

HOUSE BILL NO. 346  
INTRODUCED BY D. KOTTEL

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO ELECTRICITY DEFAULT SUPPLY AND LOCAL GOVERNMENT AUTHORITY; AUTHORIZING THE ESTABLISHMENT OF LOCAL GOVERNMENT SUPPLY ENTITIES; CLARIFYING THAT A LOCAL GOVERNMENT SUPPLY ENTITY IS NOT A REGULATED PUBLIC UTILITY; CLARIFYING THE AUTHORITY OF MUNICIPAL UTILITIES; DEFINING AND CLARIFYING CERTAIN TERMS; REVISING THE TRANSITION PROVISIONS FOR CUSTOMER CHOICE THAT RELATE TO DEFAULT SUPPLY; REQUIRING THAT ANY TRANSITION CHARGE OR UNIVERSAL SYSTEM BENEFITS CHARGE CONTINUES TO BE PAID BY A LOCAL GOVERNMENT SUPPLY ENTITY CUSTOMER; EXEMPTING A LOCAL GOVERNMENT SUPPLY ENTITY FROM CERTAIN PROVISIONS AND REQUIREMENTS; PROVIDING REQUIREMENTS RELATED TO THE PROCUREMENT OF ELECTRICAL ENERGY SUPPLY FROM RENEWABLE RESOURCES; ALLOWING COMMUNITY RENEWABLE ENERGY PROJECTS OWNED BY A LOCAL GOVERNMENT SUPPLY ENTITY BE USED TOWARD MEETING THE RENEWABLE REQUIREMENT; REQUIRING THE COMMISSION TO DESIGNATE A LOCAL GOVERNMENT SUPPLY ENTITY AS A DEFAULT SUPPLIER IF CERTAIN CONDITIONS ARE MET; AMENDING SECTIONS 69-3-101, 69-7-101, 69-8-103, 69-8-201, 69-8-208, 69-8-210, 69-8-403, 69-8-419, 69-8-420, 69-8-421, AND 69-8-1008, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** Section 69-3-101, MCA, is amended to read:

**"69-3-101. Meaning of term "public utility".** (1) The term "public utility", ~~within the meaning for the purposes of this chapter, shall embrace every~~ means a corporation, ~~both either public and or private, a~~ company, an individual, or an association of individuals, as well as their lessees, trustees, or receivers, appointed by any court, ~~whatsoever, that now or hereafter may own, operate, or control~~ owns, operates, or controls any plant or equipment, any part of a plant or equipment, or any water right within the state for the production, delivery, or furnishing for or to other persons, firms, associations, or corporations, private or municipal:

- (a) except as provided in subsection (2)(d), heat;
- (b) street-railway service;
- (c) except as provided in subsection (2)(d), light;

- (d) power in any form or by any agency;
  - (e) except as provided in chapter 7, water for business, manufacturing, household use, or sewerage service, whether within the limits of municipalities, towns, and villages or elsewhere;
  - (f) regulated telecommunications service.
- (2) The term "~~public utility~~" does not include:
- (a) privately owned and operated water, sewer, or combination systems that do not serve the public;
  - (b) county or consolidated city and county water or sewer districts as defined in Title 7, chapter 13, parts 22 and 23; ~~or~~
  - (c) a person exempted from regulation as a public utility as provided in 69-3-111; or
  - (d) a local government supply entity as defined in 69-8-103."

**Section 2.** Section 69-7-101, MCA, is amended to read:

**"69-7-101. Municipal utilities -- regulation by municipality.** A municipality has the power and authority to regulate, establish, and change, as it considers proper, rates, charges, and classifications imposed for utility services, including default supply services, as defined in 69-8-103, to its inhabitants and other persons served by municipal utility systems. Rates, charges, and classifications must be reasonable and just."

**Section 3.** 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 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) "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) a distribution services provider of a utility that has restructured in accordance with this chapter; or  
(b) a local government supply entity designated by the commission as a default supplier under [section 12].

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

(b) The term does not include a local government supply entity acting as a default supplier.

(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.

(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 amounts and the issuance of transition bonds.

(15)(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) "Generation facility" means any combination of a generator or generators and other associated machinery and equipment that are normally operated to produce electricity, including associated transmission facilities necessary to interconnect with the transmission grid.

~~(17)~~(18) "Interested person" means a retail electricity customer, the consumer counsel established in 5-15-201, the commission, or a utility.

~~(18)~~(19) "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.

