

HOUSE BILL NO. 25

INTRODUCED BY A. OLSON

BY REQUEST OF THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE ELECTRIC UTILITY INDUSTRY RESTRUCTURING AND CUSTOMER CHOICE LAWS; CLARIFYING LEGISLATIVE FINDINGS AND POLICY PROVISIONS; ELIMINATING AND CLARIFYING CERTAIN DEFINITIONS; DEFINING CERTAIN TERMS; CLARIFYING CUSTOMER OPTIONS REGARDING PURCHASING ELECTRICITY SUPPLY; CLARIFYING PUBLIC UTILITY AND COOPERATIVE UTILITY EXEMPTIONS; CLARIFYING ELECTRICITY SUPPLY AND PROCUREMENT REQUIREMENTS; CLARIFYING THE PREAPPROVAL PROCESS FOR NEW ELECTRICITY SUPPLY RESOURCES; AMENDING SECTIONS 15-72-103, 15-72-104, 35-19-102, 69-8-101, 69-8-102, 69-8-103, 69-8-201, 69-8-210, 69-8-311, 69-8-419, 69-8-420, 69-8-421, AND 69-8-1004, MCA; REPEALING SECTIONS 69-8-104, 69-8-202, 69-8-203, 69-8-204, 69-8-208, 69-8-209, 69-8-211, 69-8-301, 69-8-302, 69-8-303, 69-8-304, 69-8-308, 69-8-309, 69-8-310, 69-8-401, 69-8-403, 69-8-404, 69-8-408, 69-8-409, 69-8-410, AND 69-8-411, MCA."

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

Section 1. Section 15-72-103, MCA, is amended to read:

"15-72-103. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Customer" or "purchaser" means a person who acquires for consideration electricity for use or consumption and not for resale.

(2) "Distribution services provider" means a person controlling or operating distribution facilities for distribution of electricity to the public. A distribution services provider includes a purchaser who takes electricity directly from a transmission line and a purchaser who generates electricity for the purchaser's own use but does not include electricity generated by the purchaser for noncommercial use or for agricultural use.

(3) "Person" means an individual, estate, trust, receiver, cooperative association, corporation, limited liability company, firm, partnership, joint venture, syndicate, or other entity, including any gas or electric utility owned or operated by a county, municipality, or other political subdivision of the state.

(4) "Transmission services provider" means a person or entity controlling or operating ~~transmission~~

facilities ~~as that term is defined in 69-8-103~~ used for the transmission of electricity."

Section 2. Section 15-72-104, MCA, is amended to read:

"15-72-104. Wholesale energy transaction tax -- rate of tax -- exemptions -- cost recovery. (1) (a)

Except as provided in subsection (3), a wholesale energy transaction tax is imposed upon electricity transmitted within the state as provided in this section. The tax is imposed at a rate of 0.015 cent per kilowatt hour of electricity transmitted by a transmission services provider in the state.

(b) For electricity produced in the state for delivery outside of the state, the taxpayer is the person owning or operating the electrical generation facility producing the electricity. The transmission services provider shall collect the tax from the person based upon the kilowatt hours introduced onto transmission lines from the electrical generation facility. The amount of kilowatt hours subject to tax must be reduced by 5% to compensate for transmission line losses.

(c) For electricity produced in the state for delivery within the state, the taxpayer is the distribution services provider. The transmission services provider shall collect the tax based upon the amount of kilowatt hours of electricity delivered to the distribution services provider. The taxpayer may apply for a refund for overpayment of taxes pursuant to 15-72-116.

(d) For electricity produced outside the state for delivery inside the state, the taxpayer is the distribution services provider. The transmission services provider shall collect the tax based upon the amount of kilowatt hours of electricity delivered to the distribution services provider.

(e) For electricity delivered to a distribution services provider that is a rural electric cooperative for delivery to purchasers that have opted for customer choice under the provisions of Title 69, chapter 8, part 3, the taxpayer is the distribution services provider. The transmission services provider shall collect the tax based on the amount of kilowatt hours of electricity delivered to the distribution services provider that is attributable to customers that have opted for customer choice.

(f) For electricity delivered to a distribution services provider that prior to May 2, 1999, was owned by a public utility as defined in 69-3-101, the tax is imposed on the successor distribution services provider. The transmission services provider shall collect the tax based upon the amount of kilowatt hours of electricity delivered to the distribution services provider.

