

Unofficial Draft Copy

As of: 2024/05/10 05:45:20

Drafter: Jason Mohr, 406-444-1640

68th Legislature 2023

PD 0011

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

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

6 **Section 3, Section 4.** Section 69-3-1204, MCA, is amended to read:

7 **"69-3-1204. Integrated least-cost plan.** (1) (a) The commission shall adopt rules requiring a public
8 utility to prepare and file a plan at least every 3 years for meeting the requirements of its customers in the most
9 cost-effective manner consistent with the public utility's obligation to serve and in accordance with this part.

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

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

12 (i) an evaluation of the full range of cost-effective means for the public utility to meet the service
13 requirements of its Montana customers, including conservation or similar improvements in the efficiency by
14 which services are used and including demand-side management programs in accordance with 69-3-1209;
15 (ii) an annual electric demand and energy forecast developed pursuant to commission rules that
16 includes energy and demand forecasts for each year within the planning period and historical data, as required
17 by commission rule;

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

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

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

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

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

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

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

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

10 (5) Within 120 days of receipt of a plan, the~~The~~ commission shall:
11 (a) review the plan;
12 (b) publish a copy of the plan;
13 (c) allow for a minimum of ~~30~~60~~45~~ days for the public to comment on the plan; and
14 ~~(d) provide public meetings in accordance with 69-3-1205.~~
15 (6) The commission may provide public meetings in accordance with 69-3-1205.
16 ~~(6)(7)~~(a) The commission may identify deficiencies in the plan, including:
17 (i) any concerns of the commission regarding the public utility's compliance with commission rules; and
18 (ii) ways to remedy the concerns.
19 (b) The commission may engage independent engineering, financial, and management consultants or
20 advisory services to evaluate a public utility's plan. The consultants ~~shall demonstrate~~must have demonstrated
21 knowledge and experience with resource procurement and resource portfolio management, modeling, risk
22 management, and engineering practices. The commission shall charge a fee to the public utility to pay for the
23 costs of consultants or advisory services. These costs are recoverable in rates."

Commented [JM3]: Section 12 has contingency language that makes this 120-day deadline go away w/o an appropriation

24
25 ~~Section 4. Section 2.~~ Section 69-3-1205, MCA, is amended to read:
26 **"69-3-1205. Public comment -- public meetings.** (1) When developing a plan in accordance with
27 this part and prior to submitting a plan to the commission, a public utility shall hold at least ~~two~~four public
28 meetings in the utility's Montana service territory to ensure a plan best meets the diverse goals of shareholders,

1 ratepayers, and society.

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

7 ~~(2)(3)~~ After a plan is submitted, the commission shall~~may~~ conduct ~~two~~ public meetings for the purpose
8 of receiving comment on a plan. The commission or the department of public service regulation may comment
9 on the plan. A comment by the commission or the department may not be construed as preapproval by the
10 commission of rate treatment for any proposed resource.

11 ~~(3)(4)~~ The department of environmental quality:

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

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

18 ~~(4)(5)~~ The consumer counsel shall review and may comment on a submitted plan."
19

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

21 **"69-3-1207. Competitive solicitation process -- ~~Montana consumer counsel Independent~~**
22 **~~evaluator --Department of Environmental Quality~~ role.** (1) (a) Except as provided in subsection (5), a public
23 utility that intends to seek approval by the commission pursuant to 69-8-421 for the acquisition, construction, or
24 purchase of an electricity supply resource shall conduct a competitive solicitation process.

25 (b) ___ A public utility may not prohibit a qualifying small power production facility as defined in 69-3-
26 601 or another utility or supplier that owns an electricity supply resource or intends to construct an electricity
27 supply resource from participating in a competitive solicitation process.

28 (c) ___ ~~A competitive solicitation process that is open to bids that would result in the ownership of an~~

Commented [JM4]: This language roughly mirrors the Administrative Procedures Act, which allows an agency to determine what a "substantive" comment entails. This also requires the utility to respond to substantive comments.

