

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING ON
ARM 38.5.6001, 38.5.6002,)	PROPOSED AMENDMENT AND
38.5.6004, 38.5.6006, 38.5.6007,)	REPEAL
38.5.6008, 38.5.6010, 38.5.8201,)	
38.5.8202, 38.5.8203, 38.5.8204,)	
38.5.8209, 38.5.8210, 38.5.8211,)	
38.5.8212, 38.5.8213, 38.5.8218,)	
38.5.8219, 38.5.8220, 38.5.8221,)	
38.5.8225, 38.5.8226, 38.5.8227,)	
38.5.8228, and 38.5.8229 and repeal)	
of 38.5.8001, 38.5.8002, 38.5.8003,)	
38.5.8004, 38.5.8005, 38.5.8101, and)	
38.5.8102 pertaining public utilities,)	
electricity suppliers and natural gas)	
suppliers.)	

TO: All Concerned Persons

1. On March 5, 2008, at 10:00 a.m., the Department of Public Service Regulation will hold a public hearing in the Bollinger Room of the Public Service Commission offices, 1701 Prospect Avenue, at Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Public Service Regulation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Service Regulation no later than 4:00 p.m. on February 27, 2008, to advise us of the nature of the accommodation that you need. Please contact Connie Jones, Commission Secretary, Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana, 59620-2601; telephone (406) 444-6170; fax (406) 444-7618; TDD (406) 444-6199; or e-mail conniej@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

38.5.6001 DEFINITIONS (1) "Small customer" means a residential customer or a small ~~electricity or~~ natural gas commercial customer of a distribution utility.

(2) "Residential customer" means a residential customer of a distribution utility.

~~(3) "Small electricity commercial customer" means a commercial electricity customer whose individual account averaged a monthly demand in the previous~~

~~calendar year of less than 300 kilowatts (kW) or a new commercial customer whose individual account is estimated to average a monthly demand of less than 300 kW.~~

(4) (3) "Small natural gas commercial customer" means a commercial natural gas customer with usage per year on an individual account which averages under 500 dekatherm units (dkts) or 500 mcf (each mcf unit is one-thousand cubic feet) or a new commercial customer whose individual account is estimated to average a monthly usage under 500 dkts or mcf per year.

AUTH: 69-3-1404, MCA

IMP: 69-3-1404, MCA

REASON: Ch. 491, L. 2007 repealed electric customer choice for small customers and eliminated the definition of and references to default supply. The change is necessary to conform the rule to the revised statutes.

38.5.6002 VERIFICATION OF SMALL CUSTOMER CHOICE OF SUPPLIER

(1) remains the same.

(2) The letter of authorization shall be a separate document (or an easily separable document) that is delivered to the prospective customer along with the service contract. The letter of authorization shall contain the authorizing language described in (4) of this rule, the sole purpose of which is to authorize a natural gas ~~or electricity~~ supplier to initiate a change in the customer's choice of supplier. The letter of authorization must be signed and dated by the customer who is responsible for payment of the natural gas ~~or electricity~~ account.

(3) and (4) remain the same.

AUTH: 69-3-1404, MCA

IMP: 69-3-1404, MCA

REASON: Ch. 491, L. 2007 repealed electric customer choice for small customers and eliminated the definition of and references to default supply. The change is necessary to conform the rule to the revised statutes.

38.5.6004 SMALL CUSTOMER SERVICE CONTRACT (1) All rates, terms and conditions for supply service must be provided to a small customer in a service contract, written in plain language. The service contract must include the letter of authorization required by ARM 38.5.6002 and the letter of authorization must be returned by the customer to the supplier before any supply service is provided. The front page of a service contract shall prominently and clearly disclose in a uniform information label prescribed by the commission and as available on the commission's internet website:

(a) remains the same;

(b) the effective price for supply service, in ~~cents per kilowatt-hour for electricity or, for gas,~~ price per either dekatherm or mcf, whichever billing unit is used by the distribution services provider, for various levels of consumption typical for the customer's customer segment;

(c) and (d) remain the same.

(2) remains the same.

(3) No supplier, regulated distribution utility, transmission service provider, energy service provider, metering service provider, billing service provider, or other company or individual involved in the sale or delivery of ~~electricity or~~ natural gas, may disclose individual customer information to others without prior written consent from the customer except as provided by commission rule or order.

(4) through (10) remain the same.

AUTH: 69-3-1404, MCA

IMP: 69-3-1404, MCA

REASON: Ch. 491, L. 2007 repealed electric customer choice for small customers and eliminated the definition of and references to default supply. The change is necessary to conform the rule to the revised statutes.

38.5.6006 BILLS TO SMALL CUSTOMERS (1) through (4) remain the same.

(5) ~~Electric and natural~~Natural gas distribution utilities may enter into agreements with ~~electricity or~~ natural gas suppliers for billings and collections. The two companies must establish an efficient method of resolving customer inquiries and disputes. The billing entity must be able to provide the customer with the name, address and telephone number of an employee or department responsible for customer dispute resolution.

(6) ~~Bills for electricity services must clearly itemize each service component and its respective charge, including:~~

~~(a) electricity supply;~~

~~(b) transmission and distribution;~~

~~(i) if charges for transmission and ancillary services are paid by a supplier and passed on to a retail customer in electricity supply charges, the supplier must identify the transmission portion of the charges;~~

~~(c) transition charges; and~~

~~(d) universal system benefits.~~

~~(7) Bills for natural gas services must clearly itemize each service component and the charge associated with each service component, including:~~

~~(a) natural gas supply;~~

~~(b) transportation and distribution;~~

~~(i) if charges for transportation and ancillary services are paid by a supplier and passed on to a retail customer in natural gas supply charges, the supplier must identify the transportation portion of the charges;~~

~~(c) transition charges; and~~

~~(d) universal system benefits.~~

~~(8) (7) Bills must separately subtotal charges for regulated and unregulated services. Bills combining charges for both electric and natural gas services must separate the electricity-related portion of the bill from the natural gas-related portion and separately subtotal the regulated and unregulated charges for each.~~

~~(9) (8) Bills must provide the actual cents per kilowatt-hour or mcf/dkt charged to the customer for the customer's usage of ~~electricity or~~ natural gas supply for the~~

current billing period, calculated by dividing the total charge for supply service by the customer's usage for the current billing period.

~~(40)~~ (9) Undesignated partial payments of a bill must be applied first to regulated service, then to service other than regulated service in the percentage of each service provider's charges to the total charges to the customer for services other than regulated service. Regulated service may not be affected by billing disputes over unregulated service or service provided by other companies.

~~(41)~~ (10) A for-profit affiliate of a cooperative utility that uses a regulated distribution utility's facilities to supply ~~electricity~~ or natural gas to customers outside the cooperative utility's distribution service territory must satisfy the billing provisions of this rule.

