

## 1 HOUSE BILL NO. 597

2 INTRODUCED BY D. ZOLNIKOV

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO UTILITY  
5 REGULATION; REVISING ENERGY RESOURCE PLANNING AND PROCUREMENT; REPEALING CERTAIN  
6 UTILITY ELECTRICITY SUPPLY RESOURCE PLANNING AND PROCUREMENT REQUIREMENTS;  
7 REQUIRING A PUBLIC UTILITY TO ESTABLISH AN ADVISORY COMMITTEE FOR RESOURCE PLANNING;  
8 ESTABLISHING A COMPETITIVE SOLICITATION PROCESS FOR PUBLIC UTILITIES; REQUIRING A PUBLIC  
9 UTILITY SEEKING APPROVAL TO ACQUIRE, CONSTRUCT, OR PURCHASE A RESOURCE TO CONDUCT  
10 A COMPETITIVE SOLICITATION PROCESS ~~APPROVED BY THE PUBLIC SERVICE COMMISSION;~~  
11 ESTABLISHING THE REQUIREMENTS OF A COMPETITIVE SOLICITATION PROCESS; ALLOWING THE  
12 MONTANA CONSUMER COUNSEL TO REQUEST, SELECT, AND RETAIN AN INDEPENDENT MONITOR FOR  
13 COMPETITIVE SOLICITATIONS; ~~REQUIRING~~ ALLOWING THE COMMISSION TO ESTABLISH ENERGY  
14 SAVINGS AND PEAK DEMAND REDUCTION GOALS; ALLOWING DEMAND-SIDE MANAGEMENT  
15 PROGRAMS TO BE INCLUDED IN UTILITY RATE PROCESSES; ~~ESTABLISHING COMMISSION~~  
16 ~~REQUIREMENTS FOR REVIEW AND APPROVAL OR REJECTION OF A COMPETITIVE SOLICITATION~~  
17 ~~PROCESS;~~ REQUIRING LEAST-COST RESOURCE PLANNING EVERY 3 YEARS; ~~REQUIRING PUBLIC~~  
18 ~~SERVICE COMMISSION APPROVAL OF LEAST-COST RESOURCE PLANS;~~ REVISING PUBLIC HEARING  
19 REQUIREMENTS FOR RESOURCE PLANS; REQUIRING UTILITIES TO HOLD PUBLIC MEETINGS WHEN  
20 DEVELOPING RESOURCE PLANS; ~~REVISING ELECTRICITY SUPPLY RESOURCE PREAPPROVAL~~  
21 ~~CRITERIA AND REQUIREMENTS;~~ REQUIRING AN ELECTRICITY SUPPLY RESOURCE TO BE IDENTIFIED,  
22 WITH CONDITIONS, IN A COMMISSION-APPROVED PLAN; ALLOWING THE COMMISSION TO ASSESS A  
23 FEE; ~~REQUIRING AN INDEPENDENT~~ ALLOWING FOR A HEARINGS EXAMINER FOR PROCEEDINGS  
24 UNDER TITLE 69; ~~ESTABLISHING REQUIREMENTS FOR HEARINGS CONDUCTED BY AN EXAMINER;~~  
25 ~~REQUIRING HEARINGS TO BE CONDUCTED PURSUANT TO THE MONTANA RULES OF EVIDENCE;~~  
26 ESTABLISHING A PROCESS FOR USE OF A HEARINGS EXAMINER; GRANTING THE PUBLIC SERVICE  
27 COMMISSION RULEMAKING AUTHORITY; ~~PROHIBITING THE COMMISSION FROM CONDUCTING~~  
28 ~~DISCOVERY OR CROSS-EXAMINATION;~~ REQUIRING THE COMMISSION TO ISSUE ORDERS WITHIN 9  
29 MONTHS OF A HEARING; ~~PROVIDING EXCEPTIONS;~~ ESTABLISHING REQUIREMENTS FOR FINAL  
30 DECISIONS; AMENDING SECTIONS 69-1-110, 69-1-114, 69-2-102, 69-2-201, 69-3-103, 69-3-106, 69-3-303;