(2) (a) If more than one transmission services provider transmits electricity, the last transmission services provider transmitting or delivering the electricity shall collect the tax.

(b) If the transmission services provider is an agency of the United States government, the distribution

services provider receiving the electricity shall self-assess the tax subject to the provisions of this part.

(c) If an electrical generation facility located within the state produces electricity for sale inside and outside the state, sales within the state are considered to have come from electricity produced within the state for purposes of the tax imposed by this section.

(3) (a) Electricity transmitted through the state that is not produced or delivered in the state is exempt from the tax imposed by this section.

(b) Electricity produced in the state by an agency of the United States government or electricity produced from an electric energy generation facility, as defined in 90-5-101(3), constructed after May 1, 2001, that is within the exterior boundaries of a Montana Indian reservation for delivery outside of the state is exempt from the tax imposed by this section.

(c) Electricity produced by wind turbines erected on state land for which annual lease payments are made to the permanent school trust fund is exempt from the tax imposed by this section.

(d) Electricity delivered to a distribution services provider that is a municipal utility described in ~~69-8-103(5)(b)~~ 69-8-103(3)(b) or a rural electric cooperative organized under the provisions of Title 35, chapter 18, is exempt from the tax imposed by this section.

(e) Electricity delivered to a purchaser that receives its power directly from a transmission or distribution facility owned by an entity of the United States government on or before May 2, 1997, or electricity that is transmitted exclusively on transmission or distribution facilities owned by an entity of the United States government on or before May 2, 1997, is exempt from the tax imposed by this section.

(4) A distribution services provider is allowed to recover the tax imposed by this section and the administrative costs to comply with this part in its rates."

Section 3. Section 35-19-102, MCA, is amended to read:

"35-19-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Distribution utility" means ~~the electricity distribution portion of a public utility as defined in 69-8-103~~ a utility owning distribution facilities for distribution of electricity to the public.

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

(3) "Small commercial customer" means, for a distribution utility, individual accounts of a commercial customer with an average monthly demand in the previous calendar year of less than 100 kilowatts or a new commercial customer with an estimated average monthly demand of less than 100 kilowatts.

(4) "Small customer" means a residential customer or small commercial customer of a distribution utility."

Section 4. Section 69-8-101, MCA, is amended to read:

"69-8-101. Short title. This chapter may be cited as the "Electric Utility Industry Restructuring and Customer Choice Transition Act"."

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 declares that the:

- ~~(1) The generation and sale of electricity is becoming a competitive industry.~~
- ~~———— (2) Montana customers should have the freedom to choose their electricity supply and related services in accordance with this chapter. Affording this opportunity serves the public interest.~~
- ~~(3)(1) The interests of small Montana consumers must be protected through the provision of adequate and reliable default electricity supply service at the lowest long-term total cost; and~~
- ~~(4)(2) The financial integrity of electrical utilities must be fostered.~~
- ~~(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.~~
- ~~———— (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)~~(1) "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 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 property.

~~(3)~~(2) "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)~~(3) "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)~~(4) "Customer-generator" means a user of a net metering system.

~~(8) "Default supplier" means a distribution services provider 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.~~

~~————(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.~~

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

~~(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)~~(5) "Electricity supply costs" means the actual costs of providing ~~default~~ electricity 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;

(i) the revenue requirement for a plant or equipment owned or leased by a public utility and used for the production of electricity, including capital costs, operating costs, and other costs for a plant or equipment; and

~~(j)~~(j) any other costs directly related to the purchase of electricity; and the management of default electricity supply costs; and provision of default electricity supply and related services service.

(6) "Electricity supply service" means the provision of electricity supply and related services.

~~(14)~~(7) "Financing order" means an order of the commission adopted in accordance with 69-8-503 that authorizes the imposition and collection of fixed transition amounts and the issuance of transition bonds.

~~(15)~~(8) (a) "Fixed 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 costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and of acquiring transition property through a plan approved by the commission in the financing order, including the costs of issuing, servicing, and retiring transition bonds.

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

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

~~(17)~~(9) "Interested person" means a retail electricity customer, the consumer counsel established in 5-15-201, the commission, or a utility.

~~(18)~~(10) "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.

~~(19)~~(11) "Local governing body" means a local board of trustees of a rural electric cooperative.

~~(20)~~(12) "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.

~~(21)~~(13) "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.