AUTH: 69-3-1404, MCA

IMP: 69-3-1404, MCA

REASON: Ch. 491, L. 2007 repealed electric customer choice for small customers and eliminated the definition of and references to default supply. The change is necessary to conform the rule to the revised statutes.

38.5.6007 DEFAULT SUPPLIER (1) ~~The regulated electric distribution utility shall serve as the default supplier in its distribution service territory when a small customer is without supply service because the customer has not selected a competitive supplier or due to contract termination by an electricity supplier, including termination for nonpayment.~~ The regulated natural gas distribution utility shall serve as the default supplier in its distribution service territory when a small customer is without supply service because the customer has not selected a competitive supplier or due to contract termination by a natural gas supplier, including termination for nonpayment.

(2) A customer receiving default supply service must remain in that service until his account is cleared with the default supplier. Once a customer's past due account is cleared, the customer may select a competitive service option from an alternative supplier. A default supplier may disconnect service to a customer who has not paid for its distribution services or default ~~electricity~~ or natural gas supply services. The deposit and termination rules of the commission apply to a default supplier (see ARM 38.5.1101 through 38.5.1112 and ARM 38.5.1401 through 38.5.1418).

(3) After a competitive bid solicitation, a regulated ~~electric~~ or natural gas distribution utility may contract with a third-party supplier to acquire the necessary ~~electric~~ or natural gas supply to allow the distribution provider to meet its default supplier obligations. The regulated ~~electric~~ or natural gas distribution utility is responsible for ensuring compliance with the commission's deposit and termination rules.

AUTH: 69-3-1404, MCA

IMP: 69-3-1404, MCA

REASON: Ch. 491, L. 2007 repealed electric customer choice for small customers and eliminated the definition of and references to default supply. The change is necessary to conform the rule to the revised statutes.

38.5.6008 SERVICE DISCONNECTION (1) ~~A regulated electric distribution utility may not disconnect or deny electric distribution service to a customer due to the customer's failure to pay for unregulated service or service provided by another entity. A regulated natural gas distribution utility may not shut off or deny regulated natural gas distribution service to a customer due to the customer's failure to pay for unregulated service or service provided by another entity. When the same regulated utility is both a customer's natural gas distribution utility and electric distribution utility, it may not deny, disconnect or shut off natural gas service or electric service due to the customer's failure to pay for the other utility service.~~

(2) Regulated distribution utilities may offer agreements to landlord small customers to allow them to authorize the utility to switch a rental unit's electricity and/or natural gas service to the default supplier or to a specified competitive supplier in the event of a tenant customer's service termination.

AUTH: 69-3-1404, MCA
IMP: 69-3-1404, MCA

REASON: Ch. 491, L. 2007 repealed electric customer choice for small customers and eliminated the definition of and references to default supply. The change is necessary to conform the rule to the revised statutes.

38.5.6010 CLAIMS MADE IN MARKETING ELECTRICITY OR NATURAL GAS

(1) A supplier shall include in its license application and in its annual reports sufficient documentation to substantiate any claims made to customers in advertising, marketing, promoting, or representing that ~~electricity or natural gas~~ purchased from the supplier is environmentally beneficial, environmentally benign, preserves or enhances environmental quality, is produced primarily with renewable energy sources, or is produced with specific resources or technologies.

(2) The commission may, on its own motion or in response to a complaint from a customer or another supplier, initiate a proceeding to investigate any claims made by a supplier in advertising, marketing, promoting and representing its services to customers. On determining that a supplier's claims are misleading, deceptive, false or fraudulent, the commission may apply appropriate penalties, including license revocation, pursuant to ~~69-4-408~~ and 69-3-1405, MCA.

(3) ~~Unregulated supply affiliates of former vertically integrated, regulated public utilities may not refer to, or imply any association with, the reliability, safety, quality, value, history, or economic benefits of service formerly provided by the vertically integrated, regulated utility business when advertising, marketing, promoting or representing unregulated electricity or natural gas supply and/or retail energy services to customers in the service area of the former vertically integrated, regulated public utility.~~

AUTH: 69-3-1404, MCA
IMP: 69-3-1404, MCA

REASON: Ch. 491, L. 2007 repealed electric customer choice for small customers and eliminated the definition of and references to default supply. The change is necessary to conform the rule to the revised statutes. The reference to 69-4-408 appears to be an error.

38.5.8201 INTRODUCTION AND APPLICABILITY (1) These guidelines apply to electric utilities subject to the provisions of 69-8-419 through 421, MCA.

~~(2) These guidelines provide policy guidance to default supply utilities (DSU) on long-term default electricity supply resource planning and procurement. With the exception of ARM 38.5.8301, the guidelines do not impose on DSUs specific resource procurement processes nor or mandate particular resource acquisitions. Instead, the guidelines describe a process framework for considering resource needs and suggest optimal ways of meeting those needs. Electricity default supply resource decisions affect the public interest. A DSU utility can better fulfill its obligations, mitigate risks and achieve resource procurement goals if it includes the public in the electricity supply resource portfolio planning process. An independent advisory committee of respected technical and public policy experts may offer the DSU utility an excellent source of up-front, substantive input that would help mitigate risk and improve resource procurement outcomes in a manner consistent with these guidelines. Consistent with these guidelines, and after an opportunity for public input, the DSU utility must ultimately make electricity supply resource acquisition decisions based on economics, reliability, management expertise, and sound judgment.~~

~~(2) (3) A DSU utility should thoroughly document its default supply portfolio planning processes, resource procurement processes and management decision-making so that it can fully demonstrate to the commission and stakeholders the prudence of default supply-related costs and/or justify requests for advanced approval of power purchase agreements electricity supply resources. A DSU utility should routinely communicate with the commission and stakeholders regarding ongoing default supply portfolio planning and resource procurement activities.~~

~~(3) (4) These guidelines will provide the basis for commission review and consideration of the prudence of a DSU's default utility's electricity supply resource planning and procurement actions, and are the standards against which the commission will evaluate the reasonableness of power electricity supply agreements resources for which a utility requests filed as part of a DSU's application for advanced approval under 69-8-421, MCA. As such, the guidelines should assist DSUs utilities in making prudent decisions and in fully recovering default supply-related costs. Successful application of the guidelines will require a commitment from the commission, DSUs utilities and stakeholders to honor the spirit and intent of the guidelines.~~

~~(4) These guidelines are applicable to any public utility designated by the commission or Montana law as the default supplier of electricity to retail customers in its distribution service territory. These guidelines do not apply to public utilities~~

that are not required to restructure pursuant to Title 69, chapter 8, MCA.

(5) These guidelines ~~supercede~~ supersede the commission's electric least cost planning rules (ARM 38.5.2001 through 38.5.2012) solely with respect to a DSU's default electricity supply resource planning and procurement functions.

