

SENATE BILL NO. 337

INTRODUCED BY WANZENRIED, GILLAN, LARSON, MOSS, GRINDE, VAN DYK, DRISCOLL, BECKER, BRANAE, WILMER, WISEMAN, NOONAN, HARRINGTON, GROESBECK, SESSO, GALLUS, VILLA, PARKER, COHENOUR, COONEY, GALLIK, KAUFMANN, ERICKSON, HENRY, HANDS, WILLIAMS, LIND, MCALPIN, WINDY BOY, BERGREN, BIXBY, SMALL-EASTMAN, SMITH, JOPEK, CAMPBELL, DICKENSON, EBINGER, FRENCH, FUREY, PHILLIPS, POMNICHOWSKI, REINHART, RYAN, SANDS

A BILL FOR AN ACT ENTITLED: "~~AN ACT EXPANDING THE MEMBERSHIP OF AN ELECTRICITY BUYING COOPERATIVE;~~ ALLOWING ELECTRICITY BUYING COOPERATIVES TO OWN GENERATION, TRANSMISSION, AND DISTRIBUTION EQUIPMENT; ALLOWING BUYING COOPERATIVES TO PURCHASE AND SELL THE PRODUCTS NECESSARY TO PRODUCE OR USE ELECTRICITY, FUEL PRODUCED WITH RENEWABLE ENERGY FOR HEAT OR TRANSPORTATION, OR HEAT AS PART OF A COMBINED HEAT AND POWER PROGRAM; GRANTING A BUYING COOPERATIVE THE ABILITY TO LEASE PROPERTY ~~AND LEND MONEY;~~ REQUIRING AN ELECTRICITY BUYING COOPERATIVE PROVIDING ELECTRICITY TO SMALL CUSTOMERS OF A DISTRIBUTION UTILITY TO PROVIDE ANCILLARY SERVICES; REQUIRING THE PUBLIC SERVICE COMMISSION TO ESTABLISH TARIFFS RELATED TO RENEWABLE RESOURCES; AMENDING SECTIONS 35-19-102, 35-19-107, 35-19-201, AND 35-19-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

SECTION 1. 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 regulated by the public service commission pursuant to Title 69, chapter 3.~~

(2) "Load" means the electricity that is consumed.

~~(2)~~(3) "Residential customer" means a residential customer of a distribution utility.

~~(3)~~(4) "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)~~(5) "Small customer" means a residential customer or small commercial customer of a distribution utility."

Section 2. Section 35-19-107, MCA, is amended to read:

"35-19-107. Membership. (1) Membership in a buying cooperative is restricted to:

- ~~(a) small customers of a distribution utility;~~
- ~~(b) tribes;~~
- ~~(c) rural electric cooperatives;~~
- ~~(d) municipal electric utilities; or~~
- ~~(e) the state of Montana and any of its political subdivisions, including but not limited to counties, municipalities, or school districts.~~

(2) A member may join a buying cooperative by the methods prescribed in the buying cooperative's bylaws or may be assigned to a buying cooperative by the public service commission, as provided by commission rule."

Section 3. Section 35-19-201, MCA, is amended to read:

"35-19-201. Powers of buying cooperative. A buying cooperative may:

- (1) sue and be sued in its corporate name;
- (2) have existence for as long as it serves its purpose;
- (3) adopt a corporate seal and alter the seal at pleasure;
- (4) own, lease, possess, and enjoy as much real and personal property as is necessary for the transaction of its business and sell, lease, and dispose of the property;
- (5) borrow or lend money, or otherwise contract indebtedness, and pledge its property, both real and personal, to secure the payment of the borrowed money or contract for debt;
- (6) enter into contracts and other obligations for:
 - (a) the purchase and sale to its members of:
 - (i) electricity to its members;
 - (ii) fuel produced with renewable energy for heat or transportation; or
 - (iii) heat as part of a combined heat and power program;
 - (b) the transmission or distribution of the electricity for the purpose of interconnection with electric service facilities as defined in 69-5-102, transmission facilities as defined in 69-8-103, distribution facilities as defined in

69-8-103, western area power administration facilities, Bonneville power administration facilities, or regulated or unregulated independent service operator facilities or area electrical power grids or of the fuel or heat; and

(c) the OWNERSHIP, lease, or use of:

(i) renewable energy generating equipment; or AND

(II) TRANSMISSION AND DISTRIBUTION EQUIPMENT NECESSARY TO INTERCONNECT WITH FACILITIES DESCRIBED IN SUBSECTION (6)(B); AND

(D) THE LEASE OR USE OF CAPACITY ON TRANSMISSION OR DISTRIBUTION SYSTEMS;

~~— (ii) capacity on transmission and distribution systems;~~

(7) sell or otherwise dispose of electricity on the wholesale market not consumed by its members electricity, fuel produced with renewable energy for heat or transportation, or energy used for heat as part of a combined heat and power program;

(8) conduct its business and exercise all of its powers within or outside of this state;

(9) adopt, amend, and repeal bylaws; and

(10) except as prohibited in 35-19-202, do and perform all other acts and things and have and exercise all other powers that may be necessary, convenient, or appropriate to accomplish the purpose for which the buying cooperative is organized."

