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As of: May 24, 2004 (5:04pm)

LC1010

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act **for Energy and Telecommunications Interim Committee Discussion Purposes**, providing a default supplier with an option to invest in or acquire a plant or equipment used for the production of electricity; modifying certain definitions; providing a preapproval process for default supplier investments or acquisitions in a plant or equipment used for the production of electricity; amending sections 69-8-103, 69-8-204, 69-8-208, 69-8-210, and 69-8-419, MCA; and providing an immediate effective date."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-8-103, MCA, is amended to read:

"69-8-103. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Aggregator" or "market aggregator" means an entity, licensed by the commission, that aggregates retail customers, purchases electrical energy, and takes title to electrical energy as an intermediary for sale to retail customers.

(2) "Assignee" means any entity, including a corporation, partnership, board, trust, or financing vehicle, to which a utility assigns, sells, or transfers, other than as security, all

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or a portion of the utility's interest in or right to transition property. The term also includes an entity, corporation, public authority, partnership, trust, or financing vehicle to which an assignee assigns, sells, or transfers, other than as security, the assignee's interest in or right to transition property.

(3) "Board" means the board of investments created by 2-15-1808.

(4) "Broker" or "marketer" means an entity, licensed by the commission, that acts as an agent or intermediary in the sale and purchase of electrical energy but that does not take title to electrical energy.

(5) "Cooperative utility" means:

(a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

(b) an existing municipal electric utility as of May 2, 1997.

(6) "Customer" or "consumer" means a retail electric customer or consumer. The university of Montana, pursuant to 20-25-201(1), and Montana state university, pursuant to 20-25-201(2), are each considered a single retail electric customer or consumer with a single individual load.

(7) "Customer-generator" means a user of a net metering system.

(8) "Default supplier" means a ~~distribution services provider of a~~ public utility that has restructured in accordance with this chapter.

(9) "Default supply service" means the provision of

electricity supply by a default supplier.

(10) "Distribution facilities" means those facilities by and through which electricity is received from a transmission services provider and distributed to the customer and that are controlled or operated by a distribution services provider.

(11) "Distribution services provider" means a utility owning distribution facilities for distribution of electricity to the public.

(12) "Electricity supplier" means any person, including aggregators, market aggregators, brokers, and marketers, offering to sell electricity to retail customers in the state of Montana.

(13) "Electricity supply costs" means the actual costs of providing default supply service, including but not limited to:

- (a) capacity costs;
- (b) energy costs;
- (c) fuel costs;
- (d) ancillary service costs;
- (e) demand-side management and energy efficiency costs;
- (f) transmission costs, including congestion and losses;
- (g) billing costs;
- (h) planning and administrative costs;
- (i) capital costs for a plant or equipment used for the

production of electricity; and

~~(i)~~(j) any other costs directly related to the purchase of electricity, management of default electricity supply costs, and provision of default supply and related services.

(14) "Financing order" means an order of the commission

adopted in accordance with 69-8-503 that authorizes the imposition and collection of fixed transition amounts and the issuance of transition bonds.

(15) (a) "Fixed transition amounts" means those nonbypassable rates or charges, including but not limited to:

- (i) distribution;
- (ii) connection;
- (iii) disconnection; and

(iv) termination rates and charges that are authorized by the commission in a financing order to permit recovery of transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and of acquiring transition property through a plan approved by the commission in the financing order, including the costs of issuing, servicing, and retiring transition bonds.

(b) If requested by the utility in the utility's application for a financing order, fixed transition amounts must include nonbypassable rates or charges to recover federal and state taxes in which the transition cost recovery period is modified by the transactions approved in the financing order.

(16) "Functionally separate" means a utility's separation of the utility's electricity supply, default supply service, transmission, distribution, and unregulated retail energy services assets and operations.

(17) "Interested person" means a retail electricity customer, the consumer counsel established in 5-15-201, the commission, or a utility.

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(18) "Large customer" means, for universal system benefits programs purposes, a customer with an individual load greater than a monthly average of 1,000 kilowatt demand in the previous calendar year for that individual load.

(19) "Local governing body" means a local board of trustees of a rural electric cooperative.

(20) "Low-income customer" means those energy consumer households and families with incomes at or below industry-recognized levels that qualify those consumers for low-income energy-related assistance.

(21) "Net metering" means measuring the difference between the electricity distributed to and the electricity generated by a customer-generator that is fed back to the distribution system during the applicable billing period.

