

1 SENATE BILL NO. 402

2 INTRODUCED BY D. ANKNEY

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ENERGY AND UTILITY LAWS;
5 ESTABLISHING THE "MONTANA ENERGY ACCOUNTABILITY ACT"; PROVIDING A PURPOSE STATEMENT;
6 REQUIRING ENTITIES TO NOTIFY THE PUBLIC SERVICE COMMISSION WHEN ACQUIRING AN
7 ADDITIONAL OR INCREASED INTEREST IN A COAL-FIRED GENERATING FACILITY OR UNIT WITH PLANS
8 TO RETIRE THE FACILITY OR UNIT; REQUIRING NOTIFICATION BY ENTITIES WHEN RETIRING A
9 FACILITY OR UNIT; REQUIRING ENTITIES TO PAY AN IMPACT FEE WHEN ACQUIRING AN ADDITIONAL
10 OR INCREASED INTEREST IN A COAL-FIRED GENERATING FACILITY WITH PLANS TO RETIRE THE
11 FACILITY OR WHEN RETIRING A FACILITY OR UNIT; REQUIRING THE DEPARTMENT OF REVENUE TO
12 USE TAXABLE VALUE TO DETERMINE THE IMPACT FEE; REQUIRING THE FEE TO BE VERIFIED AND
13 COLLECTED BY THE DEPARTMENT OF REVENUE; ALLOCATING A PORTION OF THE FEE TO THE
14 GENERAL FUND AND A PORTION OF THE FEE TO CERTAIN COUNTIES; REQUIRING COUNTIES THAT
15 RECEIVE AN IMPACT FEE TO ESTABLISH AN IMPACT TRUST ACCOUNT; PROVIDING FOR THE USE OF
16 THE TRUST ACCOUNT; GRANTING THE PUBLIC SERVICE COMMISSION RULEMAKING AUTHORITY;
17 REQUIRING A FEE FOR A WAIVER REQUEST; ALLOWING FOR IMPACT FEE WAIVERS UNDER CERTAIN
18 CIRCUMSTANCES; REQUIRING REMEDIATION AND LIABILITY REQUIREMENTS FOR CERTAIN PONDS
19 AT A COAL-FIRED GENERATING FACILITY WHEN FACILITIES OR UNITS ARE RETIRED UNDER CERTAIN
20 CIRCUMSTANCES; REVISING THE RENEWABLE RESOURCE STANDARD; CLARIFYING THE DEFINITION
21 OF "PUBLIC UTILITY" FOR THE PURPOSES OF THE RENEWABLE RESOURCE STANDARD; CLARIFYING
22 THE RENEWABLE RESOURCE STANDARD REQUIREMENTS FOR CERTAIN PUBLIC UTILITIES;
23 PROVIDING EXCEPTIONS; GRANTING PRIORITY STATUS TO TREASURE STATE ENDOWMENT
24 PROJECTS REQUESTED AS A RESULT OF THE RETIREMENT OF A COAL-FIRED GENERATING FACILITY;
25 REQUIRING THE PUBLIC SERVICE COMMISSION TO CONDUCT OR PARTICIPATE IN A STUDY OF
26 TRANSMISSION LINE ACCESS AND USE RELATED TO COAL-FIRED GENERATING FACILITIES OR UNITS;
27 REQUIRING A PORTION OF THE WHOLESALE ENERGY TRANSACTION TAX TO BE USED TO FUND THE
28 TRANSMISSION STUDY; AMENDING SECTIONS 15-72-106, 69-3-2003, 69-3-2004, 69-8-426, AND 90-6-710,
29 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

30

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

2

3 NEW SECTION. **Section 1. Short title.** [Sections 1 through 10] may be cited as the "Montana Energy
4 Accountability Act".

5

6 NEW SECTION. **Section 2. Purpose and intent.** (1) The purpose of [sections 1 through 10] is to
7 provide for a financial partnership between state and local government units and the owners of coal-fired
8 generating facilities in Montana.

9 (2) This partnership is founded on trust and is committed to protecting and promoting the financial
10 interests of Montana's cities, towns, counties, local schools, special districts, and state government.

11 (3) The legislature recognizes the critical importance of coal-fired generation to the vitality of Montana's
12 economy and the state's revenue base. The legislature also recognizes that there are efforts to retire coal-fired
13 generating facilities in Montana prematurely and to replace fossil-fuel generation with renewable energy
14 generation. The premature retirement of coal-fired generation will have a negative and unwarranted impact on
15 state and local government units, as well as on the citizens of Montana. The purpose of [sections 1 through 10]
16 is to encourage energy generation in Montana and to provide for a timely transition in regional energy policy
17 without adversely affecting tax revenue received from longstanding economic activity in the state.

18

19 NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 10], the following definitions
20 apply:

21 (1) "Coal-fired generating facility or unit" means any combination of a physically connected generator
22 or generators, associated prime movers, and other associated property, including appurtenant land and
23 improvements and personal property, that are located in Montana and normally operated together to produce
24 electric power from coal-fired steam turbines and have a generating capacity greater than or equal to 200
25 megawatts. A coal-fired generating facility includes and may be limited to one or more operating units of a
26 coal-fired generating facility that collectively compose a larger facility that is or may be owned by more than one
27 electrical company, electricity supplier, or public utility on [the effective date of this act].

