

HOUSE BILL NO. 509

INTRODUCED BY A. OLSON, DOWELL, FORRESTER, GEBHARDT, GILLAN, GOLIE, LASLOVICH,
 MAHLUM, MANGAN, MATTHEWS, MCCARTHY, MCNUTT, SHEA, WITT

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO ELECTRICAL ENERGY; PROVIDING THAT AN ELECTRICITY BUYING COOPERATIVE MAY SERVE ONLY AS A SUPPLIER OR PROMOTER OF ALTERNATIVE ENERGY AND CONSERVATION PROGRAMS; ESTABLISHING AN ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE; REVISING CERTAIN LEGISLATIVE FINDINGS AND POLICY; DESIGNATING THE DEFAULT SUPPLIER AS THE DISTRIBUTION SERVICES PROVIDER OF A UTILITY; MODIFYING CERTAIN DEFINITIONS; DEFINING "DEFAULT SUPPLY SERVICE" AND "ELECTRICITY SUPPLY COSTS"; ~~ELIMINATING~~ EXTENDING THE TRANSITION PERIOD ~~ENDING JULY 1, 2007~~ TO JULY 1, 2027; ~~REPLACING THE TERM "TRANSITION" WITH THE TERM "STRANDED COSTS"~~; MODIFYING PILOT PROGRAMS TO ~~ALLOW~~ REQUIRE UTILITIES AND ELECTRICITY SUPPLIERS TO USE A SELECT SET OF SMALL CUSTOMERS TO MEASURE THE POTENTIAL FOR DEVELOPING AND OFFERING CUSTOMER CHOICE IN THE FUTURE; ~~ELIMINATING THE TERM "TRANSITION PLAN" AND REPLACING IT WITH "CUSTOMER CHOICE PLAN"~~; ESTABLISHING OPTIONS AND REQUIREMENTS FOR CUSTOMER CHOICE OF ENERGY SUPPLY; REQUIRING THE COMMISSION TO ESTABLISH RATES, FEES, RULES, AND PROCEDURES TO ENABLE CUSTOMERS TO REASONABLY CHOOSE AN ELECTRICITY SUPPLIER WHILE PROTECTING SMALL CUSTOMERS; ALLOWING THE COMMISSION TO ESTABLISH DIFFERENT CATEGORIES OF DEFAULT SUPPLY CUSTOMERS; PROHIBITING A CUSTOMER RECEIVING DEFAULT SUPPLY SERVICE FROM RESELLING ELECTRICITY; ALLOWING THE DEFAULT SUPPLIER TO IMPLEMENT DEMAND REDUCTION PROGRAMS; CLARIFYING CERTAIN PUBLIC UTILITY RESPONSIBILITIES AS A SUCCESSOR IN INTEREST; MODIFYING THE REQUIREMENT THAT PUBLIC UTILITIES EDUCATE CUSTOMERS ABOUT CUSTOMER CHOICE; MODIFYING PUBLIC UTILITY FUNCTIONAL SEPARATION REQUIREMENTS; MODIFYING DISTRIBUTION ~~AND TRANSMISSION~~ SERVICES REQUIREMENTS; MODIFYING PUBLIC UTILITY ELECTRICITY SUPPLY REQUIREMENTS; REQUIRING THAT A PUBLIC UTILITY'S DISTRIBUTION SERVICES PROVIDER PROVIDE DEFAULT SUPPLY SERVICE; REQUIRING THE COMMISSION TO ESTABLISH DEFAULT SUPPLY RESOURCE PLANNING AND PROCUREMENT GUIDELINES; REQUIRING THE COMMISSION TO ESTABLISH AN ELECTRICITY COST RECOVERY MECHANISM; PROVIDING FOR COMMISSION REVIEW OF ELECTRICITY SUPPLY COSTS; ALLOWING THE COMMISSION TO REQUIRE A DEFAULT SUPPLIER TO OFFER MULTIPLE SERVICE

OPTIONS; REQUIRING A DEFAULT SUPPLIER TO OFFER ITS CUSTOMERS THE OPTION OF PURCHASING A PRODUCT COMPOSED OF CERTIFIED ENVIRONMENTALLY PREFERRED RESOURCES; EXTENDING THE UNIVERSAL SYSTEM BENEFITS CHARGE RATES BY 2 1/2 YEARS TO DECEMBER 31, 2005; PROVIDING FOR REIMBURSEMENT AND AUTHORIZING FINES IF AN ELECTRICITY SUPPLIER FAILS TO PROVIDE ELECTRICITY SUPPLY AND RELATED SERVICES TO RETAIL CUSTOMERS; MODIFYING COMMISSION AUTHORITY; REQUIRING THE COMMISSION TO MONITOR WHETHER OR NOT WORKABLE COMPETITION HAS DEVELOPED FOR SMALL CUSTOMERS; PROVIDING THAT THE COMMISSION REPORT TO THE LEGISLATURE IF IT DETERMINES THAT WORKABLE COMPETITION HAS DEVELOPED; MODIFYING BILL INFORMATION REQUIREMENTS; ELIMINATING DEFAULT SUPPLIER LICENSING REQUIREMENTS; ELIMINATING THE TRANSITION ADVISORY COMMITTEE AND TAX REVENUE ANALYSIS REQUIREMENTS; AMENDING SECTIONS 5-5-202, 5-5-223, 35-19-104, ~~69-3-1402, 69-3-1403, 69-3-1404, 69-3-1408~~, 69-8-102, 69-8-103, 69-8-104, 69-8-201, ~~69-8-202~~, 69-8-203, 69-8-204, 69-8-208, ~~69-8-209~~, 69-8-210, 69-8-211, 69-8-301, ~~69-8-302, 69-8-303, 69-8-304, 69-8-308, 69-8-309, 69-8-310, 69-8-311~~, 69-8-402, 69-8-403, 69-8-408, 69-8-409, AND 69-8-503, MCA; REPEALING SECTIONS 35-19-103, 69-8-416, 69-8-417, 69-8-501, AND 69-8-502, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

SECTION 1. SECTION 5-5-202, MCA, IS AMENDED TO READ:

"5-5-202. Interim committees. (1) During an interim when the legislature is not in session, the committees listed in subsection (2) are the interim committees of the legislature. They are empowered to sit as committees and may act in their respective areas of responsibility. The functions of the legislative council, legislative audit committee, legislative finance committee, environmental quality council, and state-tribal relations committee are provided for in the statutes governing those committees.

(2) The following are the interim committees of the legislature:

- (a) economic affairs committee;
- (b) education and local government committee;
- (c) children, families, health, and human services committee;
- (d) law and justice committee;
- (e) energy and telecommunications committee;
- ~~(e)~~(f) revenue and transportation committee; and

~~(f)~~(g) state administration and veterans' affairs committee.

(3) An interim committee or the environmental quality council may refer an issue to another committee that the referring committee determines to be more appropriate for the consideration of the issue. Upon the acceptance of the referred issue, the accepting committee shall consider the issue as if the issue were originally within its jurisdiction. If the committee that is referred an issue declines to accept the issue, the original committee retains jurisdiction.

(4) If there is a dispute between committees as to which committee has proper jurisdiction over a subject, the legislative council shall determine the most appropriate committee and assign the subject to that committee."

SECTION 2. SECTION 5-5-223, MCA, IS AMENDED TO READ:

"5-5-223. Economic affairs interim committee. The economic affairs interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes:

- (1) department of agriculture;
- (2) department of commerce;
- (3) department of labor and industry;
- (4) department of livestock;
- ~~(5) department of public service regulation;~~
- ~~(6)~~(5) office of the state auditor and insurance commissioner; and
- ~~(7)~~(6) office of economic development."

NEW SECTION. SECTION 3. ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE. 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 ENTITIES ATTACHED TO THE DEPARTMENT FOR ADMINISTRATIVE PURPOSES.

Section 4. Section 35-19-104, MCA, is amended to read:

"35-19-104. Permissible purpose of incorporation. A buying cooperative may be organized under this chapter only ~~for the purpose of supplying electricity to small customers as a default supplier, pursuant to 69-8-403, and~~ for serving as a supplier or promoter of alternative energy and conservation programs."

~~Section 2.~~ Section 69-3-1402, MCA, is amended to read:

~~"69-3-1402. Definitions.~~ As used in this part, the following definitions apply:

~~(1) "Customer" means a natural gas customer or consumer of natural gas supply or natural gas transmission transportation facilities, storage facilities, or distribution facilities.~~

~~(2) "Distribution facilities" means those facilities that are not transmission transportation facilities:~~

~~(a) by and through which natural gas is received from a transmission transportation services provider and transmitted to the customer; and~~

~~(b) operated by a distribution services provider.~~

~~(3) "Distribution services provider" means a person controlling or operating distribution facilities for distribution of natural gas to the public.~~

~~(4) "Natural gas supplier" means a person, including aggregators, market aggregators, brokers, and marketers, licensed by the commission that is offering to sell natural gas to retail customers in the state of Montana.~~

~~(5) "Natural gas utility" means a utility regulated by the commission on May 2, 1997, that provides natural gas services to the public.~~

~~(6) "Open access" means that a natural gas utility has made its transmission transportation facilities, storage facilities, or distribution facilities available to all natural gas suppliers, transmission transportation services providers, distribution services providers, and customers on a nondiscriminatory and comparable basis.~~

~~(7) "Performance-based ratemaking" means those forms of regulation that include but are not limited to the use of revenue indexing, price indexing, ranges of authorized return, gas cost indexing, and innovative use of utility-related assets and activities, such as system sales of excess natural gas supplies, release of upstream pipeline capacity, and performance of billing services for other natural gas suppliers. A performance-based regulation may also include a mechanism for automatic annual adjustments of revenue to prices to reflect changes in any index adopted for the implementation of the performance-based form of regulation.~~

~~(8) "Storage facilities" means those facilities that are owned, controlled, or operated by a person offering storage service for natural gas and generally means any underground reservoir suitable for the storage of natural gas and the facilities used to inject and withdraw natural gas into and out of that underground reservoir.~~

~~(9) "Transition Stranded costs" means:~~

~~(a) a natural gas utility's net, verifiable production and gathering-related costs, including costs of capital, that become unrecoverable as a result of customer choice and open access. These costs include but are not limited to:~~

~~—— (i) regulatory assets and deferred charges that exist as a result of current regulatory practices and that may be accounted for up to the point in time that the commission issues a final order in a docket addressing transition stranded costs, including all costs, expenses, and fees related to the issuance of transition stranded costs bonds;~~

~~—— (ii) the above-market costs associated with existing gas supply commitments;~~

~~—— (iii) other natural gas utility investments rendered uneconomic as a result of implementation of customer choice and open access;~~

~~—— (iv) the costs associated with renegotiation or buyout of existing natural gas purchase contracts; and~~

~~—— (v) the costs associated with the issuance of any related transition stranded costs bonds authorized by the commission pursuant to 69-3-1403.~~

~~—— (b) the costs of refinancing or retiring debt or equity capital of the natural gas utility and associated federal and state tax liabilities or other utility costs for which the use of transition stranded costs bonds would benefit customers.~~

~~—— (10) "Transmission Transportation facilities" means those facilities owned, controlled, and operated by a transmission transportation services provider that are used to transport natural gas from a gathering line or storage facility to a distribution facility, storage facility, or end-use customer.~~

~~—— (11) "Transmission Transportation services provider" means a person controlling or operating transmission transportation facilities.~~

~~—— (12) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customers customer's share of universal system benefits program costs.~~