1 ~~69-3-321, 69-3-324, 69-3-325, 69-3-326, 69-3-327, 69-3-328, 69-3-702, 69-3-711, 69-3-712, 69-3-713,~~  
 2 ~~69-3-1202, 69-3-1203, 69-3-1204, 69-3-1205, 69-3-1206, 69-3-1502, AND 69-8-421, 69-11-412, 69-12-206,~~  
 3 ~~69-12-210, 69-12-321, 69-12-327, 69-12-503, 69-12-505, 69-12-603, 69-12-604, 69-13-201, 69-13-301,~~  
 4 ~~69-14-606, AND 69-14-607, MCA; REPEALING SECTIONS 69-8-419 AND 69-8-420, MCA; AND PROVIDING~~  
 5 ~~AN EFFECTIVE DATE AND AN APPLICABILITY A DELAYED EFFECTIVE DATE."~~

6  
 7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 8 (Refer to Third Reading - Blue Bill)  
 9 Strike everything after the enacting clause and insert:

11 NEW SECTION. **Section 1. Competitive solicitation process -- Montana consumer counsel role.**

12 (1) (a) Except as provided in subsection (5), a public utility that intends to seek approval by the commission  
 13 pursuant to 69-8-421 for the acquisition, construction, or purchase of an electricity supply resource shall conduct  
 14 a competitive solicitation process.

15 (b) A public utility may not prohibit a qualifying small power production facility as defined in 69-3-601 or  
 16 another utility or supplier that owns an electricity supply resource or intends to construct an electricity supply  
 17 resource from participating in a competitive solicitation process.

18 (c) A competitive solicitation process that is open to bids that would result in the ownership of an  
 19 electricity supply resource by the public utility issuing the solicitation must include the use of a third-party  
 20 administrator selected by the public utility to open, consider, and evaluate bids submitted pursuant to a  
 21 solicitation.

22 (2) A public utility that plans to conduct a competitive solicitation process shall submit the following  
 23 information to the commission:

24 (a) a description of the competitive solicitation process that the public utility will use and proof of  
 25 compliance with subsections (1)(b) and (1)(c), if applicable; and

26 (b) a complete draft of the proposal soliciting electricity supply resources, citing the need for resources.

27 (3) The commission may accept public comment on the information.

28 (4) (a) The Montana consumer counsel may request, select, and retain a person or organization to act  
 29 as an independent monitor for a competitive solicitation process.

30 (b) The commission shall charge a fee to the public utility to pay for the costs of an independent monitor.



1 These costs are recoverable in rates.

2 (c) The independent monitor may assist the Montana consumer counsel by:

3 (i) providing comments on the consistency of the competitive solicitation process with industry standards;

4 (ii) monitoring and observing the competitive solicitation process, paying particular attention to the public  
5 utility's evaluation of electricity supply resources that may result in utility ownership of the resource, to ensure that  
6 the utility conducts a fair and proper process in accordance with industry standards;

7 (iii) notifying the utility and the consumer counsel on a timely basis prior to the utility's selection of the  
8 resources of any discrepancies observed in the process and resolving any differences of opinion; and

9 (iv) preparing a closing report prior to the final selection of the resources regarding the consistency of  
10 the process, including selection and notification of electricity supply resources taking part in the solicitation  
11 process based on industry standards.

12 (5) This section does not apply to:

13 (a) a request for proposals or purchase by a public utility intended solely to meet the short-term  
14 operational needs of the utility for a period of less than 3 years; or

15 (b) an application made to the commission by a public utility to acquire, construct, or purchase an  
16 opportunity resource.

17 (6) For the purposes of this section, "opportunity resource" means an electricity supply resource, either  
18 new or existing, that remains unknown as to its availability for purchase until an opportunity to purchase arises.

19

20 **NEW SECTION. Section 2. Resource planning -- advisory committee.** (1) A public utility shall  
21 maintain a broad-based advisory committee to review, evaluate, and make recommendations on technical,  
22 economic, and policy issues related to a utility's electricity system.

