

SENATE BILL NO. 247  
INTRODUCED BY COBB

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A DEFAULT ELECTRICITY SUPPLY PROCUREMENT PROCESS; REQUIRING THE PUBLIC SERVICE COMMISSION TO ADOPT RULES THAT ESTABLISH CRITERIA THAT GUIDE THE DEFAULT ELECTRICITY SUPPLY PROCUREMENT PROCESS; PROVIDING OBJECTIVES FOR THE DEFAULT SUPPLIER FOR DEFAULT SUPPLY PLANNING, PORTFOLIO MANAGEMENT, AND RESOURCE PROCUREMENT PROCESS; REQUIRING THE DEFAULT SUPPLIER TO DEVELOP A PROCUREMENT PLAN; ESTABLISHING REQUIREMENTS FOR COMMENT BY THE PUBLIC AND THE COMMISSION ACTION ON A DEFAULT SUPPLIER PROCUREMENT PLAN; ~~REQUIRING THAT ANY DEFAULT ELECTRICITY SUPPLY PURCHASE MADE IN COMPLIANCE WITH A COMMISSION-APPROVED PROCUREMENT PLAN BE RECOVERED IN DEFAULT ELECTRICITY SUPPLY RATES~~ PROVIDING A PROCESS FOR DEFAULT SUPPLY PROCUREMENT FILINGS AND COMMISSION APPROVAL; REQUIRING THE COMMISSION TO ESTABLISH AN ELECTRICITY COST RECOVERY MECHANISM FOR PRUDENTLY INCURRED ELECTRICITY SUPPLY COSTS; REQUIRING THE COMMISSION TO REQUIRE THE DEFAULT SUPPLIER TO OFFER MULTIPLE SERVICE OPTIONS; REQUIRING THE DEFAULT SUPPLIER TO OFFER ITS CUSTOMERS THE OPTION OF PURCHASING A PRODUCT COMPOSED OF CERTIFIED ENVIRONMENTALLY PREFERRED RESOURCES; ~~AMENDING SECTION~~ SECTIONS 69-1-114 AND 69-8-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

**NEW SECTION. Section 1. Default supply resource planning and procurement -- duties of default supplier -- objectives -- commission rules.** (1) The default supplier shall:

- (a) plan for future default supply resource needs;
- (b) manage a portfolio of default supply resources; and
- (c) procure new default supply resources when needed.

(2) The default supplier shall pursue the following objectives in fulfilling its duties pursuant to subsection

(1):

- (a) provide adequate and reliable default supply services at the lowest long-term total cost;
- (b) conduct an efficient default supply resource planning and procurement process that evaluates the full range of cost-effective electricity supply and demand-side management options;
- (c) identify and cost-effectively manage and mitigate risks related to its obligation to provide default electricity supply service;
- (d) use open, fair, and competitive procurement processes whenever possible; and
- (e) provide default supply services at just and reasonable rates.

(3) By December 31, 2003, the commission shall adopt rules that guide the default supply resource planning and procurement processes used by the default supplier and facilitate the achievement of the objectives in subsection (2) by the default supplier. The rules must establish:

- (a) goals, objectives, and guidelines that are consistent with the objectives in subsection (2) for:
  - (i) planning for future default supply resource needs;
  - (ii) managing the portfolio of default supply resources; and
  - (iii) procuring new default supply resources;
- (b) standards for the evaluation by the commission of the reasonableness of a power supply purchase agreement proposed by the default supplier; and
- (c) minimum filing requirements for an application by the default supplier for advanced approval of a proposed power supply purchase agreement.

**NEW SECTION. Section 2. Default supply resource procurement plans -- comment on plans. (1)**

The default supplier shall develop default supply resource procurement plans. The plans must be submitted to the commission at intervals determined in rules adopted by the commission pursuant to [section 1].

(2) A default supply resource procurement plan must demonstrate the default supplier's achievement of the objectives provided in [section 1] and compliance with the rules adopted pursuant to [section 1].

(3) The commission shall:

- (a) review the default supply resource procurement plan;
- (b) provide an opportunity to the public to comment on the plan; and
- (c) issue written comments that identify:
  - (i) any concerns of the commission regarding the default supplier's compliance with the rules adopted pursuant to [section 1]; and

(ii) ways to remedy any concerns.

**NEW SECTION. Section 3. Default supply filings -- commission processing and approval.** (1) A default supplier may apply to the commission for advanced approval of a power supply purchase agreement that is:

(a) not executed; or

(b) executed with a provision that allows termination of the agreement if the commission does not find the agreement reasonable.