~~—— (13) "Universal system benefits programs" means public purpose programs for cost-effective local energy conservation, low-income weatherization, and low-income energy bill assistance."~~

~~—— **Section 3.** Section 69-3-1403, MCA, is amended to read:~~

~~—— **"69-3-1403. Customer choice.** (1) A natural gas utility may voluntarily offer its customers choice of natural gas supplier and provide open access to its transmission transportation facilities, storage facilities, or distribution facilities.~~

~~—— (2) If a customer choice offering results in transition stranded costs, the commission may allow those transition stranded costs to be recovered in separate identifiable charges to customers. Upon commission approval, the natural gas utility must have the opportunity but not the obligation to finance the fixed transition stranded costs and related financing costs using transition cost stranded costs financing as provided for in~~

~~69-8-103 and 69-8-503."~~

~~Section 4. Section 69-3-1404, MCA, is amended to read:~~

~~"69-3-1404. Functional separation -- code of conduct -- emergency services -- customer protection. (1) A natural gas utility that provides customer choice and open access on its system shall:~~

~~(a) functionally separate its natural gas production and gathering from its natural gas transmission transportation, storage, and distribution services and remove natural gas production and gathering from the rate base;~~

~~(b) adopt and comply with commission-approved standards of conduct to be included in a tariff to govern its natural gas transmission transportation, storage, and distribution services; and~~

~~(c) provide emergency natural gas supply and related services to the extent necessary to maintain the operational integrity of the transmission transportation system as determined by the commission.~~

~~(2) The commission shall develop standards that protect consumers and natural gas suppliers from anticompetitive and abusive practices.~~

~~(3) This part does not reduce or otherwise change the authority of the commission to review the prudence of natural gas purchases made by a natural gas utility for its customers that do not have a choice or that have not made a choice of natural gas suppliers or have not been assigned a natural gas supplier."~~

~~Section 5. Section 69-3-1408, MCA, is amended to read:~~

~~"69-3-1408. Universal system benefits programs -- establishing nonbypassable rate. (1) A natural gas utility shall implement, upon commission approval, a universal system benefits program that considers existing universal system benefits programs in the state.~~

~~(2) The commission shall establish a universal system benefits charge that either all natural gas transmission transportation services providers or all distribution services providers, or both, in the state of Montana shall charge to all end-use customers, taking into consideration the current level of expenditure by the natural gas utility, cost-effectiveness, and similar costs imposed in other states. The method of assessing those rates may not disproportionately burden a large transmission transportation services provider's customers. Within the universal system benefits charge, a natural gas utility's annual funding requirement for low-income weatherization and low-income energy bill assistance is established at 0.42% of a natural gas utility's annual revenue. A natural gas utility must receive credit for its internal programs or activities that qualify as universal system benefits programs.~~

~~(3) On or before July 1, 2002, the commission shall conduct a reevaluation of the ongoing need for universal system benefits programs and annual funding requirements and shall make recommendations to the 58th legislature regarding the future need for universal system benefits programs. The determination should focus specifically on the existence of markets to provide for any of the universal system benefits programs or on whether other means for funding those universal system benefits programs have developed. These recommendations may also address how future reevaluations will be provided, if necessary."~~

Section 5. Section 69-8-102, MCA, is amended to read:

"69-8-102. Legislative findings and policy. The legislature finds and declares the following:

(1) The generation and sale of electricity is becoming a competitive industry.

(2) Montana customers should have the freedom to choose their ~~supplier of electricity~~ supply and related services in ~~a competitive market as soon as administratively feasible~~ accordance with this chapter. Affording this opportunity serves the public interest.

(3) The interests of small Montana consumers ~~should~~ must be protected through the provision of adequate and reliable default supply service at the lowest long-term total cost. ~~and the~~

~~(4)~~ The financial integrity of electrical utilities ~~should~~ must be fostered.

~~(4)~~(5) The public interest requires the continued protection of consumers through:

- (a) licensure of electricity suppliers;
- (b) provision of information to consumers regarding electricity supply service;
- (c) provision of a process for investigating and resolving complaints;
- (d) continued funding for public purpose programs for:
 - (i) cost-effective local energy conservation;
 - (ii) low-income customer weatherization;
 - (iii) renewable resource projects and applications;
 - (iv) research and development programs related to energy conservation and renewables;
 - (v) market transformation; and
 - (vi) low-income energy assistance;
- (e) assurance of service reliability and quality; and
- (f) prevention of anticompetitive and abusive activities.

~~(5)~~(6) A utility in the state of Montana may not be advantaged or disadvantaged in the competitive electricity supply market, including the consideration of the existence of universal system benefits programs and

the comparable level of funding for those programs throughout the regions neighboring Montana."

Section 6. Section 69-8-103, MCA, is amended to read:

"69-8-103. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Aggregator" or "market aggregator" means an entity, licensed by the commission, that aggregates retail customers, purchases electrical energy, and takes title to electrical energy as an intermediary for sale to retail customers.

(2) "Assignee" means any entity, including a corporation, partnership, board, trust, or financing vehicle, to which a utility assigns, sells, or transfers, other than as security, all or a portion of the utility's interest in or right to ~~transition stranded costs~~ TRANSITION property. The term also includes an entity, corporation, public authority, partnership, trust, or financing vehicle to which an assignee assigns, sells, or transfers, other than as security, the assignee's interest in or right to ~~transition stranded costs~~ TRANSITION property.

(3) "Board" means the board of investments created by 2-15-1808.

(4) "Broker" or "marketer" means an entity, licensed by the commission, that acts as an agent or intermediary in the sale and purchase of electrical energy but that does not take title to electrical energy.

(5) "Cooperative utility" means:

- (a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or
- (b) an existing municipal electric utility as of May 2, 1997.

(6) "Customer" or "consumer" means a retail electric customer or consumer. The university of Montana, pursuant to 20-25-201(1), and Montana state university, pursuant to 20-25-201(2), are each considered a single retail electric customer or consumer with a single individual load.

(7) "Customer-generator" means a user of a net metering system.

(8) "Default supplier" means a distribution services provider ~~or a person that has received a default supplier license from the commission~~ of a utility that has restructured in accordance with this chapter.

(9) "Default supply service" means the provision of electricity supply by a default supplier.

~~(9)~~(10) "Distribution facilities" means those facilities by and through which electricity is received from a transmission services provider and distributed to the customer and that are controlled or operated by a distribution services provider.

~~(10)~~(11) "Distribution services provider" means a utility owning distribution facilities for distribution of electricity to the public.

~~(11)~~(12) "Electricity supplier" means any person, including aggregators, market aggregators, brokers, and marketers, offering to sell electricity to retail customers in the state of Montana.

(13) "Electricity supply costs" means the actual costs of providing default supply service, including but not limited to:

(a) capacity costs;

(b) energy costs;

(c) fuel costs;

(d) ancillary service costs;

(e) demand-side management and energy efficiency costs;

(f) transmission costs, including congestion and losses;

(g) billing costs;

(h) planning and administrative costs; and

(i) any other costs directly related to the purchase of electricity, management of default electricity supply costs, and provision of default supply and related services.

~~(12)~~(14) "Financing order" means an order of the commission adopted in accordance with 69-8-503 that authorizes the imposition and collection of fixed ~~transition stranded costs~~ TRANSITION amounts and the issuance of ~~transition stranded costs~~ TRANSITION bonds.

~~(13)~~(15) (a) "Fixed ~~transition stranded costs~~ TRANSITION amounts" means those nonbypassable rates or charges, including but not limited to:

(i) distribution;

(ii) connection;

(iii) disconnection; and

(iv) termination rates and charges that are authorized by the commission in a financing order to permit recovery of ~~transition stranded~~ TRANSITION costs and the costs of recovering, reimbursing, financing, or refinancing the ~~transition stranded~~ TRANSITION costs and of acquiring ~~transition stranded costs~~ TRANSITION property through a plan approved by the commission in the financing order, including the costs of issuing, servicing, and retiring ~~transition stranded costs~~ TRANSITION bonds.

(b) If requested by the utility in the utility's application for a financing order, fixed ~~transition stranded costs~~ TRANSITION amounts must include nonbypassable rates or charges to recover federal and state taxes in which the ~~transition cost stranded costs~~ TRANSITION COST recovery period is modified by the transactions approved in the financing order.

~~(14)~~(16) "Functionally separate" means a utility's separation of the utility's electricity supply, transmission, distribution, and unregulated retail energy services assets and operations.

~~(15)~~(17) "Interested person" means a retail electricity customer, the consumer counsel established in 5-15-201, the commission, or a utility.

~~(16)~~(18) "Large customer" means, for universal system benefits programs purposes, a customer with an individual load greater than a monthly average of 1,000 kilowatt demand in the previous calendar year for that individual load.

~~(17)~~(19) "Local governing body" means a local board of trustees of a rural electric cooperative.

~~(18)~~(20) "Low-income customer" means those energy consumer households and families with incomes at or below industry-recognized levels that qualify those consumers for low-income energy-related assistance.

~~(19)~~(21) "Net metering" means measuring the difference between the electricity distributed to and the electricity generated by a customer-generator that is fed back to the distribution system during the applicable billing period.

~~(20)~~(22) "Net metering system" means a facility for the production of electrical energy that:

- (a) uses as its fuel solar, wind, or hydropower;
- (b) has a generating capacity of not more than 50 kilowatts;
- (c) is located on the customer-generator's premises;
- (d) operates in parallel with the distribution services provider's distribution facilities; and
- (e) is intended primarily to offset part or all of the customer-generator's requirements for electricity.

~~(21)~~(23) "Nonbypassable rates or charges" means rates or charges that are approved by the commission and imposed on a customer to pay the customer's share of ~~transition-stranded~~ TRANSITION costs or universal system benefits programs costs even if the customer has physically bypassed either the utility's transmission or distribution facilities.

~~(22)~~(24) "Pilot program" means ~~a program~~ an experimental program using a ~~representative sample~~ select set of residential and small commercial small customers to ~~assist in~~ assess the potential for developing and offering customer choice of electricity supply ~~for all residential and commercial~~ to small customers in the future.

~~(23)~~(25) "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on May 2, 1997, including the public utility's successors or assignees.

~~(24)~~(26) "Qualifying load" means, for payments and credits associated with universal system benefits programs, all nonresidential demand-metered accounts of a large customer within the utility's service territory in which the customer qualifies as a large customer.

~~(25)~~(27) "Small customer" means a residential customer or a ~~small~~ commercial customer who has an individual account with an average monthly demand in the previous calendar year of less than ~~400~~ 50 kilowatts or a new residential or commercial customer with an estimated average monthly demand of less than ~~400~~ 50 kilowatts of a public utility ~~distribution services provider~~ that has ~~opened access on its distribution system~~ restructured pursuant to Title 35, chapter 19, or this chapter.

~~(26)~~(28) "~~Transition~~ Stranded costs "~~TRANSITION~~ bondholder" means a holder of ~~transition~~ stranded costs ~~TRANSITION~~ bonds, including trustees, collateral agents, and other entities acting for the benefit of that ~~holder~~ bondholder.

~~(27)~~(29) "~~Transition~~ Stranded costs "~~TRANSITION~~ bonds" means any bond, debenture, note, interim certificate, collateral, trust certificate, or other evidence of indebtedness or ownership issued by the board or other ~~transition~~ stranded costs ~~TRANSITION~~ bonds issuer that is secured by or payable from fixed ~~transition~~ stranded costs ~~TRANSITION~~ amounts or ~~transition~~ stranded costs ~~TRANSITION~~ property. Proceeds from ~~transition~~ stranded costs ~~TRANSITION~~ bonds must be used to recover, reimburse, finance, or refinance ~~transition~~ stranded ~~TRANSITION~~ costs and to acquire ~~transition~~ stranded costs ~~TRANSITION~~ property.

