

SENATE BILL NO. 276

INTRODUCED BY R. ARTHUN

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A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE DISTRIBUTION SYSTEM IMPROVEMENT CHARGE ACT; ALLOWING A UTILITY TO ADJUST CUSTOMER RATES, WITH PUBLIC SERVICE COMMISSION APPROVAL, TO MAKE DISTRIBUTION SYSTEM IMPROVEMENTS; REQUIRING UTILITIES TO PREPARE DISTRIBUTION SYSTEM IMPROVEMENT PLANS; ESTABLISHING A PROCESS FOR DISTRIBUTION SYSTEM IMPROVEMENT CHARGE APPROVAL, COMPLAINTS, AND AMENDMENTS; AMENDING SECTIONS 69-3-302 AND 69-3-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 8] may be cited as the "Distribution System Improvement Charge Act".

NEW SECTION. **Section 2. Purpose.** The purpose of [sections 1 through 8] is to provide a utility that is providing electricity, natural gas, water, or sewer service with a mechanism to cost-effectively replace aging pipeline and powerline infrastructure by expeditiously including the full cost of improvements in the rates the utility is authorized to charge its customers in accordance with a distribution system improvement plan approved by the commission.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 8], the following definitions apply:

(1) "Adjustment dates" means January 1 and July 1 in the case of a semiannual distribution system improvement charge adjustment and January 1 in the case of an annual distribution system improvement charge adjustment unless the commission finds that alternate adjustment dates serve the purpose of [sections 1 through 8].

(2) "Base rates" means the rates for utility service established by the commission in its final order in the utility's most recently completed general rate case.

(3) "Distribution system improvement charge costs" means depreciation expenses and pretax returns

1 associated with eligible distribution system improvements. Upon application of the utility, additional expenses
2 associated with an eligible distribution system improvement may be included in costs if approved by the
3 commission.

4 (4) "Distribution system improvement charge revenue" means revenue produced through a distribution
5 system improvement charge, excluding revenue from other rates and charges.

6 (5) "Distribution system improvement plan" means a detailed plan that:

7 (a) describes the existing distribution system infrastructure that will be replaced or enhanced;

8 (b) establishes that the infrastructure to be replaced or enhanced is an eligible distribution system
9 improvement;

10 (c) establishes a reasonable duration for replacing or enhancing the described existing distribution system
11 infrastructure; and

12 (d) provides an estimate of the expected cost of implementing the plan, including distribution system
13 improvement charge costs.

14 (6) "Eligible distribution system improvement" means a proposed improvement to a system that is in
15 service, but for which changes are not included in a utility's base rate, when the improvement will replace or
16 enhance existing distribution infrastructure but will not increase utility revenue by connecting the distribution
17 system to new customers.

18 (7) "Pretax return" means the revenue necessary to:

19 (a) produce net operating income equal to the utility's weighted cost of capital;

20 (b) provide for the tax deductibility of the debt interest component of the weighted capital structure; and

21 (c) pay state and federal income taxes applicable to that income.

22 (8) "Utility" means a public utility regulated by the commission pursuant to this title that provides
23 electricity, natural gas, water, or sewer service to customers.

24 (9) "Weighted cost of capital" means the overall cost of debt and equity capital to the utility as established
25 by the commission in a final order in the utility's most recently completed general rate case.

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27 **NEW SECTION. Section 4. Distribution system improvements charge -- implementation.** Upon
28 application of a utility, the commission shall establish a distribution system improvement charge and approve
29 tariffs implementing the charge that:

30 (1) adjust base rates to recover the costs incurred by the utility for eligible distribution system

1 improvements;

2 (2) provide an automatic adjustment clause so that costs incurred in accordance with a
3 commission-approved plan are included in the charge and recovered in the subsequent adjustment period to
4 provide dollar-for-dollar matching of the charge costs to the charge revenue; and

5 (3) establish the charge as a percentage surcharge to existing base rates or as a separate rate in order
6 to disclose to a utility customer the amount devoted to the charge on each monthly utility bill.

7
8 **NEW SECTION. Section 5. Contents of application -- procedures.** (1) A utility's application to the
9 commission requesting establishment of a distribution system improvement charge must contain a distribution
10 service improvement plan and the tariffs proposed to establish the distribution system improvement charge,
11 including adjustment dates.

12 (2) Any proceeding related to an application by a utility for a distribution system improvement charge or
13 the approval of a distribution system improvement plan must be conducted as a contested case proceeding.

14 (3) If the commission determines that a distribution system improvement charge meets the requirements
15 of [sections 1 through 8] and approves a utility's distribution service improvement plan, the commission shall issue
16 an order approving the charge.

17 (4) A distribution service improvement plan must be supported by substantial credible evidence showing
18 that it will achieve the purpose of [sections 1 through 8].

19 (5) (a) Within 1 year of the date of the filing by a utility for a distribution system improvement plan and
20 charge, the commission shall issue a final order approving or denying the plan and charge.

