

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; REQUIRING THE
12 COMMISSION TO ESTABLISH ENERGY SAVINGS AND PEAK DEMAND REDUCTION GOALS; ALLOWING
13 DEMAND-SIDE MANAGEMENT PROGRAMS TO BE INCLUDED IN UTILITY RATE PROCESSES;
14 ESTABLISHING COMMISSION REQUIREMENTS FOR REVIEW AND APPROVAL OR REJECTION OF A
15 COMPETITIVE SOLICITATION PROCESS; REQUIRING LEAST-COST RESOURCE PLANNING EVERY 3
16 YEARS; REQUIRING PUBLIC SERVICE COMMISSION APPROVAL OF LEAST-COST RESOURCE PLANS;
17 REVISING PUBLIC HEARING REQUIREMENTS FOR RESOURCE PLANS; REQUIRING UTILITIES TO HOLD
18 PUBLIC MEETINGS WHEN DEVELOPING RESOURCE PLANS; REVISING ELECTRICITY SUPPLY
19 RESOURCE PREAPPROVAL CRITERIA AND REQUIREMENTS; REQUIRING AN ELECTRICITY SUPPLY
20 RESOURCE TO BE IDENTIFIED, WITH CONDITIONS, IN A COMMISSION-APPROVED PLAN; ALLOWING
21 THE COMMISSION TO ASSESS A FEE; REQUIRING AN INDEPENDENT HEARINGS EXAMINER FOR
22 PROCEEDINGS UNDER TITLE 69; ESTABLISHING REQUIREMENTS FOR HEARINGS CONDUCTED BY AN
23 EXAMINER; REQUIRING HEARINGS TO BE CONDUCTED PURSUANT TO THE MONTANA RULES OF
24 EVIDENCE; PROHIBITING THE COMMISSION FROM CONDUCTING DISCOVERY; REQUIRING THE
25 COMMISSION TO ISSUE ORDERS WITHIN 9 MONTHS OF A HEARING; PROVIDING EXCEPTIONS;
26 ESTABLISHING REQUIREMENTS FOR FINAL DECISIONS; AMENDING SECTIONS 69-1-110, 69-1-114,
27 69-2-102, 69-2-201, 69-3-103, 69-3-106, 69-3-303, 69-3-321, 69-3-324, 69-3-325, 69-3-326, 69-3-327, 69-3-328,
28 69-3-702, 69-3-711, 69-3-712, 69-3-713, 69-3-1202, 69-3-1203, 69-3-1204, 69-3-1205, 69-3-1206, 69-3-1502,
29 69-8-421, 69-11-412, 69-12-206, 69-12-210, 69-12-321, 69-12-327, 69-12-503, 69-12-505, 69-12-603, 69-12-604,
30 69-13-201, 69-13-301, 69-14-606, AND 69-14-607, MCA; REPEALING SECTIONS 69-8-419 AND 69-8-420,

1 MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

2

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

4

5 NEW SECTION. **Section 1. Competitive solicitation process required -- exception.** (1) (a) Except
6 as provided in subsection (6), a public utility that intends to seek approval by the commission pursuant to
7 69-3-201 or 69-8-421 for the acquisition, construction, or purchase of an electricity supply resource shall conduct
8 a competitive solicitation process.

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

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

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

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

20 (b) a complete draft of the proposal soliciting an electricity supply resource, citing the need for a
21 resource; and

22 (c) any other information the commission requires.

23 (3) (a) If the commission receives information from a public utility pursuant to subsection (2), the
24 commission shall accept public comment on the information. To allow for public comment, the commission may
25 hold a public hearing.

26 (b) The commission may select and retain a person or organization to act as an independent monitor
27 for a competitive solicitation process. The commission shall charge a fee to the public utility to pay for the costs
28 of an independent monitor. These costs are recoverable in rates.

29 (c) The independent monitor may assist the commission by:

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

1 and the commission's criteria;

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

5 (iii) notifying the utility and the commission on a timely basis of any discrepancies observed in the process
6 and resolving any differences of opinion; and

7 (iv) preparing a closing report regarding the consistency of the process, including selection and
8 notification of electricity supply resources taking part in the solicitation process based on industry standards and
9 commission criteria.

10 (4) (a) Except as provided in subsection (4)(b), within 60 days of receiving the information required
11 pursuant to subsection (2) the commission shall:

12 (i) approve a proposed competitive solicitation process that meets the requirements of subsections (2)
13 and (5);

14 (ii) suggest modifications to a proposed competitive solicitation process in order to meet the requirements
15 of subsections (2) and (5); or

16 (iii) reject a proposed competitive solicitation process.

17 (b) The commission may extend the time to a date that provides the commission with adequate time to
18 analyze the information provided in accordance with subsection (2). The time may not be extended by longer than
19 90 days.

20 (5) In approval or denial of the competitive solicitation process, the commission shall determine if the
21 competitive solicitation process is in the public interest. The commission shall make the determination by
22 considering:

23 (a) the cost to Montana ratepayers;

24 (b) long-term and short-term impacts;

25 (c) risk;

26 (d) reliability;

27 (e) environmental impacts;

28 (f) financial impacts on the public utility; and

29 (g) other factors determined by the commission to be relevant.

30 (6) This section does not apply to a request for proposals or purchase by a public utility intended solely

1 to meet the short-term operational needs of the utility for a period of less than 12 months.

2

3 **NEW SECTION. Section 2. Integrated least-cost resource planning -- advisory committee --**

4 **commission role.** (1) (a) A public utility shall maintain a broad-based advisory committee to review, evaluate,
5 and make recommendations on technical, economic, and policy issues related to a utility's electricity system.

6 (b) The public service commission may require a public utility to include members on an advisory
7 committee to ensure the requirements of subsection (1)(a) are met.

8 (2) The committee shall advise the utility on transmission and distribution system planning, demand-side
9 management, portfolio planning, and management and procurement completed in accordance with this part.

10

11 **NEW SECTION. Section 3. Electric utility demand-side management programs.** (1) The commission
12 may establish energy savings and peak demand reduction goals to be achieved by an electric utility, taking into
13 account the utility's cost-effective demand-side management potential, the need for electricity resources, and
14 other factors as determined by the commission.

15 (2) The commission shall permit electric utilities to implement cost-effective electricity demand-side
16 management programs and conservation in accordance with 69-3-701 through 69-3-713 and this part to reduce
17 the need for additional resources that would otherwise be met through a competitive solicitation process.

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

21 (a) program expenditures, including incentive payments;

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

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

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

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

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

27

28 **NEW SECTION. Section 4. Independent hearings examiner.** (1) (a) Except as provided in subsection
29 (9), the commission shall exercise its powers and duties in accordance with this section.

30 (b) The commission shall appoint an independent hearings examiner for proceedings under this title.