(20) "Local government supply entity" means an entity that is established and regulated by a local government unit with self-government powers that has acquired by ownership or lease an interest in a generation facility with at least 50 megawatts of capacity or has secured through a long-term contract an electricity supply of at least 50 megawatts for purposes of providing electricity supply services within its jurisdictional limits.

~~(19)~~(21) "Local governing body" means a local board of trustees of a rural electric cooperative.

~~(20)~~(22) "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.

~~(24)~~(23) "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)~~(24) "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.

~~(23)~~(25) "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)~~(26) "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)~~(27) "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.

~~(26)~~(28) "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)~~(29) "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.

~~(28)~~(30) "Transition bondholder" means a holder of transition bonds, including trustees, collateral agents, and other entities acting for the benefit of that bondholder.

~~(29)~~(31) "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)~~(32) "Transition charge" means a nonbypassable rate or charge to be imposed on a customer to pay

the customer's share of transition costs.

~~(31)~~(33) "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)~~(34) "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 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)~~(35) "Transition period" means the period ending July 1, 2027.

~~(34)~~(36) "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)~~(37) "Transmission facilities" means those facilities that are used to provide transmission services

as determined by the federal energy regulatory commission and the commission.

~~(36)~~(38) "Transmission services provider" means an entity controlling or operating transmission facilities.

~~(37)~~(39) "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)~~(40) "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)~~(41) (a) "Utility" means any public utility or cooperative utility.

(b) The term does not include a local government supply entity."

**Section 4.** Section 69-8-201, MCA, is amended to read:

**"69-8-201. Public utility -- transition to customer choice -- options and requirements -- waiver.** (1) ~~Before~~ Except as provided in [section 12], 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~~ Except as provided in [section 12], a small customer of a public utility that has restructured in accordance with this chapter:

(i) must, subject to subsection (2)(d), 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.

(d) Nothing in this section creates a right or interest on the part of a public utility to provide electricity supply or continue to provide electricity supply to any customer or customers if a local government supply entity makes application to provide electricity supply to those customers under [section 12].

(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) (a) Except as provided in [section 12] and subsections (4)(b) through (4)(e) of this section, 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 (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.

(c) A new 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. 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.

(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 [section 12] and subsections (2) through (4); of this section 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, including customers that transition to default supply service from a local government supply entity.

(6) ~~An~~ Except for small customers within the jurisdictional limits of a local government supply entity that have not previously elected to receive service from an electricity supplier that is not a default supplier, 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 that is not provided by a local government supply entity, 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) (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 (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 transition plan 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 5.** Section 69-8-208, MCA, is amended to read:

**"69-8-208. Public utility -- distribution services.** A public utility's distribution services provider shall:

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

(2) build and maintain distribution facilities;

(3) provide default supply service, unless default supply service is provided by a local government supply entity pursuant to [section 12]; and

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

**Section 6.** Section 69-8-210, MCA, is amended to read:

**"69-8-210. Public utilities -- electricity supply.** (1) ~~A~~ Except as provided in [section 12], 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 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) 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.

(5) (a) Subject to subsection (5)(b), the commission shall, in reviewing the procurement of electricity supply by ~~the~~ a default supplier that is a public utility's distribution services provider, 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.

(7) Any transition charge pursuant to 69-8-211 and any universal system benefits charge, as defined in 69-3-402, that are currently being paid by a public utility distribution services provider's customer that subsequently is designated as a local government supply entity customer pursuant to [section 12] must continue to be paid by that customer, along with any new charges established by the commission pursuant to 69-8-201(5)."

**Section 7.** Section 69-8-403, MCA, is amended to read:

**"69-8-403. Commission authority -- rulemaking authority.** (1) ~~Beginning~~ Except as provided in [section 12], beginning on the effective date of a commission order regarding a public utility's transition plan, the commission shall regulate the public utility's retail transmission, distribution, and default supply services within the state of Montana, as provided in this chapter.

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

(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.

(4) ~~The~~ Except for default supply services provided by a local government supply entity, 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 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 plan.

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

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

(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.

(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.

(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; or

(c) except as provided in [section 12], regulate a local government supply entity."

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

**"69-8-419. Default supply resource planning and procurement -- duties of default supplier -- objectives -- commission rules.** (1) ~~The~~ Except as provided in [section 12], a 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~~ 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."

**Section 9.** Section 69-8-420, MCA, is amended to read:

**"69-8-420. Default supply resource procurement plans -- comment on plans.** (1) ~~The~~ Except as provided in [section 12], 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 69-8-419.

(2) A default supply resource procurement plan must demonstrate the default supplier'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 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 69-8-419; and
  - (ii) ways to remedy any concerns."

