utility or competitive electricity supplier may count electricity produced by hydroelectric projects not included as eligible renewable resources under 69-3-2003(10)(d).

(f) After 2024, electricity produced by hydroelectric projects not included as eligible renewable resources under 69-3-2003(10)(d) that is counted to meet the additional renewable resource electricity required by a government entity must be subtracted from the electricity counted when calculating the electricity to be credited from hydroelectric generating facilities existing prior to 2005 under subsection (4).

(g) If procuring additional renewable electricity to service customers under this subsection (16) costs the utility more for the energy supply, transmission, or distribution components of its tariff than what it costs to provide electricity to the utility's customers for any one of those components, the utility may, subject to commission approval, add the additional energy supply, transmission, or distribution component costs to the separately itemized energy supply, transmission, or distribution component to the bills of customers receiving service pursuant to this subsection (16).

(h) If procuring additional renewable electricity to service customers under this subsection (16) costs the utility less for the energy supply, transmission, or distribution components of its tariff than what it costs to provide electricity to the utility's customers for any one of those components, the utility shall, subject to commission approval, credit the energy supply, transmission, or distribution component savings to the bills of customers receiving service pursuant to this subsection (16).

(17) Renewable energy procured or generated by a public utility to comply with a federal law, rule, or

regulation may be used to satisfy the requirements of this section. "

Section 7. Section 69-3-2005, MCA, is amended to read:

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

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

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

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

(2) A public utility ~~that intends to~~ may enter into contracts of ~~less than~~ 7 to 10 years in duration if the utility or the entity seeking a utility contract ~~shall demonstrate~~ demonstrates to the commission that these contracts will provide a lower long-term cost of meeting the standard established in 69-3-2004.

(3) (a) Contracts signed for projects located in Montana must require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if the Montana residents have substantially equal qualifications to those of nonresidents.

(b) Contracts signed ~~for~~ to construct or operate projects located in Montana must require all contractors and project operators to pay the standard prevailing rate of wages for ~~heavy construction~~ the work performed, as provided in 18-2-414 through 18-2-419~~, during the construction phase of the project~~.

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

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

(a) ~~June 1, 2013~~ September 1, 2021, for the standard required in ~~69-3-2004(4)~~ 69-3-2004(3)(a);

(b) June 1, 2022, for the standard required in 69-3-2004(3)(b);

(c) June 1, 2026, for the standard required in 69-3-2004(3)(c); and

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

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

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

Section 8. Section 69-3-2006, MCA, is amended to read:

"**69-3-2006. Commission authority -- rulemaking authority.** (1) The commission has the authority to generally implement and enforce the provisions of this part.

(2) The commission shall adopt rules before ~~June 1, 2006~~ September 1, 2021, to:

(a) select a renewable energy credit tracking system to verify compliance with this part;

(b) establish a system by which renewable resources become certified as eligible renewable resources;

(c) define the process by which waivers from full compliance with this part may be granted;

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

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

(f) establish maximum retail rate impacts in accordance with [section 1];

(g) determine how to track and verify the use of renewable energy credits generated by resources defined in 69-3-2003(10) and neighborhood renewable energy facilities used to comply with this part; and

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

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

Section 9. Section 69-3-2008, MCA, is amended to read:

"**69-3-2008. Cooperative utility -- exemption -- standard.** (1) ~~A~~ Except as provided in subsection (2) of this section and [section 2], a cooperative utility is exempt from the graduated renewable energy standard established in 69-3-2004.

(2) (a) Each governing body of a cooperative utility that ~~has 5,000 or more customers~~ serves 100 or more meters or is a generation and transmission cooperative as defined in 35-18-318 is responsible for implementing and enforcing a renewable energy standard for that cooperative utility or that generation and transmission cooperative that recognizes the intent of the legislature to encourage new renewable energy production and rural economic development, while taking into consideration the effect of the standard on rates, reliability, jobs, and financial resources.

(b) To meet the requirements of subsection (2)(a), a cooperative utility or generation and transmission cooperative shall comply with the requirements of [section 2]."

Section 10. Section 90-4-1202, MCA, is amended to read:

"**90-4-1202. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Ancillary services" has the meaning provided in 69-3-2003.

(2) "Bond" means bond, note, or other obligation.

(3) "Clean renewable energy bonds" means one or more bonds issued by a governmental body pursuant to section 54 of the Internal Revenue Code, 26 U.S.C. 54, and this part.

(4) "Commission" means the public service commission provided for in 69-1-102.

(5) "Governing authority" means a council, board, or other body governing the affairs of the governmental body.

(6) "Governmental body" means a city, town, county, school district, consolidated city-county, Indian

tribal government, or any other political subdivision of the state, however organized.

(7) "Intermittent generation resource" means a generator that operates on a limited and irregular basis due to the inconsistent nature of its fuel supply, which is primarily wind or solar power.

(8) "Internal Revenue Code" has the meaning provided in 15-30-2101.

(9) "Project" means:

(a) a facility qualifying as a "qualified project" within the meaning of section 54(d)(2) of the Internal Revenue Code, 26 U.S.C. 54(d)(2);

(b) a community renewable energy project as defined in ~~69-3-2003(4)(a);~~ 69-3-2003; or

(c) an alternative renewable energy source as defined in 15-6-225."

NEW SECTION. **Section 11. Repealer.** The following section of the Montana Code Annotated is repealed:

69-3-2007. Cost caps.

NEW SECTION. **Section 12. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

NEW SECTION. **Section 13. Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 69, chapter 3, part 20, and the provisions of Title 69, chapter 3, part 20, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 35, chapter 18, part 3, and the provisions of Title 35, chapter 18, part 3, apply to [section 2].

(3) [Section 3] is intended to be codified as an integral party of Title 76, chapter 13, and the provisions of Title 76, chapter 13, apply to [section 3].

NEW SECTION. **Section 14. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 15. Effective date.** [This act] is effective on passage and approval.

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