

HOUSE BILL NO. 99

INTRODUCED BY D. HAYMAN

BY REQUEST OF THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ELECTRICITY SUPPLY RESOURCE LAWS; ELIMINATING PREAPPROVAL OF ELECTRICITY SUPPLY RESOURCES; REQUIRING CERTAIN UTILITIES TO CONDUCT COMPETITIVE SOLICITATION UNDER CERTAIN CIRCUMSTANCES; CLARIFYING CERTAIN UTILITIES ARE EXEMPT FROM COMPETITIVE SOLICITATION REQUIREMENTS; AMENDING SECTIONS 69-3-1204, 69-3-1206, AND 69-3-1207, MCA; REPEALING SECTION 69-8-421, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** Section 69-3-1204, MCA, is amended to read:

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

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

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

(i) an evaluation of the full range of cost-effective means for the public utility to meet the service requirements of its Montana customers, including conservation or similar improvements in the efficiency by which services are used and including demand-side management programs in accordance with 69-3-1209;

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

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

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

1 (v) the proposed process the utility intends to use to solicit bids for energy and capacity resources to  
2 be acquired through a competitive solicitation process in accordance with 69-3-1207, if a competitive solicitation  
3 is required; and

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

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

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

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

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

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

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

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

26 and

27 (ii) ways to remedy the concerns.

28 (b) The commission may engage independent engineering, financial, and management consultants or

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

5

6 **Section 2.** Section 69-3-1206, MCA, is amended to read:

7 **"69-3-1206. Rate treatment.** (1) The commission may include in a public utility's rates:

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

9 (b) demand-side management programs established and implemented in accordance with 69-3-1209;

10 (c) the cost-effective expenditures for improving the efficiency with which the public utility provides  
 11 and its customers use utility services;

12 (d) the costs of complying with the planning requirements of this part; and

13 (e) the costs of complying with a competitive solicitation process conducted in accordance with 69-3-  
 14 1207, if a competitive solicitation is required.

15 (2) The commission may adopt rules establishing criteria governing the extent of recovery of  
 16 abandonment costs."

17

18 **Section 3.** Section 69-3-1207, MCA, is amended to read:

19 **"69-3-1207. Competitive solicitation process -- Montana consumer counsel role.** (1) (a) Except  
 20 as provided in subsection (5), a public utility that intends to include an electricity supply resource in its rate base  
 21 ~~seek approval by the commission pursuant to 69-8-421 for the acquisition, construction, or purchase of an~~  
 22 ~~electricity supply resource~~ shall conduct a competitive solicitation process prior to acquiring the resource.

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

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

1 solicitation.

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

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

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

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

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

11 (b) The commission shall charge a fee to the public utility to pay for the costs of an independent  
12 monitor. These costs are recoverable in rates.

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

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

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

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

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

24 (5) This section does not apply to:

25 (a) a request for proposals or purchase by a public utility intended solely to meet the short-term  
26 operational needs of the utility for a period of less than 12 months; ~~or~~

27 (b) an application made to the commission by a public utility to acquire, construct, or purchase an  
28 opportunity resource; or

1           (c) an application made by a public utility currently doing business in Montana as part of a single  
2 integrated multistate operation, no portion of which lies within the basin of the Columbia River.

3           (6) For the purposes of this section, "opportunity resource" means an electricity supply resource  
4 necessary to meet a need demonstrated in a plan in accordance with 69-3-1204(2)(a)(iv) that is either new or  
5 existing and that remains unknown as to its availability for purchase until an opportunity to purchase arises."  
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7           NEW SECTION. Section 4. Repealer. The following section of the Montana Code Annotated is  
8 repealed:

9 69-8-421.       Approval of electricity supply resources.  
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11           NEW SECTION. Section 5. Effective date. [This act] is effective on passage and approval.  
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