23 (2) The committee may advise the utility on demand-side management, portfolio planning, and  
24 management and procurement completed in accordance with this part.

25

26 **NEW SECTION. Section 3. Electric utility demand-side management programs.** (1) The  
27 commission may establish energy savings and peak demand reduction goals for an electric utility, taking into  
28 account the utility's cost-effective demand-side management potential and the need for electricity resources.

29 (2) The commission shall permit electric utilities to implement cost-effective electricity demand-side  
30 management programs and conservation in accordance with 69-3-701 through 69-3-713 and this part to reduce

1 the need for additional resources.

2 (3) Every 3 years, an electric utility shall submit a report to the commission describing the demand-side  
3 management programs and conservation implemented by the electric utility in the previous year. The report must  
4 document:

5 (a) program expenditures, including incentive payments;

6 (b) peak demand and energy savings impacts and the techniques used to estimate those impacts;

7 (c) avoided costs and the techniques used to estimate those costs;

8 (d) the estimated cost-effectiveness of the programs;

9 (e) the net economic benefits of the programs; and

10 (f) any other information required by the commission.

11

12 **NEW SECTION. Section 4. Hearings examiner.** (1) (a) Except as provided in subsections (1)(b) and  
13 (1)(c), if requested by the applicant, the commission shall appoint a hearings examiner for proceedings under this  
14 title.

15 (b) If four public service commissioners determine that a hearings examiner is not required for a  
16 proceeding, the commission is not required to appoint a hearings examiner.

17 (c) If three public service commissioners determine that a hearings examiner is necessary for a  
18 proceeding, the commission shall appoint a hearings examiner.

19 (d) The determinations in this subsection (1) must be made by a vote of the commission during a public  
20 meeting.

21 (e) If a hearings examiner is appointed, the commission may assess the costs to the applicant.

22 (f) The commission may disqualify the hearings examiner and appoint another hearings examiner. The  
23 affidavit must state the facts and the reasons for the belief that the hearings examiner should be disqualified.

24 (2) The hearings examiner may not communicate with any party or a party's representative in connection  
25 with any issue of fact or law in the case unless there is notice and opportunity for all parties to participate. The  
26 commission may not communicate with any party before the conclusion of the hearing.

27 (3) The commission may adopt rules necessary to implement the utilization of a hearings examiner in  
28 accordance with this section.

29

30 **Section 5.** Section 69-1-114, MCA, is amended to read:

1           **"69-1-114. Fees.** (1) Each fee charged by the commission must be reasonable.

2           (2) Except for a fee assessed pursuant to 69-3-204(2), ~~[section 1(4)(b)]~~, ~~69-8-421(10)~~ 69-3-1204(6)(b),  
3 or 69-12-423(2), a fee set by the commission may not exceed \$500.

4           (3) All fees collected by the department under ~~69-8-421(10)~~ [section 1(4)(b)] and 69-3-1204(6)(b) must  
5 be deposited in an account in the special revenue fund. Funds in this account must be used as provided in  
6 ~~69-8-421(10)~~ [section 1(4)(b)] and 69-3-1204(6)(b)."

7

8           **Section 6.** Section 69-3-702, MCA, is amended to read:

9           **"69-3-702. Eligible conservation.** Conservation purchases or investments are eligible under this part  
10 if they are provided for in 69-3-1206 and in accordance with [section 3]."

11

12           **Section 7.** Section 69-3-711, MCA, is amended to read:

13           **"69-3-711. Criteria for allowable conservation and demand-side management programs -- onsite**  
14 **audits.** (1) The commission shall approve cost-effectiveness criteria for conservation that ~~will~~ may be placed into  
15 a utility's rate base under this part and demand-side management programs in accordance with 69-3-1201  
16 through 69-3-1206 and [sections 1 through 3].

17           (2) The commission may conduct onsite energy audits to ensure compliance with the criteria established  
18 under subsection (1)."