Section 4. Section 35-19-202, MCA, is amended to read:

"35-19-202. Restrictions on powers of buying cooperative. Notwithstanding any other provision of this chapter, a buying cooperative may not:

~~(1) construct, purchase, take, receive, or otherwise acquire or own, hold, equip, maintain, or operate electric generating plants or transmission or distribution lines or systems, except that a buying cooperative may enter into transmission or distribution agreements for the lease or use of capacity on transmission and distribution systems;~~

(1) CONSTRUCT, PURCHASE, TAKE, RECEIVE, OR OTHERWISE ACQUIRE OR OWN, HOLD, EQUIP, MAINTAIN, OR OPERATE ELECTRIC GENERATING PLANTS OR TRANSMISSION OR DISTRIBUTION LINES OR SYSTEMS, EXCEPT AS PROVIDED IN 35-19-201(6)(C) AND (6)(D);

~~(2)(1)(2)~~ purchase electricity for or sell electricity to commercial or industrial electric consumers having individual accounts with an average monthly demand in the previous calendar year of 100 kilowatts or more or a new commercial or industrial customer with an estimated average monthly demand of 100 kilowatts or more; or

~~(3)(2)(3)~~ offer for sale any products other than:

(a) electricity supply;

(b) fuel produced with renewable energy for heat or transportation;

(c) energy used for heat as part of a combined heat and power program; or

(d) the products necessary to produce, CONSERVE, or use the electricity, fuel, or heat; OR

(4) PROVIDE ELECTRICITY TO SMALL CUSTOMERS OF A DISTRIBUTION UTILITY UNLESS THE ELECTRICITY BUYING COOPERATIVE PROVIDES ANCILLARY SERVICES AS DEFINED IN 69-8-1003:

(A) FROM A SOURCE OTHER THAN THE DISTRIBUTION UTILITY;

(B) THROUGH A CONTRACT WITH THE DISTRIBUTION UTILITY THAT IS APPROVED BY THE PUBLIC SERVICE COMMISSION; OR

(C) PURSUANT TO A TARIFF PROMULGATED BY THE PUBLIC SERVICE COMMISSION, ANOTHER RELEVANT REGULATORY BODY, OR A SERVICE PROVIDER THAT SPECIFICALLY APPLIES TO DISTRIBUTION UTILITY SERVICES PROVIDED TO ELECTRICITY BUYING COOPERATIVES.

(5) A DISTRIBUTION UTILITY MAY NOT REFUSE TO NEGOTIATE A CONTRACT WITH AN ELECTRICITY BUYING COOPERATIVE FOR SCHEDULING, SYSTEM CONTROL, AND DISPATCH SERVICES IF THAT CONTRACT IS NECESSARY TO MOVE ENERGY WITHIN A TRANSMISSION OR DISTRIBUTION SYSTEM CONTROLLED BY THE DISTRIBUTION UTILITY."

NEW SECTION. SECTION 5. ESTABLISHMENT OF TARIFF -- RENEWABLE ENERGY SOURCES. UPON THE REQUEST OF AN ELECTRICITY SUPPLIER, THE COMMISSION SHALL PREPARE THE FOLLOWING TARIFFS FOR DISTRIBUTION UTILITIES:

(1) A NONDISCRIMINATORY, COST-BASED TARIFF INDICATING THE COSTS THAT A PUBLIC UTILITY WILL INCUR IF TRANSMISSION AND DISTRIBUTION SERVICES ARE PROVIDED TO ANOTHER ELECTRICITY SUPPLIER;

(2) A NONDISCRIMINATORY, COST-BASED TARIFF FOR THE RESIDENTIAL AND SMALL COMMERCIAL CUSTOMER CLASSES TO DEFRAY THE UNRECOVERED EMBEDDED COSTS OF CUSTOMERS THAT LEAVE THE UTILITY. THE TARIFF IN THIS SUBSECTION (2) MAY NOT APPLY BEYOND THE DATE OF THE NEXT SHORT-TERM POWER PURCHASE CONTRACT NEGOTIATED BY THE UTILITY TO ACQUIRE ENERGY EQUAL TO OR GREATER THAN THE LOSS OF LOAD FROM THE EXITING CUSTOMER OR BEYOND THE NEXT ADDITION OF GENERATION BY THE UTILITY FOR WHICH THE COMMISSION DETERMINES THAT GENERATION AND LOAD PLANNING CAN BE MODIFIED, WHICHEVER PERIOD IS SHORTER. THE COMMISSION SHALL, IN MAKING A DECISION ON A TARIFF, TAKE INTO ACCOUNT THE FOLLOWING:

(A) ADDITIONAL DEMANDS ON THE ENERGY SUPPLY SYSTEM THAT CAN DEFRAY THE LOSS OF CUSTOMERS;

(B) THE EXTENT TO WHICH THE CUSTOMER LEAVING THE ENERGY SUPPLY SYSTEM WILL ENABLE THE UTILITY TO

PURCHASE LESS POWER, THUS DECREASING SPOT-MARKET OR SHORT-TERM CONTRACT PURCHASES;

(C) THE BENEFIT TO THE UTILITY OF NOT NEEDING TO CONSTRUCT ADDITIONAL GENERATION FACILITIES; AND

(D) ANY OTHER FACTORS THAT THE COMMISSION CONSIDERS NECESSARY.

(3) A NONDISCRIMINATORY, COST-BASED TARIFF FOR THE RESIDENTIAL AND SMALL COMMERCIAL CUSTOMER CLASSES TO DEFRAY THE COSTS OF A CUSTOMER RETURNING TO A DISTRIBUTION UTILITY. IN DEVELOPING THE TARIFF, THE COMMISSION SHALL TAKE INTO ACCOUNT, AMONG OTHER THINGS, THE BENEFIT TO THE DISTRIBUTION UTILITY CUSTOMERS OF HAVING INCREASED LOAD FROM THE ADDITIONAL CUSTOMER TO DEFRAY COSTS ON ALL OF ITS SYSTEMS.

NEW SECTION. **SECTION 6. CODIFICATION INSTRUCTION.** [SECTION 5] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 69, CHAPTER 3, AND THE PROVISIONS OF TITLE 69, CHAPTER 3, APPLY TO [SECTION 5].

NEW SECTION. **Section 7. Effective date.** [This act] is effective on passage and approval.

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