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UNIVERSAL SYSTEM BENEFITS PROGRAMS 42.29.101

Sub-Chapter 1

Review Process

42.29.101 DEFINITIONS The following definitions apply to this chapter:

(1) "Cost-effective" means that the expected benefits accrued as a result of pursuing the action must exceed the expected costs associated with that action over some reasonable time period.

(2) "Department" means the Montana department of revenue.

(3) "Energy conservation" means the installation or implementation of an energy efficient measure or practice which results in a reduction of energy usage.

(4) "Internal activities or programs" are those activities or programs operated, developed, or organized within the organizational structure of a utility or large customer.

(5) "Internal expenditure" means financial commitments made by a utility or large customer to a qualifying activity or program.

(6) "LIEAP" means low income energy assistance program.

(7) "Low-income customer eligibility" means those households whose annualized income is 150% or less of federal poverty guidelines. Exceptions are subject to documentation on an individual basis.

(8) "Low-income customer weatherization" means a group of energy assistance measures targeted at improving energy efficiency and energy-related safety of low-income homes in the state OF MONTANA.

(9) "Low-income energy assistance" means activities that better ensure affordable energy services on a continuing basis to low-income households in the state OF MONTANA.

(10) "Market transformation" means coordinated activities, at the state, regional, or national level, that transform markets for the support of efficient technologies and practices or renewable resources. The intent of market transformation is to undertake activities that will increase the market share so that the activity will be sustained after incentives or other support is withdrawn.

(11) "Renewable resource projects and applications" means projects and applications that use various technologies to convert virtually inexhaustible energy sources to electricity or to perform useful work in some way.

(12) "Research and development programs" means universal system benefits programs related to a broad spectrum of activities which are intended to identify, evaluate, develop, and/or demonstrate techniques or technologies related to the

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EXHIBIT 10



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acquisition of public purpose benefits.

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

(a) cost-effective energy conservation;

(b) low-income customer weatherization;

(c) renewable resource projects and applications, including those that capture unique social and energy system benefits or provides 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. (History: Sec. 69-8-413, MCA; IMP, Sec. 69-8-402, MCA; NEW, 1999 MAR p. 2927, Eff. 12/17/99; AMD, 2002 MAR p. 209, Eff. 2/1/02; AMD, 2003 MAR p. 1352, Eff. 6/27/03.)

42.29.102 PURPOSE (1) Universal system benefits programs (USBP) credit and expenditure rules are designed to help utilities, cooperatives, large customers, the state USBP fund administrator, and the general public ensure that money generated through a universal system benefits non-by-passable charge produces public purpose benefits.

(2) There may be activities, programs or expenditures that are not addressed within the rules that qualify for credits or expenditures. Activities, programs or expenditures identified in the rules are not intended to be all inclusive. An omission in the rules in no way implies or intends to affect credit amounts. (History: Sec. 69-8-413, MCA; IMP, Sec. 69-8-103 and 69-8-501, MCA; NEW, 1999 MAR p. 2927, Eff. 12/17/99.)

42.29.103 CLAIM PROCEDURE (1) Annual reports required pursuant to 69-8-402, MCA, must be filed with the department on or before March 1 of each year. Credits claimed on annual reports filed after March 1 will not be allowed until the subsequent calendar year.

(2) Documents submitted by the credit claimant shall be subject to the department's protective orders regarding confidential or proprietary materials. A credit claimant claiming confidential or proprietary materials shall move the department for a protective order 30 days in advance of filing the annual report to allow an order to be issued prior to the annual report being filed. The motion for protective order must specify the material sought to be protected and the reason such materials should be considered confidential or proprietary.



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(a) The department will grant or deny the motion within 30 days of receipt of the motion.

(b) Materials not subject to a protective order will be made available for public inspection and photocopying.

(3) The department shall publish a public notice listing:

(a) names of the claimants who have filed application for the credits as shown on the annual reports;

(b) when the annual report was filed;

(c) the specific date by which challenges may be made; and

(d) where to file the challenge.

