

HOUSE BILL NO. 597

INTRODUCED BY D. ZOLNIKOV

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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~~
12 ALLOWING THE COMMISSION TO ESTABLISH ENERGY SAVINGS AND PEAK DEMAND REDUCTION
13 GOALS; ALLOWING DEMAND-SIDE MANAGEMENT PROGRAMS TO BE INCLUDED IN UTILITY RATE
14 PROCESSES; ESTABLISHING COMMISSION REQUIREMENTS FOR REVIEW AND APPROVAL OR
15 REJECTION OF A COMPETITIVE SOLICITATION PROCESS; REQUIRING LEAST-COST RESOURCE
16 PLANNING EVERY 3 YEARS; REQUIRING PUBLIC SERVICE COMMISSION APPROVAL OF LEAST-COST
17 RESOURCE PLANS; REVISING PUBLIC HEARING REQUIREMENTS FOR RESOURCE PLANS; REQUIRING
18 UTILITIES TO HOLD PUBLIC MEETINGS WHEN DEVELOPING RESOURCE PLANS; REVISING
19 ELECTRICITY SUPPLY RESOURCE PREAPPROVAL CRITERIA AND REQUIREMENTS; REQUIRING AN
20 ELECTRICITY SUPPLY RESOURCE TO BE IDENTIFIED, WITH CONDITIONS, IN A
21 COMMISSION-APPROVED PLAN; ALLOWING THE COMMISSION TO ASSESS A FEE; ~~REQUIRING AN~~
22 INDEPENDENT ALLOWING FOR A HEARINGS EXAMINER FOR PROCEEDINGS UNDER TITLE 69;
23 ~~ESTABLISHING REQUIREMENTS FOR HEARINGS CONDUCTED BY AN EXAMINER; REQUIRING~~
24 ~~HEARINGS TO BE CONDUCTED PURSUANT TO THE MONTANA RULES OF EVIDENCE; ESTABLISHING~~
25 A PROCESS FOR USE OF A HEARINGS EXAMINER; GRANTING THE PUBLIC SERVICE COMMISSION
26 RULEMAKING AUTHORITY; PROHIBITING THE COMMISSION FROM CONDUCTING DISCOVERY OR
27 CROSS-EXAMINATION; REQUIRING THE COMMISSION TO ISSUE ORDERS WITHIN 9 MONTHS OF A
28 HEARING; PROVIDING EXCEPTIONS; ESTABLISHING REQUIREMENTS FOR FINAL DECISIONS;
29 AMENDING SECTIONS ~~69-1-110, 69-1-114, 69-2-102, 69-2-201, 69-3-103, 69-3-106, 69-3-303, 69-3-321,~~
30 ~~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, 69-3-1202,

1 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, 69-12-210,~~
2 ~~69-12-321, 69-12-327, 69-12-503, 69-12-505, 69-12-603, 69-12-604, 69-13-201, 69-13-301, 69-14-606, AND~~
3 ~~69-14-607~~; MCA; REPEALING SECTIONS 69-8-419 AND 69-8-420, MCA; AND PROVIDING AN EFFECTIVE
4 DATE AND AN APPLICABILITY DATE."

5

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

7

8 NEW SECTION. **Section 1. Competitive solicitation process required -- exception.** (1) (a) Except
9 as provided in subsection (6), a public utility that intends to seek approval by the commission pursuant to
10 69-3-201 or 69-8-421 for the acquisition, construction, or purchase of an electricity supply resource shall conduct
11 a competitive solicitation process.

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

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

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

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

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

25 (c) any other information the commission requires.

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

29 (b) The commission may select and retain a person or organization to act as an independent monitor
30 for a competitive solicitation process. The commission shall charge a fee to the public utility to pay for the costs

1 of an independent monitor. These costs are recoverable in rates.

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

3 (i) providing comments on the consistency of the competitive solicitation process with industry standards
4 and the commission's criteria;

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

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

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

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

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

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

19 (iii) reject a proposed competitive solicitation process.

20 (b) The commission may extend the time to a date that provides the commission with adequate time to
21 analyze the information provided in accordance with subsection (2). The time may not be extended by longer than
22 90 days.

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

26 (a) the cost to Montana ratepayers;

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

28 (c) risk;

29 (d) reliability;

30 (e) environmental impacts;

- 1 (f) financial impacts on the public utility; and
2 (g) other factors determined by the commission to be relevant.

3 (6) This section does not apply to a request for proposals or purchase by a public utility intended solely
4 to meet the short-term operational needs of the utility for a period of less than 12 months.

5
6 **NEW SECTION. Section 2. Integrated least-cost resource planning -- advisory committee --**

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

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

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

13
14 **NEW SECTION. Section 3. Electric utility demand-side management programs.** (1) The commission

15 may establish energy savings and peak demand reduction goals to be achieved by an electric utility, taking into
16 account the utility's cost-effective demand-side management potential, the need for electricity resources, and
17 other factors as determined by the commission.