**Section 10.** Section 69-8-421, MCA, is amended to read:

**"69-8-421. Default supply filings -- commission processing and approval.** (1) ~~A~~ Except as provided in [section 12], 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 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 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 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 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 11.** Section 69-8-1008, MCA, is amended to read:

**"69-8-1008. Cooperative utility and local government supply entity -- exemption -- standard.** (1) ~~A cooperative utility is~~ Cooperative utilities and local government supply entities are exempt from the graduated renewable energy standard established in 69-8-1004.

(2) ~~Each~~ A governing body of a cooperative utility that has 5,000 or more customers ~~is~~ and a local government supply entity, as defined in 69-8-103, are each responsible for implementing and enforcing a renewable energy standard for that cooperative utility or that local government supply entity that recognizes the intent of the legislature to encourage new renewable energy production and rural economic development, while taking into consideration the effect of the standard on rates, reliability, and financial resources."

NEW SECTION. **Section 12. Local government supply entity -- small customer electricity supply service program -- approval.** (1) On or before July 1, 2011, a local government supply entity that has adopted a plan for the transition of and service to the default supply customers of a public utility within its jurisdictional limits may file with the commission a petition that demonstrates that:

(a) it possesses all legal powers necessary to provide electricity supply service to the customers located within its jurisdictional limits;

(b) it is subject to rate and service-condition regulation by the governing body of the local government supply entity;

(c) it has made provisions for an adequate and reliable electricity supply service to customers within its jurisdictional limits at prices and on terms and conditions that are not less favorable than the prices and terms and conditions that are available to the customers of the public utility in that same geographic area;

(d) the managed transition of the customers within the jurisdictional limits of the local government supply entity will not subject the other customers of the public utility to higher or more unstable default supply service rates that would otherwise result if those same customers had not been transferred to the local government supply entity; and

(e) it has made provisions to procure a minimum of 1 megawatt of its electrical energy generation from eligible renewable resources as defined in 69-8-1003. A local government supply entity that is the owner of community renewable energy projects may use the electricity output from those projects toward meeting the requirement.

(2) The petition requirements under subsections (1)(c) and (1)(d) must be in regard to a 20-year planning period.

(3) (a) Unless the commission otherwise orders or the local government supply entity and the public utility otherwise agree, a plan for transition and service adopted by the local government electricity supply entity in accordance with subsection (1) must contain, at minimum, the terms provided in subsections (3)(b) and (3)(c).

(b) The transition of the public utility's default supply customers within the local government supply entity's jurisdictional area to the local government supply entity must occur in four equal blocks spread equally over a period of 2 years. Once the plan for orderly transition has commenced, all default supply customers of the public utility within the jurisdictional limits of the local government supply entity must be transferred to the local government supply entity.

(c) A customer of the local government supply entity:

(i) that has an individual account with an average monthly load demand of less than 50 kilowatts in the previous calendar year is assigned to the local government supply entity as a default supply customer and must receive the customer's electricity supply from the local government supply entity; and

(ii) with an estimated average monthly load demand of 50 kilowatts or greater but with an individual average monthly load demand of less than 5,000 kilowatts in the previous calendar year for that individual load may receive the customer's electricity supply from the local government supply entity as a default supply customer.

(4) (a) If the local government supply entity's petition meets the requirements of subsection (1), the commission shall enter an order approving the petition. On the date that the commission issues the order approving the petition, the local government supply entity is the default supplier within its jurisdictional limits, subject to the terms of the order.

(b) If the petition does not meet the requirements of subsection (1), the commission shall enter an order that establishes the terms and conditions necessary for the local government supply entity to satisfy the requirements of subsection (1). On the date that the commission's order approving the amended petition becomes final, the local government supply entity is the default supplier within its jurisdictional limits subject to the terms of the order unless the local government supply entity elects, within 30 days from the time the commission issues the final order, to withdraw its petition.

(5) (a) An order of the commission under subsection (4) must be issued within 180 days of the commission's receipt of the petition, unless that period is extended by the commission for good cause for another 90 days.

(b) If the commission has not taken action on the petition at the end of the period specified in subsection (5)(a), the petition is considered approved as filed.

(6) A local government supply entity that has been designated as a default supplier pursuant to this section is exempt from the provisions of 69-8-419 through 69-8-421.

NEW SECTION. **Section 13. Codification instruction.** [Section 12] is intended to be codified as an integral part of Title 69, and the provisions of Title 69 apply to [section 12].

NEW SECTION. **Section 14. Effective date.** [This act] is effective on passage and approval.

- END -