1 A hearings examiner must be assigned with regard to the expertise required for the particular matter. On the filing
2 by a party, in good faith, of a timely and sufficient affidavit of personal bias, lack of independence, disqualification
3 by law, or other disqualification of a hearings examiner or on the hearings examiner's own motion, the
4 commission shall determine the affidavit or motion as a part of the record in the case. The commission may
5 disqualify the hearings examiner and appoint another hearings examiner. The affidavit must state the facts and
6 the reasons for the belief that the hearings examiner should be disqualified.

7 (2) Unless otherwise agreed to by the parties and except as provided for in 69-3-1502 and
8 69-12-321(1)(c), the commission shall, within 10 days of the filing of a request for hearing, conduct a conference
9 with the parties for the purpose of establishing a schedule for the orderly and timely disposition of the hearing.
10 The schedule must include discovery deadlines, a hearing date, and the name of the hearings examiner
11 appointed as provided in this section to conduct the proceedings.

12 (3) The hearing must be conducted pursuant to the Montana Rules of Evidence, and the parties are
13 entitled to be heard, to present evidence material to the issues, and to cross-examine witnesses appearing at the
14 hearing. Hearings must be open to the public in accordance with 69-3-104. Parties must be allowed to conduct
15 discovery pursuant to the schedule determined in subsection (2), and the discovery must be conducted pursuant
16 to the Montana Rules of Civil Procedure. The hearings examiner shall resolve all discovery and evidence
17 disputes. All hearings conducted under this subsection must be conducted pursuant to the Montana
18 Administrative Procedure Act, as provided in Title 2, chapter 4, part 6.

19 (4) (a) The hearings examiner may issue subpoenas for the attendance of witnesses and the production
20 of books, records, documents, and other evidence relevant to the issues being heard and may administer oaths.
21 Subpoenas must be served and enforced in the manner provided by law for the service and enforcement of
22 subpoenas in a civil action in district court. The hearings examiner shall regulate the course of the hearings and
23 the need for filing briefs and may direct the parties to appear and confer to consider simplification of the issues
24 by consent of the parties.

25 (b) Commission staff may conduct discovery and be a party to the hearings examiner process.

26 (c) The hearings examiner shall file with the commission a proposed decision, including proposed
27 findings of fact, and conclusions of law, within the time set by order of the commission.

28 (5) Unless the timeline for a decision is required as provided in 69-3-603(2), 69-3-1204, 69-3-1415(3),
29 69-5-112, 69-8-421, 69-12-323, and 69-12-505(3), the commission shall issue its final order no later than 9
30 months after the hearings examiner files the proposed findings of fact and conclusions of law with the

1 commission. Each party must be simultaneously given a copy delivered personally or by certified mail. The final
2 order must:

3 (a) be in writing; and

4 (b) include findings of fact and conclusions of law, separately stated. The findings of fact must meet the
5 requirements of subsection (6).

6 (6) Findings of fact must be accompanied by a concise and explicit statement of the underlying facts
7 supporting the findings. The commission's findings of fact must be based exclusively on the evidence and the
8 matters officially noticed and on the expertise on the commission.

9 (7) If the person who conducted the hearing becomes unavailable to the commission, the commission
10 is not precluded from issuing a final order.

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

14 (9) The commission shall hold hearings and issue orders to maintain universal availability of basic
15 telecommunications services in accordance with chapter 3, parts 8 through 10 and part 13, of this title.

16 (10) Appeals from the commission's order must be filed with the district court of Lewis and Clark County
17 pursuant to the procedures provided for in Title 2, chapter 4, part 7.

18

19 **Section 5.** Section 69-1-110, MCA, is amended to read:

20 **"69-1-110. Conduct of commission business.** (1) The commission shall hold sessions at times and
21 places in this state as may be expedient. A majority of the commission constitutes a quorum for the transaction
22 of business.

23 (2) The members of the commission may administer oaths and affirmations.

24 (3) The commission may adopt rules to govern its proceedings and to regulate the mode and manner
25 of all investigations and hearings, in accordance with [section 4], concerning railroad companies and other parties
26 before it in the establishment of rates, orders, charges, and other acts required of it under the law."

27

28 **Section 6.** Section 69-1-114, MCA, is amended to read:

29 **"69-1-114. Fees.** (1) Each fee charged by the commission must be reasonable.

30 (2) Except for a fee assessed pursuant to 69-3-204(2), [section 1(3)(b)], ~~69-8-424(10)~~ 69-3-1204(6)(c),

1 or 69-12-423(2), a fee set by the commission may not exceed \$500.

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

5
6 **Section 7.** Section 69-2-102, MCA, is amended to read:
7 **"69-2-102. Role of commission when consumer counsel protests.** In any case involving an
8 application by a regulated entity to the commission for authority to increase its rates that is actively contested by
9 the consumer counsel, the commission shall leave representation of the interests of consumers to the consumer
10 counsel when the consumer counsel timely petitions to become a party to the case. This Except as provided in
11 [section 4], this section does not prohibit the commission or its staff from investigating and interrogating in any
12 hearing to clarify the case or present an issue. Evidence In accordance with the requirements of [section 4],
13 evidence may be introduced by the commission on an issue that has not been adequately addressed by any party
14 if the commission first requests counsel of record to address the issue and counsel fails to introduce sufficient
15 or adequate evidence."

16
17 **Section 8.** Section 69-2-201, MCA, is amended to read:
18 **"69-2-201. Appearance at hearings by counsel.** The consumer counsel may appear at public hearings
19 conducted by the commission in accordance with [section 4], as the representative of the consuming public, on
20 all matters ~~which that~~ come before the commission ~~which in any way~~ affect the consuming public, ~~and shall have~~
21 The consumer counsel has all the rights and powers of any party in interest appearing before the commission
22 regarding examination and cross-examination of witnesses, presentation of evidence, and other matters."

23
24 **Section 9.** Section 69-3-103, MCA, is amended to read:
25 **"69-3-103. General powers and rulemaking authority of commission.** (1) In addition to the ~~modes~~
26 ~~of procedure hereinafter prescribed~~ procedures provided for in this title and in particular cases and classes of
27 cases, and in accordance with [section 4], said the commission ~~shall have power to~~ may prescribe rules of
28 procedure and ~~to do all~~ things necessary and convenient in the exercise of the its powers, ~~conferred by this~~
29 ~~chapter upon the commission; provided that nothing in this chapter shall be construed as vesting~~ This chapter
30 does not provide the commission with judicial powers, ~~on said commission or as denying to any~~ A person, firm,

1 association, corporation, municipality, county, town, or village ~~the right to~~ may test in a court of competent
 2 jurisdiction the legality or reasonableness of any fixed order made by the commission in the exercise of its duties
 3 or powers.

4 (2) ~~The~~ In accordance with the requirements of [section 4], the commission shall have the power to may:

5 (a) adopt reasonable and proper rules relative to all inspections, tests, audits, and investigations;

6 (b) adopt and publish reasonable and proper rules to govern its proceedings; and

7 (c) regulate the mode and manner of all investigations and hearings of public utilities and other parties
 8 before it, as provided in law, including [section 4]."