(4) Publication will occur within 20 days of the department receiving the annual report.

The department shall publish the public notice in the six major newspapers of general circulation for the state OF Montana. Those newspapers are: Independent Record; Montana Standard; Billings Gazette; Missoulian; Chronicle; and Great Falls Tribune.

(5) Claimed credits shall be presumed to be acceptable unless proven otherwise, and the burden of proving ineligibility of a credit lies with the challenging party. If the department receives a challenge to a claimed credit, it shall promptly notify the credit claimant in writing of the challenge, and provide a copy of the filed challenge with any supporting documents to the claimant. (History: Sec. 69-8-413, MCA; IMP, Sec. 69-8-402 and 69-8-414, MCA; NEW, 1999 MAR p. 2927, Eff. 12/17/99; AMD, 2002 MAR p. 209, Eff. 2/1/02.)

42.29.104 CHALLENGE AND REVIEW PROCEDURES (1) Any interested person may file comments challenging a claim. A challenge must include supporting documentation. A challenge of any claimed credit must be received within 60 days of the department's receipt of the credit claimant's annual reports. The 60 days does not begin to run until the department receives the claimant's annual reports or a motion for protective order is determined, whichever occurs later.

(2) If a challenge to a credit is filed, the department shall conduct an initial review of the claim. The review will be concluded within 30 days of the close of the challenge period. The purpose of the initial review shall be to determine the likelihood of the credit qualifying for universal system benefits programs. In performing its review, the department may seek additional information from the interested persons or from the claimant.

(a) After the initial review, if the department concludes that the credit qualifies, it shall dismiss the challenge and provide the interested persons with a statement of reasons for the dismissal.



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(b) If the department concludes that the challenged credit is not likely to qualify for universal system benefits programs, the department will forward the matter to the department's office of dispute resolution to schedule a formal review.

(3) If a formal review is conducted the department shall provide public notice of the opportunity to comment to the credit claimant and interested persons. The public notice shall include:

- (a) name of the credit claimant;
- (b) name of the interested parties challenging the credits;
- (c) time period for submitting comments;
- (d) where to file the comments; and
- (e) date of the initial conference.

(4) The department shall publish the public notice in the six major newspapers of general circulation for the state OF MONTANA. Those newspapers are: Independent Record; Montana Standard; Billings Gazette; Missoulian; Chronicle; and Great Falls Tribune.

(5) The formal review process for a challenged credit shall be governed by the administrative rules found in chapter 2, sub-chapter 6 of the department's rules except that the department's final decision must be completed within 60 days of the public notice of the opportunity to comment on a challenged credit. (History: Sec. 69-8-413, MCA; IMP, Sec. 69-8-402 and 69-8-414, MCA; NEW, 1999 MAR p. 2927, Eff. 12/17/99; AMD, 2002 MAR p. 209, Eff. 2/1/02.)

42.29.105 REQUIRED RECORD KEEPING (1) In accordance with 69-8-402, MCA, a utility or large customer claiming a universal system benefits programs credit is responsible for developing and demonstrating appropriate documentation in support of its decisions relative to each application. Depending upon circumstances specific to such application, a utility or large customer claiming the incremental or total cost of a program, project, or acquisition shall include an explanation of total or incremental costs claimed.

(2) A utility or large customer claiming credits or expenditures shall maintain such records and other appropriate documentation concerning such expenditures or portions of expenditures which qualify for meeting the utility's or large customer's universal system benefits programs requirements. Any record of decision, order, or other documentation of a federal power agency, the Montana public service commission, or other governmental agency which allocates the portion of the cost of power attributable to renewable energy or conservation-related activities shall be conclusive and shall



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be appropriate documentation for purposes of the record-keeping and documentation requirements of this rule. Such documentation shall be made available to the department if the department undertakes a review of such credits pursuant to ARM 42.29.104. (History: Sec. 69-8-413, MCA; IMP, Sec. 69-8-402, MCA; NEW, 1999 MAR p. 2927, Eff. 12/17/99.)