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

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

- 24 (a) program expenditures, including incentive payments;
25 (b) peak demand and energy savings impacts and the techniques used to estimate those impacts;
26 (c) avoided costs and the techniques used to estimate those costs;
27 (d) the estimated cost-effectiveness of the programs;
28 (e) the net economic benefits of the programs; and
29 (f) any other information required by the commission.
30

1 NEW SECTION. Section 4. Independent hearings HEARINGS examiner -- DISCOVERY -- RULEMAKING.

2 (1) (a) Except as provided in subsection (9), the commission shall exercise its powers and duties in accordance
3 with this section:

4 ~~_____ (b) The EXCEPT AS PROVIDED IN SUBSECTIONS (1)(B) AND (1)(C), IF REQUESTED BY THE APPLICANT, THE~~
5 commission shall appoint ~~an independent~~ A hearings examiner for proceedings under this title.

6 (B) IF FOUR PUBLIC SERVICE COMMISSIONERS DETERMINE THAT A HEARINGS EXAMINER IS NOT REQUIRED FOR
7 A PROCEEDING, THE COMMISSION IS NOT REQUIRED TO APPOINT A HEARINGS EXAMINER.

8 (C) IF THREE PUBLIC SERVICE COMMISSIONERS DETERMINE THAT A HEARINGS EXAMINER IS NECESSARY FOR A
9 PROCEEDING, THE COMMISSION SHALL APPOINT A HEARINGS EXAMINER.

10 (D) THE DETERMINATIONS IN THIS SUBSECTION (1) MUST BE MADE BY A VOTE OF THE COMMISSION DURING A
11 PUBLIC MEETING.

12 (E) COMMISSION STAFF MAY SERVE AS A HEARINGS EXAMINER. ~~A hearings examiner must be assigned with~~
13 ~~regard to the expertise required for the particular matter. On the filing by a party, in good faith, of a timely and~~
14 ~~sufficient affidavit of personal bias, lack of independence, disqualification by law, or other disqualification of a~~
15 ~~hearings examiner or on the hearings examiner's own motion, the commission shall determine the affidavit or~~
16 ~~motion as a part of the record in the case.~~

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

19 ~~(2) Unless otherwise agreed to by the parties and except as provided for in 69-3-1502 and~~
20 ~~69-12-321(1)(c), the commission shall, within 10 days of the filing of a request for hearing, conduct a conference~~
21 ~~with the parties for the purpose of establishing a schedule for the orderly and timely disposition of the hearing.~~
22 ~~The schedule must include discovery deadlines, a hearing date, and the name of the hearings examiner~~
23 ~~appointed as provided in this section to conduct the proceedings.~~

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

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

7 ~~———— (b) Commission (2) A COMMISSION staff MEMBER WHO IS NOT SERVING AS THE HEARINGS EXAMINER may~~
 8 ~~conduct discovery and OR be a party to the hearings examiner process-, OR BOTH. A COMMISSION STAFF MEMBER~~
 9 ~~WHO IS NEITHER A HEARINGS EXAMINER NOR A PARTY TO THE HEARINGS EXAMINER PROCESS CAN ADVISE THE HEARINGS~~
 10 ~~EXAMINERS, THE COMMISSION, OR BOTH. COMMISSIONERS MAY NOT CONDUCT DISCOVERY DURING THE HEARINGS~~
 11 ~~EXAMINER PROCESS OR ENGAGE IN CROSS-EXAMINATION DURING A HEARINGS EXAMINER PROCESS.~~

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

14 ~~———— (5) Unless the timeline for a decision is required as provided in 69-3-603(2), 69-3-1204, 69-3-1415(3),~~
 15 ~~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~~
 16 ~~months after the hearings examiner files the proposed findings of fact and conclusions of law with the~~
 17 ~~commission. Each party must be simultaneously given a copy delivered personally or by certified mail. The final~~
 18 ~~order must:~~

19 ~~———— (a) be in writing; and~~

20 ~~———— (b) include findings of fact and conclusions of law, separately stated. The findings of fact must meet the~~
 21 ~~requirements of subsection (6).~~

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

25 ~~———— (7) If the person who conducted the hearing becomes unavailable to the commission, the commission~~
 26 ~~is not precluded from issuing a final order.~~

27 ~~(8)(3) The hearings examiner may not communicate with any party or a party's representative in~~
 28 ~~connection with any issue of fact or law in the case unless there is notice and opportunity for all parties to~~
 29 ~~participate. The commission may not communicate with any party before the conclusion of the hearing.~~

30 ~~(4) THE COMMISSION MAY ADOPT RULES NECESSARY TO IMPLEMENT THE UTILIZATION OF A HEARINGS EXAMINER~~

1 IN ACCORDANCE WITH THIS SECTION.

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

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

6

7 ~~——— **Section 5.** Section 69-1-110, MCA, is amended to read:~~

8 ~~——— **"69-1-110. Conduct of commission business.** (1) The commission shall hold sessions at times and~~
9 ~~places in this state as may be expedient. A majority of the commission constitutes a quorum for the transaction~~
10 ~~of business.~~

11 ~~——— (2) The members of the commission may administer oaths and affirmations.~~

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

15

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

17 **"69-1-114. Fees.** (1) Each fee charged by the commission must be reasonable.

18 (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),
19 or 69-12-423(2), a fee set by the commission may not exceed \$500.