19

20           **Section 8.** Section 69-3-712, MCA, is amended to read:

21           **"69-3-712. Commission to include conservation and demand-side management programs in rate**  
22 **base -- rate of return.** (1) In order to encourage the purchase of or investment in conservation by a utility, the  
23 commission ~~shall~~ may include conservation purchases or investments and demand-side management programs  
24 eligible under 69-3-702 and in compliance with criteria adopted under 69-3-711, 69-3-1201 through 69-3-1206,  
25 and [sections 1 through 3] in a utility's rate base.

26           (2) In establishing ~~such~~ the rate of return, the commission may allow an increment of up to 2% added  
27 to the rate of return on common equity permitted on the utility's other investments.

28           (3) The commission shall allow the rate of return increment provided for in subsection (2) for a period  
29 not to exceed 30 years after the conservation is first placed in the rate base.

30           (4) The commission shall prescribe amortization periods for conservation that is included in a utility's rate

1 base."

2

3 **Section 9.** Section 69-3-713, MCA, is amended to read:

4 **"69-3-713. Prohibition against utility claiming conservation tax credit.** A utility whose conservation  
5 is placed in the rate base under ~~this part~~ 69-3-1201 through 69-3-1206 and [sections 1 through 3] or this part may  
6 not claim the tax credit allowed in 15-32-107."

7

8 **Section 10.** Section 69-3-1202, MCA, is amended to read:

9 **"69-3-1202. Policy -- planning.** (1) (a) It is the policy of the state of ~~Montana~~ to supervise, regulate, and  
10 control public utilities. To the extent that it is consistent with the policy and in order to benefit society, the state  
11 ~~encourages~~ requires efficient utility operations, efficient use of utility services, and efficient rates.

12 (b) It is further the policy of the state to encourage utilities to acquire resources using a competitive  
13 solicitation process and in a manner that will help ensure a clean, healthful, safe, and economically productive  
14 environment.

15 (2) (a) The legislature finds that the commission may include in rates ~~the~~ any costs that are associated  
16 with acquiring ~~the~~ resources referred to in subsection (1) and that are consistent with this policy if the resources  
17 are actually used and useful for the convenience of the public.

18 (b) To advance this policy, the commission ~~may~~ shall require ~~periodic~~ long-range plans every 3 years  
19 from utilities that provide electric and natural gas service in a form and manner determined by the commission.  
20 The commission ~~may~~ shall receive comments on the plans.

21 (3) This part does not constrain or limit the commission's existing statutory duties or responsibilities."  
22

23 **Section 11.** Section 69-3-1203, MCA, is amended to read:

24 **"69-3-1203. Definitions.** As used in this part, unless the context requires otherwise, the following  
25 definitions apply:

26 (1) "Abandonment costs" means the costs incurred for resources acquired and abandoned pursuant to  
27 a plan.

28 (2) "Consumer counsel" means the consumer counsel provided for in 5-15-201.

29 (3) "Demand-side management programs" means energy efficiency, energy conservation, load  
30 management, and demand response or any combination of these measures implemented by an electric utility.

1           (4) "Energy conservation" means the decrease in electricity requirements of specific customers during  
 2 any selected time period, resulting in a reduction in end-use services.

3           (5) "Energy efficiency" means the decrease in electricity requirements of specific customers during any  
 4 selected period with end-use services of those customers held constant.

5           ~~(3)~~(6) "Externalities" mean the impacts on society that are not directly borne by the producer in  
 6 production and delivery activities, which due to imperfections in or the absence of markets are not accounted for  
 7 in the producer's production and pricing decisions.

8           ~~(4)~~(7) "Plan" means an integrated least-cost resource plan submitted by a utility in accordance with this  
 9 part and the rules adopted under this part.

10           ~~(5)~~(8) "Planning costs" means the costs of evaluating the future demand for services and of evaluating  
 11 alternative methods of satisfying future demand.

12           (9) "Planning period" means the future period for which a utility develops its plan, and the period over  
 13 which net present value of revenue requirements for resources is calculated. For purposes of this part, the  
 14 planning period is a minimum of 20 years and begins from the date the utility files its plan with the commission.

15           ~~(6)~~(10) "Portfolio development costs" means the costs of preparing a resource in a portfolio for prompt  
 16 and timely acquisition of the resource.

