

1                                 \*\*\*\* BILL NO. \*\*\*\*  
2   INTRODUCED BY \*\*\*\*  
3   BY REQUEST OF THE \*\*\*\*  
4

5   A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PUBLIC UTILITY RESOURCE PLANNING LAWS;  
6   PROVIDING TIMELINES; PROVIDING FOR AN INDEPENDENT EVALUATOR AND DUTIES; PROVIDING A  
7   DEFINITION; PROVIDING FOR A SPECIAL REVENUE ACCOUNT, ; PROVIDING AN APPROPRIATION;  
8   AMENDING SECTIONS 69-1-114, 69-3-1204, 69-3-1205, 69-3-1207, AND 69-8-421, MCA; REPEALING  
9   SECTION 69-3-1208, MCA; PROVIDING FOR CONTINGENT VOIDNESS; PROVIDING AN IMMEDIATE  
10  EFFECTIVE DATE."

11  
12  BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13  
14         NEW SECTION. **Section 1. Independent evaluator contracting special revenue account.** (1)

15         There is an independent evaluator contracting special revenue account within the state special revenue  
16  fund established in 17-2-102 to the credit of the department of environmental quality.

17         (2)       There must be paid into the account:

- 18               (a)       fees collected pursuant to 69-3-1207(5)(a);
- 19               (b)       any legislative appropriations made pursuant to [section 10(1)];
- 20               (b)       any interest or income earned on the account.

21         (3)       The department of environmental quality may use account funds to execute department duties  
22  in accordance with energy planning activities pursuant to 69-3-1205 and independent evaluator selection and  
23  representation pursuant to 69-3-1207.  
24

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

26         "**69-1-114. Fees.** (1) Each fee charged by the commission must be reasonable.

27         (2) Except for a fee assessed pursuant to 69-3-204(2), 69-3-1204(6)(b), ~~69-3-1207(4)(b)~~ 69-3-  
28 1207(5)(a), 69-3-1612(4), or 69-12-423(2), a fee set by the commission may not exceed \$500.

1 (3) All fees collected by the department under 69-3-1204(6)(b) and 69-3-1207(4)(b) must be deposited  
2 in an account in the special revenue fund. Funds in this account must be used as provided in 69-3-1204(6)(b)  
3 and 69-3-1207(4)(b).

4 (4) All fees collected by the commission under 69-3-1612(4) must be treated as financing costs and  
5 used in accordance with a financing order issued in accordance with 69-3-1606."  
6

7 ~~Section 3.~~~~Section 4.~~ Section 69-3-1204, MCA, is amended to read:

8 **"69-3-1204. Integrated least-cost plan.** (1) (a) The commission shall adopt rules requiring a public  
9 utility to prepare and file a plan at least every 3 years for meeting the requirements of its customers in the most  
10 cost-effective manner consistent with the public utility's obligation to serve and in accordance with this part.

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

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

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

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

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

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

23 (v) the proposed process the utility intends to use to solicit bids for energy and capacity resources to  
24 be acquired through a competitive solicitation process in accordance with 69-3-1207; and

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

28 (b) The utility shall fully explain, justify, and document the data, assumptions, methodologies, models,

1 determinants, and any other inputs on which it relied to develop information required in subsection (2)(a).

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

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

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

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

11 (5) Within 120 days of receipt of a plan, the The commission shall:

12 (a) review the plan;

13 (b) publish a copy of the plan;

14 (c) allow for a minimum of ~~30~~6045 days for the public to comment on the plan; and

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

16 (6) The commission may provide public meetings in accordance with 69-3-1205.

17 ~~(6)~~(7) (a) The commission may identify deficiencies in the plan, including:

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

19 (ii) ways to remedy the concerns.

20 (b) The commission may engage independent engineering, financial, and management consultants or  
21 advisory services to evaluate a public utility's plan. The consultants ~~shall demonstrate~~must have demonstrated  
22 knowledge and experience with resource procurement and resource portfolio management, modeling, risk  
23 management, and engineering practices. The commission shall charge a fee to the public utility to pay for the  
24 costs of consultants or advisory services. These costs are recoverable in rates."