~~(22)~~(14) "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.

(15) "New electricity supply resource" means an electricity supply power purchase agreement or an equity interest in a new or existing electric energy generation facility.

~~(23)~~(16) "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 costs or universal system benefits programs costs even if the customer has physically bypassed either the utility's transmission or distribution facilities.

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

~~(25)~~(17) "Public utility" ~~means any electric utility~~ has the meaning of a public utility regulated by the commission pursuant to Title 69, chapter 3, ~~on May 2, 1997, including the public utility's successors or assignees.~~

~~(26)~~(18) "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.

~~(27) "Small customer" means a residential customer or a commercial customer who has an individual account with an average monthly demand in the previous calendar year of less than 50 kilowatts or a new~~

~~residential or commercial customer with an estimated average monthly demand of less than 50 kilowatts of a public utility that has restructured pursuant to Title 35, chapter 19, or this chapter.~~

(19) "Retail customer" means a customer that purchases electricity for residential, commercial, or industrial end-use purposes and does not resell electricity to others.

~~(28)~~(20) "Transition bondholder" means a holder of transition bonds, including trustees, collateral agents, and other entities acting for the benefit of that bondholder.

~~(29)~~(21) "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 bonds issuer that is secured by or payable from fixed transition amounts or transition property. Proceeds from transition bonds must be used to recover, reimburse, finance, or refinance transition costs and to acquire transition property.

~~(30)~~(22) "Transition charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of transition costs.

~~(31)~~(23) "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 costs.

~~(32)~~(24) "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~~ or of this chapter;

(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 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 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 bonds would benefit customers.

~~(33)~~ "Transition period" means the period ending July 1, 2027.

~~(34)~~(25) "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 bonds to all revenue, collections, claims, payments, money, or proceeds of or arising from or constituting fixed transition amounts that are the subject of a financing order, including those nonbypassable rates and other charges and fixed transition amounts that are authorized by the commission in the financing order to recover transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property, including the costs of issuing, servicing, and retiring transition bonds. Any right that a utility has in the 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.

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

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

~~(37)~~(26) "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.

~~(38)~~(27) "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.

~~(39)~~(28) "Utility" means any public utility or cooperative utility."

Section 7. Section 69-8-201, MCA, is amended to read:

"69-8-201. Public utility -- transition to customer choice -- customer options and requirements -- waiver exemption. (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.

~~(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) A small customer receiving electricity from a licensed supplier prior to July 1, 2003, may continue to receive electricity supply from a supplier other than the default supplier.~~

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

~~———(3) (a) Subject to subsection (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 50 kilowatts may choose an electricity supplier.~~

~~———(b) The total average monthly billing demand for all customers that choose an electricity supplier pursuant to subsection (3)(a) in each calendar year may not exceed 20,000 kilowatts.~~

~~———(c) A customer referred to in subsection (3)(a) receiving electricity from a licensed supplier prior to July 1, 2003, may continue to receive electricity supply from a supplier other than the default supplier.~~

~~(4)(1) (a) Except as provided in subsections (4)(b) (1)(b) through (4)(e) and (1)(c), a retail 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 and that is not purchasing electricity supply from a public utility on [the effective date of this act] may not purchase electricity supply service from a public utility.~~

~~(b) A customer referred to in subsection (4)(a) that is receiving its electricity supply from the competitive marketplace may make a one-time election to enter into a 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 (5). This election must be submitted to the commission in writing no later than December 31, 2003.~~

~~(e)(b) A new retail customer with an estimated average monthly demand of greater than or equal to 5,000 kilowatts may enter into a power supply contract with the default supplier in order to receive default supply service referred to in subsection (1)(a) may request electricity supply service from the public utility, and the public utility may agree to provide electricity supply service if the retail customer demonstrates that the provision of electricity supply service to the retail customer will not adversely impact the rates of the public utility's other customers over the long term as determined by the commission. 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 (5).~~

~~(d) A customer referred to in subsection (4)(a) that was receiving electricity from the default supplier on July 1, 2003, may continue to receive electricity from the default supplier.~~

~~(c) If a public utility provides electricity supply service to a retail customer as provided in subsection (1)(b), that service is regulated by the commission and the customer may not, at a later date, purchase electricity supply service from another provider of electricity supply service.~~

~~(e) A customer referred to in subsection (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 (5).~~