20 (3) All fees collected by the department under ~~69-8-424(10)~~ [section 1(3)(b)] and 69-3-1204(6)(c) must
21 be deposited in an account in the special revenue fund. Funds in this account must be used as provided in
22 ~~69-8-424(10)~~ [section 1(3)(b)] and 69-3-1204(6)(c)."

23

24 ~~——— **Section 7.** Section 69-2-102, MCA, is amended to read:~~

25 ~~——— **"69-2-102. Role of commission when consumer counsel protests.** In any case involving an~~
26 ~~application by a regulated entity to the commission for authority to increase its rates that is actively contested by~~
27 ~~the consumer counsel, the commission shall leave representation of the interests of consumers to the consumer~~
28 ~~counsel when the consumer counsel timely petitions to become a party to the case. This Except as provided in~~
29 ~~[section 4], this section does not prohibit the commission or its staff from investigating and interrogating in any~~
30 ~~hearing to clarify the case or present an issue. Evidence In accordance with the requirements of [section 4],~~

1 ~~evidence~~ may be introduced by the commission on an issue that has not been adequately addressed by any party
 2 if the commission first requests counsel of record to address the issue and counsel fails to introduce sufficient
 3 or adequate evidence."

4

5 ~~Section 8.~~ Section 69-2-201, MCA, is amended to read:

6 ~~"69-2-201. Appearance at hearings by counsel.~~ The consumer counsel may appear at public hearings
 7 conducted by the commission in accordance with ~~[section 4]~~, as the representative of the consuming public, on
 8 all matters which ~~that~~ come before the commission which in any way affect the consuming public, and shall have
 9 ~~The consumer counsel has~~ all the rights and powers of any party in interest appearing before the commission
 10 regarding examination and cross-examination of witnesses, presentation of evidence, and other matters."

11

12 ~~Section 9.~~ Section 69-3-103, MCA, is amended to read:

13 ~~"69-3-103. General powers and rulemaking authority of commission.~~ (1) In addition to the modes
 14 of procedure hereinafter prescribed ~~procedures provided for in this title and~~ in particular cases and classes of
 15 cases, ~~and in accordance with [section 4]~~, said ~~the~~ commission shall have power to ~~may~~ prescribe rules of
 16 procedure and to do all things necessary and convenient in the exercise of the ~~its~~ powers, conferred by this
 17 chapter upon the commission; provided that nothing in this chapter shall be construed as vesting ~~This chapter~~
 18 ~~does not provide the commission with~~ judicial powers, on said commission or as denying to any ~~A~~ person, firm,
 19 association, corporation, municipality, county, town, or village the right to ~~may~~ test in a court of competent
 20 jurisdiction the legality or reasonableness of any fixed order made by the commission in the exercise of its duties
 21 or powers:

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

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

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

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

27

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

29 ~~"69-3-106. Supervision of management of public utilities.~~ (1) The commission has the authority to
 30 ~~may~~ inquire into the management of the business of all public utilities, shall keep itself informed as to the manner

1 and method in which the business is conducted, and has the right to obtain from any public utility all necessary
 2 information to enable the commission to perform its duties:

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

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

15
 16 ~~———**Section 11.** Section 69-3-303, MCA, is amended to read:~~

17 ~~———"**69-3-303. Notice and hearing on proposed change.** (1) Except as provided in 69-3-308, before the
 18 commission may approve any change increasing the rate or rates for utility service in a schedule generally
 19 affecting consumers in a utility's service area or before any change may become effective due to the passage
 20 of 9 months, the commission shall publish a notice of the proposed change, conforming to the requirements of
 21 2-4-601 in one or more newspapers published and of general circulation within the area affected by the proposed
 22 change. This notice must announce a hearing on the proposed change and must inform interested persons as
 23 to how they may petition the commission to become parties to the hearing:~~

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

28 ~~———(3) The consumer counsel may petition to become a party to the hearing."~~

29
 30 ~~———**Section 12.** Section 69-3-321, MCA, is amended to read:~~

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

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

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

13 ~~————(c) any service is inadequate service.~~

14 ~~————(2) No Except as provided for in [section 4], an order affecting such the rates, tolls, charges, schedules,~~
 15 ~~regulations, measurements, practices, or acts complained of shall received in accordance with subsection (1)~~
 16 ~~must be entered without a formal hearing, except the commission may issue an order to provide service to a~~
 17 ~~residential consumer pending a hearing on a complaint by such the consumer or by the consumer counsel on~~
 18 ~~behalf of such the consumer against a public utility, providing that if the hearing is held within 20 10 days unless~~
 19 ~~further delayed by consent of all parties."~~

20

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

22 ~~————"**69-3-324. Initiation of action by commission itself.** The commission may at any time, upon its own~~
 23 ~~motion, investigate any of the rates, tolls, charges, rules, practices, and services and after a full hearing as~~
 24 ~~provided in this part and in accordance with [section 4] may make by order such changes as may be that are just~~
 25 ~~and reasonable, the same as if a formal complaint had been made."~~

26

27 ~~————**Section 14.** Section 69-3-325, MCA, is amended to read:~~

28 ~~————"**69-3-325. Notice of hearing.** The In accordance with [section 4], the commission shall give the public~~
 29 ~~utility and the complainant or complainants at least 10 days' notice of the time when and the place where such~~
 30 ~~a hearing will be held."~~