25

26 ~~Section 4.~~Section 2. Section 69-3-1205, MCA, is amended to read:

27 "**69-3-1205. Public comment -- public meetings.** (1) When developing a plan in accordance with  
28 this part and prior to submitting a plan to the commission, a public utility shall hold at least ~~two~~four public

1 meetings in the utility's Montana service territory to ensure a plan best meets the diverse goals of shareholders,  
2 ratepayers, and society.

3 (2) A utility may petition the public service commission to forego up to two public meetings based on  
4 public participation in previous public meetings held in compliance with section 1. The public utility shall  
5 consider written and oral comments respecting the proposed plan received during public meetings or meetings  
6 of the resource planning advisory committee held pursuant to 69-3-1208. The public utility shall summarize and  
7 respond to substantive comments received and file those as part of the plan.

8 ~~(2)(3)~~ After a plan is submitted, the commission ~~shall~~may conduct ~~two~~ public meetings for the purpose  
9 of receiving comment on a plan. The commission or the department of public service regulation may comment  
10 on the plan. A comment by the commission or the department may not be construed as preapproval by the  
11 commission of rate treatment for any proposed resource.

12 ~~(3)(4)~~ The department of environmental quality:

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

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

19 ~~(4)(5)~~ The consumer counsel shall review and may comment on a submitted plan."  
20

21 **Section 5. Section 3.** Section 69-3-1207, MCA, is amended to read:

22 **"69-3-1207. Competitive solicitation process -- ~~Montana consumer counsel~~Independent**

23 **evaluator --Department of Environmental Quality role.** (1) (a) Except as provided in ~~subsection (5)~~

24 ~~subsection (6)~~, a public utility that intends to seek approval by the commission pursuant to 69-8-421 for the  
25 acquisition, construction, or purchase of an electricity supply resource shall conduct a competitive solicitation  
26 process.

27 (b) \_\_\_ A public utility may not prohibit a qualifying small power production facility as defined in 69-3-  
28 601 or another utility or supplier that owns an electricity supply resource or intends to construct an electricity

1 supply resource from participating in a competitive solicitation process.

2 (c) ~~\_\_\_\_\_ A competitive solicitation process that is open to bids that would result in the ownership of an~~  
3 ~~electricity supply resource by the public utility issuing the solicitation must include the use of a third-party~~  
4 ~~administrator selected by the public utility to open, consider, and evaluate bids submitted pursuant to a~~  
5 ~~solicitation. An independent evaluator must be used to oversee a public utility's competitive solicitation. The~~  
6 ~~Montana department of environmental quality shall select the independent evaluator pursuant to section (4).~~

7 (d) \_\_\_\_\_ An independent evaluator shall

8 (i) \_\_\_\_\_ monitor the evaluation of bids pursuant to a competitive solicitation.

9 (ii) \_\_\_\_\_ provide oversight to ensure a fair and transparent competitive solicitation;

10 (iii) \_\_\_\_\_ be familiar with competitive bid and evaluation processes; and

11 (iv) \_\_\_\_\_ evaluate and document the process used by the public utility to solicit and evaluate bids  
12 received during a competitive solicitation.

13 (e) \_\_\_\_\_ A public utility may conduct a competitive solicitation in conjunction with the development of an  
14 integrated least-cost plan in 69-3-1204.

