

HOUSE BILL NO. 294
INTRODUCED BY G. MACLAREN

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A NATURAL GAS UTILITY THAT HAS RESTRUCTURED TO ACQUIRE NATURAL GAS PRODUCTION AND GATHERING RESOURCES AND INCLUDE THEM IN THE RATE BASE; ESTABLISHING PROCEDURES FOR THE ACQUISITION AND INCLUSION OF THE RESOURCES IN THE RATE BASE; AMENDING SECTIONS 69-3-1402 AND 69-3-1404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Statement of purpose.** The purpose of [sections 1 through 4] is to establish procedures for a natural gas utility that has restructured pursuant to this part to acquire rate-based facilities.

NEW SECTION. **Section 2. Acquisition of rate-based facilities.** A natural gas utility that provides its customers with a choice of natural gas suppliers pursuant to 69-3-1403 and that does not own natural gas production and gathering resources may acquire those facilities and place them in the rate base as provided in [sections 1 through 4].

NEW SECTION. **Section 3. Application and approval of natural gas production and gathering resources.** (1) A natural gas utility may apply to the commission for approval of a natural gas production and gathering resource that is not yet procured.

(2) (a) Within 45 days of the natural gas utility's submission of an application under subsection (1), the commission shall determine whether or not the application is adequate and in compliance with the commission's minimum filing requirements.

(b) If the commission determines that the application is inadequate, the commission shall, within 10 days of the determination, provide written notice to the natural gas utility of the deficiencies.

(3) The commission shall issue an order within 270 days of receipt of an adequate application for approval of an application to lease or acquire an equity interest in natural gas production and gathering resources.

(4) 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 natural gas utility's submission of an application for approval.

(5) (a) The commission may approve or deny, in whole or in part, an application for approval of a natural gas production resource, a gathering resource, or both.

(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 approval.

(c) A commission order granting approval of an application must find that the application is in whole or in part in the public interest.

(d) The commission order may include a provision for allowable natural gas production and gathering assets cost of service when the utility has filed an application for the lease or acquisition of an equity interest in natural gas production and gathering resources.

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

(f) A commission order that denies approval must describe why the findings required in subsection (5)(c) could not be reached.

(6) Except as otherwise provided in this part, if the commission has issued an order containing the findings required under subsection (5)(c), the commission may not subsequently disallow the recovery of costs related to the approved natural gas production and gathering resource based on contrary findings.

(7) Nothing in this section limits the commission's ability to, in any future rate proceeding, inquire into the manner in which the natural gas utility has managed, dispatched, operated, or maintained any resource or managed any natural gas supply purchase agreement as part of its overall resource portfolio. The commission may subsequently disallow rate recovery for the costs that result from the failure of a natural gas utility to reasonably manage, dispatch, operate, maintain, or administer natural gas production and gathering resources in a manner consistent with [sections 1 through 4] and commission rules.

(8) By March 31, 2010, the commission shall adopt rules prescribing minimum filing requirements for applications filed pursuant to this part.

NEW SECTION. Section 4. Use of natural gas production and gathering resources. Natural gas production and gathering resources acquired by a natural gas utility pursuant to this part:

(1) must be used by the natural gas utility to serve and benefit customers that have not made a choice of natural gas suppliers within the natural gas utility's Montana service territory; and

(2) may not be removed from the rate base unless the commission finds that customers of the natural

gas utility will not be adversely affected.

Section 5. Section 69-3-1402, MCA, is amended to read:

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

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

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

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

(b) operated by a distribution services provider.

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

(4) "Natural gas production and gathering assets cost of service" means a return on invested capital and all costs associated with the acquisition, construction, administration, operation, and maintenance of a plant or equipment, minerals, and mineral rights owned or leased by a public utility and used for natural gas production and gathering.

(5) "Natural gas production and gathering resources" means plants or equipment, minerals, and mineral rights used to extract natural gas from the earth and to collect, purify, measure, regulate, compress, and transport natural gas from its place of production to its connection with a transmission facility.

~~(4)(6)~~ "Natural gas supplier" means a person, including aggregators, market aggregators, brokers, and marketers, licensed by the commission that is offering to sell natural gas to retail customers in the state of Montana.

~~(5)(7)~~ "Natural gas utility" means a utility regulated by the commission on May 2, 1997, that provides natural gas services to the public.

~~(6)(8)~~ "Open access" means that a natural gas utility has made its transmission facilities, storage facilities, or distribution facilities available to all natural gas suppliers, transmission services providers, distribution services providers, and customers on a nondiscriminatory and comparable basis.

~~(7)(9)~~ "Performance-based ratemaking" means those forms of regulation that include but are not limited to the use of revenue indexing, price indexing, ranges of authorized return, gas cost indexing, and innovative use of utility-related assets and activities, such as system sales of excess natural gas supplies, release of upstream pipeline capacity, and performance of billing services for other natural gas suppliers. A performance-based

regulation may also include a mechanism for automatic annual adjustments of revenue to prices to reflect changes in any index adopted for the implementation of the performance-based form of regulation.

~~(8)~~(10) "Storage facilities" means those facilities that are owned, controlled, or operated by a person offering storage service for natural gas and generally means any underground reservoir suitable for the storage of natural gas and the facilities used to inject and withdraw natural gas into and out of that underground reservoir.

~~(9)~~(11) "Transition costs" means:

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

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

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

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

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

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

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

~~(10)~~(12) "Transmission facilities" means those facilities owned, controlled, and operated by a transmission services provider that are used to transport natural gas from a gathering line or storage facility to a distribution facility, storage facility, or end-use customer.

~~(11)~~(13) "Transmission services provider" means a person controlling or operating transmission facilities.

~~(12)~~(14) "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 program costs.

~~(13)~~(15) "Universal system benefits programs" means public purpose programs for cost-effective local energy conservation, low-income energy bill discounts, low-income weatherization, and emergency low-income energy bill assistance."

Section 6. Section 69-3-1404, MCA, is amended to read:

"69-3-1404. Functional separation -- code of conduct -- emergency services -- customer protection. (1) ~~A~~ Except as provided in [sections 1 through 4], a natural gas utility that provides customer choice and open access on its system shall:

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

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

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

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

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

NEW SECTION. Section 7. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 69, chapter 3, part 14, and the provisions of Title 69, chapter 3, part 14, apply to [sections 1 through 4].

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

NEW SECTION. Section 9. Applicability. [This act] applies to applications received by the public service commission after March 31, 2010.

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