~~(28)~~(30) "~~Transition~~ Stranded costs "~~TRANSITION~~ charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of ~~transition~~ stranded ~~TRANSITION~~ costs.

~~(29)~~(31) "~~Transition cost~~ Stranded costs "~~TRANSITION COST~~ recovery period" means the period beginning on July 1, 1998, and ending when a utility customer does not have any liability for payment of ~~transition~~ stranded ~~TRANSITION~~ costs.

~~(30)~~(32) "~~Transition~~ Stranded "~~TRANSITION~~ costs" means:

(a) a public utility's net verifiable generation-related and electricity supply costs, including costs of capital, that become unrecoverable as a result of the implementation of this chapter or of federal law requiring retail open access or customer choice;

(b) those costs that include but are not limited to:

(i) regulatory assets and deferred charges that exist because of current regulatory practices and can be accounted for up to the effective date of the commission's final order regarding a public utility's ~~transition~~ customer choice ~~TRANSITION~~ plan and conservation investments made prior to universal system benefits charge implementation;

(ii) nonutility and utility power purchase contracts EXECUTED BEFORE MAY 2, 1997, including qualifying facility contracts;

(iii) existing generation investments and supply commitments or other obligations incurred before May

2, 1997, and costs arising from these investments and commitments;

(iv) the costs associated with renegotiation or buyout of the existing nonutility and utility power purchase contracts, including qualifying facilities and all costs, expenses, and reasonable fees related to issuing ~~transition stranded costs~~ TRANSITION bonds; and

(v) the costs of refinancing and retiring of debt or equity capital of the public utility and associated federal and state tax liabilities or other utility costs for which the use of ~~transition stranded costs~~ TRANSITION bonds would benefit customers.

~~(31)~~ "Transition period" means the period ending July 1, 2007.

~~(33)~~ "TRANSITION PERIOD" MEANS THE PERIOD ENDING JULY 1, 2027.

~~(32)(33)(34)~~ "Transition ~~Stranded costs~~ TRANSITION property" means the property right created by a financing order, including without limitation the right, title, and interest of a utility, assignee, or other issuer of ~~transition stranded costs~~ TRANSITION bonds to all revenue, collections, claims, payments, money, or proceeds of or arising from or constituting fixed ~~transition stranded costs~~ TRANSITION amounts that are the subject of a financing order, including those nonbypassable rates and other charges and fixed ~~transition stranded costs~~ TRANSITION amounts that are authorized by the commission in the financing order to recover ~~transition stranded~~ TRANSITION costs and the costs of recovering, reimbursing, financing, or refinancing the ~~transition stranded~~ TRANSITION costs and acquiring ~~transition stranded costs~~ TRANSITION property, including the costs of issuing, servicing, and retiring ~~transition stranded costs~~ TRANSITION bonds. Any right that a utility has in the ~~transition stranded costs~~ TRANSITION property before the utility's sale or transfer or any other right created under this section or created in the financing order and assignable under this chapter or assignable pursuant to a financing order is only a contract right.

~~(33)(34)(35)~~ "Transmission facilities" means those facilities that are used to provide transmission services as determined by the federal energy regulatory commission and the commission.

~~(34)(35)(36)~~ "Transmission services provider" means ~~a person~~ an entity controlling or operating transmission facilities.

~~(35)(36)(37)~~ "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of universal system benefits programs costs.

~~(36)(37)(38)~~ "Universal system benefits programs" means public purpose programs for:

- (a) cost-effective local energy conservation;
- (b) low-income customer weatherization;
- (c) renewable resource projects and applications, including those that capture unique social and energy

system benefits or that provide transmission and distribution system benefits;

- (d) research and development programs related to energy conservation and renewables;
- (e) market transformation designed to encourage competitive markets for public purpose programs; and
- (f) low-income energy assistance.

~~(37)(38)~~(39) "Utility" means any public utility or cooperative utility."

Section 7. Section 69-8-104, MCA, is amended to read:

"69-8-104. Pilot programs. (1) Except as provided in ~~69-8-201(3) 69-8-201(8)~~ 69-8-201(9) and 69-8-311, utilities ~~shall may~~ SHALL conduct pilot programs using a select set of their small customers to assess the potential for developing and offering customer choice of electricity supply to small customers in the future. The commission shall review and approve the design and availability of pilot programs and shall monitor the results of pilot programs. ~~representative sample of their residential and small commercial customers. A report describing and analyzing the results of the pilot programs must be submitted to the commission and the transition advisory committee established in 69-8-501 on or before July 1, 2005.~~

(2) ~~Utilities shall use pilot~~ Pilot programs must be designed to gather necessary information to determine the most effective and timely options for providing customer choice to small customers in the future. Necessary information includes but is not limited to:

(a) the level of demand for electricity supply choice and the availability of ~~market prices~~ market-based electricity supply options for small customers;

(b) the best means to encourage and support the development of sufficient markets and bargaining power for the benefit of small customers;

(c) the electricity suppliers' interest in serving small customers and the opportunities in providing service to small customers; and

(d) experience in the broad range of technical and administrative support matters involved in designing and delivering unbundled retail services to small customers."

Section 8. Section 69-8-201, MCA, is amended to read:

"69-8-201. Public utility -- ~~transition to~~ TRANSITION TO customer choice -- options and requirements -- waiver. (1) ~~A public utility shall, except as provided in this section, adhere to the following deadlines:~~
~~— (a) All customers with individual loads greater than 1,000 kilowatts and for loads of the same customer with individual loads at a meter greater than 300 kilowatts that aggregate to 1,000 kilowatts or greater must have~~

the opportunity to choose an electricity supplier:

~~—— (b) Before July 1, 2007, all other public utility customers must have the opportunity to choose an electricity supplier.~~

~~—— (2) The commission shall designate the public utility or one or more default suppliers to provide regulated default service for those small customers of a public utility that are not being served by a competitive electricity supplier: (1) BEFORE JULY 1, 2027, ALL PUBLIC UTILITY CUSTOMERS OF A PUBLIC UTILITY THAT HAS RESTRUCTURED IN ACCORDANCE WITH THIS CHAPTER MUST HAVE THE OPPORTUNITY TO CHOOSE AN ELECTRICITY SUPPLIER OTHER THAN THE DEFAULT SUPPLIER.~~

(1)(2) (a) A small customer of a public utility that has restructured in accordance with this chapter:
(i) must receive default supply services from the default supplier as provided in this chapter; and
(ii) may purchase electricity supply services through a commission-approved small customer electricity supply program as provided in this section.

(b) (i) A small customer receiving electricity from a licensed supplier prior to [the effective date of this act] may continue to receive electricity supply from a supplier other than the default supplier.

~~—— (ii) A customer subject to subsection (1)(b)(i) that chooses to return to default supply service is subject to the provisions established by the commission in accordance with subsection (4):~~

(c) Customers that represent separately metered services with an estimated average monthly demand of less than 400 50 kilowatts related to the same individual customer referred to in subsection (2) or (3) (3) OR (4) may be combined with the respective eligible customer load or loads.

(2)(3) A (A) SUBJECT TO SUBSECTION (2)(B) (3)(B), A customer of a public utility that has restructured in accordance with this chapter and that has an individual load with an average monthly demand of less than 5,000 kilowatts but greater than or equal to 400 50 kilowatts must have the opportunity to MAY choose an electricity supplier.

(B) THE TOTAL AVERAGE MONTHLY BILLING DEMAND FOR ALL CUSTOMERS THAT CHOOSE AN ELECTRICITY SUPPLIER PURSUANT TO SUBSECTION (2)(A) (3)(A) IN EACH CALENDAR YEAR MAY NOT EXCEED 20,000 KILOWATTS IN A CALENDAR YEAR.

(C) A CUSTOMER REFERRED TO IN SUBSECTION (3)(A) RECEIVING ELECTRICITY FROM A LICENSED SUPPLIER PRIOR TO [THE EFFECTIVE DATE OF THIS ACT] MAY CONTINUE TO RECEIVE ELECTRICITY SUPPLY FROM A SUPPLIER OTHER THAN THE DEFAULT SUPPLIER.

(3)(4) (a) Except as provided in subsection SUBSECTIONS (3)(b) THROUGH (3)(E) 4)(B) THROUGH (4)(E), a customer of a utility that has restructured in accordance with this chapter and that has an individual load with an

average monthly demand of greater than or equal to 5,000 kilowatts shall purchase its entire electricity supply from the competitive marketplace.

(b) A customer referred to in subsection ~~(3)(a)~~ (4)(A) may THAT IS RECEIVING ITS ELECTRICITY SUPPLY FROM THE COMPETITIVE MARKETPLACE MAY MAKE A ONE-TIME ELECTION TO enter into a ~~negotiated~~ PERMANENT power supply contract with the default supplier for service on or after July 1, 2004. These contracts must include the applicable provisions established by the commission pursuant to subsection ~~(4)~~ (5). THIS ELECTION MUST BE SUBMITTED TO THE COMMISSION IN WRITING NO LATER THAN 90 DAYS AFTER [THE EFFECTIVE DATE OF THIS ACT].

(c) A new customer with an estimated average monthly demand of greater than or equal to 5,000 kilowatts shall MAY enter into a power supply contract with the default supplier in order to receive default supply service. THE NEW CUSTOMER'S ELECTION OF AN ELECTRICITY SUPPLIER MUST BE SUBMITTED IN WRITING TO THE COMMISSION AT LEAST 90 DAYS BEFORE DELIVERY OF ELECTRICITY. These contracts must include the applicable provisions established by the commission pursuant to subsection ~~(4)~~ (5).

(D) A CUSTOMER REFERRED TO IN SUBSECTION ~~(3)(A)~~ (4)(A) THAT WAS RECEIVING ELECTRICITY FROM THE DEFAULT SUPPLIER ON [THE EFFECTIVE DATE OF THIS ACT] MAY CONTINUE TO RECEIVE ELECTRICITY FROM THE DEFAULT SUPPLIER.

(E) A CUSTOMER REFERRED TO IN SUBSECTION ~~(3)(A)~~ (4)(A) THAT IS A PUBLIC AGENCY, AS DEFINED IN 18-1-101, MAY ENTER INTO A POWER SUPPLY CONTRACT WITH THE DEFAULT SUPPLIER FOR DEFAULT SUPPLY SERVICE FOR ALL OR PART OF THE PUBLIC AGENCY'S LOAD. THESE CONTRACTS MUST INCLUDE THE APPLICABLE PROVISIONS ESTABLISHED BY THE COMMISSION PURSUANT TO SUBSECTION ~~(4)~~ (5).

~~(4)(5)~~ The commission shall adopt rules and establish rates and fees to enable customers referred to in subsections (1) through (3) to have reasonable opportunities to choose an electricity supplier or to receive default supply service IN ACCORDANCE WITH SUBSECTIONS ~~(1) THROUGH (3)~~ (2) THROUGH (4), while providing reasonable protection for small customers from higher or more unstable default supply service rates than would otherwise result if these choices were not offered.