17           ~~(7)~~(11) "Public utility" means a public utility, as defined in 69-3-101, that provides electric or natural gas  
 18 service. The term does not include municipal utilities."

19

20           **Section 12.** Section 69-3-1204, MCA, is amended to read:

21           **"69-3-1204. Integrated least-cost plan.** (1) ~~(a)~~ (a) The commission ~~may~~ shall adopt rules requiring a public  
 22 utility to prepare and file a plan every 3 years for meeting the requirements of its customers in the most  
 23 cost-effective manner consistent with the public utility's obligation to serve and in accordance with this part.

24           (b) The rules ~~may~~ must prescribe the content and the time for filing a plan.

25           (2) (a) A plan must contain but is not limited to:

26           (i) an evaluation of the full range of cost-effective means for the public utility to meet the service  
 27 requirements of its Montana customers, including conservation or similar improvements in the efficiency by which  
 28 services are used and including demand-side management programs in accordance with [section 3];

29           (ii) an annual electric demand and energy forecast developed pursuant to commission rules that includes  
 30 energy and demand forecasts for each year within the planning period and historical data, as required by

1 commission rule;

2 (iii) an assessment of planning reserve margins and contingency plans for the acquisition of additional  
3 resources developed pursuant to commission rules;

4 (iv) an assessment of the need for additional resources and the utility's plan for acquiring resources;

5 (v) the proposed process the utility intends to use to solicit bids for energy and capacity resources to be  
6 acquired through a competitive solicitation process in accordance with [section 1]; and

7 (vi) descriptions of at least two alternate scenarios that can be used to represent the costs and benefits  
8 from increasing amounts of renewable energy resources and demand-side management programs, based on  
9 rules developed by the commission.

10 (b) The utility shall fully explain, justify, and document the data, assumptions, methodologies, models,  
11 determinants, and any other inputs on which it relied to develop information required in subsection (2)(a).

12 (3) (a) The commission may adopt rules providing guidelines to be used in preparing a plan and  
13 identifying the criteria to be used in determining cost-effectiveness.

14 (b) The criteria may include externalities associated with the acquisition of a resource by a public utility.

15 (c) The rules must establish the minimum filing requirements for acceptance of a plan by the commission  
16 for further review. If a plan does not meet the minimum filing requirements, it must be returned to the public utility  
17 with a list of deficiencies. A corrected plan must be submitted within the time established by the commission.

18 (4) A plan filed with the commission by a utility, as defined in 75-20-104, must be provided to the  
19 department of environmental quality and the consumer counsel.

20 (5) The commission shall:

21 (a) review the plan;

22 (b) publish a copy of the plan;

23 (c) allow for a minimum of 60 days for the public to comment on the plan; and

24 (d) provide public meetings in accordance with 69-3-1205.

25 (6) (a) The commission may identify deficiencies in the plan, including:

26 (i) any concerns of the commission regarding the public utility's compliance with commission rules; and

27 (ii) ways to remedy the concerns.

28 (b) The commission may engage independent engineering, financial, and management consultants or  
29 advisory services to evaluate a public utility's plan. The consultants must have demonstrated knowledge and  
30 experience with resource procurement and resource portfolio management, modeling, risk management, and

1 engineering practices. The commission shall charge a fee to the public utility to pay for the costs of consultants  
 2 or advisory services. These costs are recoverable in rates."

3

4 **Section 13.** Section 69-3-1205, MCA, is amended to read:

5 **"69-3-1205. Public comment -- public meetings.** (1) When developing a plan in accordance with this  
 6 part and prior to submitting a plan to the commission, a public utility shall hold at least two public meetings in the  
 7 utility's Montana service territory to ensure a plan best meets the diverse goals of shareholders, ratepayers, and  
 8 society.

9 ~~(1)(2)~~ The After a plan is submitted, the commission shall conduct a two public meeting meetings for the  
 10 purpose of receiving comment on a plan. The commission or the department of public service regulation may  
 11 comment on the plan. A comment by the commission or the department may not be construed as preapproval  
 12 by the commission of rate treatment for any proposed resource.