1 ~~electricity supply resource by the public utility issuing the solicitation must include the use of a third-party~~
2 ~~administrator selected by the public utility to open, consider, and evaluate bids submitted pursuant to a~~
3 ~~solicitation. An independent evaluator must be used to oversee a public utility's competitive solicitation. The~~
4 ~~Montana department of environmental quality shall select the independent evaluator pursuant to section (4).~~
5 ~~(d) An independent evaluator shall~~
6 ~~(i) monitor the evaluation of bids pursuant to a competitive solicitation.~~
7 ~~(ii) provide oversight to ensure a fair and transparent competitive solicitation;~~
8 ~~(iii) be familiar with competitive bid and evaluation processes; and~~
9 ~~(iv) document the process used by the public utility to solicit and evaluate bids received during a~~
10 ~~competitive solicitation.~~
11 ~~(e) A public utility may conduct a competitive solicitation in conjunction with the development of an~~
12 ~~integrated least-cost plan in 69-3-1204.~~
13 (2) A public utility that plans to conduct a competitive solicitation process shall submit the following
14 information to the commission:
15 (a) a description of the competitive solicitation process that the public utility will use and proof of
16 compliance with subsections (1)(b) and (1)(c), if applicable; and
17 (b) a complete draft of the proposal soliciting electricity supply resources, citing the ~~need for~~
18 ~~resources range in size and type of resource needs that may include all resource types~~
19 (3) The commission ~~may accept public comment on the information~~ shall:
20 (a) ~~notice and accept public comment regarding information received in accordance with~~
21 ~~subsection (2); and~~
22 (b) ~~notify the department of environmental quality when the commission receives a proposal to~~
23 ~~solicit electricity supply resources and share information collected under subsection (2) and public comment~~
24 ~~collected under this subsection (3).~~
25 (4) (a) ~~The Montana consumer counsel may request, select, and retain a person or organization to~~
26 ~~act as an independent monitor for a competitive solicitation process. Subject to public comments received~~
27 ~~pursuant to subsection (4)(b), the department of environmental quality shall:~~
28 (i) ~~solicit, evaluate, and maintain a list of independent evaluators of a competitive solicitation~~

Commented [JM5]: This subsection reorganizes previous language to show that DEQ selects an independent evaluator (subsection (c)) and provides requirements for an independent evaluator

Commented [JM6]: Requested change by DEQ

1 process:
2 (ii) develop a process to disqualify and remove from the list those independent evaluators who do
3 not comply with established qualifications;
4 (iii) update the list every three years; and
5 (iv) after information is submitted to the commission in accordance with subsection (2) and subject
6 to rules adopted by the department pursuant to subsection (4)(c), select an independent evaluator from the list.
7 (b) The department shall accept public comment when developing and updating the list.
8 (c) On or before July 1, 2026, the department shall adopt rules for:
9 (i) evaluating independent evaluators for inclusion on the list;
10 (ii) selecting an independent evaluator in accordance with this section;
11 (iii) implementing this subsection (4);
12 (iv) prescribing the general form of a contract with an independent evaluator. This general form of a
13 contract is subject to review and input from the public utility and to approval by the public service commission.
14 (d) Nothing in this section limits the department's ability to fulfill its duties in accordance with 69-3-
15 1205.
16 (b)(5)(a) The commission shall department may charge a fee to the public utility to pay for the
17 costs of selecting and representing an independent monitor evaluator. This fee must be deposited in the
18 independent evaluator contracting special revenue account pursuant to [section 1]. These costs are
19 recoverable in rates. The department shall provide documentation of the costs to the commission for costs
20 incurred pursuant to its duties in 69-3-1205 and 69-3-1207.
21 (b) After the department selects an independent evaluator in accordance with subsection (4), the
22 public utility shall execute a contract for service with the independent evaluator on a general form of a contract
23 prescribed by rule and pursuant to the duties listed in [section 6]. Costs associated with executing an
24 independent evaluator contract are recoverable in rates.
25 (c) The department shall provide counsel to an independent evaluator to allow the independent
26 evaluator to execute its duties in accordance with [section 6].
27 (e) The independent monitor may assist the Montana consumer counsel by:
28 (i) providing comments on the consistency of the competitive solicitation process with industry

Commented [JM7]: New subsections for add'l rulemaking requirements

Commented [JM8]: This language attempts to allow a utility and PSC to review and approve "the general form of a contract." But they would not approve a specific contract with a specific independent evaluator.

Commented [JM9]: Consolidates previous language referencing "fee."

Commented [JM10]: This addition clarifies that the cost of the contract with the independent evaluator is subject to cost-recovery through rates.