~~(5)(6)~~ An electricity supplier licensed by the commission to offer electricity supply service to small customers may petition the commission for the opportunity to provide electricity to small customers. THE TOTAL AVERAGE MONTHLY DEMAND FOR ALL CUSTOMERS REFERRED TO IN SUBSECTION ~~(1)(A)~~ (2)(A) IN EACH CALENDAR YEAR THAT RECEIVE SERVICE FROM AN ELECTRICITY SUPPLIER THAT IS NOT THE DEFAULT SUPPLIER MAY NOT EXCEED 10,000 KILOWATTS IN A CALENDAR YEAR. The commission shall ensure that electricity supply service provided pursuant to this subsection is consistent with the requirements in subsection ~~(4)~~ (5) and the provision of default supply service pursuant to this chapter.

~~(6)(7)~~ Based on an analysis of the sources of costs of providing default supply service, the commission may:

~~(a)~~ establish different categories of default supply service customers to assist with the implementation of this section;

~~(b)~~ allocate default supply costs; and

~~(c)~~ develop default supply rates.

~~(7)(8)~~ (a) Except as provided in subsection ~~(7)(b)~~ (8)(B), a customer receiving default supply service may not resell the electricity.

~~(b)~~ A default supplier may implement demand reduction programs that reward customers for reducing demand under terms established by the commission.

~~(3)(8)(9)~~ (a) Except as provided in 69-5-101, 69-5-102, 69-5-104 through 69-5-112, and 69-8-402, a public utility currently doing business in Montana as part of a single integrated multistate operation, no portion of which lies within the basin of the Columbia River, may defer compliance with this chapter until a time that the public utility can reasonably implement customer choice in the state of the public utility's primary service territory.

~~(b)~~ To the extent that a public utility described in subsection ~~(8)(a)~~ (9)(A) becomes the successor in interest of another public utility that has restructured in accordance with this chapter, it shall assume responsibility only for the applicable customer choice plan of the acquired public utility.

~~(4)(9)(10)~~ Upon a request from a public utility with fewer than 50 customers, the commission shall waive compliance with the requirements of 69-8-104, 69-8-202 through 69-8-204, 69-8-208 through 69-8-211, 69-8-402, and this section."

———— **Section 10.** Section 69-8-202, MCA, is amended to read:

———— **"69-8-202. Public utility -- transition customer choice plans.** (1) All public utilities, pursuant to this chapter, shall submit a transition customer choice plan to the commission. Plans must be filed with the commission not later than 1 year before the date by which any customers of the public utility are entitled to choice of electricity supplier pursuant to 69-8-201. The commission may develop a schedule for public utilities that are required to file plans. The transition customer choice plan must demonstrate that the public utility meets all the requirements of this chapter.

———— (2) The commission shall develop a procedural schedule that includes:

———— (a) a preliminary transition customer choice plan determination including the commission's findings on whether the plan is complete and adequate subject to the requirements of this chapter; and

- ~~_____ (b) an opportunity for a public utility to file a revised plan based on the preliminary determination.~~
- ~~_____ (3) Unless waived by the public utility, the commission shall issue a final order approving, modifying, or denying the transition customer choice plan before 9 months after the date a public utility files a plan. All parties are afforded an opportunity for hearing before issuance of the final order.~~
- ~~_____ (4) The commission shall process a request for approval of a transition customer choice plan pursuant to the contested case procedures of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6.~~
- ~~_____ (5) On approval of the plan, the commission shall enforce the public utility obligations as incorporated in the plan and in the commission's final order."~~

Section 9. Section 69-8-203, MCA, is amended to read:

"69-8-203. Public utility -- ~~customer choice -- continued service --~~ CUSTOMER CHOICE -- education of customers. ~~(1) A customer is permitted to choose an electricity supplier pursuant to the deadlines established in 69-8-201. Public utilities shall propose a method for customers to choose an electricity supplier.~~

~~_____ (2) If a customer has not chosen an electricity supplier by the end of the transition period, a city, county, or consolidated government that is licensed as an electricity supplier may, upon application to and approval by the commission, become the default supplier to residential and commercial customers of a public utility within its jurisdiction. For customers that are not within the jurisdiction of a licensed and approved city, county, or consolidated government electricity supplier area, a public utility shall propose a method in the public utility's transition plans for assigning that customer to an electricity supplier. The commission shall establish an application process and guidelines for the designation of one or more default suppliers for the distribution area of each public utility.~~

~~_____ (3) A public utility may phase in customer choice to promote the orderly transition to a competitive market environment pursuant to the deadlines in 69-8-201.~~

~~_____ (4) Public DURING THE TRANSITION PERIOD, PUBLIC utilities shall educate their customers about customer choice options so that customers may make an informed choice of an electricity supplier from among the options, including pilot programs, electricity supplier service options, and other electricity supply options available under default supply service. This education process must give special emphasis to education efforts during the transition period."~~

Section 10. Section 69-8-204, MCA, is amended to read:

"69-8-204. Public utility -- functional separation, divestiture, and nondiscrimination. (1) To the

extent that a public utility is vertically integrated, a public utility shall functionally separate the public utility's electricity supply, retail transmission, and retail distribution, and regulated and unregulated retail energy services operations in the state of Montana, upon application to and approval from the commission.

~~(2) The commission may not order a public utility to divest itself of any generation assets or prohibit a public utility from divesting itself voluntarily of any generation assets.~~

~~(3)~~(2) Public utilities shall:

(a) prevent undue discrimination in favor of their own power supply, other services, divisions, or affiliates, if any;

(b) prevent any other forms of self-dealing that could result in noncompetitive electricity prices to customers; and

(c) grant customers and their electricity suppliers access to the public utility's retail transmission and distribution system on a nondiscriminatory basis at rates, terms, and conditions of service comparable to the use of the retail transmission and distribution system by the public utility and the public utility's affiliates.

~~(4)~~(3) The provisions of this section are satisfied if the public utility adopts and complies with a code of conduct consistent with the federal energy regulatory commission approved code of conduct pursuant to 18 CFR, part 37. ~~The commission shall promulgate rules relating to the codes of conduct, AND COMMISSION RULES AND ORDERS."~~

Section 11. Section 69-8-208, MCA, is amended to read:

"69-8-208. Public utility -- distribution services. ~~(1)~~ A public utility's distribution services provider shall:

~~(a)~~(1) file tariffs that make distribution facilities available to all electricity suppliers, transmission services providers, and customers on a nondiscriminatory and comparable basis;

~~(b)~~(2) build and maintain distribution facilities; ~~and~~

~~(c)~~(3) ~~be an emergency supplier of electricity and related services~~ provide default supply service; and

(4) provide or contract for emergency electricity supply and related services.

~~(2) When a distribution services provider acts as an emergency supplier of electricity and related services to customers, the electricity supplier that should have provided the electricity shall reimburse the distribution services provider at the higher of a multiple of the cost or a multiple of the then-existing market rate for that electricity. The commission shall determine and authorize the multiple used. The market rate is the highest published rate for electricity purchased within the local load control area at the time that the distribution services provider provided the emergency supply. A distribution services provider is not required to purchase any~~

reserve supply of electricity to fulfill this obligation."

~~Section 14.~~ Section 69-8-209, MCA, is amended to read:

~~"69-8-209. Public utilities -- transmission services.~~ For transmission services regulated by the commission, public utilities, through filed tariffs, shall A transmission services provider:

~~(1) shall make transmission services available for nondiscriminatory and comparable use by all electricity suppliers, by distribution services providers, and by customers, subject to the terms and conditions of all applicable tariffs; and~~

~~(2) may be the emergency supplier of electricity and related services under contract with the distribution services provider to all retail customers regardless of the size of the customer."~~

Section 12. Section 69-8-210, MCA, is amended to read:

"69-8-210. Public utilities -- electricity supply. ~~(1) On the effective date of a commission order implementing a public utility's transition plan pursuant to 69-8-202, the public utility shall remove its generation assets from the rate base:~~

~~(2) During the transition period, the commission may establish cost-based prices for electricity supply service for customers that do not have a choice of electricity supply service or that have not yet chosen an electricity supplier:~~

~~(3) If the transition period is extended, then the customers' distribution services provider shall:~~

~~(a) extend any cost-based contract with the distribution services provider's affiliate supplier for a term of not more than 3 years; or~~

~~(b) purchase electricity from the market; and~~

~~(c) use a mechanism that recovers electricity supply costs in rates to ensure that those costs are fully recovered.~~ (1) A public utility's distribution services provider shall provide default supply service.

(2) The commission shall adopt rules that establish guidelines that provide the basis for the default supplier's resource planning and procurement activities and the commission's review and consideration of the default supplier's requests for recovery of electricity supply costs.

(3) The commission shall establish an electricity cost recovery mechanism that allows a default supplier to fully recover prudently incurred electricity supply costs, subject to the provisions of subsection (2). The cost recovery mechanism must provide for prospective rate adjustments for cost differences resulting from cost changes, load changes, and the time value of money on the differences.

(4) The commission's review of the electricity supply costs incurred by a default supplier must be based on facts that were known or should reasonably have been known by the default supplier at the time it made the decisions that resulted in incurring the costs.

(5) The commission may direct a default supplier to offer its customers multiple default supply service options if the commission determines that those options are in the public interest and contribute to the purposes ARE CONSISTENT WITH THE PROVISIONS of 69-8-104 and are consistent with the provisions of 69-8-201.

(6) Notwithstanding any service options that the commission may require pursuant to subsection (5), a default supplier shall offer its customers the option of purchasing a product composed of or supporting power from certified environmentally preferred resources that include but are not limited to wind, solar, geothermal, and biomass, subject to review and approval by the commission. The commission shall ensure that these resources have been certified as meeting industry-accepted standards.

~~(4)~~(7) If a public utility intends to be an electricity supplier through an unregulated division, then the public utility must be licensed as an electricity supplier pursuant to 69-8-404."

Section 13. Section 69-8-211, MCA, is amended to read:

"69-8-211. Public utilities -- ~~transition-stranded~~ TRANSITION costs and charges -- ~~rate moratorium~~.

(1) Subject to the provisions of this section, the commission shall allow recovery of the following categories of ~~transition-stranded~~ TRANSITION costs:

(a) the unmitigable costs of qualifying facility contracts, including reasonable buyout or buydown costs, for which the contract price of generation is above the market price for generation;

(b) the unmitigable costs of energy supply-related regulatory assets and deferred charges that exist because of current regulatory practices and that can be accounted for up to the effective date of the commission's final order regarding a public utility's ~~transition-customer choice~~ TRANSITION plan, including costs, expenses, and reasonable fees related to issuing of ~~transition-stranded costs~~ TRANSITION bonds;

(c) the unmitigable ~~transition-stranded~~ TRANSITION costs related to public utility-owned generation and other power purchase contracts, except that recovery of those costs is limited to the amount accruing during the first 4 years after the commission enters an order pursuant to 69-8-202(3); and

(d) other ~~transition-stranded~~ TRANSITION costs ~~as that~~ may qualify for recovery under this section.

(2) ~~Transition-Stranded~~ TRANSITION costs as determined by the commission upon an affirmative showing by a public utility must meet the following requirements:

(a) ~~Transition-Stranded~~ TRANSITION costs must reflect all reasonable mitigation by the public utility,

including but not limited to good faith efforts to renegotiate contracts, buying out or buying down contracts, and refinancing through ~~transition stranded costs~~ TRANSITION bonds.

(b) The value of all generation-related assets and liabilities and OTHER electricity supply ~~costs~~ OBLIGATIONS must be reasonably demonstrable and must be considered on a net basis, and methods for determining value must include but are not limited to:

- (i) estimating future market values of electricity and ancillary services provided by the assets;
- (ii) appraisal by independent third-party professionals; or
- (iii) a competitive bid sale.