13 ~~(2)(3)~~ The department of environmental quality:

14 (a) shall review a plan submitted to the commission and comment on the need for new resources, the  
 15 alternatives evaluated to meet the need, the environmental implications of the resource choices, and other related  
 16 issues that it considers important. The department shall coordinate and deliver all comments from other executive  
 17 branch agencies.

18 (b) may use a plan in the development of studies for a specific energy facility for which an application  
 19 for a certificate of compliance is submitted under Title 75, chapter 20.

20 ~~(3)(4)~~ The consumer counsel shall review and may comment on a submitted plan."

21

22 **Section 14.** Section 69-3-1206, MCA, is amended to read:

23 **"69-3-1206. Rate treatment.** (1) The commission may include in a public utility's rates:

24 (a) the cost of resources acquired in accordance with a plan;

25 (b) demand-side management programs established and implemented in accordance with [section 3];

26 and

27 ~~(b)(c)~~ the cost-effective expenditures for improving the efficiency with which the public utility provides  
 28 and its customers use utility services, ~~and~~

29 ~~(e)(2)~~ The commission shall include in a public utility's rates the costs of complying with the planning  
 30 requirements of this part and the costs of complying with a competitive solicitation process conducted in

1 accordance with [section 1], including Costs include but are not limited to:

2 ~~(i)~~(a) planning costs;

3 ~~(ii)~~(b) portfolio development costs; and

4 ~~(iii)~~(c) all or a portion of abandonment costs.

5 ~~(2)~~(3) The commission ~~shall~~ may adopt rules establishing criteria governing the extent of recovery of  
6 abandonment costs."

7

8 **Section 15.** Section 69-8-421, MCA, is amended to read:

9 **"69-8-421. Approval of electricity supply resources.** (1) A public utility that removed its generation  
10 assets from its rate base pursuant to this chapter prior to October 1, 2007, may apply to the commission for  
11 approval of an electricity supply resource that:

12 (a) is not yet procured; and

13 (b) is subject to a competitive solicitation process when applicable in accordance with [section 1].

14 (2) Within 45 days of the public utility's submission of an application for approval, the commission shall  
15 determine whether or not the application is adequate and in compliance with the commission's minimum filing  
16 requirements. If the commission determines that the application is inadequate, it shall explain the deficiencies.

17 (3) The commission shall issue an order within 180 days of receipt of an adequate application for  
18 approval of a power purchase agreement from an existing generating resource unless it determines that  
19 extraordinary circumstances require additional time.

20 (4) (a) Except as provided in subsections (4)(b) through (4)(d), the commission shall issue an order  
21 within 270 days of receipt of an adequate application for approval of a lease, an acquisition of an equity interest  
22 in a new or existing plant or equipment used to generate electricity, or a power purchase agreement for which  
23 approval would result in construction of a new electric generating resource. The commission may extend the time  
24 limit up to an additional 90 days if it determines that extraordinary circumstances require it.

25 (b) If an air quality permit pursuant to Title 75, chapter 2, is required for a new electrical generation  
26 resource or a modification to an existing resource, the commission shall hold the public ~~hearing~~ meetings on the  
27 application for approval in accordance with 69-3-1205(2) at least 30 days after the issuance of the final air quality  
28 permit.

29 (c) If a final air quality permit is not issued within the time limit pursuant to subsection (4)(a), the  
30 commission shall extend the time limit in order to comply with subsection (4)(b).

1 (d) The commission may extend the time limit for issuing an order for an additional 60 days following the  
2 hearing meetings pursuant to subsection (4)(b).

3 (5) To facilitate timely consideration of an application, the commission may initiate proceedings to  
4 evaluate planning and procurement activities related to a potential resource procurement, if necessary, in  
5 accordance with [section 1] prior to the public utility's submission of an application for approval.

6 (6) (a) The commission may approve or deny, in whole or in part, an application for approval of an  
7 electricity supply resource.

8 (b) The commission may consider all relevant information known up to the time that the administrative  
9 record in the proceeding is closed in the evaluation of an application for approval.