AUTH: 69-3-2006, 69-8-403, 69-8-419, MCA

IMP: 69-8-403, 69-3-2004, 69-3-2005, MCA

REASON: Ch. 491, L. 2007 repealed electric customer choice for small customers and eliminated the definition of and references to default supply. Ch. 220, L. 2007 renumbered sections derived from the Montana Renewable Power Production and Rural Economic Development Act. The change is necessary to conform the rule to the revised statutes and to adopt the preferred spelling of supersede.

38.5.8202 DEFINITIONS For the purpose of this subchapter, the following definitions are applicable:

(1) "Carbon offset provider" means a third party entity that:

(a) arranges for projects or actions that either reduce carbon dioxide emissions or that increase the absorption of carbon dioxide; and

(b) has been determined to be qualified by the commission in an order addressing a utility's application for approval of an acquisition of an equity interest or lease in a facility or equipment constructed after January 1, 2007 that generates electricity primarily by combusting natural or synthetic gas.

(2) "Cost-effective carbon offsets" means actions taken by a utility or a carbon offset provider on behalf of a utility or both which reduce carbon dioxide emissions or increase the absorption of carbon dioxide and which collectively do not increase the annual cost of producing electricity from a facility or equipment that generates electricity primarily by combusting natural or synthetic gas by more than 2.5%:

(1) (3) "Default Electricity supply costs" means the actual electricity supply costs incurred in of providing default electricity supply service through power purchase agreements, demand-side management and energy efficiency programs, including but not limited to: capacity costs, energy costs, fuel costs, ancillary service costs, demand-side management and energy efficiency costs, transmission costs (including congestion and losses), billing costs, planning and administrative costs, and any other costs directly related to the purchase of electricity, and the management and provision of default electricity supply costs and provision of default supply and related services power purchase agreements.

(2) (4) "Default Electricity supply resource" means:

(a) remains the same;

(b) a plant or equipment owned or leased, in whole or in part, by a utility for purposes of generating electricity and used to serve the utility's native load;

(b) (c) a demand-side management activity, including energy efficiency and conservation programs and pricing mechanisms; or

~~(d)~~ a combination of ~~wholesale power transactions and demand-side management activities~~~~(a), (b), and (c).~~

~~(3)~~ "Default supply utility or DSU" means a ~~distribution services provider regulated by the commission.~~

~~(4)~~ ~~(5)~~ "Environmentally responsible" means explicitly recognizing and incorporating into ~~default electricity supply resource~~ portfolio planning, management and procurement processes and decision-making the policy of the state of Montana to encourage utilities to acquire resources in a manner that will help ensure a clean, healthful, safe and economically productive environment.

~~(5)~~ ~~(6)~~ "External costs" means costs incurred by society but not incorporated directly into electricity production and delivery activities, or retail prices for electricity services directly paid by consumers.

~~(6)~~ ~~(7)~~ "Long-term" means a time period at least as long as a ~~DSU's default utility's electricity supply resource~~ planning horizon. ~~Long-term should also be considered that time period in which a DSU can reasonably expect to provide default supply service.~~

~~(7)~~ ~~(8)~~ "Planning horizon" means the longer of:

(a) the longest remaining contract term in a ~~DSU's utility's current default electricity supply resource~~ portfolio;

(b) the period of the longest lived contract term being considered for a new electricity supply resource being considered for acquisition; or

(c) ten years.

~~(8)~~ ~~(9)~~ "Pre-filing communication" means, with respect to an application by a ~~DSU utility for advanced approval of a electricity supply resource~~, informal information exchange, including oral dialogue and written discovery, between the ~~DSU utility~~ and members of its stakeholder advisory committee, the Montana Consumer Counsel, other stakeholders and commission staff that occurs after the ~~DSU utility~~ files a notice of intent to request ~~advanced approval of a new electricity supply resource~~ pursuant to ARM 38.5.8228 up to the date the ~~DSU utility~~ files an the application for advanced approval.

~~(9)~~ ~~(10)~~ "Rate stability" means minimal price variation, both month-to-month and year-to-year, and minimal price inflation over time.

~~(10)~~ ~~(11)~~ "Stakeholder" means a member of the public (individual, corporation, organization, group, etc.) who may have a special interest in, or may be especially affected by, these rules.

AUTH: 69-8-403, MCA

IMP: 69-8-403, MCA

REASON: Ch. 491, L. 2007 repealed electric customer choice for small customers and eliminated the definition of and references to default supply. The change is necessary to conform the rule to the revised statutes.

38.5.8203 GOALS (1) The goals of these ~~default electricity supply resource~~ planning and procurement guidelines are ~~to~~:

- (a) to facilitate a DSU's utility's provision of adequate and reliable default electricity supply services, stably and reasonably priced, at the lowest long-term total cost;
- (b) to promote economic efficiency and environmental responsibility;
- (c) to facilitate a DSU's utility's on-going financial health;
- (d) to facilitate a process through which a DSU utility identifies and cost-effectively manages and mitigates risks related to its obligation to provide default electricity supply service in a retail choice environment; and
- ~~(e) foster an environment in which meaningful retail customer choice and workable competition can develop, where feasible; and~~
- (f) (e) to build on the fundamental rate making relationship between the commission and the DSU utility to advance these goals.

AUTH: 69-8-403, MCA

IMP: 69-8-403, MCA

REASON: Ch. 491, L. 2007 repealed electric customer choice for small customers and eliminated the definition of and references to default supply. The change is necessary to conform the rule to the revised statutes.

38.5.8204 OBJECTIVES (1) In order to satisfy its default electricity supply service responsibilities, a DSU utility should pursue the following objectives in assembling and managing an electricity supply resource portfolio. ~~The DSU should:~~

- (a) provide default supply customers adequate and reliable default electricity supply services, stably and reasonably priced, at the lowest long-term total cost;
- (b) design rates for default supply service that are equitable and promote rational, economically efficient consumption and customer choice decisions;
- (c) assemble and maintain a balanced, environmentally responsible portfolio of power electricity supply and demand-side management resources coordinated with economically efficient cost allocation and rate design that most efficiently supplies firm, full provides electricity supply services to default supply customers over the planning horizon;
- (d) maintain an optimal mix of demand-side management and power electricity supply sources resources with respect to underlying fuels, generation technologies and associated environmental impacts, and a diverse mix of long, medium and short duration power supply contracts with staggered start and expiration dates; and
- (e) maximize the dissemination of information to default customers regarding the mix of resources and the corresponding level of emissions and other environmental impacts associated with default electricity supply service through itemized labeling and reporting of the default supply portfolio's energy products.