9

10 **Section 10.** Section 69-3-106, MCA, is amended to read:

11 **"69-3-106. Supervision of management of public utilities.** (1) The commission ~~has the authority to~~
 12 may inquire into the management of the business of all public utilities, ~~shall~~ keep itself informed as to the manner
 13 and method in which the business is conducted, and ~~has the right to~~ obtain from any public utility all necessary
 14 information to enable the commission to perform its duties.

15 (2) ~~The~~ Except as provided in [section 4], the commission, any commissioner, or any person or persons
 16 employed by the commission ~~for that purpose, upon demand, has the right to~~ may inspect the books, accounts,
 17 papers, records, and memoranda of any public utility and ~~to~~ examine, under oath, any officer, agent, or employee
 18 of the public utility in relation to its business and affairs. ~~Any A person, other than one of the commissioners,~~ who
 19 makes the demand shall produce the person's authority to make the inspection.

20 (3) ~~The~~ Except as provided in [section 4], the commission may require by order or subpoena, to be
 21 served on any public utility in the same manner that a summons is served in a civil action in the district court, the
 22 production, within this state and at a time and place that it may designate, of any books, accounts, papers, or
 23 records kept by a public utility in any office or place outside of the state or verified copies in lieu of the books,
 24 accounts, papers, or records, if the commission orders, so that that an examination of the books, accounts,
 25 papers, or records may be made by the commission or under its direction. ~~Any A~~ public utility failing or refusing
 26 to comply with ~~any~~ an order or subpoena is subject to the liability provided for in 69-3-206."

27

28 **Section 11.** Section 69-3-303, MCA, is amended to read:

29 **"69-3-303. Notice and hearing on proposed change.** (1) Except as provided in 69-3-308, before the
 30 commission may approve any change increasing the rate or rates for utility service in a schedule generally

1 affecting consumers in a utility's service area or before any change may become effective due to the passage
 2 of 9 months, the commission shall publish a notice of the proposed change, conforming to the requirements of
 3 2-4-601 in one or more newspapers published and of general circulation within the area affected by the proposed
 4 change. This notice must announce a hearing on the proposed change and must inform interested persons as
 5 to how they may petition the commission to become parties to the hearing.

6 (2) The ~~commission~~ hearings examiner shall proceed to conduct the hearing under the Montana
 7 Administrative Procedure Act ~~and in accordance with [section 4].~~ As provided in [section 4], the final decision
 8 of the commission in any matter decided after a hearing conducted pursuant to this section must conform to the
 9 requirements of a decision in a contested case under the Montana Administrative Procedure Act.

10 (3) The consumer counsel may petition to become a party to the hearing."
 11

12 **Section 12.** Section 69-3-321, MCA, is amended to read:

13 **"69-3-321. Complaints against public utility -- hearing.** (1) ~~The~~ Except as provided in [section 4], the
 14 commission ~~shall proceed, with or without notice, to make such investigation~~ may investigate as it may deem
 15 ~~necessary upon a~~ after receiving a complaint ~~made~~ against any public utility by any mercantile, agricultural, or
 16 manufacturing society or club, by any body politic or municipal organization or association, ~~the same being~~
 17 ~~interested,~~ or by any person, firm, or corporation, provided ~~such~~ the person, firm, or corporation is directly
 18 affected ~~thereby, that~~ by:

19 (a) ~~any~~ of the rates, tolls, charges, or schedules or any joint rate or rates that are in any way
 20 unreasonable or unjustly discriminatory;

21 (b) ~~any~~ regulations, measurements, practices, or acts ~~whatsoever~~ affecting or relating to the production,
 22 transmission, delivery, or furnishing of heat, light, water, power, or regulated telecommunications service, or any
 23 service in connection ~~therewith~~ with heat, light, water, power, or regulated telecommunications service ~~is in any~~
 24 ~~respect~~ that are unreasonable, insufficient, or unjustly discriminatory; or

25 (c) ~~any service is~~ inadequate service.

26 (2) ~~No~~ Except as provided for in [section 4], an order affecting ~~such~~ the rates, tolls, charges, schedules,
 27 regulations, measurements, practices, or acts ~~complained of~~ shall received in accordance with subsection (1)
 28 must be entered without a formal hearing, except the commission may issue an order to provide service to a
 29 residential consumer pending a hearing on a complaint by ~~such~~ the consumer or by the consumer counsel on
 30 behalf of ~~such~~ the consumer against a public utility, ~~providing that~~ if the hearing is held within ~~20~~ 10 days unless

1 further delayed by consent of all parties."

2

3 **Section 13.** Section 69-3-324, MCA, is amended to read:

4 **"69-3-324. Initiation of action by commission itself.** The commission may ~~at any time, upon its own~~
5 ~~motion,~~ investigate ~~any~~ of the rates, tolls, charges, rules, practices, and services and after a full hearing as
6 provided in this part and in accordance with [section 4] may ~~make by order such changes as may be that are~~ just
7 and reasonable, the same as if a formal complaint had been made."

8

9 **Section 14.** Section 69-3-325, MCA, is amended to read:

10 **"69-3-325. Notice of hearing.** ~~The~~ In accordance with [section 4], the commission shall give the public
11 utility and the complainant or complainants at least 10 days' notice of the time ~~when~~ and the place where ~~such~~
12 a hearing will be held."

13

14 **Section 15.** Section 69-3-326, MCA, is amended to read:

15 **"69-3-326. Conduct of hearing.** (1) (a) ~~At~~ In accordance with [section 4], at the hearing, both the
16 complainant and the public utility ~~have the right to~~ may appear by counsel or otherwise and ~~to~~ must be fully heard.

17 (b) ~~Either~~ In accordance with [section 4], either party is entitled to an order by the commission for the
18 appearance of witnesses or the production of books, papers, and documents containing material testimony.

19 (2) Witnesses appearing ~~upon~~ on the order of the ~~commission~~ hearings examiner are entitled to the same
20 fees and mileage as witnesses in civil cases in the courts of the state, and the fees and mileage must be paid
21 out of the state treasury in the same manner as other claims against the state are paid. Fees or mileage may not
22 be allowed unless the ~~presiding officer of the commission~~ hearings examiner certifies to the correctness of the
23 claim."

24

25 **Section 16.** Section 69-3-327, MCA, is amended to read:

26 **"69-3-327. Subpoena of witnesses.** If ~~any~~ a party ordered to appear before the ~~commission~~ hearings
27 examiner as a witness fails to obey the order, the ~~commission or its staff~~ hearings examiner may apply to the clerk
28 of the nearest district court for a subpoena commanding the attendance of the witness ~~before the commission.~~
29 ~~It is the duty of the~~ The clerk ~~to~~ shall issue the subpoena and ~~of any~~ a peace officer ~~to~~ shall serve the subpoena.
30 Disobedience to the subpoena is considered contempt of court and is punishable accordingly."