28 (2) "Electrical company" means a company owned by investors that:

29 (a) wholly or partially owns or operates a coal-fired generating facility in Montana, directly or through a
30 subsidiary or an affiliate;

1 (b) furnishes or has furnished electricity from the coal-fired generating facility to retail customers in
2 another state prior to [the effective date of this act]; and

3 (c) would be a public utility as defined in subsection (6) if those retail electricity customers were in
4 Montana.

5 (3) "Electricity supplier" means an entity that wholly or partially owns or operates a coal-fired generating
6 facility or unit in Montana that is not a public utility or an electrical company.

7 (4) "Eligible coal-fired generating facility acquisition costs" are costs and expenses incurred when a
8 transaction is consummated by an electrical company in connection with the acquisition of an additional or
9 increased interest in one or more coal-fired generating facilities or units. Eligible coal-fired generating facility
10 acquisition costs include costs and expenses incurred by an electrical company to secure, finance, purchase, and
11 acquire an additional or increased interest in one or more coal-fired generating facilities, together with all rights
12 and obligations related to the ownership, operation, and control of the interest, and includes all transaction costs,
13 closing costs, legal fees, taxes, charges, expenses, and other costs incurred by an electrical company in
14 connection with the acquisitions. Costs may include the trade of assets or power supply in exchange for an
15 additional or increased interest in a coal-fired generating facility.

16 (5) "Local government unit" means an incorporated city or town, a county, a consolidated local
17 government, a tribal government, or a county or multicounty water, sewer, or solid waste district.

18 (6) "Public utility" means an electric utility regulated by the public service commission pursuant to Title
19 69, including the public utility's successors or assignees.

20 (7) "Retire" or "retired" means the time at which a coal-fired generating facility or unit:

21 (a) ceases to generate electricity and is retired from service; or

22 (b) is mothballed or kept in working order but operation is suspended and the facility or unit has not yet
23 been retired.

24 (8) "Tribal government" means a federally recognized Indian tribe within the state of Montana.

25
26 **NEW SECTION. Section 4. Coal-fired plant acquisition or retirement -- notice.** (1) If an electrical
27 company, electricity supplier, or public utility incurs eligible coal-fired generating facility acquisition costs with a
28 plan to retire a coal-fired generating facility or unit, the electrical company, public utility, or electricity supplier that
29 incurs the acquisition costs shall file a notice with the public service commission within 30 days of incurring
30 eligible coal-fired generating facility acquisition costs.

1 (2) If an electrical company, electricity supplier, public utility, or combination of those entities does not
2 incur eligible coal-fired generating facility acquisition costs but retires a coal-fired generating facility or unit, the
3 electrical company, electricity supplier, public utility, or combination of entities jointly agreeing to retire the facility
4 or unit shall file a notice with the public service commission within 30 days of reaching an agreement to retire the
5 facility or unit.

6 (3) Within 30 days of receiving the notice required pursuant to subsection (1), the public service
7 commission shall notify the department of revenue and the local governing body of the county where the
8 coal-fired generating facility or unit is located of the filing of the notice.

9 (4) Nothing in [sections 1 through 10] may be construed to:

10 (a) alter or modify the authority of the public service commission to regulate the rates and services of
11 a public utility that is subject to the provisions of this chapter; or

12 (b) expand the authority of the public service commission to regulate an electrical company or an
13 electricity supplier that is not subject to the provisions of this chapter.

14
15 **NEW SECTION. Section 5. Coal county impact fee -- distribution of fee.** (1) (a) Except as provided
16 in [section 8] and subsection (2) of this section, if an electrical company, electricity supplier, or public utility incurs
17 eligible coal-fired generating facility acquisition costs with a plan to retire a coal-fired generating facility or unit,
18 the electrical company, electricity supplier, or public utility that incurs acquisition costs is subject to a coal county
19 impact fee in accordance with subsection (1)(c) annually for the first 20 years after the electrical company,
20 electricity supplier, or public utility incurs eligible coal-fired generating facility acquisition costs. The annual impact
21 fee must be paid each year beginning in the year that the electrical company, electricity supplier, or public utility
22 incurs eligible coal-fired generating facility acquisition costs.

23 (b) The electrical company, electricity supplier, or public utility that incurs acquisition costs and is subject
24 to the impact fee in accordance with this subsection (1) shall within 60 days of providing the public service
25 commission with notice in accordance with [section 4(1)] provide the department of revenue with a complete list
26 of all property that is part of the coal-fired generating facility or unit planned for retirement.

27 (c) The department of revenue shall verify the information provided in accordance with subsection (1)(b)
28 and determine the annual impact fee by multiplying the total taxable value of all property planned to be retired
29 by five. The total taxable value of all property must be based on the total taxable value for the 2014 tax year.

30 (d) The annual impact fee remains static for the 20-year period that it is due annually.

1 (e) The department of revenue shall notify the electrical company, electricity supplier, or public utility that
2 it is responsible for the impact fee in the amount determined in accordance with subsection (1)(c). The electrical
3 company, electricity supplier, or public utility shall remit the amount due in accordance with [section 6].