(2) These objectives are listed in order of importance, but no single objective should be pursued such that others are ignored. Simultaneously achieving these multiple objectives will require a balanced approach. A DSU utility should apply the recommendations in ARM 38.5.8209 through 38.5.8213, 38.5.8218 through 38.5.8221, 38.5.8225, and 38.5.8226, in addition to relevant commission orders, to

achieve these goals and objectives.

AUTH: 69-8-403, MCA

IMP: 69-8-403, MCA

REASON: Ch. 491, L. 2007 repealed electric customer choice for small customers and eliminated the definition of and references to default supply. The change is necessary to conform the rule to the revised statutes.

38.5.8209 ~~DEFAULT SUPPLY UTILITY EMERGENCY SERVICE~~
RESPONSIBILITIESRESPONSIBILITY

~~(1) A DSU's default utility's electricity supply service responsibilities are responsibility is:~~

~~(a) to plan and manage its electricity supply resource portfolio in order to provide adequate, reliable, and efficient annual and long-term default electricity supply services at the lowest total cost;~~

~~(b) to provide all or a substantial amount of the emergency electricity supply requirements of retail customers who have electricity supply service contracts with a non-utility electricity supplier or marketer that has failed to deliver the required electricity supply. (A DSU utility is not required to maintain a reserve of electricity supply to fulfill its emergency supply responsibilities. To the greatest extent practicable, a DSU utility should recover the costs of providing emergency service from the supplier or marketer that failed to deliver the required electricity or the customers that directly benefited from the DSU's utility's provision of emergency service. A DSU utility must provide emergency service according to commission-approved tariff schedules.); and~~

~~(c) to comply with the provisions of the Montana Renewable Power Production and Rural Economic Development Act, codified at 69-8-1001 through 69-8-1008, MCA, and ARM 38.5.8301.~~

~~(2) The DSU should establish an optional retail electricity product composed of or supporting power from certified environmentally preferred resources that include but are not limited to biomass, wind, solar or geothermal resources. The resources used to provide this service should be certified as meeting industry-accepted standards.~~

AUTH: ~~69-3-2006~~, 69-8-403, 69-8-419, MCA

IMP: 69-8-403, ~~69-3-2004~~, ~~69-3-2005~~, MCA

REASON: Ch. 491, L. 2007 repealed electric customer choice for small customers and eliminated the definition of and references to default supply. Ch. 220, L. 2007 renumbered sections derived from the Montana Renewable Power Production and Rural Economic Development Act. The change is necessary to conform the rule to the revised statutes.

38.5.8210 RESOURCE NEEDS ASSESSMENT (1) Before ~~soliciting~~
acquiring new multi-year wholesale power contracts electricity supply resources for

~~inclusion in the default supply portfolio, a DSU utility should evaluate its existing default supply resource portfolio resources and analyze future resource needs in the context of the goals and objectives of these guidelines. A DSU utility should use a planning horizon as defined in these rules.~~

(2) A ~~DSU's default supply portfolio~~ utility's resource needs assessment should include:

(a) analyses of ~~default~~ customer loads including base load, intermediate load, peak load and ancillary service requirements, seasonal and daily load shapes and variability, the number and type of ~~default~~ customers, load growth, trends in customer choice and retail markets, technology that may lead to substitutes for grid-based electricity service, impacts of demand-side management and price elasticity of demand;

(b) remains the same;

(c) an assessment of the types of wholesale electricity products that could effectively and efficiently contribute to meeting portfolio needs including base load, heavy load, peak, dispatchable, curtailable, assignable, firm, full requirements, load following, unit contingent, slice of the system (fixed percentage of hourly system load requirements), and others;

(d) an assessment of ~~the resource diversity of~~ within the existing portfolio with respect to generation fuel and generation technology (e.g., conventional coal, clean coal, hydro, natural gas combined cycle, natural gas simple cycle, wind, fuel cell, etc.) ~~in the context of the goals and objectives of these guidelines;~~ and

(e) remains the same.

(3) A ~~DSU's~~ utility's resource needs assessment should include analyses of how cost allocation and rate design decisions might impact future loads and resource needs. A ~~DSU's~~ utility's cost allocation and rate design practices should support and complement the goals and objectives of these guidelines.

AUTH: 69-8-403, MCA

IMP: 69-8-403, MCA

REASON: Ch. 491, L. 2007 repealed electric customer choice for small customers and eliminated the definition of and references to default supply. The change is necessary to conform the rule to the revised statutes.

38.5.8211 COST ALLOCATION AND RATE DESIGN (1) A ~~DSU's~~ utility's cost allocation and rate design practices and rate case proposals should support and complement the goals and objectives of these guidelines. Different approaches to allocating costs and designing rates have different advantages and disadvantages. A ~~DSU~~ utility should consider these advantages and disadvantages in the context of the goals and objectives of these guidelines when proposing particular cost allocations and rate designs. A ~~DSU~~ utility should evaluate and consider the following items when allocating costs and designing rates:

(a) through (f) remain the same.

~~(2) A DSU must ensure that all allowable default supply related costs are recovered through default supply service prices, not in transmission or distribution service prices. An analysis of the sources of default supply costs might support the recovery of some costs through non-bypassable default supply prices.~~

AUTH: 69-8-403, MCA

IMP: 69-8-403, MCA

REASON: Ch. 491, L. 2007 repealed electric customer choice for small customers and eliminated the definition of and references to default supply. The change is necessary to conform the rule to the revised statutes.

38.5.8212 RESOURCE ACQUISITION (1) A DSU utility should apply industry ~~accepted~~ standard procurement practices to acquire ~~default~~ electricity supply resources. The commission cannot prescribe in advance the precise industry ~~accepted practices~~ standards a DSU utility must apply since industry ~~accepted practices~~ standards vary depending on context and circumstances. Generally, an industry ~~accepted~~ acceptable approach to resource procurement should encompass the following basic steps:

- (a) remains the same;
- (b) explore a wide variety of alternative electricity supply and ~~demand-side~~ resources, ~~products and prices~~;
- (c) collect proposals from various parties offering electricity supply and ~~demand-side~~ resources and ~~products~~;
- ~~(d)~~ (d) analyze the feasibility and economic costs, risks and benefits of rate basing versus wholesale alternative electricity supply arrangements;
- ~~(e)~~ (e) analyze the proposals or offers alternative electricity supply resources with respect to price and non-price factors in the context of the goals and objectives of these guidelines;
- ~~(e)~~ (f) select the most appropriate proposals options and develop a shortlist;
- ~~(f)~~ (g) refine the analysis of short-listed options and select negotiate the most appropriate contract option; and
- ~~(g)~~ (h) anticipate changing circumstances and remain flexible.