(22) "Net metering system" means a facility for the production of electrical energy that:

- (a) uses as its fuel solar, wind, or hydropower;
- (b) has a generating capacity of not more than 50 kilowatts;
- (c) is located on the customer-generator's premises;
- (d) operates in parallel with the distribution services provider's distribution facilities; and
- (e) is intended primarily to offset part or all of the customer-generator's requirements for electricity.

(23) "Nonbypassable rates or charges" means rates or charges that are approved by the commission and imposed on a customer to pay the customer's share of transition costs or universal system

benefits programs costs even if the customer has physically bypassed either the utility's transmission or distribution facilities.

(24) "Pilot program" means an experimental program using a select set of small customers to assess the potential for developing and offering customer choice of electricity supply to small customers in the future.

(25) "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on May 2, 1997, including the public utility's successors or assignees.

(26) "Qualifying load" means, for payments and credits associated with universal system benefits programs, all nonresidential demand-metered accounts of a large customer within the utility's service territory in which the customer qualifies as a large customer.

(27) "Small customer" means a residential customer or a commercial customer who has an individual account with an average monthly demand in the previous calendar year of less than 50 kilowatts or a new residential or commercial customer with an estimated average monthly demand of less than 50 kilowatts of a public utility that has restructured pursuant to Title 35, chapter 19, or this chapter.

(28) "Transition bondholder" means a holder of transition bonds, including trustees, collateral agents, and other entities acting for the benefit of that bondholder.

(29) "Transition bonds" means any bond, debenture, note, interim certificate, collateral, trust certificate, or other

evidence of indebtedness or ownership issued by the board or other transition bonds issuer that is secured by or payable from fixed transition amounts or transition property. Proceeds from transition bonds must be used to recover, reimburse, finance, or refinance transition costs and to acquire transition property.

(30) "Transition charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of transition costs.

(31) "Transition cost recovery period" means the period beginning on July 1, 1998, and ending when a utility customer does not have any liability for payment of transition costs.

(32) "Transition costs" means:

(a) a public utility's net verifiable generation-related and electricity supply costs, including costs of capital, that become unrecoverable as a result of the implementation of ~~this chapter~~ or of federal law requiring retail open access or customer choice or of this chapter;

(b) those costs that include but are not limited to:

(i) regulatory assets and deferred charges that exist because of current regulatory practices and can be accounted for up to the effective date of the commission's final order regarding a public utility's transition plan and conservation investments made prior to universal system benefits charge implementation;

(ii) nonutility and utility power purchase contracts executed before May 2, 1997, including qualifying facility contracts;

(iii) existing generation investments and supply commitments or other obligations incurred before May 2, 1997, and costs arising from these investments and commitments;

(iv) the costs associated with renegotiation or buyout of the existing nonutility and utility power purchase contracts, including qualifying facilities and all costs, expenses, and reasonable fees related to issuing transition bonds; and

(v) the costs of refinancing and retiring of debt or equity capital of the public utility and associated federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit customers.

(33) "Transition period" means the period ending July 1, 2027.

(34) "Transition property" means the property right created by a financing order, including without limitation the right, title, and interest of a utility, assignee, or other issuer of transition bonds to all revenue, collections, claims, payments, money, or proceeds of or arising from or constituting fixed transition amounts that are the subject of a financing order, including those nonbypassable rates and other charges and fixed transition amounts that are authorized by the commission in the financing order to recover transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property, including the costs of issuing, servicing, and retiring transition bonds. Any right that a utility has in the transition property before the utility's sale or transfer or any other right created under this section or

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created in the financing order and assignable under this chapter or assignable pursuant to a financing order is only a contract right.

(35) "Transmission facilities" means those facilities that are used to provide transmission services as determined by the federal energy regulatory commission and the commission.

(36) "Transmission services provider" means an entity controlling or operating transmission facilities.

(37) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of universal system benefits programs costs.

(38) "Universal system benefits programs" means public purpose programs for:

(a) cost-effective local energy conservation;

(b) low-income customer weatherization;

(c) renewable resource projects and applications, including those that capture unique social and energy system benefits or that provide transmission and distribution system benefits;

(d) research and development programs related to energy conservation and renewables;

(e) market transformation designed to encourage competitive markets for public purpose programs; and

(f) low-income energy assistance.

(39) "Utility" means any public utility or cooperative utility."

{*Internal References to 69-8-103:*

15-32-402 x 15-72-103 x 15-72-104 x 35-19-102 x
69-3-1403 x 75-25-101 x }

Section 2. Section 69-8-204, MCA, is amended to read:

"69-8-204. Public utility -- functional separation, divestiture, and nondiscrimination. (1) To the extent that a public utility is vertically integrated, a public utility shall functionally separate the public utility's electricity supply, default supply service, retail transmission, retail distribution, and regulated and unregulated retail energy services operations in the state of Montana, upon application to and approval from the commission.