4 (2) (a) Except as provided in [section 8], if an electrical company, electricity supplier, public utility, or
5 combination of those entities retires a coal-fired generating facility or unit but does not incur eligible coal-fired
6 generating facility acquisition costs, the electrical company, electricity supplier, public utility, or combination of
7 entities jointly agreeing to retire the facility or unit is subject to a coal county impact fee in accordance with
8 subsection (2)(c) annually for the first 10 years after the electrical company, electricity supplier, public utility, or
9 any combination of entities jointly agreeing to retire the facility or unit retires the coal-fired generating facility or
10 unit. The annual impact fee must be paid each year beginning in the year that the electrical company, electricity
11 supplier, public utility, or combination of entities retires the coal-fired generating facility or unit.

12 (b) The electrical company, electricity supplier, public utility, or combination of entities that is subject to
13 the impact fee in accordance with this subsection (2) shall within 60 days of providing the public service
14 commission with notice in accordance with [section 4(2)] provide the department of revenue with a complete list
15 of all property that is part of the coal-fired generating facility or unit being retired. If more than one entity is retiring
16 property and the property is owned by more than one entity, the entities shall select among themselves one party
17 to provide the complete list of property to the department.

18 (c) The department of revenue shall verify the information provided in accordance with subsection (2)(b)
19 and determine the annual impact fee by multiplying the total taxable value of all taxable property retired by two.
20 The total taxable value of all property must be based on the total taxable value for the tax year preceding the year
21 that the property was retired.

22 (d) The annual impact fee remains static for the 10-year period that it is due annually.

23 (e) The department of revenue shall notify the electrical company, electricity supplier, public utility, or
24 combination of entities that they are responsible for the impact fee in the amount determined in accordance with
25 subsection (2)(c). If more than one electrical company, electricity supplier, or public utility is responsible for the
26 fee, the entities responsible for the impact fee may determine how to proportionally share in the fee; however,
27 the entities shall determine among themselves which electrical company, electricity supplier, or public utility shall
28 then remit the total amount due to the department in accordance with [section 6].

29 (3) If an electrical company, electricity supplier, or public utility is paying a coal county impact fee in
30 accordance with subsection (1) and retires a coal-fired generating facility before the passage of 20 years, the

1 electrical company or public utility shall continue to pay the coal county impact fee required pursuant to
 2 subsection (1) for every year after the date that the coal-fired generating facility or unit is retired for up to 20 years.

3
 4 **NEW SECTION. Section 6. Payment of fees -- deposit of fees.** (1) (a) On or before March 1 of each
 5 year, an electrical company, electricity supplier, or public utility shall submit the impact fee required in accordance
 6 with [section 5] to the department of revenue. The penalty and interest provisions contained in 15-1-216 apply
 7 to late payments of the fee.

8 (b) The department may withhold 1% of the money received under subsection (1)(a) as reimbursement
 9 for the collection of the fee.

10 (2) (a) Except as provided in subsection (2)(b), money paid in accordance with [section 5] must be
 11 deposited in the state general fund.

12 (b) In fiscal year 2016 and in each succeeding fiscal year, 50% of all money received pursuant to
 13 subsection (1) must be deposited in the coal county trust account established in [section 7] in the county in which
 14 the coal-fired generating facility or unit owned by the electrical company, electricity supplier, or public utility is
 15 located.

16 (3) On August 15 following the close of the fiscal year, the state treasurer shall distribute the revenue
 17 dedicated in subsection (2) to the county for deposit into the coal county trust account established in [section 7].

18
 19 **NEW SECTION. Section 7. Coal county trust account -- expenditure and restrictions.** (1) The
 20 governing body of a county eligible to receive a coal county impact fee shall establish a coal county trust account.

21 (2) Money received by a county from a coal county impact fee must remain in the coal county trust
 22 account and may not be appropriated by the governing body until:

23 (a) a coal-fired generating facility or unit is retired; or

24 (b) the number of persons employed full-time at the coal-fired generating facility or unit is less than
 25 one-half of the average number of persons employed full-time at the facility during the immediately preceding
 26 2-year period.

27 (3) If the circumstances described in subsection (2)(a) or (2)(b) occur, the governing body of the county
 28 shall allocate at least one-third of the funds proportionally to affected high school districts and elementary school
 29 districts in the county and may use the remaining funds in the coal county trust account to:

30 (a) pay for outstanding capital project bonds or other expenses incurred prior to retirement of the facility

1 or unit or the reduction in the workforce described in subsection (2);

2 (b) decrease property tax mill levies that are directly caused by the cessation, reduction, or elimination
3 of activity at the coal-fired generating facility or unit;

4 (c) promote diversification and development of the economic base within the jurisdiction of a local
5 government unit through assistance to existing business, retention and expansion of existing business,
6 unemployment assistance in addition to a formerly employed individual's unemployment compensation and
7 unemployment benefits, workforce redevelopment and training, or assistance to new business;

8 (d) attract new industry to the impact area;

9 (e) provide cash incentives for expanding the employment base of the area impacted by the changes
10 at the coal-fired generating facility or unit described in subsection (2); or

11 (f) provide grants or loans to other local government units to assist with impacts caused by the changes
12 described in subsection (2).