(2) Although these basic steps could be achieved through a variety of methods, a DSU utility should use competitive solicitations with short-list negotiations as a preferred procurement method of ~~procuring default supply resources~~. A DSU utility should design requests for proposals based on its resource needs assessment. Competitive solicitations should treat bidders fairly, promote ~~transparency in a DSU's default supply~~ transparent portfolio planning and electricity supply resource procurement processes and contribute to achieving the goals and objectives of these guidelines. A DSU's utility's resource acquisition process should conform to the following principles:

- (a) A DSU utility should clearly define the resources, products and services it needs before issuing a resource solicitation and clearly communicate these needs to potential bidders in the request(s) for proposals. Multiple solicitations and/or solicitations for multiple resources, products and services may be necessary to obtain information sufficient for prudent analyses and decision-making;

(b) A DSU utility should establish bid evaluation and bidder qualification standards and criteria it will use to select from among offers before issuing a resource solicitation and clearly communicate these standards and criteria to potential bidders in the request for proposals. Once bids are received, a DSU utility should apply its bid evaluation and bidder qualification standards and criteria firmly and consistently;

(c) A DSU utility should develop a systematic rating mechanism that allows it to objectively rank bids with respect to price and nonprice attributes. A DSU utility is not required to reveal to bidders the specific ranking method used to select preferred bids, however a DSU utility should thoroughly document the development and use of the method for later presentation to the commission;

(d) A DSU utility should establish a shortlist of offers from bidders with which the DSU utility will pursue contract negotiations. A DSU utility should complete due diligence regarding bid qualifications, bidder credit worthiness and experience and project feasibility before selecting an offer for the shortlist. A DSU utility should not indicate to a bidder that its offer is being considered for the shortlist while performing initial due diligence;

(e) If, in evaluating offers, a DSU utility determines that a previously unidentified resource attribute should be considered in the bid evaluation, or that additional evaluation criteria should be used, all bidders should be given an opportunity to supplement their offering to address the DSU's utility's desire for the new attribute or the new criteria. The DSU utility should attempt to minimize such occurrences;

(f) A DSU utility should not reassign or "flip" ~~default~~ supply contracts to an additional third party(ies) after the original bid activity and during the evaluation of bids. A DSU utility must notify the commission before reassigning any fully executed contract;

(g) During competitive solicitation and resource acquisition processes a DSU utility should not publicly disclose specific information related to particular bids, including price, before the DSU utility completes its resource acquisition process and has signed contracts with the selected bidder(s);

(h) The DSU utility should obtain input and recommendations from an advisory committee regarding any procurement process that may involve projects or proposals by an affiliate of the DSU utility. The DSU utility should employ an independent third party to develop competitive solicitations if affiliate interests could be involved. An independent third party should review the contract terms and conditions in any power purchase agreement between a DSU utility and an affiliate before the DSU utility signs the agreement. A DSU utility should consult with its advisory committee before selecting the independent third party and should evaluate the third party's findings with the advisory committee. The DSU utility should be prepared to offer substantially the same form of contract to other bidders for similar products to the extent procuring such products is otherwise justified under the goals, objectives and procedures established in these guidelines; and

(i) A DSU utility should not provide any information to an affiliate with respect to the DSU's utility's resource needs assessment, evaluation criteria, bidder qualification criteria, due diligence or any other relevant resource procurement

information unless such information is simultaneously provided to all other prospective bidders.

(3) To the extent a DSU utility does not use competitive solicitations to acquire default electricity supply resources it should thoroughly document the exercise of its judgment in evaluating and selecting resource options, including the decision not to use competitive solicitations.

(4) A decision by a utility regarding the acquisition of an equity interest in an electricity generating plant or equipment or the construction of such a resource on its own should be thoroughly evaluated against available market-based alternatives.

~~(4)~~ (5) Use of competitive solicitations as the preferred method for procuring default electricity supply resources may not adequately achieve the goals and objectives of these guidelines with respect to demand-side resources. A DSU utility should design programs and associated marketing and verification measures, as necessary, to ensure that its procurement of demand-side resources is optimized in the context of the goals and objectives of these guidelines.

AUTH: 69-8-403, MCA

IMP: 69-8-403, MCA

REASON: Ch. 491, L. 2007 repealed electric customer choice for small customers and eliminated the definition of and references to default supply. The change is necessary to conform the rule to the revised statutes.

38.5.8213 MODELING AND ANALYSIS (1) A DSU's utility's default electricity supply resource portfolio planning, resource procurement and decision-making processes should incorporate proven, cost-effective computer modeling and rigorous analyses. A DSU utility should use modeling and analyses to:

(a) evaluate and quantify probable default supply load characteristics, including trends in load shapes, load growth, ~~load migration to choice~~ and price elasticity of demand;

(b) remains the same;

(c) evaluate and quantify projected ~~portfolio~~ electricity supply resource requirements over the planning horizon;

(d) develop competitive resource solicitations, including associated bid evaluation and selection criteria and/or develop alternative candidate resources for utility construction and ownership;

(e) develop methods for weighting resource attributes and ranking bid offers and alternative candidate owned resources. Resource attributes may include, but are not necessarily limited to:

(i) through (x) remain the same;

(f) remains the same;

(g) help the DSU utility, with input from an advisory committee, inject prudent and informed judgments into the ~~portfolio~~ electricity supply resource planning and resource acquisition process;

(h) optimize the mix of ~~portfolio~~ electricity supply resources in the context of the goals and objectives of these guidelines; and

(i) meet the DSU's utility's burden of proof in prudence and cost recovery filings before the commission.

AUTH: 69-8-403, MCA

IMP: 69-8-403, MCA

REASON: Ch. 491, L. 2007 repealed electric customer choice for small customers and eliminated the definition of and references to default supply. The change is necessary to conform the rule to the revised statutes.

38.5.8218 DEMAND-SIDE RESOURCES (1) Energy efficiency and conservation measures can effectively contribute to serving total ~~default~~ electricity load requirements at the lowest long-term total cost. A DSU utility should develop a comprehensive inventory of all potentially cost-effective demand-side resources available in its service area and optimize the acquisition of demand-side resources over its planning horizon.

(2) A DSU utility should evaluate the cost-effectiveness of demand-side resources and programs based on its long-term avoidable costs. Cost-effectiveness evaluations of demand-side resources should encompass avoidable electricity supply, transmission and distribution costs.

(3) A nonparticipant (no-losers) test considers utility-sponsored demand-side management programs cost effective only if rates to customers that do not participate in the program are not affected by the program. A DSU utility should not evaluate the cost-effectiveness of demand-side resources using a nonparticipant test.

(4) A DSU utility should develop and strive to achieve targets for steady, sustainable investments in cost-effective, long-term demand-side resources. A DSU's utility's investment in demand-side resources should be coordinated with and complement its universal system benefits activities.

(5) Except when the entire resource would otherwise be lost, a DSU's utility's demand-side management programs should not be focused on "cream skimming;" the least expensive and most readily obtainable resource potential should be acquired in conjunction with other measures that are cost-effective only if acquired in a package with the least expensive, most readily available resources.