(c) Investments and power purchase contracts must have been previously allowed in rates or, if not previously allowed in rates, must be determined to be used and useful to ratepayers in connection with the commission's approval of the utility's ~~transition customer choice~~ TRANSITION plan.

(d) Unless otherwise provided for in this chapter, only costs related to ~~existing~~ investments and power purchase contracts identified in subsection (2)(c) THAT WERE ALLOWED IN RATES BEFORE MAY 2, 1997, and costs arising from those investments and power purchase contracts may be included as ~~transition stranded~~ TRANSITION costs.

(3) (a) On commission approval of the amount of a public utility's ~~transition stranded~~ TRANSITION costs, those costs must be recovered through the imposition of a ~~transition stranded costs~~ TRANSITION charge.

(b) A ~~transition stranded costs~~ TRANSITION charge may not be collected from customers for:

- (i) new or additional loads of 1,000 kilowatts or greater that were first served by the public utility after December 31, 1996; or
- (ii) loads served by that customer's own generation.

(c) Subject to commission approval, a public utility and a customer may agree to alter the customer's ~~transition stranded costs~~ TRANSITION charge payment schedule. Public utilities may file with the commission tariffs for electric service rates that foster economic development or retention of existing customers within the state, including generally available rate schedules. ~~Transition Stranded costs~~ TRANSITION charges are the only charges that may be imposed upon a customer class to recover ~~transition stranded~~ TRANSITION costs under this section. A separate exit fee may not be charged under this section.

(4) ~~Transition charges Stranded costs~~ TRANSITION CHARGES must be imposed within a ~~transition cost stranded costs~~ TRANSITION COST recovery period approved by the commission on a case-by-case basis. Except for ~~transition stranded~~ TRANSITION costs recovered under subsection (1)(c), categories of ~~transition stranded~~ TRANSITION costs may have varying ~~transition cost stranded costs~~ TRANSITION COSTS recovery periods.

(5) Approval of ~~transition-stranded~~ TRANSITION costs and collection of those ~~transition-stranded~~ TRANSITION costs through ~~transition-stranded-costs~~ TRANSITION charges is a settlement of all ~~transition-stranded~~ TRANSITION costs claims by a public utility. A public utility seeking to recover ~~transition-stranded~~ TRANSITION costs through any means not authorized by this chapter may not collect ~~transition-stranded-costs~~ TRANSITION charges with respect to these ~~transition-stranded~~ TRANSITION costs.

~~(6) Except as provided in subsection (7), public utilities shall implement a rate moratorium during the transition period from July 1, 2000, through June 30, 2002, and only for those customers subject to the provisions of 69-8-201(1)(b), public utilities may not increase that increment of rates normally allocated to electric supply-related costs above the increment associated with electric supply-related costs reflected in rates in effect on July 1, 1998. Public utilities may propose increases to those increments of rates normally allocated to transmission and distribution costs.~~

~~———— (7) Excepted from the provisions of subsection (6) are:~~

~~———— (a) increased costs related to universal system benefits programs greater than those currently in rates, including the treatment of universal system benefits program costs as an expense;~~

~~———— (b) increased costs necessary to implement full customer choice, including but not limited to metering, billing, and technology. Those costs must be recovered from the customers on whose behalf the increased costs are incurred.~~

~~———— (c) subject to commission approval, an extraordinary event resulting in an 8% power supply-related annual revenue requirement increase from July 1, 2000, through June 30, 2002;~~

~~———— (d) the increase or decrease in the annual state and local property tax expense that has occurred since May 2, 1997.~~

~~———— (8) Notwithstanding subsections (6) and (7), during the transition period, public utilities may not charge rates or collect costs that include costs reallocated to transition costs at a level higher than the public utility would reasonably expect to recover in rates had the current regulatory system remained intact.~~

~~———— (9) Public utilities shall apply savings resulting under 69-8-503 toward the rate moratorium pursuant to subsection (6).~~

~~———— (10) Before July 1, 2002, public utilities may accelerate the amortization of accumulated deferred investment tax credits associated with transmission, distribution, and the general plant as an adjustment to earnings if electric earnings fall below 9.5% earned return on average equity. The public utility may include the flow through of investment tax credits so that the public utility's earned return on equity is maintained at 9.5%. Accumulated deferred investment tax credits amortized under this subsection may not be reflected in operating~~

income for ratemaking purposes:

———(11) The commission shall issue the accounting orders necessary to align rate moratorium timing and requirements to actual transition bonds savings."

———**Section 16.** Section 69-8-301, MCA, is amended to read:

———"**69-8-301. Cooperative utility -- transition plan for customer customer choice plans.** (1) Except as provided in 69-8-311, on or before July 1, 2006, the local governing body of a cooperative utility shall adopt a transition customer choice plan:

———(2) (a) Except as provided in subsection (2)(b), transition plans must contain a transition period that may not end later than July 1, 2007. At the conclusion of the transition period, all customers must have the opportunity to choose an electricity supplier:

———(b) If after a pilot program for customers of a cooperative utility with loads less than 1,000 kilowatts a competitive market, technology, or other conditions precedent to full customer choice have not developed, then the transition plan may be altered by the cooperative utility's governing body for those customers:

———(3)(2) This chapter does not require the cooperative utility to divest itself of any generation, transmission, or distribution assets or prohibit a cooperative utility from divesting itself voluntarily of those assets:

———(4)(3) A If a cooperative utility's local governing body adopts a customer choice plan, the cooperative utility shall certify to the commission that the local governing body has adopted a transition customer choice plan. In the cooperative utility's certification filing, the cooperative utility shall provide to the commission documentation that the cooperative utility's transition customer choice plan is consistent with this chapter."

———**Section 17.** Section 69-8-302, MCA, is amended to read:

———"**69-8-302. Cooperative utility -- customer choice -- education of customers -- continued service.** (1) Except as provided in 69-8-311, cooperative utilities shall propose a method for cooperative utility customers to choose an electricity supplier:

———(2) Customer choice may be phased in to promote the orderly transition to a competitive market environment:

———(3)(2) Cooperative utilities shall educate their customers about customer choice so that customers may make an informed choice of an electricity supplier. This education process must give special emphasis to education efforts during the transition period:

———(4)(3) If a cooperative utility customer has not chosen an electricity supplier by the end of the transition

period, then the electricity supplier is the cooperative utility that filed the plan or an electricity supplier designated by the cooperative utility."

~~Section 18.~~ Section 69-8-303, MCA, is amended to read:

~~"69-8-303. Cooperative utility -- functional separation.~~ (1) To the extent that a cooperative utility is vertically integrated, the cooperative utility has the option to functionally separate the cooperative utility's electricity supply, transmission, distribution, and unregulated energy services assets and operations in the state of Montana. If the cooperative utility intends to exercise this option, the cooperative utility's transition customer choice plan must explain the cooperative utility's proposed separation process.

~~(2) A cooperative utility shall describe in the transition customer choice plan measures taken by the cooperative utility to prevent undue discrimination in favor of the cooperative utility's own electricity supply, if any, and in favor of the cooperative utility's affiliates, if any:~~

~~(3) Cooperative utilities may establish a code of conduct similar to the federal energy regulatory commissions code of conduct established in 18 CFR, part 37."~~

~~Section 19.~~ Section 69-8-304, MCA, is amended to read:

~~"69-8-304. Cooperative utility -- distribution services.~~ (1) A cooperative utility transition customer choice plan must include distribution facility tariffs that must be established by the cooperative utility's local governing body and must include the obligation for the cooperative utility to:

~~(a) make distribution services available to all electricity suppliers, transmission services providers, and customers on a nondiscriminatory and comparable basis;~~

~~(b) build and maintain distribution facilities; and~~

~~(c) be an emergency supplier of electricity and related services.~~

~~(2) If a distribution services provider acts as an emergency supplier of electricity and related services to a customer of an electricity supplier, then the electricity supplier failing to meet contractual obligations shall reimburse the distribution services provider at an amount to be set by the local governing body but may not exceed the higher of a multiple of the cost or a multiple of the then-existing market rate for that electricity. The market rate is the highest published rate for electricity purchased within the local load control area at the time that the distribution services provider provided the emergency supply. A distribution services provider is not required to purchase any reserve supply of electricity to fulfill this obligation.~~

~~(3) Recoverable costs for cooperative utilities must be based upon standard financial reporting~~

statements and may reflect comparable rates of return of other utilities."

~~Section 20.~~ Section 69-8-308, MCA, is amended to read:

~~"69-8-308. Cooperative utility -- transmission services.~~ Transition Customer choice plans must state whether the cooperative utility's transmission services, if any, are regulated by the federal energy regulatory commission. If those services are not regulated by the federal energy regulatory commission, the plan must provide the basis for comparable and nondiscriminatory use by all electricity suppliers, distribution services providers, and customers. A cooperative utility's local governing body shall establish the cooperative utility's transmission tariffs."

~~Section 21.~~ Section 69-8-309, MCA, is amended to read:

~~"69-8-309. Cooperative utility -- electricity supply.~~ (1) A transition customer choice plan may provide for a cooperative utility to own electric generation assets and for a cooperative utility to offer electricity supply service. The local governing body shall establish the price for electricity supply service offered by a cooperative utility:

~~(2) Cooperative utilities intending to offer electricity supply service shall comply with the provisions of 69-8-404.~~

~~(3) If a cooperative utility offers electricity supply service competitively to customers using a public utility's distribution facilities, the cooperative utility shall create an affiliated for-profit entity or similar structure to serve those customers that allows the entity to be taxed at the same level as other for-profit electricity suppliers."~~

~~Section 22.~~ Section 69-8-310, MCA, is amended to read:

~~"69-8-310. Cooperative utility -- transition stranded costs and charges.~~ (1) For the purposes of this section, "transition stranded costs" means those costs, liabilities, and investments that cooperative utilities would reasonably expect to recover if fully bundled ratemaking conditions continued and that may not be recoverable as a result of the transition to a competitive market for electricity supply service:

~~(2) Transition Stranded costs eligible for treatment include but are not limited to:~~

~~(a) regulatory assets and deferred charges typically recoverable in rates;~~

~~(b) nonutility and utility power purchase contracts;~~

~~(c) existing commitments or obligations incurred before May 2, 1997, and other cooperative utility investments rendered uneconomic as a result of the implementation of this chapter or the introduction of retail~~

wheeling through federal legislation or regulation;

~~——— (d) costs associated with any renegotiation or buyout of the existing nonutility and utility power purchase contracts;~~

~~——— (e) revenue that appears as a portion of a facility charge necessary to meet debt service requirements, including any coverage amounts required by any mortgage, indenture, or other financing document;~~

~~——— (f) costs of refinancing and retiring debt of the cooperative utility and associated federal and state tax liabilities or other utility costs for which the use of transition stranded costs bonds would benefit customers; and~~

~~——— (g) all costs, expenses, and reasonable fees related to transition stranded costs bonds.~~

~~——— (3) For a cooperative utility's transition stranded costs to be fully recoverable, the cooperative utility shall make reasonable efforts to mitigate those transition stranded costs.~~

~~——— (4) Cooperative utilities may not collect any more costs, including costs reallocated to transition stranded costs, at a level higher than would otherwise be anticipated had the current regulatory system remained intact, with the exception of:~~

~~——— (a) increased costs related to universal system benefits charges; and~~

~~——— (b) increased costs of metering, billing, and technology necessary to facilitate full customer choice.~~

~~——— (5) Subject to the obligation to mitigate transition stranded costs, a cooperative utility shall fully recover transition stranded costs as approved by its local governing body. Unmitigable transition stranded costs are nonbypassable and collected on a nondiscriminatory basis from consumers using the cooperative utility's distribution facilities in the receipt of electricity supply services.~~

~~——— (6) A cooperative utility may not collect transition stranded costs from a customer for which the cooperative utility does not have and never has had an obligation to incur costs to provide electricity supply service unless the unmitigated transition stranded costs were incurred solely on behalf of the customer.~~

~~——— (7) Approval of and collection of transition stranded costs through a transition stranded costs charge is a settlement of all transition stranded costs claims by a cooperative utility. A cooperative utility seeking to recover transition stranded costs through any other means may not collect transition stranded costs charges."~~

~~——— **Section 23.** Section 69-8-311, MCA, is amended to read:~~

~~——— "**69-8-311. Cooperative utility -- exemption.** (1) Within 1 year after May 2, 1997, a cooperative utility may file a notice with the commission that the cooperative utility does not intend to open the cooperative utility's distribution facilities to electricity suppliers and does not intend to adopt a transition customer choice plan. Except as otherwise provided in the universal system benefits program pursuant to 69-8-402, a cooperative utility filing~~

notice under this section is exempt from the provisions and requirements of this chapter.