13 (4) Except as provided in subsection (3)(b), money held in the coal county trust account may not be
14 considered as cash balance for the purpose of reducing mill levies.

15 (5) Money in the coal county trust account must be invested as provided by law. Interest and income
16 from the investment of funds in the account must be credited to the account.

17
18 **NEW SECTION. Section 8. Appropriate retirement -- public service commission duties.** (1) (a) An
19 electrical company, electricity supplier, public utility, or combination of those entities is not subject to the impact
20 fee provided for in [section 5(2)] if the electrical company, electricity supplier, public utility, or combination of
21 entities retires a coal-fired generating facility or unit because:

22 (i) the electrical company, electricity supplier, public utility, or combination of entities demonstrates in
23 accordance with rules adopted by the commission pursuant to subsection (2) that the electrical company,
24 electricity supplier, public utility, or combination of entities is not able to meet mandated federal or state standards
25 or other coal-fired generating facility or unit regulations without unreasonable investment or capital improvement.

26 An investment or capital improvement is considered unreasonable if it is:

27 (A) economically or technologically unfeasible; or

28 (B) outside the scope of an improvement or investment that would be made in a similar circumstance
29 by a prudent owner of a coal-fired generating facility or unit.

30 (ii) the electrical company, electricity supplier, public utility, or combination of entities demonstrates in

1 accordance with rules adopted by the commission pursuant to subsection (2) that the coal-fired generating facility
2 or unit has reached the end of its useful life.

3 (b) The commission shall provide an impact fee waiver to an electrical company, electricity supplier,
4 public utility, or combination of entities in accordance with subsection (1)(a) and in accordance with rules adopted
5 by the commission pursuant to subsection (2).

6 (c) Within 30 days of issuing the waiver, the commission shall provide a copy of the waiver to the
7 department of revenue and to the local governing body where the coal-fired generating facility is located.

8 (2) By January 1, 2016, the commission shall adopt rules that guide the processes used by an electrical
9 company, electricity supplier, public utility, or combination of entities to facilitate a determination in accordance
10 with subsection (1). The rules must establish:

11 (a) standards for the evaluation by the commission of the reasonableness of the retirement proposed;

12 (b) minimum filing requirements for an application for approval of a fee waiver in accordance with
13 subsection (1)(b); and

14 (c) a fee, no greater than \$500, to accompany an application filed with the commission.

15
16 **NEW SECTION. Section 9. Transmission study -- special revenue account.** (1) There is a Montana
17 transmission study special revenue account to the credit of the public service commission within the state special
18 revenue fund established in 17-2-102.

19 (2) Revenue derived from the wholesale energy transaction tax pursuant to 15-72-106(4) must be
20 deposited into the account.

21 (3) The revenue received under this section must be used by the commission to complete or facilitate
22 the completion of the study required pursuant to subsection (4).

23 (4) Before July 1, 2018, the commission shall conduct a study or participate in a study being facilitated
24 by a regional transmission planning authority to determine transmission impacts associated with retiring a
25 coal-fired generating facility or unit and replacing the respective amounts of capacity with proportional amounts
26 of renewable energy in Montana.

27 (5) On or before September 1, 2018, results of the study must be submitted to the energy and
28 telecommunications interim committee provided for in 5-5-230.

29
30 **NEW SECTION. Section 10. Ponds -- administrative order on consent.** (1) If an electrical company,

1 electricity supplier, or public utility incurs eligible coal-fired generating facility acquisition costs and plans to retire
 2 a facility or unit, the electrical company, electricity supplier, or public utility that incurs eligible coal-fired generating
 3 facility acquisition costs is liable and responsible for all remediation, closure, and postclosure activities, including
 4 monitoring, at the facility or unit associated with:

- 5 (a) bottom ash ponds;
- 6 (b) fly ash ponds;
- 7 (c) evaporation ponds;
- 8 (d) effluent holding ponds; and
- 9 (e) other water management ponds.

10 (2) The electrical company, electricity supplier, or public utility shall assume the remediation, closure,
 11 and postclosure obligations for the facility or unit set forth in an administrative order on consent or other
 12 enforcement order to bring the ponds into compliance with Title 75, chapters 5 and 20.

13

14 **Section 11.** Section 15-72-106, MCA, is amended to read:

15 **"15-72-106. Collection of wholesale energy transaction tax -- disposition of revenue.** (1) A
 16 transmission services provider shall collect the tax imposed under 15-72-104 from the taxpayer and pay the tax
 17 collected to the department. If the transmission services provider collects a tax in excess of the tax imposed by
 18 15-72-104, both the tax and the excess must be remitted to the department.

19 (2) A self-assessing distribution services provider is subject to the provisions of this part.

20 (3) ~~The Except as provided in subsection (4), the wholesale energy transaction tax collected under this~~
 21 part must, in accordance with the provisions of 17-2-124, be deposited in the general fund.

22 (4) In fiscal year 2016, an amount sufficient to fund the Montana public service commission transmission
 23 study required in [section 9], as determined by the commission but not to exceed \$100,000 of the wholesale
 24 energy transaction tax collected under this part, must be deposited in the state special revenue account provided
 25 for in [section 9]."