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

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

19 (b) \_\_\_\_\_ a complete draft of the proposal soliciting electricity supply resources, citing the ~~need for~~  
20 ~~resources~~ range in size and type of resource needs that may include all resource types

21 (3) \_\_\_\_\_ The commission ~~may accept public comment on the information~~ shall:

22 (a) \_\_\_\_\_ notice and accept public comment regarding information received in accordance with  
23 subsection (2); and

24 (b) \_\_\_\_\_ notify the department of environmental quality when the commission receives a proposal to  
25 solicit electricity supply resources and share information collected under subsection (2) and public comment  
26 collected under this subsection (3).-

27 (4) (a) \_\_\_\_\_ ~~The Montana consumer counsel may request, select, and retain a person or organization to~~  
28 ~~act as an independent monitor for a competitive solicitation process.~~ Subject to public comments received

1 pursuant to subsection (4)(b), the department of environmental quality shall:

2 (i) solicit, evaluate, and maintain a list of independent evaluators of a competitive solicitation  
3 process;

4 (ii) develop a process to disqualify and remove from the list those independent evaluators who do  
5 not comply with established qualifications;

6 (iii) update the list at least every three years; and

7 (iv) after information is submitted to the commission in accordance with subsection (2) and subject  
8 to rules adopted by the department pursuant to subsection (4)(c), select an independent evaluator from the list.

9 (b) The department shall accept public comment when developing and updating the list.

10 (c) On or before July 1, 2026, the department shall adopt rules for:

11 (i) evaluating independent evaluators for inclusion on the list;

12 (ii) selecting an independent evaluator in accordance with this section;

13 (iii) implementing this subsection (4);

14 (iv) prescribing the scope of work for the independent evaluator pursuant to the duties in [section  
15 6].

16 (d) Nothing in this section limits the department's ability to fulfill its duties in accordance with 69-3-  
17 1205.

18 ~~(b)(5)(a)~~ The ~~commission shall~~ department may charge a fee to the public utility to pay for the  
19 costs of selecting and representing an independent ~~monitor~~ evaluator. This fee must be deposited in the  
20 independent evaluator contracting special revenue account pursuant to [section 1]. These costs are  
21 recoverable in rates. The department shall provide documentation of the costs to the commission for costs  
22 incurred pursuant to its duties in 69-3-1205 and 69-3-1207.

23 (b) After the department selects an independent evaluator in accordance with subsection (4), the  
24 public utility shall execute a contract for service with the independent evaluator on a general form of a contract  
25 prescribed by rule and pursuant to the duties listed in [section 6]. Costs associated with the services of an  
26 independent evaluator are recoverable in rates. These services may include providing legal counsel to allow the  
27 independent evaluator to execute its duties in accordance with [section 6].

28 (e) ~~The independent monitor may assist the Montana consumer counsel by:~~

- ~~(i) providing comments on the consistency of the competitive solicitation process with industry standards;~~
- ~~(ii) monitoring and observing the competitive solicitation process, paying particular attention to the public utility's evaluation of electricity supply resources that may result in utility ownership of the resource, to ensure that the utility conducts a fair and proper process in accordance with industry standards;~~
- ~~(iii) notifying the utility and the consumer counsel on a timely basis prior to the utility's selection of the resources of any discrepancies observed in the process and resolving any differences of opinion; and~~
- ~~(iv) preparing a closing report prior to the final selection of the resources regarding the consistency of the process, including selection and notification of electricity supply resources taking part in the solicitation process based on industry standards.~~

~~(5) This section does not apply to:~~

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

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

~~(6) For the purposes of this section, "opportunity resource" means an electricity supply resource necessary to meet a need demonstrated in a plan in accordance with 69-3-1204(2)(a)(iv) that is either new or existing and that remains unknown as to its availability for purchase until an opportunity to purchase arises.~~

~~(6) This section does not apply to:~~

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

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

~~(7) For the purposes of this section, "opportunity resource" means an electricity supply resource necessary to meet a need demonstrated in a plan in accordance with 69-3-1204(2)(a)(iv) that is either new or existing and that remains unknown as to its availability for purchase until an opportunity to purchase arises."~~

NEW SECTION. Section 6, Section 4. Independent evaluator role. (1) The independent evaluator

1 shall oversee the competitive solicitation conducted by the public utility to protect the public interest and  
2 advance the policies in 69-3-1202.