~~———— (2) A cooperative utility filing a notice under this section:~~

~~———— (a) may elect later to adopt a transition customer choice plan in accordance with this chapter; and~~

~~———— (b) may not use a public utility's distribution facilities unless preexisting contracts exist."~~

SECTION 14. SECTION 69-8-301, MCA, IS AMENDED TO READ:

"69-8-301. Cooperative utility -- transition plan for customer choice. (1) Except as provided in 69-8-311, on or before July 1, 2006, the local governing body of a cooperative utility shall adopt a transition plan.

(2) (a) Except as provided in subsection (2)(b), transition plans must contain a transition period that may not end later than July 1, ~~2007~~ 2027. At the conclusion of the transition period, all customers must have the opportunity to choose an electricity supplier.

(b) If after a pilot program for customers of a cooperative utility with loads less than 1,000 kilowatts a competitive market, technology, or other conditions precedent to full customer choice have not developed, then the transition plan may be altered by the cooperative utility's governing body for those customers.

(3) This chapter does not require the cooperative utility to divest itself of any generation, transmission, or distribution assets or prohibit a cooperative utility from divesting itself voluntarily of those assets.

(4) A cooperative utility's local governing body shall certify to the commission that the local governing body has adopted a transition plan. In the cooperative utility's certification filing, the cooperative utility shall provide to the commission documentation that the cooperative utility's transition plan is consistent with this chapter."

Section 15. Section 69-8-402, MCA, is amended to read:

"69-8-402. Universal system benefits programs. (1) Universal system benefits programs are established for the state of Montana to ensure continued funding of and new expenditures for energy conservation, renewable resource projects and applications, and low-income energy assistance ~~during the transition period and into the future.~~

(2) Beginning January 1, 1999, 2.4% of each utility's annual retail sales revenue in Montana for the calendar year ending December 31, 1995, is established as the initial funding level for universal system benefits programs. ~~To collect this amount of funds on an annualized basis in 1999, the commission shall establish rates for utilities subject to its jurisdiction and the governing boards of cooperatives shall establish rates for the cooperatives. Except as provided in subsection (7), these~~ TO COLLECT THIS AMOUNT OF FUNDS ON AN ANNUALIZED

BASIS IN 1999, THE COMMISSION SHALL ESTABLISH RATES FOR UTILITIES SUBJECT TO ITS JURISDICTION AND THE GOVERNING BOARDS OF COOPERATIVES SHALL ESTABLISH RATES FOR THE COOPERATIVES. These universal system benefits charge rates must remain in effect until July 1, 2003 through December 31, 2005.

(a) The recovery of all universal system benefits programs costs imposed pursuant to this section is authorized through the imposition of a universal system benefits charge assessed at the meter for each local utility system customer as provided in this section.

(b) ~~Utilities~~ A utility must receive credit toward annual funding requirements for ~~a~~ the utility's internal programs or activities that qualify as universal system benefits programs, including those amortized or nonamortized portions of expenditures for the purchase of power that are for the acquisition or support of renewable energy, conservation-related activities, or low-income energy assistance, and for large customers' programs or activities as provided in subsection (7). The department of revenue shall review claimed credits of the utilities and large customers pursuant to 69-8-414.

(c) A utility's distribution services provider at which the sale of power for final end use occurs is the utility that receives credit for the universal system benefits programs expenditure.

(d) A customer's distribution services provider shall collect universal system benefits funds less any allowable credits.

(e) For a utility to receive credit for ~~low-income-related~~ low-income-related expenditures, the activity must have taken place in Montana.

(f) If a utility's or a large customer's credit for internal activities does not satisfy the annual funding provisions of subsection (2), then the utility shall make a payment to the universal system benefits fund established in 69-8-412 for any difference.

(3) Cooperative utilities may collectively pool their statewide credits to satisfy their annual funding requirements for universal system benefits programs and low-income energy assistance.

(4) A utility's ~~transition customer choice~~ TRANSITION plan must describe how the utility proposes to provide for universal system benefits programs, including the methodologies, such as cost-effectiveness and need determination, used to measure the utility's level of contribution to each program.

(5) A utility's minimum annual funding requirement for low-income energy and weatherization assistance is established at 17% of the utility's annual universal system benefits funding level and is inclusive within the overall universal system benefits funding level.

(a) A utility must receive credit toward the utility's low-income energy assistance annual funding requirement for the utility's internal low-income energy assistance programs or activities.

(b) If a utility's credit for internal activities does not satisfy its annual funding requirement, then the utility shall make a payment for any difference to the universal low-income energy assistance fund established in 69-8-412.

(6) An individual customer may not bear a disproportionate share of the local utility's funding requirements, and a sliding scale must be implemented to provide a more equitable distribution of program costs.

(7) (a) A large customer:

(i) shall pay a universal system benefits programs charge with respect to the large customer's qualifying load equal to the lesser of:

(A) \$500,000, less the large customer credits provided for in this subsection (7); or

(B) the product of 0.9 mills per kilowatt hour multiplied by the large customer's total kilowatt hour purchases, less large customer credits with respect to that qualifying load provided for in this subsection (7);

(ii) must receive credit toward that large customer's universal system benefits charge for internal expenditures and activities that qualify as a universal system benefits programs expenditure, and these internal expenditures must include but not be limited to:

(A) expenditures that result in a reduction in the consumption of electrical energy in the large customer's facility; and

(B) those amortized or nonamortized portions of expenditures for the purchase of power at retail or wholesale that are for the acquisition or support of renewable energy or conservation-related activities.

(b) Large customers making these expenditures must receive a credit against the large customer's universal system benefits charge, except that any of those amounts expended in a calendar year that exceed that large customer's universal system benefits charge for the calendar year must be used as a credit against those charges in future years until the total amount of those expenditures has been credited against that large customer's universal system benefits charges.

(8) A public utility shall prepare and submit an annual summary report of the public utility's activities relating to all universal system benefits programs to the commission, ~~and~~ the department of revenue, ~~and the transition advisory committee provided for in 69-8-501,~~ AND THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE PROVIDED FOR IN [SECTION 3]. A cooperative utility shall prepare and submit annual summary reports of activities to the cooperative utility's respective local governing body, ~~and~~ the statewide cooperative utility office; ~~and the transition advisory committee~~ AND THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE. The statewide cooperative utility office shall prepare and submit an annual summary report of the activities of individual cooperative utilities, including a summary of the pooling of statewide credits, as provided in subsection

(3), to the department of revenue ~~and to the transition advisory committee~~ AND THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE. The annual report of a public utility or of the statewide cooperative utility office must include but is not limited to:

(a) the types of internal utility and customer programs being used to satisfy the provisions of this chapter;

(b) the level of funding for those programs relative to the annual funding requirements prescribed in subsection (2); and

(c) any payments made to the statewide funds in the event that internal funding was below the prescribed annual funding requirements.

(9) A utility or large customer filing for a credit shall develop and maintain appropriate documentation to support the utility's or the large customer's claim for the credit.

(10) (a) A large customer claiming credits for a calendar year shall submit an annual summary report of its universal system benefits programs activities and expenditures to the department of revenue and to the large customer's utility. The annual report of a large customer must identify each qualifying project or expenditure for which it has claimed a credit and the amount of the credit. Prior approval by the department of revenue or the utility is not required, except as provided in subsection (10)(b).

(b) If a large customer claims a credit that the department of revenue disallows in whole or in part, the large customer is financially responsible for the disallowance. A large customer and the large customer's utility may mutually agree that credits claimed by the large customer be first approved by the utility. If the utility approves the large customer credit, the utility may be financially responsible for any subsequent disallowance."

Section 16. Section 69-8-403, MCA, is amended to read:

"69-8-403. Commission authority -- rulemaking authority. (1) Beginning on the effective date of a commission order regarding a public utility's ~~transition customer choice~~ TRANSITION plan, the commission shall regulate the public utility's retail transmission, ~~and distribution, and default supply~~ services within the state of Montana, as provided in this chapter, ~~and may not regulate the price of electricity supply except as electricity supply may be procured as provided in this section:~~

~~— (a) by one or more default suppliers for those customers not being served by a competitive supplier; or~~

~~— (b) by the distribution function of a public utility for those customers that are not being served by a competitive electricity supplier as provided by commission rules. During the transition period, those procurements may include a cost-based contract from a supply affiliate or an unregulated division.~~

~~— (2) The commission shall decide if there is workable competition in the electricity supply market by~~

~~determining whether competition is sufficient to inhibit monopoly pricing or anticompetitive price leadership. In reaching a decision, the commission may not rely solely on market share estimates.~~

~~(3)(2)~~ The commission shall license electricity suppliers and enforce licensing provisions pursuant to 69-8-404.

~~(4)(3)~~ The commission shall promulgate rules that identify the licensees and ensure that the offered electricity supply is provided as offered and is adequate in terms of quality, safety, and reliability.

~~(5)(4)~~ The commission shall establish just and reasonable rates through established ratemaking principles for public utility default supply, distribution, and transmission services and shall regulate these services. The commission may approve rates and charges for ~~electricity distribution and transmission~~ those services based on alternative forms of ratemaking such as performance-based ratemaking, on a demonstration by the public utility that the alternative method complies with this chapter, and on the public utility's ~~transition customer choice~~ TRANSITION plan.

~~(6)(5)~~ The commission shall certify that a cooperative utility has adopted a ~~transition customer choice~~ TRANSITION plan that complies with this chapter. A cooperative utility's ~~transition customer choice~~ TRANSITION plan is considered certified 60 days after the cooperative utility files for certification.

~~(7)(6)~~ The commission shall promulgate rules that protect consumers, distribution services providers, and electricity suppliers from anticompetitive and abusive practices.

~~(8)~~ The commission shall license default suppliers and enforce default licensing provisions pursuant to 69-8-416.

~~(9)~~ The commission shall promulgate rules for the licensing of default suppliers on or before December 1, 1999.

~~(10)(7) (a)~~ Until the The commission has determined that shall monitor whether or not workable competition has developed for small customers, a default supplier's obligation to serve remains.

~~(b)~~ If the commission makes a determination that workable competition has developed for small customers, the commission shall provide a report to the legislature that includes recommendations for legislative implementation of customer choice for small customers.