(2) Public utilities shall:

(a) prevent undue discrimination in favor of their own power supply, other services, divisions, or affiliates, if any;

(b) prevent any other forms of self-dealing that could result in noncompetitive electricity prices to customers; and

(c) grant customers and their electricity suppliers access to the public utility's retail transmission and distribution system on a nondiscriminatory basis at rates, terms, and conditions of service comparable to the use of the retail transmission and distribution system by the public utility and the public utility's affiliates.

(3) The provisions of this section are satisfied if the public utility adopts and complies with a code of conduct consistent with the federal energy regulatory commission approved code of conduct pursuant to 18 CFR, part 37, and commission rules and orders."

{*Internal References to 69-8-204:*

69-8-201 x}

Section 3. Section 69-8-208, MCA, is amended to read:

"69-8-208. Public utility -- distribution services. A public utility's distribution services provider shall:

~~(1) file tariffs that make distribution facilities available to all electricity suppliers, transmission services providers, and customers on a nondiscriminatory and comparable basis;~~

~~(2) build and maintain distribution facilities;~~

~~(3) provide default supply service; and~~

~~(4) (3) provide or contract for emergency electricity supply and related services, and build and maintain distribution facilities."~~

{ Internal References to 69-8-208:
69-8-201* x 69-8-408 x }

Section 4. Section 69-8-210, MCA, is amended to read:

"69-8-210. Public utilities -- default supply service -- emergency service -- electricity supply. (1) A public utility's ~~distribution services provider~~ utility that has restructured under this chapter, shall provide default supply service and provide or contract for emergency electricity supply and related services.

(2) The commission shall establish an electricity cost recovery mechanism that allows a default supplier to fully recover prudently incurred electricity supply costs, subject to

the provisions of 69-8-419 and 69-8-420. The cost recovery mechanism must provide for prospective rate adjustments for cost differences resulting from cost changes, load changes, and the time value of money on the differences.

(3) The commission may direct a default supplier to offer its customers multiple default supply service options if the commission determines that those options are in the public interest and are consistent with the provisions of 69-8-104 and 69-8-201.

(4) Notwithstanding any service options that the commission may require pursuant to subsection (3), a default supplier shall offer its customers the option of purchasing a product composed of or supporting power from certified environmentally preferred resources that include but are not limited to wind, solar, geothermal, and biomass, subject to review and approval by the commission. The commission shall ensure that these resources have been certified as meeting industry-accepted standards.

(5) (a) Subject to subsection (5)(b), the commission shall, in reviewing the procurement of electricity supply by the default supplier, take into account the statewide economic benefits that are associated with the electricity supply procurement for the default supply stakeholders. The default supply stakeholders include the default supplier, customers of the default supplier, and the public.

(b) The consideration of economic benefits is secondary to the consideration of the costs and benefits to the consumer and other criteria established by law.

(6) If a public utility intends to be an electricity supplier through an unregulated division, then the public utility must be licensed as an electricity supplier pursuant to 69-8-404."

{Internal References to 69-8-210:
69-8-201* x 69-8-421 x}

Section 5. Section 69-8-419, MCA, is amended to read:

"69-8-419. Default supply resource planning and procurement -- duties of default supplier -- objectives -- commission rules.

(1) The default supplier shall:

- (a) plan for future default supply resource needs;
- (b) manage a portfolio of default supply resources; and
- (c) procure new default supply resources when needed.

(2) The default supplier may invest in or acquire a plant or equipment used for the production of electricity, subject to the commission's regulatory authority pursuant to Title 69.

~~(2)~~(3) The default supplier shall pursue the following objectives in fulfilling its duties pursuant to subsection (1) and (2):

(a) provide adequate and reliable default supply services at the lowest long-term total cost;

(b) conduct an efficient default supply resource planning and procurement process that evaluates the full range of cost-effective electricity supply and demand-side management options;

(c) identify and cost-effectively manage and mitigate risks

related to its obligation to provide default electricity supply service;

(d) use open, fair, and competitive procurement processes whenever possible; and

(e) provide default supply services at just and reasonable rates;

(f) uses electricity generated by the default supplier only when the default supplier demonstrates, through the use of an open, fair, and competitive procurement process, that the cost of the electricity is the least cost alternative.