26

27 **Section 12.** Section 69-3-2003, MCA, is amended to read:

28 **"69-3-2003. Definitions.** As used in this part, unless the context requires otherwise, the following
 29 definitions apply:

30 (1) "Ancillary services" means services or tariff provisions related to generation and delivery of electric

1 power other than simple generation, transmission, or distribution. Ancillary services related to transmission
2 services include energy losses, energy imbalances, scheduling and dispatching, load following, system
3 protection, spinning reserves and nonspinning reserves, and reactive power.

4 (2) "Balancing authority" means a transmission system control operator who balances electricity supply
5 and load at all times to meet transmission system operating criteria and to provide reliable electric service to
6 customers.

7 (3) "Common ownership" means the same or substantially similar persons or entities that maintain a
8 controlling interest in more than one community renewable energy project even if the ownership shares differ
9 between two community renewable energy projects. Two community renewable energy projects may not be
10 considered to be under common ownership simply because the same entity provided debt or equity or both debt
11 and equity to both projects.

12 (4) "Community renewable energy project" means an eligible renewable resource that:

13 (a) is interconnected on the utility side of the meter in which local owners have a controlling interest and
14 that is less than or equal to 25 megawatts in total calculated nameplate capacity; or

15 (b) is owned by a public utility and has less than or equal to 25 megawatts in total nameplate capacity.

16 (5) (a) "Competitive electricity supplier" means any person, corporation, or governmental entity that is
17 selling electricity to small customers at retail rates in the state of Montana and that is not a public utility or
18 cooperative.

19 (b) The term does not include governmental entities selling electricity produced only by facilities
20 generating less than 250 kilowatts that were in operation prior to 1990.

21 (6) "Compliance year" means each calendar year beginning January 1 and ending December 31, starting
22 in 2008, for which compliance with this part must be demonstrated.

23 (7) "Cooperative utility" means:

24 (a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

25 (b) an existing municipal electric utility as of May 2, 1997.

26 (8) "Dispatch ability" means the ability of either a balancing authority or the owner of an electric
27 generating resource to rapidly start, stop, increase, or decrease electricity production from that generating
28 resource in order to respond to the balancing authority's need to match supply resources to loads on the
29 transmission system.

30 (9) "Electric generating resource" means any plant or equipment used to generate electricity by any

1 means.

2 (10) "Eligible renewable resource" means a facility either located within Montana or delivering electricity
3 from another state into Montana that commences commercial operation after January 1, 2005, or a hydroelectric
4 project expansion referred to in subsection (10)(d)(iii), any of which produces electricity from one or more of the
5 following sources:

6 (a) wind;

7 (b) solar;

8 (c) geothermal;

9 (d) water power, in the case of a hydroelectric project that:

10 (i) does not require a new appropriation, diversion, or impoundment of water and that has a nameplate
11 rating of 10 megawatts or less;

12 (ii) is installed at an existing reservoir or on an existing irrigation system that does not have hydroelectric
13 generation as of April 16, 2009, and has a nameplate capacity of 15 megawatts or less; or

14 (iii) is an expansion of an existing hydroelectric project that commences construction and increases
15 existing generation capacity on or after October 1, 2013. Engineering estimates of the average incremental
16 generation from the increase in existing generation capacity must be submitted to the commission for review. The
17 commission shall determine an average annual incremental generation that will constitute the eligible renewable
18 resource from the capacity expansion, subject to further revision by the commission in the event of significant
19 changes in stream flow or dam operation.

20 (e) landfill or farm-based methane gas;

21 (f) gas produced during the treatment of wastewater;

22 (g) low-emission, nontoxic biomass based on dedicated energy crops, animal wastes, or solid organic
23 fuels from wood, forest, or field residues, including wood pieces that have been treated with chemical
24 preservatives, such as creosote, pentachlorophenol, or copper-chrome arsenic, and that are used at a facility that
25 has a nameplate capacity of 5 megawatts or less;

26 (h) hydrogen derived from any of the sources in this subsection (10) for use in fuel cells; and

27 (i) the renewable energy fraction from:

28 (i) the sources identified in this subsection (10) of electricity production from a multiple-fuel process with
29 fossil fuels;

30 (ii) flywheel storage as defined in 15-6-157(4)(d);