(6) remains the same.

(7) A DSU's utility's development of demand-side resources should include an examination of innovative methods to address cost recovery issues related to demand-side resource investments and expenses, including undesirable effects on revenues related to the provision of transmission and distribution services.

AUTH: 69-8-403, MCA

IMP: 69-8-403, MCA

REASON: Ch. 491, L. 2007 repealed electric customer choice for small customers and eliminated the definition of and references to default supply. The change is necessary to conform the rule to the revised statutes..)

38.5.8219 RISK MANAGEMENT AND MITIGATION (1) Prudent ~~default~~ electricity supply resource planning and procurement includes evaluating, managing and mitigating risks associated with the inherent uncertainty of wholesale electricity supply markets and ~~default supply~~ customer load characteristics. A DSU utility should identify and analyze sources of risk using its own techniques, market intelligence, risk management policies and judgment. The DSU utility should apply industry ~~accepted~~ standard instruments and strategies, document decisions to use various instruments and strategies and monitor the ongoing appropriateness of such instruments and strategies. Sources of risk that should be evaluated may include, but are not limited to:

<u>Underlying Risk Factor</u>	<u>Price/Cost Uncertainty Risk</u>	<u>Load Uncertainty Risk</u>
(a) Fuel prices and price volatility	X	X
(b) Environmental regulations & taxes	X	X
(c) Default <u>Retail</u> supply rates	X	<u>X</u>
(d) Competitive suppliers' prices	X	
(e) Transmission constraints	X	
(f) Weather	X	X
(g) Supplier capabilities	X	X
(h) Supplier creditworthiness	X	
(i) Contract terms and condition <u>conditions</u>	X	X
(j) Construction costs	X	X

(2) A DSU's utility's strategy for managing and mitigating risks associated with the identified risk factors should be developed in the context of the goals and objectives of these guidelines and include an evaluation of relevant opportunity costs.

(3) A DSU utility should manage and mitigate risk through adequate utility staffing and technical resources (e.g., computer modeling), diversity (fuels, technology, contract terms), and contingency planning.

(4) A DSU utility should use an independent advisory committee of respected technical and public policy experts as a source of upfront, substantive input to mitigate risk and optimize resource procurement outcomes in a manner consistent with these guidelines.

(5) A DSU utility should use cost-effective resource planning and acquisition techniques to manage and mitigate risks associated with the above identified risk factors, including, but not limited to:

(a) through (e) remain the same.

AUTH: 69-8-403, MCA
IMP: 69-8-403, MCA

REASON: Ch. 491, L. 2007 repealed electric customer choice for small customers and eliminated the definition of and references to default supply. The change is necessary to conform the rule to the revised statutes.

38.5.8220 TRANSPARENCY AND DOCUMENTATION (1) A ~~DSU~~ utility should thoroughly document the exercise of its judgment in implementing all aspects of the guidelines, including any deviations from the framework set forth in these guidelines.

(2) A ~~DSU~~ utility must procure and manage a portfolio of ~~power purchase contracts and demand-side~~ electricity supply resources to serve the full load requirements of its ~~default supply~~ customers. The commission must allow a ~~DSU~~ utility to recover ~~through default supply rates~~ all costs it prudently incurs to perform this function. Whether the costs a ~~DSU~~ utility incurs are prudent is, in part, directly related to whether its resource procurement process was conducted prudently. It is vital that a ~~DSU~~ utility document its ~~default supply~~ portfolio planning, management and electricity supply resource procurement activities to justify the prudence of its resource procurement decisions. The better a ~~DSU~~ utility documents the steps involved in its resource procurement process and explains how and why decisions were made during procurement and in developing management strategies, the easier it is to satisfy its burden of proof. When a ~~DSU~~ utility requests cost recovery related to the procurement of ~~new power purchase contracts~~ electricity supply resources it should, as applicable:

(a) remains the same;

(b) provide and explain the calculation of all cost estimates for all resource alternatives considered;

~~(b)~~ (c) list and describe all resource attributes considered in evaluating resource alternatives and how the attributes are relevant to the evaluation of potential resources based on the resource needs assessment;

~~(c)~~ (d) explain how the identified resource attributes were weighted as part of the resource evaluation and discuss the trade-offs between alternative resources that have different attributes and various weights;

~~(d)~~ (e) document and explain the use of the ranking methodology and decision criteria used to evaluate resource alternatives;

~~(e)~~ (f) document and explain computer modeling and analysis designed to assess how various potential resources fit with existing resources and contribute to optimizing the overall portfolio;

~~(f)~~ (g) document relevant industry practices, instruments and actions to procure resources and manage risk observed in other utilities in the Western Electricity Coordinating Council regarding portfolio design, to the extent such practices form the basis for a ~~DSU's~~ utility's decisions;

~~(g)~~ (h) document and explain how and when management injected its judgment onto analyses of resource alternatives, final selection and contract negotiations, and the impact of management judgment; and

~~(h)~~ (i) document the discussion and recommendations of the DSU's utility's advisory committee.

AUTH: 69-8-403, MCA

IMP: 69-8-403, MCA

REASON: Ch. 491, L. 2007 repealed electric customer choice for small customers and eliminated the definition of and references to default supply. The change is necessary to conform the rule to the revised statutes.

38.5.8221 AFFILIATE TRANSACTIONS (1) The commission subjects transactions between a DSU utility and any of its ~~corporate~~-affiliates to close scrutiny. A DSU utility should not acquire resources involving affiliate transactions except through competitive solicitations that are consistent with these guidelines. ~~DSUs~~ A utility should sufficiently demonstrate through transparent, documented modeling, analysis and judgment that any resource acquired from an affiliate corresponds to a predetermined portfolio need.