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Section 17. Section 69-3-328, MCA, is amended to read:

"69-3-328. Depositions of witnesses. The ~~commission~~ hearings examiner or any party to ~~any the~~ proceeding ~~before it~~ may cause the depositions of witnesses to be taken in the manner prescribed by law for ~~like~~ similar depositions in civil actions."

Section 18. Section 69-3-702, MCA, is amended to read:

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

Section 19. Section 69-3-711, MCA, is amended to read:

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

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

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

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

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

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

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

1

2 **Section 21.** Section 69-3-713, MCA, is amended to read:

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

6

7 **Section 22.** Section 69-3-1202, MCA, is amended to read:

8 **"69-3-1202. Policy -- planning.** (1) (a) It is the policy of the state of Montana to supervise, regulate, and
9 control public utilities. To the extent that it is consistent with the policy and in order to benefit society, the state
10 ~~encourages~~ requires efficient utility operations, efficient use of utility services, and efficient rates.

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

14 (c) In addition, it is the policy of the state that a utility consult and involve a broad-based advisory
15 committee pursuant to [section 2] when developing long-range plans.

16 (2) (a) The legislature finds that the commission may preapprove resources eligible in accordance with
17 69-8-421 and may include in rates ~~the~~ any costs that are associated with acquiring the resources referred to in
18 subsection (1) or 69-8-421 and that are consistent with this policy if the resources are actually used and useful
19 for the convenience of the public, and if the resources meet the requirements of this part.

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

23 (3) This part does not constrain or limit the commission's existing statutory duties or responsibilities."
24

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

26 **"69-3-1203. Definitions.** As used in this part, unless the context requires otherwise, the following
27 definitions apply:

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

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

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

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

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

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

10 ~~(4)~~(7) "Plan" means an integrated least-cost resource plan submitted by a utility in accordance with this
 11 part and the rules adopted under this part.

12 ~~(5)~~(8) "Planning costs" means the costs of evaluating the future demand for services and of evaluating
 13 alternative methods of satisfying future demand.

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

17 ~~(6)~~(10) "Portfolio development costs" means the costs of preparing a resource in a portfolio for prompt
 18 and timely acquisition of the resource.

19 ~~(7)~~(11) "Public utility" means a public utility, as defined in 69-3-101, that provides electric or natural gas
 20 service. The term does not include municipal utilities.

21 (12) "Resource acquisition period" means the first 6 to 10 years of the planning period, during which the
 22 utility acquires specific resources to meet projected electric system demand and energy requirements. The
 23 resource acquisition period begins from the date the utility files its plan with the commission."

24

25 **Section 24.** Section 69-3-1204, MCA, is amended to read:

26 **"69-3-1204. Integrated least-cost plan.** (1) ~~(a)~~ The commission ~~may~~ shall adopt rules requiring a public
 27 utility to prepare and file a plan every 3 years for meeting the requirements of its customers in the most
 28 cost-effective manner consistent with the public utility's obligation to serve and in accordance with this part.

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

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

- 1 (i) an evaluation of the full range of cost-effective means for the public utility to meet the service
2 requirements of its Montana customers, including conservation or similar improvements in the efficiency by which
3 services are used, and including demand-side management programs in accordance with [section 3];
- 4 (ii) a statement of the utility-specified resource acquisition period and planning period. The utility shall
5 consistently use the specified resource acquisition and planning periods throughout the entire resource plan and
6 resource acquisition process. The utility shall include a detailed explanation as to why the specific period lengths
7 were chosen in light of the assessment of the needs of the utility system.
- 8 (iii) an annual electric demand and energy forecast developed pursuant to commission rules that includes
9 energy and demand forecasts for each year within the planning period and historical data, as required by
10 commission rule;
- 11 (iv) an evaluation of economic and reliability optimization of the system, including the interactions of
12 generation, transmission, and distribution resources;
- 13 (v) an assessment of planning reserve margins and contingency plans for the acquisition of additional
14 resources developed pursuant to commission rules;
- 15 (vi) an assessment of the need for additional resources and the utility's plan for acquiring resources;
16 (vii) the proposed process the utility intends to use to solicit bids for energy and capacity resources to
17 be acquired through a competitive solicitation process in accordance with [section 1]; and
- 18 (viii) descriptions of at least two alternate plans that can be used to represent the costs and benefits from
19 increasing amounts of renewable energy resources and demand-side management programs, based on rules
20 developed by the commission.
- 21 (b) The utility shall fully explain, justify, and document the data, assumptions, methodologies, models,
22 determinants, and any other inputs on which it relied to develop information required in subsection (2)(a).
- 23 (3) (a) The commission may adopt rules providing guidelines to be used in preparing a plan and
24 identifying the criteria to be used in determining cost-effectiveness.
- 25 (b) The criteria may include externalities associated with the acquisition of a resource by a public utility.
26 (c) The rules must establish the minimum filing requirements for acceptance of a plan by the commission
27 for further review. If a plan does not meet the minimum filing requirements, it must be returned to the public utility
28 with a list of deficiencies. A corrected plan must be submitted within the time established by the commission.
- 29 (4) A plan filed with the commission by a utility, as defined in 75-20-104, must be provided to the
30 department of environmental quality and the consumer counsel.

- 1 (5) The commission shall:
- 2 (a) review the plan;
- 3 (b) publish a copy of the plan;
- 4 (c) allow for a minimum of 60 days for the public to comment on the plan;
- 5 (d) provide public meetings in accordance with 69-3-1205; and
- 6 (e) issue written approval of the plan within 12 months after the plan is submitted to the commission.
- 7 (6) (a) The commission may approve a plan in accordance with subsection (5)(e) and also identify
- 8 deficiencies in the plan, including:
- 9 (i) any concerns of the commission regarding the public utility's compliance with commission rules; and
- 10 (ii) ways to remedy the concerns.
- 11 (b) In addition to information required in subsection (2)(b), upon request of the commission, a public utility
- 12 shall provide any additional underlying data, assumptions, and modeling necessary for the commission to review
- 13 and approve a plan in accordance with subsection (5).
- 14 (c) The commission may engage independent engineering, financial, and management consultants or
- 15 advisory services to evaluate a public utility's plan. The consultants must have demonstrated knowledge and
- 16 experience with resource procurement and resource portfolio management, modeling, risk management, and
- 17 engineering practices. The commission shall charge a fee to the public utility to pay for the costs of consultants
- 18 or advisory services. These costs are recoverable in rates."

19

20 **Section 25.** Section 69-3-1205, MCA, is amended to read:

21 **"69-3-1205. Public comment -- public meetings.** (1) When developing a plan in accordance with this

22 part and prior to submitting a plan to the commission, a public utility shall hold at least two public meetings in the

23 utility's Montana service territory to ensure a plan best meets the diverse goals of shareholders, ratepayers, and

24 society.

25 ~~(+)(2) The~~ After a plan is submitted, the commission shall conduct a two public meeting meetings for the

26 purpose of receiving comment on a plan. The commission or the department of public service regulation may

27 comment on the plan. A comment by the commission or the department may not be construed as preapproval

28 by the commission of rate treatment for any proposed resource.

