

HOUSE BILL NO. 491  
INTRODUCED BY B. WISEMAN

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING SMALL POWER PRODUCTION LAWS; REQUIRING A UTILITY TO CONTRACT IN GOOD FAITH AND IN ACCORDANCE WITH FEDERAL REGULATIONS FOR THE PURCHASE OF ELECTRICITY FROM QUALIFYING SMALL POWER PRODUCTION FACILITIES; REQUIRING THE COMMISSION TO DETERMINE AVOIDED COSTS AND STANDARD RATES; PROVIDING PENALTIES FOR A UTILITY'S NONCOMPLIANCE WITH SMALL POWER PRODUCTION LAWS; REPEALING A PENDING REPEAL OF THE SMALL POWER PRODUCTION LAWS; AMENDING SECTIONS 69-3-601, 69-3-602, 69-3-603, AND 69-3-604, MCA; REPEALING CHAPTER 284, LAWS OF 2003; 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. Penalty.** (1) A public utility that violates any provision of 69-3-601 through 69-3-604, fails or refuses to comply with any provision of 69-3-601 through 69-3-604, fails to place in operation any rate established in accordance with 69-3-601 through 69-3-604, or fails, neglects, or refuses to obey a commission or court requirement or order enforcing any provision of 69-3-601 through 69-3-604 is subject to a civil penalty of not less than \$100 or more than \$1,000 per day of the violation, refusal, failure, or neglect.

(2) The penalty may be recovered in a civil action upon the complaint of the commission or an aggrieved party in any court of competent jurisdiction.

**Section 2.** Section 69-3-601, MCA, is amended to read:

**"69-3-601. (Temporary) Definitions.** As used in this part, the following definitions apply:

(1) "Avoided costs" means the incremental costs as determined by the commission to an electric utility of electric energy, capacity, or both that the utility would generate itself or purchase from another source if the energy, capacity, or both were not purchased from the qualifying small power production facility or facilities.

~~(1)~~(2) "Commission" means the Montana public service commission.

~~(2)~~(3) "Electric cooperative" means a rural electric cooperative organized under the laws of Montana, or a foreign corporation admitted to do business in Montana.

(4) "Long-term contract" means a contract of 15 years or longer in duration.

~~(3)~~(5) "Qualifying small power production facility" means a facility that:

(a) produces electricity by the use, as a primary energy source, of biomass, waste, water, wind, or other renewable resource, or any combination of those sources; or

(b) produces electricity and useful forms of thermal energy, such as heat or steam, used for industrial, commercial, heating, or cooling purposes through the sequential use of energy known as cogeneration; and

(c) has a power production capacity that together with any other facilities located at the same site is not greater than 80 megawatts; and

(d) is owned by a person not primarily engaged in the generation or sale of electricity other than electric power from a small power production facility.

(6) "Standard rate" means a rate applicable to all power purchase contracts between a utility and qualifying small power production facilities that do not choose to negotiate a different rate.

~~(4)~~(7) "Utility" means any public utility supplying electricity and regulated by the commission. ~~(Repeated on occurrence of contingency--secs. 1, 3, Ch. 284, L. 2003.)~~

**Section 3.** Section 69-3-602, MCA, is amended to read:

**"69-3-602. (Temporary) Generation and sale of electricity by qualifying small power production facility.** (1) A qualifying small power production facility may generate electricity from the sources described in ~~69-3-601(3)(a)~~ 69-3-601(5)(a) and ~~(3)(b)~~ (5)(b) and may contract for the sale of that electricity with a utility.

(2) A qualifying small power production facility may generate electricity from the sources described in ~~69-3-601(3)(a)~~ 69-3-601(5)(a) and ~~(3)(b)~~ (5)(b) and may contract for the sale of that electricity with an electric cooperative under terms and conditions mutually agreed upon between the parties and in compliance with the rates and regulations established by the Public Utility Regulatory Policies Act. ~~(Repeated on occurrence of contingency--secs. 1, 3, Ch. 284, L. 2003.)~~

**Section 4.** Section 69-3-603, MCA, is amended to read:

**"69-3-603. (Temporary) Required sale of electricity under rates and conditions prescribed by commission.** (1) (a) Except as provided in subsection (1)(b), a utility shall purchase any energy and capacity made available by a qualifying small power production facility.

