

## 1 SENATE BILL NO. 379

2 INTRODUCED BY S. FITZPATRICK

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ENERGY AND BUSINESS LAWS;  
5 PROVIDING FOR THE CONTINUED OWNERSHIP AND OPERATION OF MONTANA COAL-FIRED  
6 GENERATING UNITS; PROVIDING FOR COST RECOVERY FOR UNDEPRECIATED BOOK VALUE AND  
7 ADDITIONAL INVESTMENT; PROVIDING A REBUTTABLE PRESUMPTION AGAINST DISALLOWANCES  
8 FOR REPLACEMENT COSTS; AMENDING SECTION 69-3-331, MCA; AND PROVIDING AN IMMEDIATE  
9 EFFECTIVE DATE."

10

11 WHEREAS, having sufficient energy available to deliver to homes and businesses is critical to the  
12 public health and the economy; and

13 WHEREAS, energy markets cannot be relied on to provide sufficient energy at all times at a reasonable  
14 cost; and

15 WHEREAS, having a sufficient and reliable source of energy in the state is critical to supporting the  
16 Montana electric grid; and

17 WHEREAS, Montana does not have sufficient in-state generation resources to ensure that all  
18 Montanans have access to energy whenever they need it and at a reasonable cost; and

19 WHEREAS, the continued operation of coal-fired generating units provides a reliable source of energy  
20 and capacity critical to helping meet the state's energy needs at all times and at a reasonable price; and

21 WHEREAS, the owners of Colstrip Units 1 and 2 closed those units in 2020; and

22 WHEREAS, the continued operation of coal-fired generating units is vital to Montanans having access  
23 to energy at all times and at a reasonable cost; and

24 WHEREAS, providing financial certainty to a utility that may be willing to acquire an additional  
25 ownership interest in coal-fired generating units promotes their continued operation.

26

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

28

1            NEW SECTION. Section 1. Coal-fired generating unit -- continued operation. (1)(A) To  
 2 encourage the continued operation of coal-fired generating units as defined in 75-8-103, the commission shall  
 3 MAY allow an electric utility ~~regulated in accordance with this chapter that is already a joint owner of a coal-fired~~  
 4 ~~generating unit, that acquires~~ TO ACQUIRE an additional equity interest in, or ~~enters~~ TO ENTER into a lease or a  
 5 power purchase agreement to lease or purchase one or more coal-fired generating units after [the effective  
 6 date of this act].

7            (B) IF THE COMMISSION ALLOWS A UTILITY TO ACQUIRE AN ADDITIONAL EQUITY INTEREST IN OR TO ENTER  
 8 INTO A LEASE OR A POWER PURCHASE AGREEMENT, THE COMMISSION SHALL ALLOW THE UTILITY to fully recover the  
 9 utility's:

10            ~~(a)(i)~~ (i) remaining undepreciated book value for its ~~AN~~ ownership interest ACQUIRED in the coal-fired  
 11 generating unit ~~that existed prior to~~ AFTER [the effective date of this act]; and

12            ~~(b)(ii)~~ (ii) share of applicable legal obligations as defined in 75-8-103 for decommissioning and  
 13 remediation required at a coal-fired generating unit established prior to [the effective date of this act] that  
 14 ~~existed by virtue of its ownership or are acquired in accordance with this section after~~ [the effective date of this  
 15 act].

16            (2) The commission shall also allow for a rate of return on an additional equity interest, lease, or  
 17 power purchase agreement. ~~The rate of return must be~~ COMMISSION MUST DETERMINE THE RATE OF RETURN based  
 18 on the value attributed to the additional interest, lease, or power purchase agreement ~~calculated to equal~~  
 19 ACCORDING TO the book value of the existing ownership interest prorated by size in megawatts.

20  
 21            NEW SECTION. Section 2. Continued operation after acquisition. (1) If an electric utility seeks  
 22 full-cost recovery in accordance with [section 1], the electric utility shall file a \$500 application fee with the  
 23 commission. The fee is not recoverable in an electric utility's rates.

24            (2) (a) An electric utility granted cost recovery and a rate-of-return in accordance with [section 1] shall  
 25 continue to operate the coal-fired generating units until the commission issues an order finding that closure of  
 26 the units is in the public interest.

27            (b) An order finding that closure of the units is in the public interest must be handled through the  
 28 Montana Administrative Procedure Act's procedures for contested cases.

1            (C) UNTIL THE UTILITY'S OWNERSHIP INTEREST IS FULLY DEPRECIATED, ONLY THE EXISTING OWNER OF AN  
 2 EXISTING OWNERSHIP INTEREST MAY FILE AN APPLICATION FOR CLOSURE OF THE UNIT.

3  
 4            **NEW SECTION. Section 3. Rebuttal presumption -- disallowance of replacement power costs.**

5 (1) If an operator of a coal-fired generating unit is obligated under contract or other requirement, including an  
 6 owner's agreement, to operate under a prudent utility practice, the commission shall apply a rebuttable  
 7 presumption that a utility's replacement power costs attributable to power outages, reduced generation,  
 8 operations, or maintenance and repair at coal-fired generating units are prudent.

9            (2) (a) "Prudent utility practice" means, unless defined otherwise in an owner's agreement, at any  
 10 particular time, any of the practices, methods, and acts engaged in or approved by a significant portion of the  
 11 electrical utility industry prior to practice or approval, or any of the practices, methods, or acts, which, in the  
 12 exercise of reasonable judgement in the light of the facts known at the time the decision was made, could have  
 13 been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety,  
 14 and expedition.

15            (b) The term is not limited to the optimum practice, method, or act to the exclusion of all others, but  
 16 rather to be a spectrum of possible practices, methods, or acts.

17            (c) The term also includes those practices, methods, and acts that are required in accordance with  
 18 applicable laws, final orders, or regulations by regulatory agencies with jurisdiction.

19

20            **Section 4.** Section 69-3-331, MCA, is amended to read:

21            **"69-3-331. Cost tracking and recovery.** (1) ~~Except as provided in [section 3],~~ if the commission  
 22 approves a cost-tracking adjustment for a public utility regulated in accordance with chapter 8 or under this  
 23 chapter, the cost-tracking adjustment must provide for:

24            (a) identical treatment of public utilities subject to chapter 8 or this chapter;

25            (b) 90% customer and 10% shareholder sharing of costs, if cost sharing is required; and

26            (c) full recovery of costs incurred by a public utility as a result of qualifying small power production  
 27 facility purchase requirements established in Title 69, chapter 3, part 6.

28            (2) A cost-tracking adjustment may not include a deadband.

