

HOUSE BILL NO. 284

INTRODUCED BY J. SCHILLINGER

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE REVIEW AND APPROVAL OF ELECTRICITY SUPPLY RESOURCES; AMENDING SECTIONS 69-8-201 AND 69-8-421, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** Section 69-8-201, MCA, is amended to read:

**"69-8-201. Public utility -- customer electricity supply service options and requirements -- exemption.** (1) (a) Except as provided in subsections (1)(b) and (1)(c), a retail customer that has an individual load with an average monthly demand of greater than or equal to 5,000 kilowatts and that is not purchasing electricity supply service from a public utility on October 1, 2007, may not purchase electricity supply service from a public utility.

(b) A retail customer referred to in subsection (1)(a) may request electricity supply service from the public utility, and the public utility shall provide electricity supply service if the retail customer demonstrates that the provision of electricity supply service to the retail customer will not adversely impact the public utility's other customers over the long term as determined by the commission.

(c) If a public utility provides electricity supply service to a retail customer as provided in subsection (1)(b), that service is regulated by the commission and the customer may not, at a later date, purchase electricity supply service from another provider of electricity supply service.

(2) (a) A retail customer that has an individual load with an average monthly demand of less than 5,000 kilowatts that is not purchasing electricity from a public utility on October 1, 2007, may continue to purchase electricity from an electricity supplier. The retail customer may subsequently purchase electricity from a public utility subject to commission rule or order, but the customer may not, at a later date, choose to purchase electricity from another source.

(b) A retail customer that has an individual load with an average monthly demand of less than

1 5,000 kilowatts and that is currently purchasing electricity from a public utility may not choose to purchase  
2 electricity from another source after October 1, 2007.

3 (3) Nothing in this section affects a retail customer's rights and obligations with respect to net  
4 metering, cogeneration, self-generation, or ancillary sales of electricity related to deviations from scheduled  
5 energy deliveries from nonutility suppliers, as may be provided for in law, commission rule or order, or a tariff  
6 approved by the public service commission or the federal energy regulatory commission.

7 (4) (a) Except as provided in 69-5-101, 69-5-102, 69-5-104(2), 69-5-105 through 69-5-112, 69-8-  
8 402, 69-8-421, and subsection (4)(b) of this section, a public utility currently doing business in Montana as part  
9 of a single integrated multistate operation, no portion of which lies within the basin of the Columbia River, is  
10 exempt from the requirements of this chapter.

11 (b) To the extent that a public utility described in subsection (4)(a) becomes the successor in  
12 interest of another public utility that has restructured in accordance with this chapter before October 1, 2007, it  
13 is subject to the requirements of this chapter with respect to the service area of the acquired public utility."  
14

15 **Section 2.** Section 69-8-421, MCA, is amended to read:

16 **"69-8-421. Approval of electricity supply resources.** (1) A public utility ~~that removed its generation~~  
17 ~~assets from its rate base pursuant to this chapter prior to October 1, 2007,~~ may apply to the commission for  
18 approval of an electricity supply resource that:

19 (a) is not yet procured; and

20 (b) is subject to a competitive solicitation process when applicable in accordance with 69-3-1207.

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

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

28 (4) (a) Except as provided in subsections (4)(b) through (4)(d), the commission shall issue an order

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

5 (b) If an air quality permit pursuant to Title 75, chapter 2, is required for a new electrical generation  
6 resource or a modification to an existing resource, the commission shall hold the public meetings on the  
7 application for approval in accordance with 69-3-1205(2) at least 30 days after the issuance of the final air  
8 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  
12 following the meetings 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, if necessary, in  
15 accordance with 69-3-1207 prior to the public utility's 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  
19 administrative 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 and  
23 objectives in 69-3-201, 69-3-1201 through 69-3-1209, and commission rules.

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

27 (e) When issuing an order for the acquisition of an equity interest or lease in a facility or equipment  
28 that is constructed after January 1, 2007, and that is used to generate electricity that is primarily fueled by

1 natural or synthetic gas, the commission shall require the applicant to implement cost-effective carbon offsets.  
 2 Expenditures required for cost-effective carbon offsets pursuant to this subsection (6)(e) are fully recoverable in  
 3 rates. By March 31, 2008, the commission shall adopt rules for the implementation of this subsection (6)(e).

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

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

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

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

17 (9) Nothing limits the commission's ability to subsequently, in any future rate proceeding, inquire  
 18 into the manner in which the public utility has managed, dispatched, operated, or maintained any resource or  
 19 managed any power purchase agreement as part of its overall resource portfolio. The commission may  
 20 subsequently disallow rate recovery for the costs that result from the failure of a public utility to reasonably  
 21 manage, dispatch, operate, maintain, or administer electricity supply resources in a manner consistent with 69-  
 22 3-201 and commission rules.

23 (10) The commission shall adopt rules prescribing minimum filing requirements for applications filed  
 24 pursuant to this part."  
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26 **NEW SECTION. Section 3. Effective date.** [This act] is effective on passage and approval.

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