- 1 (iii) hydroelectric pumped storage as defined in 15-6-157(4)(e);
- 2 (iv) batteries; and
- 3 (v) compressed air derived from any of the sources in this subsection (10) that is forced into an
- 4 underground storage reservoir and later released, heated, and passed through a turbine generator.
- 5 (11) "Local owners" means:
- 6 (a) Montana residents;
- 7 (b) general partnerships of which all partners are Montana residents;
- 8 (c) business entities organized under the laws of Montana that:
- 9 (i) have less than \$50 million of gross revenue;
- 10 (ii) have less than \$100 million of assets; and
- 11 (iii) have at least 50% of the equity interests, income interests, and voting interests owned by Montana
- 12 residents;
- 13 (d) Montana nonprofit organizations;
- 14 (e) Montana-based tribal councils;
- 15 (f) Montana political subdivisions or local governments;
- 16 (g) Montana-based cooperatives other than cooperative utilities; or
- 17 (h) any combination of the individuals or entities listed in subsections (11)(a) through (11)(g).
- 18 (12) "Nonspinning reserve" means offline generation that can be ramped up to capacity and synchronized
- 19 to the grid within 10 minutes and that is needed to maintain system frequency stability during emergency
- 20 conditions, unforeseen load swings, and generation disruptions.
- 21 (13) "Public utility" means:
- 22 (a) any electric utility regulated by the commission pursuant to Title 69, chapter 3, on January 1, 2005,
- 23 including the public utility's successors or assignees; or
- 24 (b) any entity that:
- 25 (i) wholly or partially owns or operates a coal-fired generating facility in Montana, directly or through a
- 26 subsidiary or an affiliate;
- 27 (ii) furnishes or has furnished electricity from the generating facility to retail customers in another state
- 28 prior to [the effective date of this act]; and
- 29 (iii) would be a public utility under subsection (13)(a) if those retail electricity customers were in Montana.
- 30 (14) "Renewable energy credit" means a tradable certificate of proof of 1 megawatt hour of electricity

1 generated by an eligible renewable resource that is tracked and verified by the commission and includes all of
2 the environmental attributes associated with that 1 megawatt-hour unit of electricity production.

3 (15) "Renewable energy fraction" means the proportion of electricity output directly attributable to
4 electricity and associated renewable energy credits produced by one of the sources identified in subsection (10).

5 (16) "Seasonality" means the degree to which an electric generating resource is capable of producing
6 electricity in each of the seasons of the year.

7 (17) "Small customer" means a retail customer that has an individual load with an average monthly
8 demand of less than 5,000 kilowatts.

9 (18) "Spinning reserve" means the online reserve capacity that is synchronized to the grid system and
10 immediately responsive to frequency control and that is needed to maintain system frequency stability during
11 emergency conditions, unforeseen load swings, and generation disruptions.

12 (19) "Total calculated nameplate capacity" means the calculation of total nameplate capacity of the
13 community renewable energy project and other eligible renewable resources that are:

- 14 (a) located within 5 miles of the project;
15 (b) constructed within the same 12-month period; and
16 (c) under common ownership."
17

18 **Section 13.** Section 69-3-2004, MCA, is amended to read:

19 **"69-3-2004. Renewable resource standard -- administrative penalty -- waiver.** (1) Except as provided
20 in 69-3-2007 and subsections ~~(11) through (14)~~ (12) through (15) of this section, a graduated renewable energy
21 standard is established for public utilities and competitive electricity suppliers as provided in subsections (2)
22 through ~~(4)~~ (5) of this section.

23 (2) In each compliance year beginning January 1, 2008, through December 31, 2009, each public utility
24 and competitive electricity supplier shall procure a minimum of 5% of its retail sales of electrical energy in
25 Montana from eligible renewable resources.

26 (3) (a) In each compliance year beginning January 1, 2010, through December 31, 2014, each public
27 utility and competitive electricity supplier, except as provided in subsections ~~(13)~~ (14) and ~~(14)~~ (15), shall procure
28 a minimum of 10% of its retail sales of electrical energy in Montana from eligible renewable resources.

29 (b) Beginning January 1, 2012, as part of their compliance with subsection (3)(a), public utilities shall
30 purchase both the renewable energy credits and the electricity output from community renewable energy projects

1 that total at least 50 megawatts in nameplate capacity.

2 (c) Public utilities shall proportionately allocate the purchase required under subsection (3)(b) based on
3 each public utility's retail sales of electrical energy in Montana in the calendar year 2011.

4 (4) (a) In the compliance year beginning January 1, 2015, and in each succeeding compliance year, each
5 public utility and competitive electricity supplier, except as provided in subsections ~~(13) and (14)~~ (14) and (15),
6 shall procure a minimum of 15% of its retail sales of electrical energy in Montana from eligible renewable
7 resources.

8 (b) (i) As part of their compliance with subsection (4)(a), public utilities shall purchase both the renewable
9 energy credits and the electricity output from community renewable energy projects that total at least 75
10 megawatts in nameplate capacity.

11 (ii) In meeting the standard in subsection (4)(b)(i), a public utility may include purchases made under
12 subsection (3)(b).

13 (c) Public utilities shall proportionately allocate the purchase required under subsection (4)(b) based on
14 each public utility's proportion of the total retail sales of electrical energy by public utilities in Montana in the
15 calendar year 2014.

16 (5) (a) Except as provided in subsection (5)(b), in the compliance year beginning January 1, 2016, and
17 in each succeeding compliance year, a public utility shall generate a minimum of 15% of its production in Montana
18 from eligible renewable resources.

19 (b) A public utility may request an exemption from the requirement in subsection (5)(a) if the public utility:

20 (i) demonstrates to the commission that it is meeting a renewable portfolio standard of 15% of its retail
21 electricity sales in a state in which it furnishes electricity from the generating facility described in 69-3-2003(13)(b);

22 (ii) is otherwise subject to this part; or

23 (iii) demonstrates to the commission that it has not incurred eligible coal-fired generating facility
24 acquisition costs as defined in [section 3] with a plan to retire the facility during the 12 months prior to the
25 compliance year.