(2) To the extent a DSU utility procures resources involving affiliate transactions it should respond to the following primary regulatory concerns:

(a) A DSU utility should demonstrate that it has not subordinated its ~~default~~ electricity supply service obligations in favor of an affiliate ~~corporate entity~~;

(b) The burden of proof is on a DSU utility to demonstrate that costs it incurs through any affiliate transactions are just and reasonable and in the public interest and, as such, are recoverable through regulated rates. Since, by definition, such transactions cannot be presumed to be conducted on a truly arm's-length basis, inevitably leaving room for gaming, self dealing and certain subsidies, the commission will subject these transactions to greater scrutiny to reasonably protect ratepayers served under regulated rates from harm. This higher level of protection is referred to as the "no harm to ratepayer" standard. This standard has evolved over time from long standing regulatory practices and policies that require affiliated transactions to be fair, reasonable and in the public interest before the associated costs are recoverable through rates. In keeping with the "no harm to ratepayer" standard, the commission will judge the reasonableness of affiliate transactions-related costs in relation to the lower of cost or market at the time of contract execution. For purposes of this rule, cost, by definition, is the applicable regulated cost of service structure, including a return on the capital invested, to provide the relevant affiliated services;

(c) A DSU utility must reasonably assure that costs and revenues are accurately and properly segregated between regulated and nonregulated affiliated entities in order to protect captive customers served under regulated rates, and avoid subsidies to, and excess charges by, nonregulated affiliates;

(d) The "no harm to ratepayer" standard requires that the books of account and related records of any affiliate transacting business with the DSU utility must be

available for audit and review purposes. A DSU utility should impute the estimated costs of necessary audit activity into affiliate resource costs when evaluating resource alternatives according to these guidelines. As reasonable and necessary and when lawful, the commission will protect affiliate information through confidentiality agreements;

(e) In order to provide for ongoing regulatory review, a DSU utility should separately report on its on-going affiliated transactions and relationships in the context of the issues identified in this rule. Such reporting should be sufficient to allow the commission to adequately monitor whether ~~on-going~~ affiliate transactions-related costs are prudent and, therefore, recoverable through regulated rates; and

(f) A DSU utility must implement a code of conduct to guide management and other employees regarding standards for day-to-day business activities with affiliates and to guard against self-dealing, gaming and resulting subsidies.

AUTH: 69-8-403, MCA

IMP: 69-8-403, MCA

REASON: Ch. 491, L. 2007 repealed electric customer choice for small customers and eliminated the definition of and references to default supply. The change is necessary to conform the rule to the revised statutes.

38.5.8225 STAKEHOLDER INPUT (1) A DSU utility should maintain a broad-based advisory committee to review, evaluate and make recommendations on technical, economic and policy issues related to a ~~DSU's default supply~~ electricity supply resource portfolio planning, management and ~~resource~~ procurement process. An independent advisory committee of respected technical and public policy experts may provide an excellent source of upfront, substantive input to mitigate risk and optimize resource procurement outcomes consistent with these guidelines. Maintaining an effective advisory committee could involve funding certain member participation. A DSU utility should also facilitate processes that provide opportunities for a broader array of stakeholders to comment. Such processes could include:

(a) and (b) remain the same;

(c) other processes that may provide a DSU utility information about public opinion on resource procurement matters.

AUTH: 69-8-403, MCA

IMP: 69-8-403, MCA

REASON: Ch. 491, L. 2007 repealed electric customer choice for small customers and eliminated the definition of and references to default supply. The change is necessary to conform the rule to the revised statutes.

38.5.8226 DEFAULT ELECTRICITY SUPPLY RESOURCE PLANNING AND PROCUREMENT FILINGS (1) A ~~DSU~~ utility must file a comprehensive, long-term portfolio management and electricity supply resource procurement plan by December 15 in each odd-numbered year.

(2) As necessary, a ~~DSU's~~ utility's periodic electricity supply cost tracking filings should include the information, analyses and documentation recommended in these guidelines to support its request for cost recovery related to ~~default~~ electricity supply resource cost additions or changes.

(3) A ~~DSU's annual~~ periodic cost tracking filing should document the status of on-going ~~default supply~~ portfolio planning, management and electricity supply resource procurement activities and include rolling three-year action plans. Action plans should include a discussion of activities involving transmission and distribution functions and services.

(4) The commission may implement a ~~DSU's annual~~ utility's periodic electricity supply cost recovery request on an interim basis, subject to retroactive adjustment, to allow adequate time to process such requests and render a final order.

AUTH: 69-8-403, MCA
IMP: 69-8-403, MCA

REASON: Ch. 491, L. 2007 repealed electric customer choice for small customers and eliminated the definition of and references to default supply. The change is necessary to conform the rule to the revised statutes.

38.5.8227 REWARD FOR SUCCESSFUL DEFAULT SUPERIOR ELECTRICITY SUPPLY SERVICE

(1) The commission will evaluate a ~~DSU's~~ utility's performance in providing ~~default~~ service pursuant to the goals and objectives of these guidelines and may reward the ~~DSU~~ utility monetarily for superior performance at a level commensurate with such performance.

AUTH: 69-8-403, MCA
IMP: 69-8-403, MCA

REASON: Ch. 491, L. 2007 repealed electric customer choice for small customers and eliminated the definition of and references to default supply. The change is necessary to conform the rule to the revised statutes.

38.5.8228 MINIMUM FILING REQUIREMENTS FOR ~~DSU~~ UTILITY APPLICATIONS FOR ADVANCED APPROVAL OF ELECTRICITY SUPPLY RESOURCES

(1) If a ~~DSU~~ utility intends to file an application for ~~advanced~~ approval of a ~~power purchase agreement~~ electricity supply resource that is not yet procured, it must notify the commission and the Montana Consumer Counsel far enough in advance of filing to accommodate adequate pre-filing communication. If

the power purchase contract resource will result from a competitive solicitation, notice must be provided before the DSU utility issues a request for proposals.

(2) An application by a DSU utility for advanced approval of a power purchase agreement electricity supply resource must incorporate by reference the DSU's most recent long-term resource plan, must include the DSU's most recent three-year action plan, and must provide include, as applicable:

(a) a complete explanation and justification of all changes, if any, to the DSU's most recent long-term resource plan and three-year action plan, including how the DSU has responded to all commission written comments on the long-term plan;

(b) a copy of the proposed power purchase agreement, including all appendices and attachments, if any;

(c) testimony and supporting work papers demonstrating the need for the resource/electricity supply product(s) underlying the power purchase agreement;

(d) testimony and supporting work papers demonstrating that the resource/electricity supply product(s) underlying the power purchase agreement:

(i) is in the public interest;

(ii) will facilitate achieving the goals and objectives of these guidelines; and

(iii) complies with all resource procurement guidelines in this subchapter;

(e) if the power purchase agreement resulted from a competitive solicitation, copies of:

(i) the DSU's request for proposals;

(ii) all bids received;

(iii) testimony and work papers demonstrating all due diligence and bid evaluation conducted by the DSU, including the application of bid rating mechanisms and management judgment;

(f) testimony and supporting work papers demonstrating that the price, term and quantity associated with the power purchase agreement are reasonable and in the public interest;

(g) thorough explanation and justification for any other terms in the power purchase agreement for which the DSU is requesting advanced approval;

(h) testimony describing all pre-filing communication;

(i) thorough explanation and justification for any request for a commission decision less than 180 days from the date the DSU's application is filed including a specific plan for ensuring adequate due process; and

(j) testimony and supporting documentation related to any advice received from the DSU's stakeholder advisory committee regarding the power purchase agreement or the underlying resource/electricity product(s) and actions taken or not taken by the DSU in response to such advice.