1

2 ~~Section 15.~~ Section 69-3-326, MCA, is amended to read:

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

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

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

12

13 ~~Section 16.~~ Section 69-3-327, MCA, is amended to read:

14 ~~"69-3-327. Subpoena of witnesses. If any a party ordered to appear before the commission hearings~~
15 ~~examiner as a witness fails to obey the order, the commission or its staff hearings examiner may apply to the clerk~~
16 ~~of the nearest district court for a subpoena commanding the attendance of the witness before the commission.~~
17 ~~It is the duty of the The clerk to shall issue the subpoena and of any a peace officer to shall serve the subpoena.~~
18 ~~Disobedience to the subpoena is considered contempt of court and is punishable accordingly."~~

19

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

21 ~~"69-3-328. Depositions of witnesses. The commission hearings examiner or any party to any the~~
22 ~~proceeding before it may cause the depositions of witnesses to be taken in the manner prescribed by law for like~~
23 ~~similar depositions in civil actions."~~

24

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

26 **"69-3-702. Eligible conservation.** Conservation purchases or investments are eligible under this part
27 if they are provided for in 69-3-1206 and in accordance with [section 3]."

28

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

30 **"69-3-711. Criteria for allowable conservation and demand-side management programs -- onsite**

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

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

6
 7 **Section 8.** Section 69-3-712, MCA, is amended to read:

8 **"69-3-712. Commission to include conservation and demand-side management programs in rate**
 9 **base -- rate of return.** (1) In order to encourage the purchase of or investment in conservation by a utility, the
 10 commission ~~shall~~ may include conservation purchases or investments and demand-side management programs
 11 eligible under 69-3-702 and in compliance with criteria adopted under 69-3-711, 69-3-1201 through 69-3-1206,
 12 and [sections 1 through 3] in a utility's rate base.

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

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

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

19
 20 **Section 9.** Section 69-3-713, MCA, is amended to read:

21 **"69-3-713. Prohibition against utility claiming conservation tax credit.** A utility whose conservation
 22 is placed in the rate base under this part or 69-3-1201 through 69-3-1206 and [sections 1 through 3] may not
 23 claim the tax credit allowed in 15-32-107."

24
 25 **Section 10.** Section 69-3-1202, MCA, is amended to read:

26 **"69-3-1202. Policy -- planning.** (1) (a) It is the policy of the state of Montana to supervise, regulate, and
 27 control public utilities. To the extent that it is consistent with the policy and in order to benefit society, the state
 28 ~~encourages~~ requires efficient utility operations, efficient use of utility services, and efficient rates.

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

1 environment.

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

4 (2) (a) The legislature finds that the commission may preapprove resources eligible in accordance with
 5 69-8-421 and may include in rates the any costs that are associated with acquiring the resources referred to in
 6 subsection (1) or 69-8-421 and that are consistent with this policy if the resources are actually used and useful
 7 for the convenience of the public, and if the resources meet the requirements of this part.

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

11 (3) This part does not constrain or limit the commission's existing statutory duties or responsibilities."
 12

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

14 **"69-3-1203. Definitions.** As used in this part, unless the context requires otherwise, the following
 15 definitions apply:

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

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

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

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

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

25 ~~(3)~~(6) "Externalities" mean the impacts on society that are not directly borne by the producer in
 26 production and delivery activities, which due to imperfections in or the absence of markets are not accounted for
 27 in the producer's production and pricing decisions.

28 ~~(4)~~(7) "Plan" means an integrated least-cost resource plan submitted by a utility in accordance with this
 29 part and the rules adopted under this part.

30 ~~(5)~~(8) "Planning costs" means the costs of evaluating the future demand for services and of evaluating

1 alternative methods of satisfying future demand.

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

5 ~~(6)~~(10) "Portfolio development costs" means the costs of preparing a resource in a portfolio for prompt
 6 and timely acquisition of the resource.

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

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

12

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

14 **"69-3-1204. Integrated least-cost plan.** (1) (a) The commission ~~may~~ shall adopt rules requiring a public
 15 utility to prepare and file a plan every 3 years for meeting the requirements of its customers in the most
 16 cost-effective manner consistent with the public utility's obligation to serve and in accordance with this part.

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

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

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

22 (ii) a statement of the utility-specified resource acquisition period and planning period. The utility shall
 23 consistently use the specified resource acquisition and planning periods throughout the entire resource plan and
 24 resource acquisition process. The utility shall include a detailed explanation as to why the specific period lengths
 25 were chosen in light of the assessment of the needs of the utility system.

26 (iii) an annual electric demand and energy forecast developed pursuant to commission rules that includes
 27 energy and demand forecasts for each year within the planning period and historical data, as required by
 28 commission rule;

29 (iv) an evaluation of economic and reliability optimization of the system, including the interactions of
 30 generation, transmission, and distribution resources;

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

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

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

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

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

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

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

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

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

19 (5) The commission shall:

20 (a) review the plan;

21 (b) publish a copy of the plan;

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

23 (d) provide public meetings in accordance with 69-3-1205; and

24 (e) issue written approval of the plan within 12 months after the plan is submitted to the commission.