(2) (a) The commission shall issue an order on the default supplier's application for advanced approval of a power supply purchase agreement in a timely manner as provided in this subsection (2).

(b) In establishing an administrative procedure for reviewing an application for advanced approval, the commission shall consider any financing and market constraints and the due process rights of affected persons.

(c) Within 45 days of the default supplier's submission of an application for advanced approval, the commission shall determine whether or not the application is adequate and in compliance with the commission's minimum filing requirements. If the commission determines that the application is inadequate, it shall explain how the filing fails to comply with the objectives in [section 1] and the rules adopted pursuant to [section 1].

(d) The commission shall issue an order within 180 days of receipt of an adequate application unless it determines that extraordinary circumstances require additional time.

(e) To facilitate timely consideration of an application, the commission may initiate proceedings to evaluate planning and procurement activities related to a potential resource procurement prior to the default supplier's submission of an application for approval.

(3) (a) The commission may approve or deny, in whole or in part, an application for advanced approval of a power supply purchase agreement.

(b) The commission may consider all relevant information known up to the time that the administrative record in the proceeding is closed in the evaluation of an application for advanced approval of a power supply purchase agreement.

(c) A commission order granting advanced approval of a power supply purchase agreement must include the following findings:

(i) advanced approval of all or part of the agreement is in the public interest;

(ii) the agreement resulted from a reasonable effort by the default supplier to comply with the objectives in [section 1] and the rules adopted pursuant to [section 1]; and

(iii) the price, quantity, duration, and other contract terms directly related to the price, quantity, and duration of the power supply purchase agreement are reasonable.

(d) The commission order may include other findings that the commission determines are necessary.

(e) A commission order that denies advanced approval must describe why the findings required in subsection (3)(c) could not be reached.

(4) Notwithstanding any provision of this chapter to the contrary, if the commission has issued an order containing the findings required under subsection (3)(c), the commission may not subsequently disallow the recovery of costs incurred under the agreement based on contrary findings.

(5) If a default supplier does not apply for advanced approval of a power supply purchase agreement, the commission shall consider the prudence of the default supplier's resource procurement actions in the context of a default supplier's cost recovery filing pursuant to 69-8-210 or in a separate proceeding. The commission's decisions in these proceedings must be based on facts that were known or should reasonably have been known by the default supplier at the time of its procurement decisions.

(6) Nothing limits the commission's ability to subsequently, in any future cost recovery proceeding, inquire into the manner in which the default supplier has managed a power supply purchase agreement as part of its overall portfolio. The commission may subsequently disallow default supply costs that result from the failure of a default supplier to reasonably administer power supply purchase agreements in the context of its overall default supply portfolio management and service obligations.

(7) The commission may engage independent consultants or advisory services to evaluate a utility's default supply resource procurement plans and proposed power supply purchase agreements. The consultants must have demonstrated knowledge and experience with electricity supply procurement and resource portfolio management, modeling, and risk management practices. The commission shall charge a fee to the default supplier to pay for the costs of consultants or advisory services. These costs are recoverable in default supply rates.

**Section 4.** Section 69-1-114, MCA, is amended to read:

**"69-1-114. Fees.** (1) Each fee charged by the commission must be commensurate with the costs incurred in administering the function for which the fee is charged except those fees set by federal statute.

(2) ~~No~~ Except for a fee assessed pursuant to [section 3(7)], no fee set by the commission may exceed \$500.

(3) All fees collected by the department under [section 3(7)] must be deposited in an account in the

special revenue fund. Funds in this account must be used as provided in [section 3(7)]."

**Section 5.** 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 establish an electricity cost recovery mechanism that allows a default supplier to fully recover prudently incurred electricity supply costs, subject to the provisions of [sections 1 and 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.

(3) 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 are consistent with the provisions of 69-8-104 and 69-8-201.

(4) Notwithstanding any service options that the commission may require pursuant to subsection (3), 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)(5) 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."~~

NEW SECTION. Section 6. Codification instruction. [Sections 1 through 3] are intended to be codified

as an integral part of Title 69, chapter 8, part 4, and the provisions of Title 69, chapter 8, part 4, apply to [sections 1 through 3].

NEW SECTION. **Section 7. Coordination instruction.** If [this act] and House Bill No. 509 are both passed and approved, then [section 14 of House Bill No. 509], amending 69-8-210, is void.

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

NEW SECTION. **Section 9. Applicability.** [Sections 1 through 3] apply only to power supply purchase agreements for which the procurement process begins on or after [the effective date of this act].

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