42.29.106 CREDITS AND EXPENDITURES FOR COST-EFFECTIVE ENERGY CONSERVATION (1) Subject to ARM 42.29.111, credits or expenditures permitted in support of cost-effective energy conservation include, but are not limited to:

- (a) energy audits;
- (b) water heater programs;
- (c) lighting efficiency conversions;
- (d) motor efficiency conversions;
- (e) consumer conservation education;
- (f) demand side management programs;
- (g) ground-source heat pumps used for energy efficiency savings;
- (h) irrigation audits to reduce power requirements;
- (i) programs such as super good cents;
- (j) design/construction assistance for energy-efficient construction;
- (k) design/implementation assistance for retrofits of existing loads;
- (l) waste heat generation expenses;
- (m) street lighting/security lighting upgrades for efficiency;
- (n) incremental cost of distribution efficiency expenditures attributable to increases in energy efficiency above acceptable minimum industry standards that are documented and verified by an electrical engineer;
- (o) peak-shaving devices applied in customer facilities for the purpose of reducing peak demands excluding interruptible service or payment for curtailment rates; and
- (p) large customer conservation investments made pursuant to Title 69, chapter 8, MCA.

(2) Credits and expenditures for cost-effective conservation shall include a cross-fuels analysis where appropriate.

(3) Pure load building costs or expenses are not acceptable universal system benefits programs credit or expenditure activities. (History: Sec. 69-8-413, MCA; IMP, Sec. 69-8-402, MCA; NEW, 1999 MAR p. 2927, Eff. 12/17/99.)



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42.29.107 CREDITS AND EXPENDITURES FOR LOW-INCOME UNIVERSAL SYSTEM BENEFITS PROGRAMS (1) Subject to ARM 42.29.111, credits or expenditures permitted in support of low-income energy assistance and weatherization activities include, but are not limited to:

- (a) outreach for LIEAP enrollment;
- (b) funds contributed to endowments that qualify for low-income universal system benefits programs purposes;
- (c) safety/repairs related to low-income energy issues;
- (d) energy-efficient equipment/technologies that assist low-income households in paying the costs of home energy;
- (e) heating and energy crisis benefits, including payments toward recipient households' energy costs;
- (f) payment toward recipient household weatherization costs;
- (g) purchase and delivery of fuels used by recipient households for home energy;
- (h) purchase, delivery, and installation of weatherization materials;
- (i) purchase and delivery of blankets, space heating devices, equipment, and other tangible items that are provided to assist low-income households pay the costs of home energy;
- (j) discounted utility and bulk fuel prices for recipient households;
- (k) partial or full waivers of utility and other low-income home energy connection and reconnection fees, application fees, and late payment charges;
- (l) partial or full forgiveness of home energy bill arrearages;
- (m) discounts or reductions in the costs of home heating and weatherization materials;
- (n) services of paid staff donated by their employer to deliver fuel and other tangible items that assist low-income households pay the costs of home energy; and
- (o) purchase, delivery, and installation of energy efficient equipment/technologies that assist low-income households pay the costs of home energy.

(2) Low-income energy assistance and weatherization activities include a broad-based spectrum of services and benefits that provide affordable home energy services to qualifying low-income families in the state OF MONTANA. Customers must comply with low-income customer eligibility requirements with documentation to support the exceptions. (History: Sec. 69-8-413, MCA; IMP, Sec. 69-8-412, MCA; NEW, 1999 MAR p. 2927, Eff. 12/17/99.)

42.29.108 RENEWABLE RESOURCE PROJECTS AND APPLICATIONS (1) Subject to ARM 42.29.111, credits or expenditures for renewable resource projects include, but are not limited to:



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- (a) photovoltaic conversion;
- (b) solar thermal applications;
- (c) geothermal projects;
- (d) wind power projects and applications; and

(e) micro hydro projects that are on streams outside protected areas as defined by the northwest power planning council or state or federal law, or that are irrigation ditch projects.