25 (6) (a) The commission may approve a plan in accordance with subsection (5)(e) and also identify
26 deficiencies in the plan, including:

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

28 (ii) ways to remedy the concerns.

29 (b) In addition to information required in subsection (2)(b), upon request of the commission, a public utility
30 shall provide any additional underlying data, assumptions, and modeling necessary for the commission to review

1 and approve a plan in accordance with subsection (5).

2 (c) The commission may engage independent engineering, financial, and management consultants or
 3 advisory services to evaluate a public utility's plan. The consultants must have demonstrated knowledge and
 4 experience with resource procurement and resource portfolio management, modeling, risk management, and
 5 engineering practices. The commission shall charge a fee to the public utility to pay for the costs of consultants
 6 or advisory services. These costs are recoverable in rates."

7

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

9 **"69-3-1205. Public comment -- public meetings.** (1) When developing a plan in accordance with this
 10 part and prior to submitting a plan to the commission, a public utility shall hold at least two public meetings in the
 11 utility's Montana service territory to ensure a plan best meets the diverse goals of shareholders, ratepayers, and
 12 society.

13 ~~(1)(2)~~ The After a plan is submitted, the commission shall conduct a two public meeting meetings for the
 14 purpose of receiving comment on a plan. The commission or the department of public service regulation may
 15 comment on the plan. A comment by the commission or the department may not be construed as preapproval
 16 by the commission of rate treatment for any proposed resource.

17 ~~(2)(3)~~ The department of environmental quality:

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

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

24 ~~(3)(4)~~ The consumer counsel shall review and may comment on a submitted plan."

25

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

27 **"69-3-1206. Rate treatment.** (1) The commission may include in a public utility's rates:

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

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

30 ~~(2) The commission shall MAY include in a public utility's rates:~~

1 ~~(b)(a)~~ the cost-effective expenditures for improving the efficiency with which the public utility provides
2 and its customers use utility services; ~~and~~ IN A PUBLIC UTILITY'S RATES.

3 ~~(c)(b)(3)~~ THE COMMISSION SHALL INCLUDE the costs of complying with the planning requirements of this part
4 and the costs of complying with a competitive solicitation process conducted in accordance with [section 1];
5 including IN A PUBLIC UTILITY'S RATES. COSTS INCLUDE but ARE not limited to:

6 ~~(i)(A)~~ planning costs;

7 ~~(ii)(B)~~ portfolio development costs; and

8 ~~(iii)(C)~~ all or a portion of abandonment costs.

9 ~~(2)(3)(4)~~ The commission shall may adopt rules establishing criteria governing the extent of recovery
10 of abandonment costs."

11

12 ~~Section 27.~~ Section 69-3-1502, MCA, is amended to read:

13 ~~"69-3-1502. Commission approval of material affiliate transactions -- rulemaking authority. (1) In~~
14 ~~addition to the commission's existing regulatory authority under this title and except as provided in 69-3-1503 and~~
15 ~~subsection (4) of this section, a regulated energy utility may not enter into a material affiliate transaction without~~
16 ~~the commission's review and approval.~~

17 ~~(2) The commission shall approve or deny the material affiliate transaction. Upon a showing of good~~
18 ~~cause, the commission shall hold a public hearing in accordance with [section 4] on the proposed material affiliate~~
19 ~~transaction within 45 days of an official notification by the regulated energy utility to the commission that the utility~~
20 ~~is intending to enter into a material affiliate transaction.~~

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

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

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

28

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

30 **"69-8-421. Approval of electricity supply resources.** (1) A public utility that removed its generation

1 assets from its rate base pursuant to this chapter prior to October 1, 2007, may apply to the commission for
2 approval of an electricity supply resource that:

3 (a) is not yet procured;

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

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

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

9 ~~(2)~~(3) Within 45 days of the public utility's submission of an application for approval, the commission shall
10 determine whether or not the application is adequate and in compliance with subsections (1) and (2) and the
11 commission's minimum filing requirements. If the commission determines that the application is inadequate, it
12 shall explain the deficiencies.

13 ~~(3)~~(4) The commission shall issue an order within 180 days of receipt of an adequate application for
14 approval of a power purchase agreement from an existing generating resource unless it determines that
15 extraordinary circumstances require additional time.

16 ~~(4)~~(5) (a) Except as provided in subsections ~~(4)(b)~~ (5)(b) through ~~(4)(d)~~ (5)(d), the commission shall issue
17 an order within 270 days of receipt of an adequate application for approval of a lease, an acquisition of an equity
18 interest in a new or existing plant or equipment used to generate electricity, or a power purchase agreement for
19 which approval would result in construction of a new electric generating resource. The commission may extend
20 the time limit up to an additional 90 days if it determines that extraordinary circumstances require it.

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

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

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

29 ~~(5)~~(6) To facilitate timely consideration of an application, the commission may initiate proceedings to
30 evaluate planning and procurement activities related to a potential resource procurement, if necessary, in

1 accordance with [section 1] prior to the public utility's submission of an application for approval.

2 ~~(6)(7)~~ (a) The commission may approve or deny, in whole or in part, an application for approval of an
3 electricity supply resource.

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

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

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

8 (ii) procurement of the electricity supply resource is consistent with the requirements and objectives in
9 ~~69-3-201, the objectives in 69-8-419~~ 69-3-1201 through 69-3-1206, [sections 1 through 3], and commission rules.

