



Energy and Telecommunications Interim Committee

65th Montana Legislature

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April 23, 2018

To: Energy and Telecommunications Interim Committee
From: Jameson Walker, Legislative Attorney
Re: Administrative Rule Report, April 2018

The Energy and Telecommunications Interim Committee (ETIC) is responsible for reviewing administrative rules promulgated by several state agencies for compliance with the Montana Administrative Procedure Act (MAPA). The ETIC has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the Department of Public Service Regulation and the Public Service Commission. The following notices are filed with the Secretary of State's Office for publication in the Montana Administrative Register (MAR). Notices are available at <http://www.mtrules.org> (search by notice number).

PROPOSAL NOTICES

Department of Public Service Regulation and Public Service Commission

MAR Notice Number: 38-5-240

Subject: Adoption and amendment of rules pertaining to creation of a legally enforceable obligation and access to avoided cost modeling data for a qualifying facility.

Summary: The department proposes to adopt New Rule I (creation of a legally enforceable obligation). The rule seeks to clarify legally enforceable obligations, a term used in 18 C.F.R. Section 292.304. The department states that the adoption of the rule sets forth the standard in Whitehall Wind LLC, Docket D2002.8.100, Order 64444e (May 18, 2010). The department states that the rule is reasonably necessary to provide additional clarity and improve implementation of the standard. The department proposes to adopt New Rule II (qualifying facility access to avoided cost modeling data). This requires a utility to provide reasonably transparent data concerning the utility's avoided cost. The proposed rule addresses when a utility uses proprietary modeling software to calculate avoided cost and requires the utility to make its modeling software accessible to the qualifying facility to conduct an alternative avoided cost calculation. The department states that this codifies the commission's existing policy regarding qualifying facilities' access to proprietary modeling software. The department states that the proposed rule implements requirements designed to achieve the commission's expectation that utilities and qualifying facilities engage in "a robust bilateral negotiation process, centered around sound avoided cost principles, that can better accommodate the moving parts of an unknown energy future." Finally, the department proposes to amend 38.5.1901 to add a

definition for "production profile." The department states that this definition is necessary to implement New Rules I and II.

Notes/Hearing: The department held a public hearing on April 9, 2018, to consider the rule notice.

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