

HOUSE BILL NO. 743

INTRODUCED BY T. WOODS

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING REGULATORY TREATMENT OF CERTAIN ESTIMATED
5 AND ASSUMED CARBON COSTS IN ELECTRICITY SUPPLY RESOURCE COSTS; REQUIRING THE PUBLIC
6 SERVICE COMMISSION TO DETERMINE THE VALUE OF CERTAIN CARBON COSTS; REQUIRING THE
7 COMMISSION TO PROVIDE SEPARATE REGULATORY TREATMENT OF COSTS; PROVIDING FOR THE
8 USE OF CONSULTANTS AND A FEE; AMENDING SECTIONS 69-1-114 AND 69-8-421, MCA; AND
9 PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."
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11 WHEREAS, estimated and assumed carbon costs resulted in placing as much as a 30% premium on the
12 value of NorthWestern Energy's hydroelectric facility assets in accordance with Montana Public Service
13 Commission Docket No. D2013.12.85, Order No. 7323k, permanently embedding assumed carbon costs in
14 Montana customer rates; and

15 WHEREAS, NorthWestern Energy's modeling assumptions and the assumptions included in Docket No.
16 D2013.12.85, Order No. 7323k, regarding carbon costs translate into a nearly \$300 million overpayment to
17 NorthWestern Energy by Montana customers.
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19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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21 **NEW SECTION. Section 1. Estimated and assumed carbon costs -- rate classification.** (1) On or
22 before January 1, 2020, if estimated and assumed carbon costs were included in the valuation of an electricity
23 supply resource acquired by a public utility, the commission shall:

24 (a) determine the dollar amount included in a public utility's rate base attributable to estimated and
25 assumed carbon costs; and

26 (b) establish separate regulatory treatment of costs determined in accordance with subsection (1)(a),
27 including ordering the costs be:

28 (i) held in a deferred account, payable in customer rates at a time when the public utility demonstrates
29 and the commission approves a finding that a carbon price exists in the wholesale market for electricity;

30 (ii) securitized over an appropriate term;

1 (iii) amortized over an appropriate term; or

2 (iv) treated in a manner pursuant to any combination of subsections (1)(b)(i) through (1)(b)(iii).

3 (2) For the purposes of this section, "estimated and assumed carbon costs" means the net present value
4 of a hypothetical future carbon price's imputation to forecast wholesale electricity prices, multiplied by the forecast
5 output of the electricity supply resource.

6 (3) Proceedings concerning regulatory treatment of costs under this section must be held in accordance
7 with chapter 3, part 3, of this title.

8 (4) The commission shall engage independent engineering, financial, and management consultants or
9 advisory services to provide assistance in the evaluation of estimated and assumed carbon costs. The
10 commission shall charge a fee to the public utility to pay for the costs of consultants or advisory services.

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12 **Section 2.** Section 69-1-114, MCA, is amended to read:

13 **"69-1-114. Fees.** (1) Each fee charged by the commission must be reasonable.

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

16 (3)(a) All fees collected by the department under 69-8-421(10) must be deposited in an account in the
17 special revenue fund. Funds in this account must be used as provided in 69-8-421(10).

18 (b) All fees collected by the department under [section 1(4)] must be deposited in an account in the
19 special revenue fund. Funds in this account must be used as provided in [section 1(4)]."

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21 **Section 3.** Section 69-8-421, MCA, is amended to read:

22 **"69-8-421. Approval of electricity supply resources.** (1) A public utility that removed its generation
23 assets from its rate base pursuant to this chapter prior to October 1, 2007, may apply to the commission for
24 approval of an electricity supply resource that is not yet procured.

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

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

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

6 (b) If an air quality permit pursuant to Title 75, chapter 2, is required for a new electrical generation
7 resource or a modification to an existing resource, the commission shall hold the public hearing on the application
8 for approval at least 30 days after the issuance of the final air quality permit.

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

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

13 (5) To facilitate timely consideration of an application, the commission may initiate proceedings to
14 evaluate planning and procurement activities related to a potential resource procurement prior to the public utility's
15 submission of an application for approval.

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

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

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

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

22 (ii) procurement of the electricity supply resource is consistent with the requirements in 69-3-201, the
23 objectives in 69-8-419, and commission rules.

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

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

1 31, 2008, the commission shall adopt rules for the implementation of this subsection (6)(e).

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

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

5 (7) Notwithstanding any provision of this chapter to the contrary and except as provided in [section 1],
6 if the commission has issued an order containing the findings required under subsection (6)(c), the commission
7 may not subsequently disallow the recovery of costs related to the approved electricity supply resource based
8 on contrary findings.

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

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

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

27 (11) By March 31, 2008, the commission shall adopt rules prescribing minimum filing requirements for
28 applications filed pursuant to this part."
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30 NEW SECTION. **Section 4. Codification instruction.** [Section 1] is intended to be codified as an

1 integral part of Title 69, chapter 8, part 4, and the provisions of Title 69, chapter 8, part 4, apply to [section 1].

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3 NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

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5 NEW SECTION. **Section 6. Retroactive applicability.** [This act] applies retroactively, within the
6 meaning of 1-2-109, to electricity supply resources acquired by a public utility on or after January 1, 2014.

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