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

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

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

19 (g) A commission order that denies approval must describe why the findings required in subsection ~~(6)(e)~~
20 (7)(c) could not be reached.

21 ~~(7)(8)~~ Notwithstanding any provision of this chapter to the contrary, if the commission has issued an
22 order containing the findings required under subsection ~~(6)(e)~~ (7)(c), the commission may not subsequently
23 disallow the recovery of costs related to the approved electricity supply resource based on contrary findings.

24 ~~(8)(9)~~ Until the state or federal government has adopted uniformly applicable statewide standards for
25 the capture and sequestration of carbon dioxide, the commission may not approve an application for the
26 acquisition of an equity interest or lease in a facility or equipment used to generate electricity that is primarily
27 fueled by coal and that is constructed after January 1, 2007, unless the facility or equipment captures and
28 sequesters a minimum of 50% of the carbon dioxide produced by the facility. Carbon dioxide captured by a facility
29 or equipment may be sequestered offsite from the facility or equipment.

30 ~~(9)(10)~~ Nothing limits the commission's ability to subsequently, in any future rate proceeding, inquire into

1 the manner in which the public utility has managed, dispatched, operated, or maintained any resource or
 2 managed any power purchase agreement as part of its overall resource portfolio. The commission may
 3 subsequently disallow rate recovery for the costs that result from the failure of a public utility to reasonably
 4 manage, dispatch, operate, maintain, or administer electricity supply resources in a manner consistent with
 5 69-3-201, ~~69-8-419~~, and commission rules.

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

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

14
 15 ~~Section 29.~~ Section 69-11-412, MCA, is amended to read:

16 ~~"69-11-412. Division of joint rates among carriers. (1) Whenever the commission shall have~~
 17 ~~established if the commission establishes a joint rate for the transportation of freight carried over two or more~~
 18 ~~connecting lines of railroad, railway, or common carrier, the railroads, railways, or common carriers affected by~~
 19 ~~such the joint rate may, by agreement, provide for the shared distribution thereof of the rate between themselves.~~

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

27 ~~(3) Any A railroad, railway company, or common carrier and its officers or agents who shall refuse or fail~~
 28 ~~to comply with any an order or rule relative to this section made by the commission shall be are subject to a fine~~
 29 ~~of not less than \$25 or more than \$50. Each day of such the refusal or failure shall be deemed is a separate~~
 30 ~~offense and shall be is subject to the penalty herein prescribed, such The fine to must be recovered in a civil~~

1 action upon complaint of brought by the commission in any a court of competent jurisdiction."

2

3 ~~Section 30.~~ Section 69-12-206, MCA, is amended to read:

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

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

16

17 ~~Section 31.~~ Section 69-12-210, MCA, is amended to read:

18 ~~"69-12-210. Complaints.~~ (1) The ~~In accordance with [section 4], the~~ commission may conduct investigations and hear complaints to determine whether a motor carrier has violated any of the commission's rules or orders or any provision of this chapter.

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

24

25 ~~Section 32.~~ Section 69-12-321, MCA, is amended to read:

26 ~~"69-12-321. Hearing on application for motor carrier certificate.~~ (1) (a) Upon the filing of an application for a certificate by a Class A, Class B, Class C, Class D, or Class E motor carrier, except a Class C motor carrier authorized to operate under the terms of a contract as provided in 69-12-324, or upon the filing of a request for a transfer of authority, the commission shall provide notice of the application to any interested party.

30 ~~(b) If a protest or a request for hearing is received, the commission shall fix a time and place for a~~

1 ~~hearing in accordance with [section 4] on the application.~~

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

5 ~~—— (c)(d) A protest related to an application by a motor carrier pursuant to 69-12-311(1)(a) or~~
 6 ~~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~~
 7 ~~requirements of 69-12-323(5).~~

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

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

14 ~~—— (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~~
 15 ~~carrier, or by a Class D motor carrier for a certificate of public convenience and necessity may be denied without~~
 16 ~~a public hearing when the records of the commission demonstrate that the route or territory sought to be served~~
 17 ~~by the applicant has previously been made the basis of a public investigation and finding by the commission that~~
 18 ~~public convenience and necessity do not require the proposed motor carrier service. A hearing must be held in~~
 19 ~~accordance with [section 4] if the applicant presents facts demonstrating that conditions over the route or in the~~
 20 ~~territory and affecting transportation facilities have materially changed since the previous public investigation and~~
 21 ~~finding and that public convenience and necessity now require the motor carrier operation."~~

22

23 ~~—— **Section 33.** Section 69-12-327, MCA, is amended to read:~~

24 ~~—— **"69-12-327. Revocation of certificate -- right of review.** (1) If it appears that a certificate holder is~~
 25 ~~violating or refusing to observe any of the commission's orders or rules or any provision of Title 69, as amended,~~
 26 ~~the commission may issue an order to the certificate holder to show cause why the certificate should not be~~
 27 ~~revoked. If the certificate holder fails to appear to show cause as ordered by the commission, the certificate may~~
 28 ~~be revoked without a hearing. If the holder does appear to show cause, the commission may:~~