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

~~(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 (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. The commission shall ensure that electricity supply service provided pursuant to this subsection is consistent with the requirements in subsection (5) and the provision of default supply service pursuant to this chapter.~~

~~(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.~~

~~(8) (a) Except as provided in subsection (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.~~

~~(9)(2)~~ (a) Except as provided in 69-5-101, 69-5-102, 69-5-104 through 69-5-112, ~~and 69-8-402, and subsection (2)(b) of this section,~~ 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 is exempt from the requirements of this chapter.~~

(b) To the extent that a public utility described in subsection ~~(9)(a)~~ (2)(a) becomes the successor in interest of another public utility that has restructured in accordance with this chapter before [the effective date of this act], it shall assume responsibility only for the applicable transition plan of it is subject to the requirements of this chapter with respect to the service area of the acquired public utility.

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

"69-8-210. Public utilities -- electricity supply -- environmentally preferred resources. ~~(1) A public utility's distribution services provider shall provide default supply service.~~

~~(2)(1)~~ (2)(1) The commission shall establish an electricity cost recovery mechanism that allows a ~~default supplier~~ public utility to fully recover prudently incurred electricity supply costs, subject to the provisions of 69-8-419 and 69-8-420. 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)(2)~~ (4)(2) Notwithstanding any service options that the commission may require ~~pursuant to subsection (3), a default supplier,~~ a public utility 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.

~~(5) (a) Subject to subsection (5)(b), the commission shall, in reviewing the procurement of electricity supply by the default supplier, take into account the statewide economic benefits that are associated with the electricity supply procurement for the default supply stakeholders. The default supply stakeholders include the~~

default supplier, customers of the default supplier, and the public.

~~———— (b) The consideration of economic benefits is secondary to the consideration of the costs and benefits to the consumer and other criteria established by law.~~

~~———— (6) 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 9. Section 69-8-311, MCA, is amended to read:

"69-8-311. Cooperative utility -- electricity supply service -- exemption. (1) A local governing body shall establish the price for electricity supply service offered by a cooperative utility.

~~(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 plan.~~

~~(2) 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 plan in accordance with this chapter; and~~

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

Section 10. Section 69-8-419, MCA, is amended to read:

"69-8-419. Default Electricity supply resource planning and procurement -- duties of default supplier public utility -- objectives -- commission rules. (1) The ~~default supplier~~ public utility shall:

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

(2) The ~~default supplier~~ public utility shall pursue the following objectives in fulfilling its duties pursuant to subsection (1):

- (a) provide adequate and reliable ~~default supply services~~ electricity supply service at the lowest long-term total cost;
- (b) conduct an efficient ~~default~~ electricity 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~~ electricity supply service at just and reasonable rates.

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

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

Section 11. Section 69-8-420, MCA, is amended to read:

"69-8-420. ~~Default~~ Electricity supply resource procurement plans -- comment on plans. (1) The ~~default supplier~~ public utility shall develop ~~default~~ electricity supply resource procurement plans. The plans must be submitted to the commission at intervals determined in rules adopted by the commission pursuant to 69-8-419.

(2) ~~A default~~ An electricity supply resource procurement plan must demonstrate the ~~default supplier's~~ public utility's achievement of the objectives provided in 69-8-419 and compliance with the rules adopted pursuant to 69-8-419.

(3) The commission shall:

- (a) review the ~~default~~ electricity 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~~ public utility's compliance with the rules adopted pursuant to 69-8-419; and
 - (ii) ways to remedy any concerns."

Section 12. Section 69-8-421, MCA, is amended to read:

"69-8-421. Default supply filings -- commission processing and approval Preapproval of new electricity supply resources. (1) A ~~default supplier~~ public utility that removed its generation assets from its rate base pursuant to this chapter prior to [the effective date of this act] may apply to the commission for preapproval of a new electricity supply resource that is not yet procured. ~~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~~ public utility's application for ~~advanced approval of a power supply purchase agreement~~ preapproval of a new electricity supply resource in a timely manner as provided in this subsection (2).

(b) In establishing an administrative procedure for reviewing an application for ~~advanced approval~~ preapproval, 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~~ public utility's submission of an application for ~~advanced approval~~ preapproval, 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 69-8-419 and the rules adopted pursuant to 69-8-419.

(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~~ public utility's submission of an application for ~~approval~~ preapproval.

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

(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~~ preapproval of a new electricity supply resource.