Commented [JM11]: Clarifies role of DEQ counsel to indep. evaluator

1 standards;
2 (ii) monitoring and observing the competitive solicitation process, paying particular attention to the
3 public utility's evaluation of electricity supply resources that may result in utility ownership of the resource, to
4 ensure that the utility conducts a fair and proper process in accordance with industry standards;
5 (iii) notifying the utility and the consumer counsel on a timely basis prior to the utility's selection of
6 the resources of any discrepancies observed in the process and resolving any differences of opinion; and
7 (iv) preparing a closing report prior to the final selection of the resources regarding the consistency
8 of the process, including selection and notification of electricity supply resources taking part in the solicitation
9 process based on industry standards.
10 (5) This section does not apply to:
11 (a) a request for proposals or purchase by a public utility intended solely to meet the short-term
12 operational needs of the utility for a period of less than 12 months; or
13 (b) an application made to the commission by a public utility to acquire, construct, or purchase an
14 opportunity resource.
15 (6) For the purposes of this section, "opportunity resource" means an electricity supply resource
16 necessary to meet a need demonstrated in a plan in accordance with 69-3-1204(2)(a)(iv) that is either new or
17 existing and that remains unknown as to its availability for purchase until an opportunity to purchase arises."
18

19 **NEW SECTION. Section 6, Section 4. Independent evaluator role.** (1) The independent evaluator
20 shall oversee the competitive solicitation conducted by the public utility to protect the public interest and
21 advance the policies in 69-3-1202.
22 (2) The independent evaluator shall:
23 (a) provide comments to the public utility and the commission on the consistency of a competitive
24 solicitation process with industry standards;
25 (b) monitor, evaluate, and observe the competitive solicitation process, paying particular attention
26 to the public utility's evaluation of electricity supply resources that may result in utility ownership of the resource,
27 to ensure that the utility conducts a fair and proper process in accordance with industry standards;
28 (c) notify the utility and the commission on a timely basis prior to the utility selection of the

Unofficial Draft Copy

As of: 2024/05/10 05:45:20

Drafter: Jason Mohr, 406-444-1640

68th Legislature 2023

PD 0011

resources of any discrepancies observed in the process and resolve any differences of opinion; and
(d) prepare 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. Public utilities shall include the closing report in applications for future
cost-recovery dockets.

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

(2) 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.

(3) 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."

Section 7, Section 4. Section 69-3-1208, MCA, is amended to read:

"69-3-1208. Resource planning -- advisory committee. (1) A public utility shall maintain a broad-
based advisory committee to review, evaluate, and make recommendations on technical, economic, and policy
issues related to a utility's electricity system.

(2) The committee may advise the utility on demand-side management, portfolio planning, and
management and procurement completed in accordance with this part.

(3) The committee membership shall be published by the utility.

(4) Committee meetings shall be open to the public if a majority of members vote to hold open public
meetings."

(4) A committee meeting must be open to the public when a majority of the committee members
vote to hold a public meeting.

Commented [JM12]: This "new" section is basically the last subsections of section 5, making it easier to identify the independent evaluator role. Subsection (2)(e) allows parties to question independent evaluator during discovery and hearings.

1
2 **NEW SECTION. Section 8, Section 5. Integrated resource planning and acquisition program. (1)**

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

- 5 (a) 2 regulatory analysts; and
- 6 (b) necessary additional staff to administer the program.

Commented [JM13]: B/c of contingent voidness in Section 8, this section disappears w/o an appropriation

7
8 **Section 9.** Section 69-8-421, MCA, is amended to read:

9 **"69-8-421. Approval of electricity supply resources.** (1) A public utility may apply to the
10 commission for approval of an electricity supply resource that:

- 11 (a) is not yet procured; and
- 12 (b) is subject to a competitive solicitation process when applicable in accordance with 69-3-1207.

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

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

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

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

Commented [JM14]: Updates internal reference

28 (c) If a final air quality permit is not issued within the time limit pursuant to subsection (4)(a), the

Unofficial Draft Copy

As of: 2024/05/10 05:45:20

Drafter: Jason Mohr, 406-444-1640

68th Legislature 2023

PD 0011

1 commission shall extend the time limit in order to comply with subsection (4)(b).

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

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

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

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

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

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

13 (ii) procurement of the electricity supply resource is consistent with the requirements and objectives in
14 69-3-201, 69-3-1201 through 69-3-1209, and commission rules.

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

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

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

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

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

Unofficial Draft Copy

As of: 2024/05/10 05:45:20

Drafter: Jason Mohr, 406-444-1640

68th Legislature 2023

PD 0011

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

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

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

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

18

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

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

24

25 **NEW SECTION. ~~Section 11.~~Section 10. Codification instruction.** [Section 1, 6, and 8] are
26 intended to be codified as an integral part of Title 69, chapter 3, part 12, and the provisions of Title 69, chapter
27 3, part 12, apply to [sections 1, 6, and 8].

28

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

3
4 **NEW SECTION. ~~Section 13.~~~~Section 6.~~ {standard} Effective date.** [This act] is effective July 1,
5 2025.

6 - END -

Commented [JM15]: This language means that w/o an appropriation to the PSC, the 120-day deadline in section 3 and the new IRP program (section 8) would go away.

DRAFT