(a) a complete and thorough explanation and justification of all changes to the utility's most recent long-term resource plan and three year action plan, including how the utility has responded to all commission written comments;

(b) a statement explaining whether the application pertains to a power purchase agreement with an existing generating resource, a lease or acquisition of an equity interest in a new or existing generating resource, or a power purchase

agreement for which approval will result in construction of a new generating resource;

(c) testimony and supporting work papers describing the resource and stating the facts (not conclusory statements) that show that acquiring the resource is in the public interest and is consistent with the requirements in 69-3-201 and 69-8-419, MCA, the utility's most recent long-term resource plan (as modified by (a)), and these rules;

(d) testimony and supporting work papers demonstrating the utility's estimates of the cost of the resource compared to the cost of each alternative resource the utility considered and all relevant functional differences between each alternative;

(e) testimony and supporting work papers demonstrating the implementation of cost-effective carbon offsets for a electricity supply resource fueled primarily by natural or synthetic gas constructed after January 1, 2007;

(f) testimony and supporting work papers demonstrating the capture and sequestration of 50% of the carbon dioxide produced by a electricity supply resource fueled primarily by coal constructed after January 1, 2007;

(g) a copy of the proposed power purchase agreement, including all appendices and attachments;

(h) a copy of any request for proposals issued in connection with acquisition of the electricity supply resource;

(i) testimony and supporting work papers comparing all bids received in connection with any request for proposals with respect to price and non price factors;

(j) testimony and work papers describing all due diligence and bid evaluation in connection with any request for proposals, including the ranking of bids and reliance on management judgment;

(k) thorough explanation and justification for any terms, other than price, quantity and contract duration, in a power purchase agreement for which the utility is requesting approval;

(l) a complete description of each aspect of the resource for which the utility requests approval;

(m) testimony and supporting documentation describing all pre-filing communication; and

(n) testimony and supporting documentation related to any advice received from the utility's stakeholder advisory committee regarding the proposed resource and actions taken or not taken by the utility in response to such advice.

AUTH: 69-8-403, 69-8-419, MCA

IMP: 69-8-403, 69-8-419, MCA

REASON: Ch. 491, L. 2007 repealed electric customer choice for small customers and eliminated the definition of and references to default supply. The change is necessary to conform the rule to the revised statutes. Additionally, the ability of a utility to request approval of rate-based assets requires revision to the minimum filing requirements.

38.5.8229 CONSULTANT FEES (1) When the commission engages independent consultants or advisory services to evaluate a utility's ~~default supply~~ resource procurement plans and proposed ~~power~~ electricity supply resources ~~purchase agreements~~ pursuant to 69-8-421, MCA, the commission will charge the ~~default supplier~~ utility a fee commensurate with the costs of the consultant or advisory services. The ~~default supplier~~ utility, at the commission's direction, will deposit the fee into the commission's account in the special revenue fund pursuant to 69-8-421, MCA. The initial fee charged to the ~~default supplier~~ utility will be based upon the commission's estimate of costs for the consultant or advisory services. The commission may revise the fee amount as the actual costs become known.

AUTH: 69-8-403, MCA
IMP: 69-1-114, 69-8-421, MCA

REASON: Ch. 491, L. 2007 repealed electric customer choice for small customers and eliminated the definition of and references to default supply. The change is necessary to conform the rule to the revised statutes.

4. The Department proposes to repeal the following rules:

38.5.8001 GENERAL REQUIREMENT TO OBTAIN LICENSE TO SUPPLY ELECTRICITY found at page 38-6001 of the Administrative Rules of Montana.

AUTH: 69-8-403, MCA
IMP: 69-8-404, MCA

38.5.8002 CONTENTS OF APPLICATION FOR LICENSE TO SUPPLY ELECTRICITY found at pages 38-6002 through 38-6004 of the Administrative Rules of Montana.

AUTH: 69-8-403, MCA
IMP: 69-8-404, MCA

38.5.8003 ELECTRONIC REGISTRATION found at page 38-6004 of the Administrative Rules of Montana.

AUTH: 69-8-403, MCA
IMP: 69-8-404, MCA

38.5.8004 ANNUAL REPORTS found at page 38-6005 of the Administrative Rules of Montana.

AUTH: 69-8-403, MCA
IMP: 69-8-404, MCA

38.5.8005 STANDARD SERVICE OFFER found at pages 38-6005 through 38-6006 of the Administrative Rules of Montana.

AUTH: 69-8-403, MCA

IMP: 69-8-404, MCA

38.5.8101 DEFINITIONS found at page 38-6101 of the Administrative Rules of Montana.

AUTH: 69-8-403, MCA

IMP: 69-8-203, 69-8-416, MCA

38.5.8102 APPLICATION FOR ELIGIBILITY TO BE A DEFAULT SUPPLIER found at pages 38-6101 through 8-6103 of the Administrative Rules of Montana.

AUTH: 69-8-403, MCA

IMP: 69-8-203, 69-8-416, MCA

REASON: Sec. 21, Ch. 491, L. 2007 repealed 69-8-203 and 69-8-404, MCA. Sec. 20, Ch. 565, L. 2003 repealed 69-8-416, MCA. Repeal of the statutes implemented by the rules requires repeal of the rules.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and 10 copies) may also be submitted to Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT 59620-2601, and must be received no later than March 5, 2008, 5:00 p.m., or may be submitted to the PSC through the PSC's web-based comment form at <http://psc.mt.gov> (go to "Contact Us," "Comment on Proceedings Online," then complete and submit the form no later than March 5, 2008. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-08.01.1-RUL.")

5. The PSC, a commissioner, or a duly appointed presiding officer may preside over and conduct the hearing.

6. The Montana Consumer Counsel, 616 Helena Avenue, P.O. Box 201703, Helena, Montana 59620-1703, telephone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

7. The PSC maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the PSC. Persons who wish to have their name added to the list should make a written request which includes that name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: electric utilities, providers and suppliers; natural gas utilities, providers and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines; motor carriers; rail carriers; and/or

administrative procedures. Such written request may be mailed or delivered to Public Service Commission, Legal Division, 1701 Prospect Avenue, P. O. Box 202601, Helena, Montana 59620-2601, faxed to Connie Jones at (406) 444-7618, emailed to conniej@mt.gov, or may be made by completing a request form at any rules hearing held by the PSC.

7. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The bill sponsor notice requirements of 2-4-302, MCA apply and have been fulfilled. Representative Alan Olson was notified by letter dated September 27, 2007, when the Department began to work on the substantive comment and wording of the amendments. A copy of the published notice will be sent within 3 days after publication

/s/ Greg Jergeson
Greg Jergeson, Chairman
Public Service Commission

/s/ Robin A. McHugh
Reviewed by Robin A. McHugh

Certified to the Secretary of State, January 22, 2008.