~~(3)~~(4) By December 31, 2003, the commission shall adopt rules that guide the default supply resource planning and procurement processes used by the default supplier and facilitate the achievement of the objectives in subsection ~~(2)~~ (3) by the default supplier. The rules must establish:

(a) goals, objectives, and guidelines that are consistent with the objectives in subsection ~~(2)~~ (3) for:

(i) planning for future default supply resource needs;

(ii) managing the portfolio of default supply resources; and

(iii) procuring new default supply resources;

(iv) procedures for the use of electricity generated by the default supplier in the default supply portfolio;

(b) standards for the evaluation by the commission of the reasonableness of a power supply purchase agreement proposed by the default supplier; and

(c) minimum filing requirements for an application by the default supplier for advanced approval of a proposed power supply

purchase agreement."

{ Internal References to 69-8-419:

69-8-210 x	69-8-420 x	69-8-420 x	69-8-420 x
69-8-420 x	69-8-421 x	69-8-421 x	69-8-421 x
69-8-421 x}			

NEW SECTION. **Section 6. Default supply filings for investment or acquisition of power generation -- commission processing and approval.** (1) A default supplier may apply to the commission for advanced approval of an investment or acquisition in a plant or equipment used for the production of electricity.

(2) (a) The commission shall issue an order on the default supplier's application for advanced approval of an investment or acquisition in a plant or equipment used for the production of electricity within 9 months unless waived by the public utility.

(b) Within 45 days of the default supplier's submission of an application for advanced approval, the commission shall determine whether or not the application is adequate and in compliance with the commission's minimum filing requirements. If the commission determines that the application is inadequate, it shall explain how the filing fails to comply with the objectives in 69-8-419 and the rules adopted pursuant to 69-8-419.

(c) To facilitate timely consideration of an application, the commission may initiate proceedings to evaluate planning activities related to a potential investment or acquisition in a plant or equipment used for the production of electricity prior to the default supplier's submission of an application for approval.

(3) (a) The commission may approve or deny, in whole or in part, an application for advanced approval of a potential investment or acquisition in a plant or equipment used for the production of electricity.

(b) The commission may consider all relevant information known up to the time that the administrative record in the proceeding is closed in the evaluation of an application for advanced approval of a potential investment or acquisition in a plant or equipment used for the production of electricity.

(c) A commission order granting advanced approval of an investment or acquisition in a plant or equipment used for the production of electricity must include the following findings:

(i) Advanced approval of all or part of the investment or acquisition in a plant or equipment used for the production of electricity is in the public interest.

(ii) The investment or acquisition resulted from a reasonable effort by the default supplier to comply with the objectives in 69-8-419 and the rules adopted pursuant to 69-8-419.

(iii) The investment or acquisition in a plant or equipment used for the production of electricity would be used and useful in the provision of just and reasonable default supply service.

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

(e) A commission order that denies advanced approval must describe why the findings required in subsection (3)(c) could not be reached.

(4) Notwithstanding any provision of this chapter to the contrary, if the commission has issued an order containing the findings required under subsection (3)(c), the commission may not subsequently disallow the recovery of costs incurred under the investment or acquisition made by a public utility based on contrary findings.

(5) If a default supplier does not apply for advanced approval of an investment or acquisition in a plant or equipment used for the production of electricity, the commission shall consider the prudence of the default supplier's investment or acquisition in the context of a default supplier's cost recovery filing pursuant to 69-8-210 or in a separate proceeding. The commission's decisions in these proceedings must be based on facts that were known or should reasonably have been known by the default supplier at the time of its investment or acquisition decisions.

(6) Nothing limits the commission's ability to subsequently, in any future cost recovery proceeding, inquire into the manner in which the default supplier has managed and operated a plant or equipment used for the production of electricity as part of its overall portfolio. The commission may subsequently disallow default supply costs that result from the failure of a default supplier to reasonably manage or operate a plant or equipment used for the production of electricity in the context of its overall default supply portfolio management and service obligations.

(7) The commission may engage independent consultants or

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advisory services to evaluate a utility's default supply resource procurement plans and proposed investment or acquisition in a plant or equipment used for the production of electricity. The consultants must have demonstrated knowledge and experience with electricity supply procurement and resource portfolio management, investment, or acquisition in a plant or equipment used for the production of electricity, modeling, and risk management practices. The commission shall charge a fee to the default supplier to pay for the costs of consultants or advisory services. These costs are recoverable in default supply rates.

NEW SECTION. Section 7. {standard} Codification

instruction. [Section 6] is intended to be codified as an integral part of Title 69, chapter 8, part 4, and the provisions of Title 69, chapter 8, part 4, apply to [section 6].

NEW SECTION. Section 8. {standard} Effective date. [This act] is effective on passage and approval.

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