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

30 ~~—— (b) hold a hearing on the question of revocation, notifying the holder of the time and place for the hearing~~

1 ~~in accordance with [section 4].~~

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

4

5 ~~———— **Section 34.** Section 69-12-503, MCA, is amended to read:~~

6 ~~———— **"69-12-503. Rates to be reasonable and nondiscriminatory.** (1) All rates, The rates, fares, charges,~~
 7 ~~classifications, or rules of service for the transportation of property, and/or persons, or both upon on the public~~
 8 ~~highways of this state must be fair, just, reasonable, and nondiscriminatory. No A motor carrier operating under~~
 9 ~~established rates shall make, may not give, or permit any undue preference or advantage to any particular~~
 10 ~~person, company, corporation, locality, or description of traffic, nor shall such, A motor carrier may not subject~~
 11 ~~any particular person, company, corporation, locality, or description of traffic to any prejudice or disadvantage~~
 12 ~~in any respect. Nothing herein provided shall prevent the commission from authorizing The commission may~~
 13 ~~authorize different rates or schedules of rates for service between the same places or between different points~~
 14 ~~of origin, and/or destination, or both within the same places when such different rates are justified by the differing~~
 15 ~~character of service to be rendered by the carrier to a shipper or consignee.~~

16 ~~———— (2) The commission may, upon its own initiative or upon the complaint of any interested party, investigate~~
 17 ~~in accordance with the requirements of [section 4] any rate, fare, charge, classification, or rule of service~~
 18 ~~contained in the schedule of any a motor carrier. If the commission shall find finds, after such an investigation,~~
 19 ~~that any such a rate, fare, charge, classification, or rule of service is unfair, unjust, unreasonable, or~~
 20 ~~discriminatory, it shall disallow the same rate, fare, charge, classification, or rule of service and fix a rate, fare,~~
 21 ~~charge, classification, or rule of service which shall be that is fair, just, reasonable, and nondiscriminatory, and~~
 22 ~~it The commission shall order the affected motor carrier or carriers to conform to such the modified schedule.~~
 23 ~~Each A motor carrier affected by any complaint or investigation shall first be given notice of the same complaint~~
 24 ~~or investigation and an opportunity to be heard before the commission."~~

25

26 ~~———— **Section 35.** Section 69-12-505, MCA, is amended to read:~~

27 ~~———— **"69-12-505. Suspension of proposed rate revision -- hearing.** (1) Upon its own initiative or upon the~~
 28 ~~complaint of any interested party filed with the commission within 20 days after the date upon which a change~~
 29 ~~or revision of any rate, fare, charge, or classification is filed with the commission, the commission may suspend~~
 30 ~~the operation of such the rate, fare, charge, or classification for a period not to exceed 180 days. The order~~

1 directing such ~~the~~ suspension must be issued by the commission not less than 2 business days prior to the
 2 proposed effective date. The motor carrier or carriers filing such ~~the~~ rate, fare, charge, or classification shall ~~must~~
 3 be given prompt notice by the complaining party, mailing ~~who shall mail~~ a copy of the complaint concerning such
 4 ~~the~~ proposed change or revision to the carrier or publishing agent, and such ~~the~~ carrier or carriers also shall ~~must~~
 5 be given an opportunity to reply to any such ~~the~~ complaint. If the proposed change or revision is in a tariff issued
 6 by a tariff publishing bureau for a motor carrier or carriers, notice to such ~~the~~ bureau of any complaint will
 7 constitute ~~constitutes~~ notice to the participating carriers in such ~~the~~ tariff.

8 ~~——— (2) (a) If all the protests are withdrawn and the commission finds the proposed increase justified, the~~
 9 ~~commission may vacate the suspension and permit the proposed rates to become effective without a public~~
 10 ~~hearing.~~

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

18 ~~——— (3) After considering the evidence presented at such the hearing and in accordance with the~~
 19 ~~requirements and recommendations of a hearings examiner as provided in [section 4], the commission shall issue~~
 20 ~~an order approving, denying, or modifying the proposed change or revision. Unless such the hearing is held and~~
 21 ~~such the order is issued within 180 days from the date upon which that the suspension was ordered, the proposed~~
 22 ~~change or revision shall be deemed is approved and effective as filed."~~

23
 24 ~~——— **Section 36.** Section 69-12-603, MCA, is amended to read:~~

25 ~~——— **"69-12-603. Investigation of operation under agreement.** The Except as provided in [section 4], the~~
 26 ~~commission may, upon complaint or upon its own initiative without complaint, investigate and determine whether~~
 27 ~~any agreement previously approved by it under 69-12-601 or any terms or conditions upon on which such the~~
 28 ~~approval was granted are not in conformity with 69-12-601 and 69-12-602 or whether any such the terms or~~
 29 ~~conditions are not necessary for the purpose of conformity with 69-12-601 and 69-12-602. After such an~~
 30 ~~investigation, the commission may by order terminate or modify its approval of such an agreement if it finds such~~