(7) (A) AFTER JULY 1, 2010, THE COMMISSION SHALL CONTINUOUSLY MONITOR WHETHER OR NOT WORKABLE COMPETITION HAS DEVELOPED FOR SMALL CUSTOMERS.

(B) IF THE COMMISSION DETERMINES THAT WORKABLE COMPETITION HAS DEVELOPED FOR SMALL CUSTOMERS AFTER JULY 1, 2010, THE COMMISSION SHALL PROVIDE A REPORT TO THE LEGISLATURE THAT INCLUDES RECOMMENDATIONS FOR LEGISLATIVE IMPLEMENTATION OF CUSTOMER CHOICE FOR SMALL CUSTOMERS.

~~(11)~~(8) In addition to promulgating rules expressly provided for in this chapter, the commission may promulgate any other rules necessary to carry out the provision of this chapter.

~~(12)~~(9) This chapter does not give the commission the authority to:

(a) regulate cooperative utilities in any manner other than reviewing certification filings for compliance with this chapter; or

(b) compel any change to a cooperative utility's certification filing made pursuant to this chapter."

Section 17. Section 69-8-408, MCA, is amended to read:

"69-8-408. Penalties -- license revocation. (1) The commission may begin a proceeding to revoke or suspend a license of an electricity supplier, impose a penalty, or both, for just cause on the commission's own investigation or upon the complaint of an affected party if it is established that the electricity supplier:

(a) intentionally provided false information to the commission;

(b) ~~switched; the electricity supply for a customer or caused to be switched;~~ the electricity supply for a customer to be switched without first obtaining the ~~customers~~ customer's written permission;

(c) failed to provide a reasonably adequate supply of electricity for its customers in Montana; or

(d) committed fraud or engaged in deceptive practices.

(2) Any person selling or offering to sell electricity in this state in violation of 69-8-404, 69-8-410, and this section is subject to a fine of not less than \$100 or more than \$1,000 for the violation or a license revocation or suspension. Each day of each violation constitutes a separate violation.

~~(3) The fine must be recovered in a civil action upon the complaint by the commission in any court of competent jurisdiction.~~

~~(4)~~(3) A license revocation proceeding under this section is a contested case proceeding pursuant to the Montana Administrative Procedure Act, Title 2, chapter 4, part 6.

(4) (a) If a distribution services provider provides or contracts for the provision of emergency electricity supply and related services to retail customers, the electricity supplier that should have provided the electricity shall reimburse the distribution services provider for the higher of the customers' contracted electricity supply rates or the existing market rates multiplied by the quantity of electricity supply service provided.

(b) (i) An electricity supplier's failure to deliver electricity supplies and the necessity of an emergency supply response by the distribution services provider pursuant to 69-8-208 is justification for a commission proceeding to revoke or suspend a license of an electricity supplier, impose a penalty, or both.

(ii) For purposes of this subsection (4), the actual costs and rates for the electricity provided by the

distribution services provider as emergency supply must be used as the basis of any fine levied on an electricity supplier pursuant to subsection (4)(b)(i). The fine must be determined by an amount to be applied to actual costs and rates of electricity provided for the emergency service. The commission shall determine the amount to be used and how the amount is applied.

(5) Fines imposed under this section must be recovered in a civil action upon a complaint filed by the commission in any court of competent jurisdiction."

Section 18. Section 69-8-409, MCA, is amended to read:

"69-8-409. Bill information -- customer nonpayment -- commission rulemaking. (1) ~~Electrical~~ Electricity bills to consumers must disclose each component of the ~~electrical~~ bill in accordance with rules promulgated by the commission. ~~Electrical~~ Electricity bills must disclose but are not limited to the following:

- (a) distribution ~~and transmission~~ AND TRANSMISSION charges;
- ~~(b) transmission charges;~~
- ~~(b)(c)(B)~~ (B) electricity supply charges;
- ~~(e)(d)(C)~~ (C) ~~competitive transition stranded costs~~ TRANSITION charges; and
- ~~(d)(e)(D)~~ (D) universal system benefits charges.

(2) The commission shall promulgate rules establishing the procedures relating to how and when an electricity supplier may discontinue service to a customer because of the ~~customers~~ customer's nonpayment and the procedures relating to reconnection, except that those rules may not apply to electricity suppliers that are cooperative utilities.

(3) Local governing bodies of a cooperative utility shall retain authority for cooperative utilities regarding:

- (a) customer nonpayment and reconnection; and
- (b) information contained in ~~electrical~~ electricity bills to consumers."

Section 19. Section 69-8-503, MCA, is amended to read:

"69-8-503. ~~Transition Stranded~~ TRANSITION costs financing. (1) A utility may, ~~after July 1, 1997,~~ apply to the commission for a determination that certain ~~transition stranded~~ TRANSITION costs may be recovered through the issuance of ~~transition stranded costs~~ TRANSITION bonds. If ~~transition stranded costs~~ TRANSITION bonds are issued, cost savings associated with and resulting from the bonds must benefit customers. After the issuance of a financing order, the utility retains sole discretion regarding whether to sell, assign, or otherwise transfer or pledge ~~transition stranded costs~~ TRANSITION property or to cause the ~~transition stranded costs~~ TRANSITION bonds

to be issued, including the right to defer or postpone the sale, assignment, transfer, pledge, or issuance. If ~~transition stranded costs~~ TRANSITION bonds are not issued within 4 years of the issuance of the financing order, the financing order must terminate. The utility may apply for an extension or renewal of a financing order.

(2) (a) The commission may issue financing orders in accordance with this section to facilitate the recovery, reimbursement, financing, or refinancing of ~~transition stranded costs~~ TRANSITION costs and the acquisition of ~~transition stranded costs~~ TRANSITION property. A financing order may be adopted only upon the application of a utility and may ~~only~~ become effective in accordance with its terms only after the utility files with the commission the utility's written consent to all terms and conditions of the financing order. A financing order may specify how amounts collected from a customer are allocated between fixed ~~transition stranded costs~~ TRANSITION amounts and other charges.

(b) A financing order must include, without limitation, a procedure for the expeditious approval by the commission of periodic adjustments to nonbypassable rates and charges associated with fixed ~~transition stranded costs~~ TRANSITION amounts included in the order to ensure recovery of all ~~transition stranded costs~~ TRANSITION costs and the costs of capital associated with the proposed recovery, reimbursement, financing, or refinancing of ~~transition stranded costs~~ TRANSITION costs and the acquisition of ~~transition stranded costs~~ TRANSITION property, including the costs of issuing, servicing, and retiring the ~~transition stranded costs~~ TRANSITION bonds contemplated by the financing order. The order must set forth the term over which the ~~transition stranded costs~~ TRANSITION bonds are to be paid, but those terms may not exceed 20 years. These adjustments may not impose fixed ~~transition stranded costs~~ TRANSITION amounts upon customer classes that were not subject to the fixed ~~transition stranded costs~~ TRANSITION amounts in the pertinent financing order.

(3) (a) Notwithstanding any other provision of law, and except as otherwise provided in this section with respect to ~~transition stranded costs~~ TRANSITION property that has been made the basis for the issuance of ~~transition stranded costs~~ TRANSITION bonds and upon the issuance of ~~transition stranded costs~~ TRANSITION bonds, the financing orders and the fixed ~~transition stranded costs~~ TRANSITION amounts must be irrevocable.

(b) If ~~transition stranded costs~~ TRANSITION bonds have been issued, the commission may not by rescinding, altering, or amending the financing order or otherwise:

(i) revalue or revise for ratemaking purposes the ~~transition stranded costs~~ TRANSITION costs or the costs of recovering, reimbursing, financing, or refinancing the ~~transition stranded costs~~ TRANSITION costs and acquiring ~~transition stranded costs~~ TRANSITION property;

(ii) determine that the fixed ~~transition stranded costs~~ TRANSITION amounts or rates are unjust or unreasonable; or

(iii) in any way reduce or impair the value of ~~transition stranded costs~~ TRANSITION property either directly or indirectly by taking fixed ~~transition stranded costs~~ TRANSITION amounts into account when setting other rates for the utility.

(c) The total amount of the ~~transition stranded costs~~ TRANSITION property may not be subject to reduction, impairment, postponement, or termination.

(d) Except as otherwise provided in this section, the state pledges and agrees with the assignees and pledgees of ~~transition stranded costs~~ TRANSITION property and ~~transition stranded costs~~ TRANSITION bondholders that the state may not limit or alter the fixed ~~transition stranded costs~~ TRANSITION amounts, ~~transition stranded costs~~ TRANSITION property, financing orders, or any right under the bonds until the bonds, together with the interest on the bonds, are fully met and discharged. The board, as agent for the state, is authorized to include this pledge and undertaking for the state in these bonds.

(e) Notwithstanding any other provision of this section, the commission shall approve those adjustments to the fixed ~~transition stranded costs~~ TRANSITION amounts ~~as that~~ may be necessary to ensure timely recovery of all ~~transition stranded~~ TRANSITION costs that are the subject of the pertinent financing order and the costs of capital associated with the recovery, reimbursement, financing, or refinancing of ~~transition stranded costs~~ TRANSITION and acquiring ~~transition stranded costs~~ TRANSITION property including the costs of issuing, servicing, and retiring the ~~transition stranded costs~~ TRANSITION bonds contemplated by the financing order. The adjustments may not impose fixed ~~transition stranded costs~~ TRANSITION amounts upon customer classes that were not subject to the fixed ~~transition stranded costs~~ TRANSITION amounts in the pertinent financing order.

(4) (a) Financing orders do not constitute a debt or liability of the state or of any political subdivision of the state if issued through the board and do not constitute a pledge of the full faith and credit of the state or any of the state's political subdivisions if issued through the board. The financing orders are payable solely from the funds provided under this section. The bonds and offering documents must contain on their face a statement to the following effect:

This bond may not constitute an indebtedness or a loan of credit of the state of Montana or any political subdivision of the state of Montana within any constitutional or statutory provision. Neither the full faith and credit nor the taxing power of the state of Montana is pledged to the payment of the principal or interest on this bond, and neither the state of Montana nor any political subdivision of the state of Montana is obligated, directly, indirectly, or contingently, to levy or to pledge any form of taxation or to make any appropriation for the payment of this bond. This bond is a limited obligation of the issuer, payable solely out of the ~~transition stranded costs~~ TRANSITION property or the proceeds of that property specifically pledged for its payment and not otherwise.

(b) The issuance of bonds under this section may not directly, indirectly, or contingently obligate the state or any political subdivision of the state to levy or to pledge any form of taxation or to make any appropriation for bond payment.

(5) The commission shall establish procedures for the expeditious processing of applications for financing orders, including the approval or disapproval of applications within 120 days after a utility submits a complete application. The commission shall provide in any financing order for a procedure for the expeditious approval by the commission of periodic adjustments to the fixed ~~transition-stranded costs~~ TRANSITION amounts that are the subject of the pertinent financing order pursuant to subsection (2). The commission shall determine on each anniversary of the issuance of the financing order and at additional intervals as may be provided for in the financing order whether the adjustments are required and shall provide for the adjustments, if required, to be approved within 60 days of each anniversary of the issuance of the financing order or of each additional interval provided for in the financing order.

(6) Fixed ~~transition-stranded costs~~ TRANSITION amounts become ~~transition-stranded costs~~ TRANSITION property when and to the extent that a financing order authorizing the fixed ~~transition-stranded costs~~ TRANSITION amounts has become effective in accordance with subsection (2), and the ~~transition-stranded costs~~ TRANSITION property must thereafter continuously exist as property for all purposes with all of the rights and privileges of this chapter for the period and to the extent provided in the financing order or until the ~~transition-stranded costs~~ TRANSITION bonds are paid in full, including all principal, interest, premium, costs, and arrearages on the ~~transition-stranded costs~~ TRANSITION bonds.