3 (2) The independent evaluator shall:

4 (a) provide comments to the public utility and the commission on the fairness, transparency, and  
5 consistency of a competitive solicitation process with industry standards;

6 (b) monitor, evaluate, and observe the competitive solicitation process, paying particular attention  
7 to the public utility's evaluation of electricity supply resources that may result in utility ownership of the resource,  
8 to ensure that the utility conducts a fair and proper process in accordance with industry standards;

9 (c) notify the utility and the commission on a timely basis prior to the utility selection of the  
10 resources of any discrepancies observed in the process and resolve any differences of opinion; and

11 (d) prepare a closing report prior to the final selection of the resources regarding the fairness,  
12 transparency, and consistency of the process, including selection and notification of electricity supply resources  
13 taking part in the solicitation process based on industry standards. Public utilities shall include the closing report  
14 in applications for future cost-recovery dockets.

15 (e) The commission shall grant the independent evaluator the right of intervention in future cost-  
16 recovery proceeding for the purpose of entering the closing report into the evidentiary record and representing  
17 the independent evaluator during discovery and hearings."

18

19 **NEW SECTION. Section 7, Section 5. Integrated resource planning and acquisition program. (1)**

20 There is an integrated resource planning and acquisition program within the public service commission  
21 comprised of:

22 (a) 2 regulatory analysts; and

23 (b) necessary additional staff to administer the program.

24

25 **Section 8, Section 9.** Section 69-8-421, MCA, is amended to read:

26 **"69-8-421. Approval of electricity supply resources. (1)** A public utility may apply to the  
27 commission for approval of an electricity supply resource that:

28 (a) is not yet procured; and



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

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

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

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

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

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

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

21 (5) To facilitate timely consideration of an application, the commission may initiate proceedings to  
22 evaluate planning and procurement activities related to a potential resource procurement, if necessary, in  
23 accordance with 69-3-1207 prior to the public utility's submission of an application for approval.

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

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

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

1 (i) approval, in whole or in part, is in the public interest; and  
2 (ii) procurement of the electricity supply resource is consistent with the requirements and objectives in  
3 69-3-201, 69-3-1201 through 69-3-1209, and commission rules.

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

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

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

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

15 (h) The commission order must approve or deny an initial cost finding, in whole or in part. Any  
16 additional costs in excess of the commission approved amount must be approved or denied, in whole or in part,  
17 in a subsequent proceeding.

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

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

27 (9) Nothing limits the commission's ability to subsequently, in any future rate proceeding, inquire into  
28 the manner in which the public utility has managed, dispatched, operated, or maintained any resource or

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

5 (10) The commission shall adopt rules prescribing minimum filing requirements for applications filed  
6 pursuant to this part."

7

8 NEW SECTION. Section 9. Repealer. The following sections of the Montana Code Annotated are  
9 repealed:

10 69-3-1208. Resource planning -- advisory committee.

11

12 NEW SECTION. Section 10. Section 5. Appropriation. (1) There is appropriated \$75,000 from the  
13 general fund to the department of environmental quality for the biennium beginning July 1, 2025, to meet the  
14 requirements of [this act].

15 (2) There is appropriated \$200,000 from the general fund to the commission for the biennium beginning  
16 July 1, 2025, to meet the requirements of [this act].

17

18 NEW SECTION. Section 11. Section 10. Codification instruction. [Section 1, 6, and 8] are  
19 intended to be codified as an integral part of Title 69, chapter 3, part 12, and the provisions of Title 69, chapter  
20 3, part 12, apply to [sections 1, 6, and 8].

21

22 NEW SECTION. Section 12. Section 7. Contingent voidness. If [this act] does not include the  
23 appropriation pursuant to [section 10(2)], then [section 3(5)] and [section 8] are void.

24

25 NEW SECTION. Section 13. Section 6. {standard} Effective date. [This act] is effective July 1,  
26 2025.

27

- END -