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

(i) ~~advanced approval~~ preapproval of all or part of the ~~agreement~~ new electricity supply resource is in the public interest;

(ii) the ~~agreement~~ new electricity supply resource resulted from a reasonable effort by the ~~default supplier~~ public utility to comply with the objectives in 69-8-419 and the rules adopted pursuant to 69-8-419; and

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

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

(e) A commission order that denies ~~advanced approval~~ preapproval 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~~ public utility does not apply for ~~advanced approval of a power supply purchase agreement~~ preapproval of a new electricity supply resource, the commission shall consider the prudence of the ~~default supplier's~~ public utility's resource procurement actions in the context of a ~~default supplier's~~ public utility'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~~ public utility 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~~ public utility has managed, dispatched, operated, and ~~maintained any new electricity supply resource~~ a power supply purchase agreement as part of its overall resource portfolio. The commission may subsequently disallow ~~default~~ electricity supply costs that result from the failure of a ~~default supplier~~ public utility to reasonably ~~administer power supply purchase agreements~~ manage, dispatch, operate, maintain, or administer new electricity supply resources in the context of its overall ~~default~~ electricity supply portfolio management and service obligations.

(7) The commission may engage independent consultants or advisory services to evaluate a public utility's ~~default~~ electricity supply resource procurement plans and proposed ~~power supply purchase agreements~~ new electricity supply resources. 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~~ public utility to pay for the costs of consultants or advisory services. These costs are recoverable in ~~default~~ electricity supply service rates.

(8) The commission may adopt rules prescribing minimum filing requirements for preapproval applications."

Section 13. Section 69-8-1004, MCA, is amended to read:

"69-8-1004. Renewable resource standard -- administrative penalty -- waiver. (1) Except as provided in 69-8-1007 and subsection (11) of this section, a graduated renewable energy standard is established for public utilities as provided in subsections (2) through (4) of this section.

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

(3) (a) In each compliance year beginning January 1, 2010, through December 31, 2014, each public utility shall procure a minimum of 10% of its retail sales of electrical energy in Montana from eligible renewable resources.

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

(c) Public utilities shall proportionately allocate the purchase required under subsection (3)(b) based on each public utility's retail sales of electrical energy in Montana in the calendar year 2009.

(4) (a) In the compliance year beginning January 1, 2015, and in each succeeding compliance year, each public utility shall procure a minimum of 15% of its retail sales of electrical energy in Montana from eligible renewable resources.

(b) (i) As part of their compliance with subsection (4)(a), public utilities shall purchase both the renewable energy credits and the electricity output from community renewable energy projects that total at least 75 megawatts in nameplate capacity.

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

(c) Public utilities shall proportionately allocate the purchase required under subsection (4)(b) based on each public utility's retail sales of electrical energy in Montana in the calendar year 2014.

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

(b) The standard in subsections (2) through (4) must be calculated on a delivered-energy basis after accounting for any line losses.

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

(7) (a) In order to meet the standard established in subsections (2) through (4), a public utility may only use:

(i) electricity from an eligible renewable resource in which the associated renewable energy credits have not been sold separately;

(ii) renewable energy credits created by an eligible renewable resource purchased separately from the associated electricity; or

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

(b) A public utility may not resell renewable energy credits and count those sold credits against the public utility's obligation to meet the standards established in subsections (2) through (4).

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

(8) Nothing in this part limits a public utility from exceeding the standards established in subsections (2) through (4).

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

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

(11) A public utility may petition the commission for a short-term waiver from full compliance with the standards in subsections (2) through (4) and the penalties levied under subsection (10). The petition must demonstrate that the:

(a) public utility has undertaken all reasonable steps to procure renewable energy credits under long-term contract, but full compliance cannot be achieved either because renewable energy credits cannot be

procured or for other legitimate reasons that are outside the control of the public utility; or

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

NEW SECTION. Section 14. Repealer. Sections 69-8-104, 69-8-202, 69-8-203, 69-8-204, 69-8-208, 69-8-209, 69-8-211, 69-8-301, 69-8-302, 69-8-303, 69-8-304, 69-8-308, 69-8-309, 69-8-310, 69-8-401, 69-8-403, 69-8-404, 69-8-408, 69-8-409, 69-8-410, and 69-8-411, MCA, are repealed.

NEW SECTION. Section 15. 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 16. 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.

- END -