1 ~~the action necessary to insure ensure conformity with 69-12-601 and 69-12-602 and may modify the terms and~~
 2 ~~conditions upon on which such the approval was granted to the extent it finds necessary to insure ensure~~
 3 ~~conformity with 69-12-601 and 69-12-602 or to the extent it finds its terms and conditions unnecessary to insure~~
 4 ~~such ensure conformity. The effective date of any order terminating or modifying approval or modifying terms and~~
 5 ~~conditions may be postponed for such a time period as determined by the commission determines is to be~~
 6 ~~reasonably necessary to avoid undue hardship."~~

7
 8 ~~———— **Section 37.** Section 69-12-604, MCA, is amended to read:~~
 9 ~~———— **"69-12-604. Hearing required on matters relating to agreements.** No An order may not be entered~~
 10 ~~under 69-12-601 or 69-12-603 except after interested parties have been afforded reasonable opportunity for~~
 11 ~~hearing in accordance with [section 4]."~~

12
 13 ~~———— **Section 38.** Section 69-13-201, MCA, is amended to read:~~
 14 ~~———— **"69-13-201. Establishment of rates and operating rules.** (1) The commission may establish and~~
 15 ~~enforce rates of charges and regulations for gathering, transporting, loading, and delivering crude petroleum, coal,~~
 16 ~~or the products of crude petroleum or coal or of carbon dioxide from a plant or facility that produces or captures~~
 17 ~~carbon dioxide by common carrier in this state and for the use of storage facilities necessarily incident to the~~
 18 ~~transportation and may prescribe and enforce rules for the government and control of common carriers in respect~~
 19 ~~to their pipelines and receiving, transferring, and loading facilities. The commission shall exercise the power upon~~
 20 ~~petition by any person showing a substantial interest in the subject and in accordance with [section 4].~~

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

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

29
 30 ~~———— **Section 39.** Section 69-13-301, MCA, is amended to read:~~

1 ~~—————"69-13-301. Records and reports. (1) Common carriers of crude petroleum, coal, or the products of~~
 2 ~~crude petroleum or coal or of carbon dioxide from a plant or facility that produces or captures carbon dioxide shall~~
 3 ~~make and publish their tariffs under rules that may be prescribed by the commission. The commission shall~~
 4 ~~require the common carriers to make reports and may investigate in accordance with the requirements of [section~~
 5 ~~4] their books and records kept in connection with the business.~~

6 ~~————(2) The commission shall require common carrier pipelines to make monthly reports, duly verified under~~
 7 ~~oath, of the total quantities of crude petroleum, coal, or the products of crude petroleum or coal or of carbon~~
 8 ~~dioxide from a plant or facility that produces or captures carbon dioxide owned by the pipelines, of the quantities~~
 9 ~~held by them in storage for others, and of their unfilled storage capacity. Publicity may not be given by the~~
 10 ~~commission to the reports as to stock of crude petroleum, coal, or the products of crude petroleum or coal or of~~
 11 ~~carbon dioxide from a plant or facility that produces or captures carbon dioxide on hand of any particular pipeline,~~
 12 ~~but the commission in its discretion may make public the aggregate amounts held by all the pipelines making the~~
 13 ~~reports and of their aggregate storage capacity."~~

14
 15 ~~————Section 40. Section 69-14-606, MCA, is amended to read:~~

16 ~~————"69-14-606. Role of public service commission with respect to crossings. (1) The commission may~~
 17 ~~enforce the orders of any board of county commissioners for the construction of railroad crossings and may pass~~
 18 ~~upon the reasonableness of any such order and modify, change, or annul the same order.~~

19 ~~————(2) Whenever any if a railroad crossing has been ordered by the county commissioners, as herein~~
 20 ~~provided in this part, the railroad company may, within 30 days after the service of such the order, serve upon~~
 21 ~~notify the commission a notice stating why the that the company believes the order is considered unreasonable~~
 22 ~~or unjust and requesting that may request that the commission hold a hearing in accordance with [section 4] for~~
 23 ~~the purpose of determining whether or not the construction of such the crossing should reasonably be required.~~
 24 ~~The commission shall thereupon institute may hold a hearing for this purpose in accordance with [section 4], and~~
 25 ~~all interested parties shall be must be given reasonable notice and an opportunity to be heard. The commission~~
 26 ~~may, after such the hearing and in accordance with [section 4], either affirm, modify, or annul such the order."~~

27
 28 ~~————Section 41. Section 69-14-607, MCA, is amended to read:~~

29 ~~————"69-14-607. Overhead or underground crossings. (1) No A railroad crossing, other than a grade~~
 30 ~~crossing, shall may not be ordered by any board of county commissioners.~~

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

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

16 ~~———— (3) In the event if an overhead or underground crossing is ordered, the commission may in its discretion~~
 17 ~~require the same crossing to be constructed and maintained by and at the expense of the railroad company or~~
 18 ~~may apportion the expense between the railroad company and the county in which said where the crossing is~~
 19 ~~located. The part of the expense apportioned to said the county, if any, shall must be paid to the railroad company~~
 20 ~~from the funds of said the county properly applicable to the payment of such the expense."~~

21
 22 **NEW SECTION. Section 16. Repealer.** The following sections of the Montana Code Annotated are
 23 repealed:

24 69-8-419. Electricity supply resource planning and procurement -- duties of public utility -- objectives --
 25 commission rules.

26 69-8-420. Electricity supply resource procurement plans -- comment on plans.

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