(b) A utility is not obligated to make the purchases under exceptional circumstances prescribed by commission rules.

(2) The utility shall offer a power purchase contract to the qualifying small power production facility

including the applicable standard rate for the sale of electricity by qualifying facilities as determined by the commission. The qualifying small power production facility and the utility may negotiate a rate different from the applicable standard rate.

(3) A utility shall negotiate in good faith to form a contract with a qualifying small power production facility. If the commission finds a utility has failed to negotiate in good faith, the utility is subject to the penalty provided for in [section 1].

~~(1)(4)~~ If a qualifying small power production facility and a utility are unable to mutually agree to a contract for the sale of electricity or a price for the electricity to be purchased by the utility, the commission shall require the utility to purchase the electricity under rates and conditions established under the provisions of subsection ~~(2) (5)~~.

~~(2)(5)~~ The commission shall determine the rates and conditions of the contract upon petition of a qualifying small power production facility or a utility ~~or during a rate proceeding involving the review of rates paid by a utility for electricity purchased from a qualifying small power production facility.~~ The commission shall render a decision within 120 days of receipt of the petition ~~or before the completion of the rate proceeding.~~ The rates and conditions of the determination ~~shall~~ must be made according to the standards prescribed in 69-3-604. ~~(Repeated on occurrence of contingency--secs. 1, 3, Ch. 284, L. 2003.)"~~

**Section 5.** Section 69-3-604, MCA, is amended to read:

**"69-3-604. (Temporary) Standards for determination of standard rates and contract conditions.**

(1) (a) By June 30, 2009 and by June 30 of every subsequent year, a utility shall submit to the commission information in compliance with 18 CFR 292.302.

(b) The commission shall use the information required in subsection (1)(a) to calculate the utility's avoided costs.

(2) The commission shall determine the standard rates for the sale of electricity from qualifying small power production facilities to a utility based on the avoided costs calculated by the commission pursuant to subsection (1)(b).

(3) A standard rate may not exceed the utility's avoided costs as calculated at the time the contract is established.

~~(4)(4)~~ The In a proceeding to determine a specific contract rate and conditions pursuant to 69-3-603(5), the commission shall determine the contract rates and conditions of the contract for the sale of electricity by a ~~qualifying small power production facility~~ according to the standards in subsections ~~(2) (5)~~ through ~~(5) (7)~~.

~~(2)(5)~~ Long-term contracts for the purchase of electricity by the utility from a qualifying small power production facility ~~shall~~ must be encouraged in order to enhance the economic feasibility of qualifying small power production facilities.

~~(3)(6)~~ The contract rate ~~rates to be paid by a utility for electricity purchased from a qualifying small power production facility shall~~ must be established with consideration of the availability and reliability of the electricity produced by the qualifying small power production facility, to the extent that the factors have not already been accounted for in the standard rate.

~~(4)(7)~~ The commission may set ~~these rates~~ the contract rate by use of any of the following methods:

- (a) the avoided cost over the term of the contract;
- (b) the cost of production for the qualifying small power production facility plus a just and reasonable return; or
- (c) any other method that will promote the development of qualifying small power production facilities.

~~(5)(8)~~ The commission may adopt rules further defining the criteria for qualifying small power production facilities, their cost-effectiveness, and other standards. ~~(Repealed on occurrence of contingency--secs. 1, 3, Ch. 284, L. 2003.)"~~

NEW SECTION. Section 6. Repealer. Chapter 284, Laws of 2003, is repealed.

NEW SECTION. Section 7. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 69, chapter 3, part 6, and the provisions of Title 69, chapter 3, part 6, apply to [section 1].

NEW SECTION. Section 8. 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 9. Effective date. [This act] is effective on passage and approval.

NEW SECTION. Section 10. Applicability. [This act] applies to contracts entered into and rates established after [the effective date of this act].

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