(7) ~~Transition-Stranded costs~~ TRANSITION bonds may be issued upon commission approval in the pertinent financing order. ~~Transition-Stranded costs~~ TRANSITION bonds must specify that they do not provide recourse to the credit or any assets of the utility, other than the ~~transition-stranded costs~~ TRANSITION property as specified in the pertinent financing order.

(8) (a) A utility may sell, assign, or transfer all or portions of the utility's interest in ~~transition-stranded costs~~ TRANSITION property to an assignee. A utility or an assignee may further sell, assign, or transfer the utility's interest in that ~~transition-stranded costs~~ TRANSITION property to one or more assignees in connection with the issuance of ~~transition-stranded costs~~ TRANSITION bonds to the extent approved in the pertinent financing order.

(b) A utility or an assignee may pledge ~~transition-stranded costs~~ TRANSITION property as collateral for ~~transition-stranded costs~~ TRANSITION bonds to the extent approved in the pertinent financing order and may provide for a security interest in the ~~transition-stranded costs~~ TRANSITION property as provided in this section.

(c) ~~Transition-Stranded costs~~ TRANSITION property may be sold, assigned, or transferred for the benefit

of:

(i) ~~transition-stranded costs~~ TRANSITION bondholders in connection with the exercise of remedies upon a default; or

(ii) any person acquiring the ~~transition-stranded costs~~ TRANSITION property after a sale, assignment, or transfer pursuant to this section.

(9) (a) To the extent that any interest in ~~transition-stranded costs~~ TRANSITION property is sold, assigned, transferred, or pledged as collateral, the commission shall authorize the utility to contract with any assignee so that the utility will, subject to the utility's rights under subsection (18):

(i) continue to operate the utility's system and to provide service to the utility's customers;

(ii) collect amounts in respect of the fixed ~~transition-stranded costs~~ TRANSITION amounts for the benefit and account of the assignee; and

(iii) account for and remit these amounts to or for the account of the assignee.

(b) Contracting with the assignee in accordance with the commission's authorization may not impair or negate the characterization of the sale, assignment, transfer, or pledge as a true sale, an absolute assignment or transfer, or a grant of a security interest, as applicable.

(10) Notwithstanding any other provision of law, any provision under this section or under a financing order requiring that the commission take or refrain from taking action with respect to the subject matter of a financing order binds the commission and any successor commission or agency exercising functions similar to the commission, and the commission or any successor commission or agency may not rescind, alter, or amend that requirement in a financing order.

(11) A pledge or any other security interest in ~~transition-stranded costs~~ TRANSITION property is valid, is enforceable against the pledgor and third parties, including judgment lien creditors, subject only to the rights of any third parties holding security interests in the ~~transition-stranded costs~~ TRANSITION property perfected in the manner described in this section, and attaches only when all of the following have taken place:

(a) the commission has issued the financing order authorizing the fixed ~~transition-stranded costs~~ TRANSITION amounts included in the ~~transition-stranded costs~~ TRANSITION property;

(b) value has been given by the pledgees of the ~~transition-stranded costs~~ TRANSITION property; and

(c) the pledgor has signed a security agreement or other financing-related agreement covering the ~~transition-stranded costs~~ TRANSITION property.

(12) (a) A valid and enforceable security interest in ~~transition-stranded costs~~ TRANSITION property is perfected only when it has attached and when a financing statement has been filed with the secretary of state

in accordance with procedures that the secretary of state may establish. The financing statement must name the pledgor of the ~~transition stranded costs~~ TRANSITION property as debtor and identify the ~~transition stranded costs~~ TRANSITION property.

(b) Any description of the ~~transition stranded costs~~ TRANSITION property is sufficient if the description refers to the financing order creating the ~~transition stranded costs~~ TRANSITION property.

(c) The commission may require other filings with respect to the security interest in accordance with procedures the commission may establish, except that these filings may not affect the perfection of the security interest.

(13) A perfected security interest in ~~transition stranded costs~~ TRANSITION property is a continuously perfected security interest in all revenue and proceeds arising with respect to the ~~transition stranded costs~~ TRANSITION property, whether or not the revenue or proceeds have accrued. Conflicting security interests must rank according to priority in time of perfection. ~~Transition Stranded costs~~ TRANSITION property constitutes property for all purposes, including for contracts securing ~~transition stranded costs~~ TRANSITION bonds, whether or not the revenue and proceeds arising with respect to the ~~transition stranded costs~~ TRANSITION property have accrued.

(14) (a) Subject to the terms of the security agreement covering the ~~transition stranded costs~~ TRANSITION property and the rights of any third parties holding security interests in the ~~transition stranded costs~~ TRANSITION property perfected in the manner described in this section, the validity and relative priority of a security interest created under this section is not defeated or adversely affected by:

(i) the commingling of revenue arising with respect to the ~~transition stranded costs~~ TRANSITION property with other funds of the utility that is the pledgor or transferor of the ~~transition stranded costs~~ TRANSITION property; or

(ii) any security interest of any third party in a deposit account of that utility perfected under Title 30, chapter 9A, part 3, into which the revenue is deposited.

(b) Subject to the terms of the security agreement, upon compliance with the requirements of this section, a pledgee of the ~~transition stranded costs~~ TRANSITION property has a perfected security interest in all cash and deposit accounts of the utility in which revenue arising with respect to the ~~transition stranded costs~~ TRANSITION property has been commingled with other funds, but the perfected security interest must be limited to an amount no greater than the amount of the revenue with respect to the ~~transition stranded costs~~ TRANSITION property received by the utility within 12 months before any default under the security agreement or the institution of insolvency proceedings by or against the utility, less payments from the revenue to the pledgees during that 12-month period.

transfer in the governing documentation of a transfer is not intended to prejudice the characterization of the transfer as a pledge or other financing for federal tax purposes.

(17) A sale, assignment, or other transfer of ~~transition-stranded costs~~ TRANSITION property may ~~only~~ be considered perfected as against any third person, including any judicial lien creditor, only when both of the following have taken place:

(a) the financing order authorizing the fixed ~~transition-stranded costs~~ TRANSITION amounts included in the ~~transition-stranded costs~~ TRANSITION property has become effective in accordance with subsection (2); and

(b) an assignment of the ~~transition-stranded costs~~ TRANSITION property, in writing, has been executed and delivered to the transferee.

(18) (a) As between bona fide assignees of the same right for value without notice, the assignee first filing a financing statement with the secretary of state in accordance with procedures that the secretary of state may establish has priority. The financing statement must name the assignor of the ~~transition-stranded costs~~ TRANSITION property as debtor and must identify the ~~transition-stranded costs~~ TRANSITION property. Any description of the ~~transition-stranded costs~~ TRANSITION property is sufficient if the description refers to the financing order creating the ~~transition-stranded costs~~ TRANSITION property. The commission may require the assignor or the assignee to make other filings with respect to the transfer in accordance with procedures that the commission may establish, but these filings may not affect the perfection of the transfer.

(b) Any successor to the utility, whether pursuant to any bankruptcy, reorganization, or other insolvency proceeding or pursuant to any merger, sale, or transfer, by operation of law or otherwise, shall perform and satisfy all obligations of the utility pursuant to this section in the same manner and to the same extent as the utility, including but not limited to collecting and paying to the assignee or pledgee, as the case may be, revenue arising with respect to the ~~transition-stranded costs~~ TRANSITION property sold, assigned, transferred, or pledged to secure ~~transition-stranded costs~~ TRANSITION bonds.

(19) ~~Transition-Stranded costs~~ TRANSITION property or any right, title, or interest of a utility, assignee, or pledgee described in the definition of ~~transition-stranded costs~~ TRANSITION property, whether before or after the issuance of a financing order, does not constitute an account or general intangibles as those terms are defined in 30-9A-102. Any right, title, or interest pertaining to a financing order, including the interest pertaining to a financing order, along with the associated ~~transition-stranded costs~~ TRANSITION property and any revenue, collections, claims, payments, money, or proceeds of or arising from fixed ~~transition-stranded costs~~ TRANSITION amounts pursuant to the financing order, may not be considered proceeds of any right, title, or interest other than in the order and the ~~transition-stranded costs~~ TRANSITION property arising from the order.

(20) The lien under this section is enforceable against the pledgor and all third parties, including judicial lien creditors, subject only to the rights of any third parties holding security interests in the ~~transition-stranded costs~~ TRANSITION property previously perfected in the manner described in this section if value has been given by the purchasers of ~~transition-stranded costs~~ TRANSITION bonds. A perfected lien in ~~transition-stranded costs~~ TRANSITION property is a continuously perfected security interest in all revenue and proceeds arising with respect to the associated ~~transition-stranded costs~~ TRANSITION property, whether or not revenue has been accrued. ~~Transition-Stranded costs~~ TRANSITION property constitutes property for the purposes of contracts securing ~~transition-stranded costs~~ TRANSITION bonds, whether or not the related revenue has accrued. The lien created under this section is perfected and ranks before any lien, including any judicial lien, that subsequently attaches to the ~~transition-stranded costs~~ TRANSITION property, to the fixed ~~transition-stranded~~ TRANSITION costs, and to the financing order and any rights created by the order or any proceeds of the order. The relative priority of a lien created under this section is not defeated or adversely affected by changes to the financing order or to the fixed ~~transition-stranded costs~~ TRANSITION amounts payable by any customer.

(21) The commission shall establish and maintain a separate system of records to reflect the date and time of receipt of all filings made under this section and may provide that transfers of ~~transition-stranded costs~~ TRANSITION property to an assignee be filed in accordance with the same system.

(22) Any sale, assignment, or other transfer of ~~transition-stranded costs~~ TRANSITION property or any pledge of ~~transition-stranded costs~~ TRANSITION property is exempt from any state or local sales, income, transfers, gains, receipts, or similar taxes.

(23) The ~~transition-stranded costs~~ TRANSITION bonds issued under this chapter are exempt from the provisions of Title 30, chapter 10, but copies of all prospectus and disclosure documents must be deposited for public inspection with the state securities commissioner.

(24) The granting, perfection, and priority of security interests with respect to ~~transition-stranded costs~~ TRANSITION property and the proceeds ~~thereof of stranded costs~~ TRANSITION property are governed by this section rather than by Title 30, chapter 9A.

(25) Upon the payment in full of ~~transition-stranded costs~~ TRANSITION bond principal and interest, the utility shall discontinue charging and collecting the competitive ~~transition-stranded costs~~ TRANSITION charge associated with that portion of the utility's approved ~~transition-stranded~~ TRANSITION costs.

(26) The commission may, by order or rule and subject to terms and conditions that it may prescribe, exempt any security or class of securities for which an application is required under this title or any public utility or class of public utility from the provisions of this title if it finds that the application of this title to the security, class

of security, public utility, or class of public utility is not required by the public interest."

NEW SECTION. **Section 20. Repealer.** Sections 35-19-103, 69-8-416, 69-8-417, 69-8-501, and 69-8-502, MCA, are repealed.

NEW SECTION. SECTION 21. CODIFICATION INSTRUCTION. [SECTION 3] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 5, CHAPTER 5, PART 2, AND THE PROVISIONS OF TITLE 5, CHAPTER 5, PART 2, APPLY TO [SECTION 3].

NEW SECTION. **Section 22. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 23. 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 24. Effective date.** [This act] is effective July 1, 2003.

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