26 ~~(5)(6)~~ (a) In complying with the standards required under subsections (2) through ~~(4)~~ (5), a public utility
27 or competitive electricity supplier shall, for any given compliance year, calculate its procurement requirement
28 based on the public utility's or competitive electricity supplier's previous year's sales of electrical energy to retail
29 customers in Montana.

30 (b) The standards in subsections (2) through ~~(4)~~ (5) must be calculated on a delivered-energy basis after

1 accounting for any line losses.

2 ~~(6)(7)~~ A public utility or competitive electricity supplier has until 3 months following the end of each
3 compliance year to purchase renewable energy credits for that compliance year.

4 ~~(7)(8)~~ (a) In order to meet the standards established in subsections (2) through ~~(4)~~ (5), a public utility or
5 competitive electricity supplier may only use:

6 (i) electricity from an eligible renewable resource in which the associated renewable energy credits have
7 not been sold separately;

8 (ii) renewable energy credits created by an eligible renewable resource purchased separately from the
9 associated electricity; or

10 (iii) any combination of subsections ~~(7)(a)(i) and (7)(a)(ii)~~ (8)(a)(i) and (8)(a)(ii).

11 (b) A public utility or competitive electricity supplier may not resell renewable energy credits and count
12 those sold credits against the public utility's or the competitive electricity supplier's obligation to meet the
13 standards established in subsections (2) through ~~(4)~~ (5).

14 (c) Renewable energy credits sold through a voluntary service such as the one provided for in
15 69-8-210(2) may not be applied against a public utility's or competitive electricity supplier's obligation to meet the
16 standards established in subsections (2) through ~~(4)~~ (5).

17 ~~(8)(9)~~ Nothing in this part limits a public utility or competitive electricity supplier from exceeding the
18 standards established in subsections (2) through ~~(4)~~ (5).

19 ~~(9)(10)~~ If a public utility or competitive electricity supplier exceeds a standard established in subsections
20 (2) through ~~(4)~~ (5) in any compliance year, the public utility or competitive electricity supplier may carry forward
21 the amount by which the standard was exceeded to comply with the standard in either or both of the 2
22 subsequent compliance years. The carryforward may not be double-counted.

23 ~~(10)(11)~~ Except as provided in subsections ~~(11) and (12)~~ (12) and (13), if a public utility or competitive
24 electricity supplier is unable to meet the standards established in subsections (2) through ~~(4)~~ (5) in any
25 compliance year, that public utility or competitive electricity supplier shall pay an administrative penalty, assessed
26 by the commission, of \$10 for each megawatt hour of renewable energy credits that the public utility or
27 competitive electricity supplier failed to procure. A public utility may not recover this penalty in electricity rates.
28 Money generated from these penalties must be deposited in the universal low-income energy assistance fund
29 established in 69-8-412(1)(b).

30 ~~(11)(12)~~ A public utility or competitive electricity supplier may petition the commission for a short-term

1 waiver from full compliance with the standards in subsections (2) through ~~(4)~~ (5) and the penalties levied under
2 subsection ~~(10)~~ (11). The petition must demonstrate that the:

3 (a) public utility or competitive electricity supplier has undertaken all reasonable steps to procure
4 renewable energy credits under long-term contract, but full compliance cannot be achieved either because
5 renewable energy credits cannot be procured or for other legitimate reasons that are outside the control of the
6 public utility or competitive electricity supplier; or

7 (b) integration of additional eligible renewable resources into the electrical grid will clearly and
8 demonstrably jeopardize the reliability of the electrical system and that the public utility or competitive electricity
9 supplier has undertaken all reasonable steps to mitigate the reliability concerns.

10 ~~(12)~~(13) (a) Retail sales made by a competitive electricity supplier according to prices, terms, and
11 conditions of a written contract executed prior to April 25, 2007, are exempt from the standards in subsections
12 (2) through ~~(4)~~ (5).

13 (b) The exemption provided for in subsection ~~(12)~~(13)~~(a)~~ (a) is terminated upon modification after April
14 25, 2007, of the prices, terms, or conditions in a written contract.

15 ~~(13)~~(14) A public utility that served 50 or fewer retail customers in Montana on December 31, 2012, is exempt from the requirements of subsections (2) through ~~(4)~~
16 (5).
17 (5).

18 ~~(14)~~(15) (a) A competitive electricity supplier with four or fewer small customers in Montana is exempt
19 from the requirements of subsections (2) through ~~(4)~~ (5).

20 (b) For the purposes of determining the number of small customers served by a competitive electricity
21 supplier, an entity that purchases electricity for commercial or industrial use and does not resell electricity to
22 others is one small customer regardless of the number of its metered locations."
23

24 **NEW SECTION. Section 14. Cost recovery by public utility -- coal-fired generating facility**
25 **acquisition costs.** A public utility may not recover in rates:

26 (1) eligible coal-fired generating facility acquisition costs as defined in [section 3]; or

27 (2) the impact fees required in accordance with [section 5].
28

29 **Section 15.** Section 69-8-426, MCA, is amended to read:

30 **"69-8-426. Use of generation assets.** Generation assets acquired by a public utility pursuant to this

1 chapter:

2 (1) must be used by the public utility to serve and benefit customers within the public utility's Montana
3 service territory; and

4 (2) may not be removed from the rate base unless:

5 (a) the commission finds that customers of the public utility will not be adversely affected; and

6 (b) if the generation asset is a coal-fired generating facility or unit and the public utility is an owner of the
7 coal-fired generating facility or unit, the public utility provides the commission with evidence that the public utility
8 will pay the appropriate impact fee in accordance with [section 5]."