29 ~~(2)(3)~~ The department of environmental quality:

30 (a) shall review a plan submitted to the commission and comment on the need for new resources, the

1 alternatives evaluated to meet the need, the environmental implications of the resource choices, and other related
 2 issues that it considers important. The department shall coordinate and deliver all comments from other executive
 3 branch agencies.

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

6 ~~(3)~~(4) The consumer counsel shall review and may comment on a submitted plan."

7

8 **Section 26.** Section 69-3-1206, MCA, is amended to read:

9 **"69-3-1206. Rate treatment.** (1) The commission may include in a public utility's rates:

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

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

12 (2) The commission shall include in a public utility's rates:

13 ~~(b)~~(a) the cost-effective expenditures for improving the efficiency with which the public utility provides
 14 and its customers use utility services; and

15 ~~(e)~~(b) the costs of complying with the planning requirements of this part and the costs of complying with
 16 a competitive solicitation process conducted in accordance with [section 1], including but not limited to:

17 (i) planning costs;

18 (ii) portfolio development costs; and

19 (iii) all or a portion of abandonment costs.

20 ~~(2)~~(3) The commission ~~shall~~ may adopt rules establishing criteria governing the extent of recovery of
 21 abandonment costs."

22

23 **Section 27.** Section 69-3-1502, MCA, is amended to read:

24 **"69-3-1502. Commission approval of material affiliate transactions -- rulemaking authority.** (1) In
 25 addition to the commission's existing regulatory authority under this title and except as provided in 69-3-1503 and
 26 subsection (4) of this section, a regulated energy utility may not enter into a material affiliate transaction without
 27 the commission's review and approval.

28 (2) The commission shall approve or deny the material affiliate transaction. Upon a showing of good
 29 cause, the commission shall hold a public hearing in accordance with [section 4] on the proposed material affiliate
 30 transaction within 45 days of an official notification by the regulated energy utility to the commission that the utility

1 is intending to enter into a material affiliate transaction.

2 (3) If a material affiliate transaction involves dividend payments from a regulated energy utility to a
3 corporate parent company, the commission may limit those dividend payments if the payments would place the
4 regulated energy utility's credit quality or property in jeopardy.

5 (4) A regulated energy utility may request an exemption from any of the provisions in this section, and
6 the commission may grant the exemption on a case-by-case basis upon a showing of good cause and after notice
7 and an opportunity for hearing.

8 (5) The commission may promulgate rules that implement the provisions of this part."
9

10 **Section 28.** Section 69-8-421, MCA, is amended to read:

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

14 (a) is not yet procured;

15 (b) meets the requirements of subsection (2); and

16 (c) is subject to a competitive solicitation process in accordance with [section 1].

17 (2) A public utility shall demonstrate in its integrated least-cost resource plan approved in accordance
18 with 69-3-1204(5)(e) that there is a need for the electricity that will be generated by the proposed electricity supply
19 resource.

20 ~~(3)~~(3) Within 45 days of the public utility's submission of an application for approval, the commission shall
21 determine whether or not the application is adequate and in compliance with subsections (1) and (2) and the
22 commission's minimum filing requirements. If the commission determines that the application is inadequate, it
23 shall explain the deficiencies.

24 ~~(3)~~(4) The commission shall issue an order within 180 days of receipt of an adequate application for
25 approval of a power purchase agreement from an existing generating resource unless it determines that
26 extraordinary circumstances require additional time.

27 ~~(4)~~(5) (a) Except as provided in subsections ~~(4)~~(b) ~~(5)~~(b) through ~~(4)~~(d) ~~(5)~~(d), the commission shall issue
28 an order within 270 days of receipt of an adequate application for approval of a lease, an acquisition of an equity
29 interest in a new or existing plant or equipment used to generate electricity, or a power purchase agreement for
30 which approval would result in construction of a new electric generating resource. The commission may extend

1 the time limit up to an additional 90 days if it determines that extraordinary circumstances require it.

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

6 (c) If a final air quality permit is not issued within the time limit pursuant to subsection ~~(4)(a)~~ (5)(a), the
7 commission shall extend the time limit in order to comply with subsection ~~(4)(b)~~ (5)(b).

8 (d) The commission may extend the time limit for issuing an order for an additional 60 days following the
9 hearing pursuant to subsection ~~(4)(b)~~ (5)(b).

10 ~~(5)(6)~~ To facilitate timely consideration of an application, the commission may initiate proceedings to
11 evaluate planning and procurement activities related to a potential resource procurement, if necessary, in
12 accordance with [section 1] prior to the public utility's submission of an application for approval.

13 ~~(6)(7)~~ (a) The commission may approve or deny, in whole or in part, an application for approval of an
14 electricity supply resource.

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

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

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

19 (ii) procurement of the electricity supply resource is consistent with the requirements and objectives in
20 69-3-201, the objectives in 69-8-419 69-3-1201 through 69-3-1206, [sections 1 through 3], and commission rules.

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

24 (e) When issuing an order for the acquisition of an equity interest or lease in a facility or equipment that
25 is constructed after January 1, 2007, and that is used to generate electricity that is primarily fueled by natural or
26 synthetic gas, the commission shall require the applicant to implement cost-effective carbon offsets. Expenditures
27 required for cost-effective carbon offsets pursuant to this subsection ~~(6)(e)~~ (7)(e) are fully recoverable in rates.
28 By March 31, 2008, the commission shall adopt rules for the implementation of this subsection ~~(6)(e)~~ (7)(e).

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

30 (g) A commission order that denies approval must describe why the findings required in subsection ~~(6)(e)~~

1 (7)(c) could not be reached.

2 ~~(7)(8)~~ Notwithstanding any provision of this chapter to the contrary, if the commission has issued an
3 order containing the findings required under subsection ~~(6)(e)~~ (7)(c), the commission may not subsequently
4 disallow the recovery of costs related to the approved electricity supply resource based on contrary findings.

5 ~~(8)(9)~~ Until the state or federal government has adopted uniformly applicable statewide standards for
6 the capture and sequestration of carbon dioxide, the commission may not approve an application for the
7 acquisition of an equity interest or lease in a facility or equipment used to generate electricity that is primarily
8 fueled by coal and that is constructed after January 1, 2007, unless the facility or equipment captures and
9 sequesters a minimum of 50% of the carbon dioxide produced by the facility. Carbon dioxide captured by a facility
10 or equipment may be sequestered offsite from the facility or equipment.

11 ~~(9)(10)~~ Nothing limits the commission's ability to subsequently, in any future rate proceeding, inquire into
12 the manner in which the public utility has managed, dispatched, operated, or maintained any resource or
13 managed any power purchase agreement as part of its overall resource portfolio. The commission may
14 subsequently disallow rate recovery for the costs that result from the failure of a public utility to reasonably
15 manage, dispatch, operate, maintain, or administer electricity supply resources in a manner consistent with
16 69-3-201, ~~69-8-419~~, and commission rules.