10 (c) A commission order granting approval of an application must include the following findings:

11 (i) approval, in whole or in part, is in the public interest; and

12 (ii) procurement of the electricity supply resource is consistent with the requirements and objectives in  
13 69-3-201, the objectives in 69-8-419 69-3-1201 through 69-3-1206, [sections 1 through 3], and commission rules.

14 (d) The commission order may include a provision for allowable generation assets cost of service when  
15 the utility has filed an application for the lease or acquisition of an equity interest in a plant or equipment used to  
16 generate electricity.

17 (e) When issuing an order for the acquisition of an equity interest or lease in a facility or equipment that  
18 is constructed after January 1, 2007, and that is used to generate electricity that is primarily fueled by natural or  
19 synthetic gas, the commission shall require the applicant to implement cost-effective carbon offsets. Expenditures  
20 required for cost-effective carbon offsets pursuant to this subsection (6)(e) are fully recoverable in rates. By March  
21 31, 2008, the commission shall adopt rules for the implementation of this subsection (6)(e).

22 (f) The commission order may include other findings that the commission determines are necessary.

23 (g) A commission order that denies approval must describe why the findings required in subsection (6)(c)  
24 could not be reached.

25 (7) Notwithstanding any provision of this chapter to the contrary, if the commission has issued an order  
26 containing the findings required under subsection (6)(c), the commission may not subsequently disallow the  
27 recovery of costs related to the approved electricity supply resource based on contrary findings.

28 (8) Until the state or federal government has adopted uniformly applicable statewide standards for the  
29 capture and sequestration of carbon dioxide, the commission may not approve an application for the acquisition  
30 of an equity interest or lease in a facility or equipment used to generate electricity that is primarily fueled by coal

1 and that is constructed after January 1, 2007, unless the facility or equipment captures and sequesters a  
 2 minimum of 50% of the carbon dioxide produced by the facility. Carbon dioxide captured by a facility or equipment  
 3 may be sequestered offsite from the facility or equipment.

4 (9) Nothing limits the commission's ability to subsequently, in any future rate proceeding, inquire into the  
 5 manner in which the public utility has managed, dispatched, operated, or maintained any resource or managed  
 6 any power purchase agreement as part of its overall resource portfolio. The commission may subsequently  
 7 disallow rate recovery for the costs that result from the failure of a public utility to reasonably manage, dispatch,  
 8 operate, maintain, or administer electricity supply resources in a manner consistent with 69-3-201, ~~69-8-419~~, and  
 9 commission rules.

10 ~~(10) The commission may engage independent engineering, financial, and management consultants or~~  
 11 ~~advisory services to evaluate a public utility's electricity supply resource procurement plans and proposed~~  
 12 ~~electricity supply resources. The consultants must have demonstrated knowledge and experience with electricity~~  
 13 ~~supply procurement and resource portfolio management, modeling, risk management, and engineering practices.~~  
 14 ~~The commission shall charge a fee to the public utility to pay for the costs of consultants or advisory services.~~  
 15 ~~These costs are recoverable in rates.~~

16 ~~(11)(10) By March 31, 2008, the~~ The commission shall adopt rules prescribing minimum filing  
 17 requirements for applications filed pursuant to this part."  
 18

19 NEW SECTION. Section 16. Repealer. The following sections of the Montana Code Annotated are  
 20 repealed:

21 69-8-419. Electricity supply resource planning and procurement -- duties of public utility -- objectives --  
 22 commission rules.

23 69-8-420. Electricity supply resource procurement plans -- comment on plans.  
 24

25 NEW SECTION. Section 17. Codification instruction. (1) [Sections 1 through 3] are intended to be  
 26 codified as an integral part of Title 69, chapter 3, part 12, and the provisions of Title 69, chapter 3, part 12, apply  
 27 to [sections 1 through 3].

28 (2) [Section 4] is intended to be codified as an integral part of Title 69, chapter 2, part 1, and the  
 29 provisions of Title 69, chapter 2, part 1, apply to [section 4].  
 30