(2) The amount of credit that may be claimed for a purchase from another party of electric energy generated from a renewable resource is the difference between the cost to the credit claimant for the energy from the renewable resource and the cost of the next best alternative known to and available to the credit claimant at the time the credit claimant committed to purchase energy from the renewable resource.

(3) The amount of credit that may be claimed for a renewable resource developed by the credit claimant is the difference between net present value cost of the renewable energy and of the next best alternative for the provision of electric service known at the time of project inception and calculated over the expected life of the project. (History: Sec. 69-8-413, MCA; IMP, Sec. 69-8-402, MCA; NEW, 1999 MAR p. 2927, Eff. 12/17/99.)

42.29.109 RESEARCH AND DEVELOPMENT ELIGIBILITY FOR CREDITS (1) Subject to ARM 42.29.111, costs incurred in connection with research and development activities supporting public purpose investments and programs are also eligible for credits. Such expenditures must take technical feasibility, economic feasibility, and local applicability into account. (History: Sec. 69-8-413, MCA; IMP, Sec. 69-8-402 and 69-8-414, MCA; NEW, 1999 MAR p. 2927, Eff. 12/17/99.)

42.29.110 MARKET TRANSFORMATION PROGRAMS (1) It is possible for market transformation programs to overlap with low-income expenditures and credits, energy conservation, renewable projects and applications, and research and development activities. Consideration of market transformation expenditures is necessary to examine the issues of whether a given technology/process possesses a reasonable probability of becoming a normal practice without the incentive. Additionally, determining whether the use of codes and standards can or should be used to compel changes in practice, and whether certain market transformation changes are likely to remain in place over time will be considered. (History: Sec. 69-8-413, MCA; IMP, Sec. 69-8-402 and 69-8-414, MCA; NEW, 1999 MAR p. 2927, Eff. 12/17/99.)



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42.29.111 QUALIFYING EXPENDITURES AND TIMING (1) A utility or large customer may be entitled to receive a credit against its universal system benefits obligation for the total cost of a qualifying expenditure. A qualifying expenditure by a utility or large customer shall be deemed to occur when resources or funds are financially committed by a utility or large customer to a program, project, or activity whether by payment, contract, or other obligation and such credited funds or resources shall be expended by the end of the following calendar year, unless the department grants an extension for good cause shown.

(2) Qualifying expenditures specifically include, but are not limited to an expenditure or financial commitment by a utility or large customer to a qualifying low-income energy assistance program such as energy share OF MONTANA or the state's low income energy assistance program.

(3) A qualifying expenditure by a utility or large customer includes a commitment of funds or resources to a universal system benefits program as defined at 69-8-103, MCA.

(4) When an expenditure is made as described in (1), it may qualify for the calendar year in which it is made. If, for example, a large customer expends funds to the state weatherization program any time prior to December 31, the expenditure may qualify as such a credit in that year. The state OF MONTANA need not expend the funds by December 31 in order for the claimant to receive a credit for the expenditure. (History: Sec. 69-8-413, MCA; IMP, Sec. 69-8-402 and 69-8-414, MCA; NEW, 1999 MAR p. 2927, Eff. 12/17/99; AMD, 2002 MAR p. 209, Eff. 2/1/02.)

42.29.112 JUDICIAL REVIEW OF DEPARTMENT DECISIONS ON CHALLENGED CREDITS (1) A party that is aggrieved by a department decision on a challenged credit is entitled to judicial review of the decision. The petition for judicial review must be filed in the district court for the county where the petitioner resides or has the petitioner's principal place of business or where the agency maintains its principal office. Service of the petition must comply with the requirements of 2-4-702, MCA. (History: Sec. 69-8-413, MCA; IMP, Sec. 69-8-414, MCA; NEW, 1999 MAR p. 2927, Eff. 12/17/99.)

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