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

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

25

26 **Section 29.** Section 69-11-412, MCA, is amended to read:

27 **"69-11-412. Division of joint rates among carriers.** (1) ~~Whenever the commission shall have~~
28 ~~established~~ If the commission establishes a joint rate for the transportation of freight carried over two or more
29 connecting lines of railroad, railway, or common carrier, the railroads, railways, or common carriers affected by
30 ~~such~~ the joint rate may, by agreement, provide for the shared distribution ~~thereof~~ of the rate between themselves.

1 (2) In the event that the railroads, railways, or common carriers affected by ~~such the rates shall fail~~ are
 2 unable to agree ~~upon on~~ the shared distribution of ~~such the~~ rate for a period of 60 days after the order fixing and
 3 determining ~~such the~~ joint rate ~~shall have been made by the commission~~, then the commission ~~shall have power~~
 4 ~~and it is hereby made its duty to call~~ shall hold a hearing in accordance with [section 4], ~~of which hearing the~~ The
 5 railroads, railways, or common carriers affected by ~~such the~~ joint rate ~~shall have~~ must receive at least ~~20~~ 10 days'
 6 notice, and ~~upon such~~ during the hearing, the commission shall ~~proceed to fix and~~ determine the pro rata
 7 distribution of ~~such the~~ joint rate between the railroads, railways, or common carriers affected ~~thereby~~ by it.

8 (3) ~~Any~~ A railroad, railway company, or common carrier and its officers or agents who ~~shall~~ refuse or fail
 9 to comply with ~~any an~~ order or rule relative to this section made by the commission ~~shall be~~ are subject to a fine
 10 of not less than \$25 or more than \$50. Each day of ~~such the~~ refusal or failure ~~shall be deemed~~ is a separate
 11 offense and ~~shall be~~ is subject to the penalty herein prescribed, ~~such The~~ fine ~~to~~ must be recovered in a civil
 12 action ~~upon complaint of~~ brought by the commission in ~~any a~~ court of competent jurisdiction."
 13

14 **Section 30.** Section 69-12-206, MCA, is amended to read:

15 **"69-12-206. Investigations by commission.** (1) ~~Any investigation, inquiry, or hearing which the~~ The
 16 commission ~~has~~ may power to undertake or to hold undertake or hold any investigation, inquiry, or hearing under
 17 the provisions of this chapter ~~may be undertaken or held by or before any member of the commission or by and~~
 18 ~~before any agent or examiner of the commission designated for the purpose by the commission as authorized~~
 19 in this chapter or by a hearings examiner in accordance with [section 4]. ~~Every~~ An approved, confirmed, and filed
 20 finding, order, or decision made by a member of the commission or by a designated agent or examiner of the
 21 commission ~~so designated, together with~~ which must include a statement in writing of the reasons ~~therefor~~ for
 22 the finding, order, or decision, ~~(which statement must be included in the finding, order, or decision, pursuant to~~
 23 ~~the investigation, inquiry, or hearing) when approved and confirmed by the commission and ordered filed in its~~
 24 ~~office shall be considered~~ is the finding, order, or decision of the commission.

25 (2) ~~An~~ In accordance with [section 4], an agent or designated examiner of the commission ~~designated~~
 26 ~~as aforesaid~~ may administer oaths, examine witnesses, and receive evidence."
 27

28 **Section 31.** Section 69-12-210, MCA, is amended to read:

29 **"69-12-210. Complaints.** (1) ~~The~~ In accordance with [section 4], the commission may conduct
 30 investigations and hear complaints to determine whether a motor carrier has violated any of the commission's

1 rules or orders or any provision of this chapter.

2 (2) Following an opportunity for hearing in accordance with [section 4] and upon a finding that a motor
3 carrier has violated any of the commission's rules or orders or any provision of this chapter, the commission may
4 suspend or revoke the motor carrier's certificate or impose any penalty provided for under 69-12-108."

5

6 **Section 32.** Section 69-12-321, MCA, is amended to read:

7 **"69-12-321. Hearing on application for motor carrier certificate.** (1) (a) Upon the filing of an
8 application for a certificate by a Class A, Class B, Class C, Class D, or Class E motor carrier, except a Class C
9 motor carrier authorized to operate under the terms of a contract as provided in 69-12-324, or upon the filing of
10 a request for a transfer of authority, the commission shall provide notice of the application to any interested party.

11 (b) If a protest or a request for hearing is received, the commission shall fix a time and place for a
12 hearing in accordance with [section 4] on the application.

13 (c) The hearing must be set for not later than 60 days after receipt of a protest or a hearing request. If
14 a protest or a request for hearing is not received, the commission may act on the application without a hearing
15 as prescribed by commission rules.

16 (d) A protest related to an application by a motor carrier pursuant to 69-12-311(1)(a) or
17 69-12-312(1)(a) or by a Class E motor carrier is limited to a protest of the motor carrier's ability to meet the
18 requirements of 69-12-323(5).

19 (2) A motor carrier referred to in 69-12-322, the department of transportation, the governing board or
20 boards of any county, town, or city into or through which the route or service as proposed may extend, and any
21 person or corporation concerned are interested parties to the proceedings and may offer testimony for or against
22 the granting of the certificate.

23 (3) The contracting parties referred to in 69-12-313(4) shall appear and offer testimony in support of the
24 applicant.

25 (4) An application by a motor carrier pursuant to 69-12-311(1)(b) or 69-12-312(1)(b), by a Class C motor
26 carrier, or by a Class D motor carrier for a certificate of public convenience and necessity may be denied without
27 a public hearing when the records of the commission demonstrate that the route or territory sought to be served
28 by the applicant has previously been made the basis of a public investigation and finding by the commission that
29 public convenience and necessity do not require the proposed motor carrier service. A hearing must be held in
30 accordance with [section 4] if the applicant presents facts demonstrating that conditions over the route or in the

1 territory and affecting transportation facilities have materially changed since the previous public investigation and
 2 finding and that public convenience and necessity now require the motor carrier operation."

3

4 **Section 33.** Section 69-12-327, MCA, is amended to read:

5 **"69-12-327. Revocation of certificate -- right of review.** (1) If it appears that a certificate holder is
 6 violating or refusing to observe any of the commission's orders or rules or any provision of Title 69, as amended,
 7 the commission may issue an order to the certificate holder to show cause why the certificate should not be
 8 revoked. If the certificate holder fails to appear to show cause as ordered by the commission, the certificate may
 9 be revoked without a hearing. If the holder does appear to show cause, the commission may:

10 (a) dismiss the proceeding, notifying the holder that the certificate is not revoked; or

11 (b) hold a hearing on the question of revocation, notifying the holder of the time and place for the hearing
 12 in accordance with [section 4].