9

10 **Section 16.** Section 90-6-710, MCA, is amended to read:

11 **"90-6-710. Priorities for projects -- procedure -- rulemaking.** (1) The department of commerce must
12 receive proposals for infrastructure projects from local governments on a continual basis. The department shall
13 work with a local government in preparing cost estimates for a project. In reviewing project proposals, the
14 department may consult with other state agencies with expertise pertinent to the proposal. For the projects under
15 90-6-703(1)(a), the department shall prepare and submit two lists containing the recommended projects and the
16 recommended form and amount of financial assistance for each project to the governor, prioritized pursuant to
17 subsection (2) and this subsection. One list must contain the ranked and recommended bridge projects, and the
18 other list must contain the remaining ranked and recommended infrastructure projects referred to in
19 90-6-701(3)(a). Each list must be prioritized pursuant to subsection (2) of this section, but the department may
20 recommend up to 20% of the interest earnings anticipated to be deposited into the treasure state endowment fund
21 established in 17-5-703 during the following biennium for bridge projects. Before making recommendations to
22 the governor, the department may adjust the ranking of projects by giving priority to urgent and serious public
23 health or safety problems. The governor shall review the projects recommended by the department and shall
24 submit the lists of recommended projects and the recommended financial assistance to the legislature.

25 (2) In preparing recommendations under subsection (1), preference must be given to infrastructure
26 projects based on the following order of priority:

27 (a) projects that solve urgent and serious public health or safety problems or that enable local
28 governments to meet state or federal health or safety standards;

29 (b) projects that reflect greater need for financial assistance than other projects;

30 (c) projects that are needed as a result of the retirement of a coal-fired generating facility or unit as

1 defined in [section 3] or are needed because an electrical company, electricity supplier, or public utility incurred
 2 eligible coal-fired generating facility acquisition costs as defined in [section 3] and retirement of a facility or unit
 3 is pending:

4 ~~(e)~~(d) projects that incorporate appropriate, cost-effective technical design and that provide thorough,
 5 long-term solutions to community public facility needs;

6 ~~(d)~~(e) projects that reflect substantial past efforts to ensure sound, effective, long-term planning and
 7 management of public facilities and that attempt to resolve the infrastructure problem with local resources;

8 ~~(e)~~(f) projects that enable local governments to obtain funds from sources other than the funds provided
 9 under this part;

10 ~~(f)~~(g) projects that provide long-term, full-time job opportunities for Montanans, that provide public
 11 facilities necessary for the expansion of a business that has a high potential for financial success, or that maintain
 12 the tax base or that encourage expansion of the tax base; and

13 ~~(g)~~(h) projects that are high local priorities and have strong community support.

14 (3) After the review required by subsection (1), the projects must be approved by the legislature.

15 (4) The department shall adopt rules necessary to implement the treasure state endowment program.

16 (5) The department shall report to each regular session of the legislature the status of all projects that
 17 have not been completed in order for the legislature to review each project's status and determine whether the
 18 authorized grant should be withdrawn."

19
 20 **NEW SECTION. Section 17. Notification to tribal governments.** The secretary of state shall send
 21 a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
 22 Chippewa tribe.

23
 24 **NEW SECTION. Section 18. Codification instruction.** (1) [Sections 1 through 10] are intended to be
 25 codified as an integral part of Title 69, and the provisions of Title 69 apply to [sections 1 through 10].

26 (2) [Section 14] is intended to be codified as an integral part of Title 69, chapter 8, and the provisions
 27 of Title 69, chapter 8, apply to [section 14].

28
 29 **COORDINATION SECTION. Section 19. Coordination instruction.** If the legislative branch biennium
 30 budget included in House Bill No. 2 includes funding for a joint subcommittee of the energy and

1 telecommunications interim committee and the environmental quality council to meet during the 2015-2016
2 interim, the joint subcommittee shall include in its study of federal actions to reduce carbon dioxide emissions an
3 analysis of ongoing actions taken in other states to facilitate the retirement of coal-fired generating facilities or
4 units in Montana.

5

6 NEW SECTION. **Section 20. Severability.** If a part of [this act] is invalid, all valid parts that are
7 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
8 the part remains in effect in all valid applications that are severable from the invalid applications.

9

10 NEW SECTION. **Section 21. Saving clause.** [This act] does not affect rights and duties that matured,
11 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

12

13 NEW SECTION. **Section 22. Effective date.** [This act] is effective on passage and approval.

14

15 NEW SECTION. **Section 23. Applicability.** [This act] applies to eligible coal-fired generating facility
16 acquisition costs on or after [the effective date of this act].

17

- END -