21 (b) If the commission does not issue its final order within 1 year, the utility may implement the charge
22 established in its application without commission approval subject to amendments made in accordance with
23 [section 7].

24
25 **NEW SECTION. Section 6. Implementation -- complaints.** (1) Except as provided in subsection (2),
26 after a distribution system improvement charge is approved by the commission, a rate adjustment under the
27 charge is automatically effective on the adjustment date without further action by the commission.

28 (2) (a) The consumer counsel may file a complaint with the commission if the consumer counsel believes
29 that a distribution system improvement charge cost contained in a rate adjustment was incorrectly calculated or
30 imprudently incurred.

1 (b) A complaint must be filed within 6 months after a utility implements a rate adjustment for a distribution
2 system improvement charge.

3 (c) A complaint must be heard by the commission as a contested case proceeding.

4 (3) A complaint filed in accordance with subsection (2) may not result in a stay of a scheduled rate
5 adjustment, but the rate adjustment must be considered an interim rate, subject to refund, if the commission finds
6 upon hearing the complaint that the rate adjustment was incorrectly calculated or imprudently incurred.

7 (4) If a complaint is filed in accordance with subsection (2), the final rate is the rate established by the
8 commission in the final order issued after a complaint proceeding.

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10 **NEW SECTION. Section 7. Distribution service improvement plan amendment.** (1) A utility, the
11 consumer counsel, or a customer directly affected by a distribution service improvement charge may file an
12 application with the commission requesting an amendment to an approved distribution service improvement plan.

13 (2) The commission may not approve an amendment that denies a utility its ability to recover distribution
14 system improvement charge costs in its customer's rates when the costs are incurred in accordance with a
15 previously approved plan.

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17 **NEW SECTION. Section 8. Balancing account -- interest.** (1) If distribution system improvement
18 charge revenue exceeds or is less than distribution system cost charge costs at the end of an adjustment period,
19 the difference must be reflected in the next adjustment period.

20 (2) The difference in revenue and cost must be reflected in rates in the next adjustment period, with
21 interest on the difference at the weighted cost of capital, as determined by the commission in its final order in a
22 utility's last completed general rate case.

23

24 **Section 9.** Section 69-3-302, MCA, is amended to read:

25 **"69-3-302. Changes in schedules.** (1) Except as provided in 69-3-308 and [sections 1 through 8], a
26 change may not be made in any schedule, including schedules of joint rates, except as approved by the
27 commission, upon the passage of 9 months, or by operation of 69-3-907(1). If the 9-month time period expires
28 prior to commission approval of a schedule, a utility may waive the time period.

29 (2) Notwithstanding any provision of this title to the contrary, other than rate adjustments made pursuant
30 to 69-3-308 or [sections 1 through 8], the rates, tolls, or charges set forth in any schedule filed with the

1 commission pursuant to 69-3-301 must become effective and be lawful rates, tolls, or charges for the utility
 2 service rendered 9 months after the date upon which the schedule was filed under the rules of practice and
 3 procedure for filing as adopted by the commission or upon commission approval, whichever occurs first, unless
 4 the utility waives the 9-month time period. However, if the rates, tolls, or charges become effective because of
 5 the passage of 9 months, the revenue collected is subject to rebate, plus interest at an annual rate determined
 6 by the commission, to the extent that the rates, tolls, or charges ultimately approved by the commission in its final
 7 decision produce revenue that is less than that collected under the filed schedules. In the case of an
 8 investor-owned utility, the interest rate set by the commission may not exceed the cost of equity capital as last
 9 determined by the commission.

10 (3) The commission may prescribe rules necessary to effectively administer this section."
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12 **Section 10.** Section 69-3-303, MCA, is amended to read:

13 **"69-3-303. Notice and hearing on proposed change.** (1) Except as provided in 69-3-308 and [sections
 14 1 through 8], before the commission may approve any change increasing the rate or rates for utility service in a
 15 schedule generally affecting consumers in a utility's service area or before any change may become effective due
 16 to the passage of 9 months, the commission shall publish a notice of the proposed change, conforming to the
 17 requirements of 2-4-601 in one or more newspapers published and of general circulation within the area affected
 18 by the proposed change. This notice must announce a hearing on the proposed change and must inform
 19 interested persons as to how they may petition the commission to become parties to the hearing.

20 (2) The commission shall proceed to conduct the hearing under the Montana Administrative Procedure
 21 Act. The final decision of the commission in any matter decided after a hearing conducted pursuant to this section
 22 must conform to the requirements of a decision in a contested case under the Montana Administrative Procedure
 23 Act.

24 (3) The consumer counsel may petition to become a party to the hearing."
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26 NEW SECTION. **Section 11. Codification instruction.** [Sections 1 through 8] are intended to be
 27 codified as an integral part of Title 69, chapter 3, and the provisions of Title 69, chapter 3, apply to [sections 1
 28 through 8].

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30 NEW SECTION. **Section 12. Effective date.** [This act] is effective on passage and approval.

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