13 (2) The holder of any ~~such~~ certificate or privilege ~~shall have all~~ has the rights of rehearing and review
 14 ~~as to such order of the commission as is provided in this chapter."~~

15

16 **Section 34.** Section 69-12-503, MCA, is amended to read:

17 **"69-12-503. Rates to be reasonable and nondiscriminatory.** (1) ~~All rates, The rates, fares, charges,~~
 18 ~~classifications, or rules of service for the transportation of property, and/or persons, or both upon on~~ the public
 19 highways of this state must be fair, just, reasonable, and nondiscriminatory. ~~No A~~ motor carrier operating under
 20 established rates ~~shall make, may not~~ give, or permit any undue preference or advantage to any particular
 21 person, company, corporation, locality, or description of traffic, ~~nor shall such. A~~ motor carrier may not subject
 22 any particular person, company, corporation, locality, or description of traffic to any prejudice or disadvantage
 23 in any respect. ~~Nothing herein provided shall prevent the commission from authorizing~~ The commission may
 24 authorize different rates or schedules of rates for service between the same places or between different points
 25 of origin, ~~and/or~~ destination, or both within the same places when ~~such~~ different rates are justified by the differing
 26 character of service to be rendered by the carrier to a shipper or consignee.

27 (2) The commission may, upon its own initiative or upon the complaint of any interested party, investigate
 28 in accordance with the requirements of [section 4] any rate, fare, charge, classification, or rule of service
 29 contained in the schedule of ~~any a~~ motor carrier. If the commission ~~shall find~~ finds, after ~~such an~~ investigation,
 30 that ~~any such a~~ rate, fare, charge, classification, or rule of service is unfair, unjust, unreasonable, or

1 discriminatory, it shall disallow the ~~same rate, fare, charge, classification, or rule of service~~ and fix a rate, fare,
 2 charge, classification, or rule of service ~~which shall be that is~~ fair, just, reasonable, and nondiscriminatory, ~~and~~
 3 it The commission shall order the affected motor carrier or carriers to conform to ~~such the~~ modified schedule.
 4 ~~Each A~~ motor carrier affected by any complaint or investigation shall first be given notice of the ~~same complaint~~
 5 or investigation and an opportunity to be heard before the commission."
 6

7 **Section 35.** Section 69-12-505, MCA, is amended to read:

8 **"69-12-505. Suspension of proposed rate revision -- hearing.** (1) Upon its own initiative or upon the
 9 complaint of any interested party filed with the commission within 20 days after the date upon which a change
 10 or revision of any rate, fare, charge, or classification is filed with the commission, the commission may suspend
 11 the operation of ~~such the~~ rate, fare, charge, or classification for a period not to exceed 180 days. The order
 12 directing ~~such the~~ suspension must be issued by the commission not less than 2 business days prior to the
 13 proposed effective date. The motor carrier or carriers filing ~~such the~~ rate, fare, charge, or classification ~~shall must~~
 14 be given prompt notice by the complaining party, ~~mailing who shall mail~~ a copy of the complaint concerning ~~such~~
 15 the proposed change or revision to the carrier or publishing agent, and ~~such the~~ carrier or carriers ~~also shall must~~
 16 be given an opportunity to reply to ~~any such the~~ complaint. If the proposed change or revision is in a tariff issued
 17 by a tariff publishing bureau for a motor carrier or carriers, notice to ~~such the~~ bureau of any complaint ~~will~~
 18 ~~constitute~~ constitutes notice to the participating carriers in ~~such the~~ tariff.

19 (2) (a) If all the protests are withdrawn and the commission finds the proposed increase justified, the
 20 commission may vacate the suspension and permit the proposed rates to become effective without a public
 21 hearing.

22 (b) Unless the suspension has been vacated, whenever the suspension of any proposed change or
 23 revision in a tariff is ordered by the commission, ~~it shall also order~~ the commission shall hold a public hearing in
 24 accordance with [section 4] to consider the reasonableness of the proposed change or revision. ~~Due notice shall~~
 25 Notice of the hearing must be given ~~for such hearing~~ to all known interested or affected persons, ~~and the same~~
 26 shall Interested persons must be allowed to appear and present evidence in accordance with [section 4].
 27 Additional prepared testimony may be presented before or during the hearing and may also be submitted after
 28 the hearing with the permission of the ~~commission~~ hearings examiner.

29 (3) After considering the evidence presented at ~~such the~~ hearing and in accordance with the
 30 requirements and recommendations of a hearings examiner as provided in [section 4], the commission shall issue

1 an order approving, denying, or modifying the proposed change or revision. Unless ~~such the~~ hearing is held and
 2 ~~such the~~ order is issued within 180 days from the date ~~upon which that~~ the suspension was ordered, the proposed
 3 change or revision ~~shall be deemed~~ is approved and effective as filed."

4

5 **Section 36.** Section 69-12-603, MCA, is amended to read:

6 **"69-12-603. Investigation of operation under agreement.** ~~The~~ Except as provided in [section 4], the
 7 commission may, upon complaint or upon its own initiative without complaint, investigate and determine whether
 8 any agreement previously approved by it under 69-12-601 or any terms or conditions ~~upon on~~ which such the
 9 approval was granted are not in conformity with 69-12-601 and 69-12-602 or whether ~~any such the~~ terms or
 10 conditions are not necessary for the purpose of conformity with 69-12-601 and 69-12-602. After ~~such an~~
 11 investigation, the commission may by order terminate or modify its approval of ~~such an~~ agreement if it finds ~~such~~
 12 the action necessary to ~~insure~~ ensure conformity with 69-12-601 and 69-12-602 and may modify the terms and
 13 conditions ~~upon on~~ which such the approval was granted to the extent it finds necessary to ~~insure~~ ensure
 14 conformity with 69-12-601 and 69-12-602 or to the extent it finds its terms and conditions unnecessary to ~~insure~~
 15 ~~such~~ ensure conformity. The effective date of any order terminating or modifying approval or modifying terms and
 16 conditions may be postponed for ~~such a time period as~~ determined by the commission ~~determines is to be~~
 17 reasonably necessary to avoid undue hardship."

18

19 **Section 37.** Section 69-12-604, MCA, is amended to read:

20 **"69-12-604. Hearing required on matters relating to agreements.** ~~No~~ An order may not be entered
 21 under 69-12-601 or 69-12-603 except after interested parties have been afforded reasonable opportunity for
 22 hearing in accordance with [section 4]."

23

24 **Section 38.** Section 69-13-201, MCA, is amended to read:

25 **"69-13-201. Establishment of rates and operating rules.** (1) The commission may establish and
 26 enforce rates of charges and regulations for gathering, transporting, loading, and delivering crude petroleum, coal,
 27 or the products of crude petroleum or coal or of carbon dioxide from a plant or facility that produces or captures
 28 carbon dioxide by common carrier in this state and for the use of storage facilities necessarily incident to the
 29 transportation and may prescribe and enforce rules for the government and control of common carriers in respect
 30 to their pipelines and receiving, transferring, and loading facilities. The commission shall exercise the power upon

1 petition by any person showing a substantial interest in the subject and in accordance with [section 4].

2 (2) An order establishing or prescribing rates and rules may not be made except after hearing in
3 accordance with [section 4] and at least 10 days' ~~and not more than 30 days'~~ notice to the person, firm,
4 corporation, partnership, joint-stock association, or association owning or controlling and operating the pipeline
5 or pipelines affected.

6 (3) If a rate is filed by any pipeline and a complaint against the rate or a petition to reduce the rate is filed
7 by any shipper and is sustained, in whole or in part, all shippers who have paid the rates filed by the pipeline have
8 the right to reparation or reimbursement of all excess in transportation charges paid, over and above the proper
9 rate as finally determined, on all shipments made after the date of the filing of the complaint."
10

11 **Section 39.** Section 69-13-301, MCA, is amended to read:

12 **"69-13-301. Records and reports.** (1) Common carriers of crude petroleum, coal, or the products of
13 crude petroleum or coal or of carbon dioxide from a plant or facility that produces or captures carbon dioxide shall
14 make and publish their tariffs under rules that may be prescribed by the commission. The commission shall
15 require the common carriers to make reports and may investigate in accordance with the requirements of [section
16 4] their books and records kept in connection with the business.

17 (2) The commission shall require common carrier pipelines to make monthly reports, duly verified under
18 oath, of the total quantities of crude petroleum, coal, or the products of crude petroleum or coal or of carbon
19 dioxide from a plant or facility that produces or captures carbon dioxide owned by the pipelines, of the quantities
20 held by them in storage for others, and of their unfilled storage capacity. Publicity may not be given by the
21 commission to the reports as to stock of crude petroleum, coal, or the products of crude petroleum or coal or of
22 carbon dioxide from a plant or facility that produces or captures carbon dioxide on hand of any particular pipeline,
23 but the commission in its discretion may make public the aggregate amounts held by all the pipelines making the
24 reports and of their aggregate storage capacity."
25

26 **Section 40.** Section 69-14-606, MCA, is amended to read:

27 **"69-14-606. Role of public service commission with respect to crossings.** (1) The commission may
28 enforce the orders of any board of county commissioners for the construction of railroad crossings and may pass
29 upon the reasonableness of any ~~such~~ order and modify, change, or annul the ~~same~~ order.
30

(2) ~~Whenever any~~ If a railroad crossing has been ordered by the county commissioners, as ~~herein~~

1 provided in this part, the railroad company may, within 30 days after the service of ~~such the~~ order, ~~serve upon~~
 2 ~~notify~~ the commission ~~a notice stating why the~~ that the company believes the order is ~~considered~~ unreasonable
 3 or unjust and ~~requesting that~~ may request that the commission hold a hearing in accordance with [section 4] for
 4 the purpose of determining whether or not the construction of ~~such the~~ crossing should reasonably be required.
 5 The commission ~~shall thereupon institute~~ may hold a hearing ~~for this purpose~~ in accordance with [section 4], and
 6 all interested parties ~~shall be~~ must be given reasonable notice and an opportunity to be heard. The commission
 7 may, after ~~such the~~ hearing and in accordance with [section 4], either affirm, modify, or annul ~~such the~~ order."
 8

9 **Section 41.** Section 69-14-607, MCA, is amended to read:

10 **"69-14-607. Overhead or underground crossings.** (1) ~~No~~ A railroad crossing, other than a grade
 11 crossing, ~~shall~~ may not be ordered by any board of county commissioners.

12 (2) (a) ~~The~~ However, if the public service commission determines that the safety, necessity, and
 13 convenience of the traveling public require the crossing, the public-service commission may, ~~however,~~ upon
 14 petition or request in writing of any board of county commissioners, order an overhead or underground crossing
 15 at any place where a railroad crossing has not been constructed and is required by the provisions of 69-14-601
 16 through 69-14-611; ~~provided, in its judgment, the safety, necessity, and convenience of the traveling public~~
 17 ~~require such crossing.~~

18 (b) When ~~any such a~~ petition or request is presented, the commission shall ~~fix a date for hearing the~~
 19 ~~same and shall give at least 10 days'~~ hold a hearing in accordance with [section 4] and provide written notice of
 20 the hearing to the board of county commissioners and to the owner or operator of the railroad to be affected by
 21 ~~such the~~ order ~~of the time fixed for the hearing.~~ At ~~such the~~ hearing, the ~~commission~~ hearings examiner shall hear
 22 all testimony offered as to the safety, necessity, and convenience of the traveling public requiring ~~such~~ a crossing
 23 and the expense of constructing and maintaining the ~~same and~~ the crossing. The hearings examiner shall ~~make~~
 24 ~~such investigation and inspection of~~ investigate and inspect the conditions at the place of crossing as ~~may be~~
 25 ~~deemed~~ necessary or advisable and shall ~~thereupon~~ determine whether ~~such the~~ order should be ~~made~~
 26 recommended to the commissioner in accordance with [section 4].

27 (3) ~~In the event~~ If an overhead or underground crossing is ordered, the commission may in its discretion
 28 require the ~~same~~ crossing to be constructed and maintained by and at the expense of the railroad company or
 29 may apportion the expense between the railroad company and the county ~~in which said~~ where the crossing is
 30 located. The part of the expense apportioned to ~~said the~~ county, if any, ~~shall~~ must be paid to the railroad company

1 from the funds of ~~said~~ the county properly applicable to the payment of ~~such~~ the expense."

2

3 **NEW SECTION. Section 42. Repealer.** The following sections of the Montana Code Annotated are

4 repealed:

5 69-8-419. Electricity supply resource planning and procurement -- duties of public utility -- objectives --
6 commission rules.

7 69-8-420. Electricity supply resource procurement plans -- comment on plans.

8

9 **NEW SECTION. Section 43. Codification instruction.** (1) [Sections 1 through 3] are intended to be
10 codified as an integral part of Title 69, chapter 3, part 12, and the provisions of Title 69, chapter 3, part 12, apply
11 to [sections 1 through 3].

12 (2) [Section 4] is intended to be codified as an integral part of Title 69, chapter 3, part 1, and the
13 provisions of Title 69, chapter 3, part 1, apply to [section 4].

14

15 **NEW SECTION. Section 44. Severability.** If a part of [this act] is invalid, all valid parts that are
16 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
17 the part remains in effect in all valid applications that are severable from the invalid applications.

18

19 **NEW SECTION. Section 45. Saving clause.** [This act] does not affect rights and duties that matured,
20 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

21

22 **NEW SECTION. Section 46. Effective date.** [This act] is effective July 1, 2019.

23

24 **NEW SECTION. Section 47. Applicability.** (1) [Sections 1 through 3] apply to applications by a utility
25 for approval of an electricity supply resource and integrated least-cost plans submitted on or after July 1, 2019.

26 (2) [Section 4] applies to hearings held on or after July 1, 2019.

27

- END -