

HOUSE BILL NO. 42

INTRODUCED BY D. ZOLNIKOV

BY REQUEST OF THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE

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5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ELECTRICITY SUPPLY RESOURCE  
6 ACQUISITION REQUIREMENT LAWS; REQUIRING THE PUBLIC SERVICE COMMISSION TO REQUIRE  
7 LONG-TERM CONTRACTS FOR THE PURCHASE OF ELECTRICITY BY A UTILITY FROM A QUALIFYING  
8 SMALL POWER PRODUCTION FACILITY; DEFINING A LONG-TERM CONTRACT; ESTABLISHING A  
9 COMPETITIVE SOLICITATION PROCESS FOR PUBLIC UTILITIES; REQUIRING A PUBLIC UTILITY TO  
10 CONDUCT A COMPETITIVE SOLICITATION PROCESS APPROVED BY THE PUBLIC SERVICE  
11 COMMISSION TO ACQUIRE, CONSTRUCT, OR PURCHASE AN ELECTRICITY SUPPLY RESOURCE;  
12 ESTABLISHING THE REQUIREMENTS OF A COMPETITIVE SOLICITATION PROCESS; ESTABLISHING  
13 COMMISSION REQUIREMENTS FOR REVIEW AND APPROVAL OR REJECTION OF A COMPETITIVE  
14 SOLICITATION PROCESS; INCORPORATING COMPETITIVE SOLICITATION REQUIREMENTS INTO  
15 PLANNING PROCESSES; AMENDING SECTIONS 69-1-114, 69-3-601, 69-3-602, 69-3-604, 69-3-1202,  
16 69-3-1204, 69-3-1206, 69-8-419, AND 69-8-421, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE  
17 AND AN APPLICABILITY DATE."

18

19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20

21 NEW SECTION. **Section 1. Competitive solicitation process required -- exception.** (1) (a) Except  
22 as provided in subsection (6), a public utility that intends to seek approval by the commission pursuant to  
23 69-3-201 or 69-8-421 for the acquisition, construction, or purchase of an electricity supply resource shall conduct  
24 a competitive solicitation process.

25 (b) A public utility may not prohibit a qualifying small power production facility as defined in 69-3-601 or  
26 another utility or supplier that owns an electricity supply resource or intends to construct an electricity supply  
27 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  
29 electricity supply resource by the public utility issuing the solicitation must include the use of a third-party  
30 administrator selected by the public utility to open, consider, and evaluate bids submitted pursuant to a

1 solicitation.

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

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

6 (b) a complete draft of the proposal soliciting an electricity supply resource; and

7 (c) any other information the commission requires.

8 (3) (a) If the commission receives information from a public utility pursuant to subsection (2), the  
9 commission shall accept public comment on the information. To allow for public comment, the commission may  
10 hold a public hearing.

11 (b) The commission may select and retain a person or organization to act as an independent monitor  
12 for a competitive solicitation process. The commission shall charge a fee to the public utility to pay the costs of  
13 an independent monitor. These costs are recoverable in rates.

14 (c) The independent monitor may assist the commission by:

15 (i) providing comments on the consistency of the competitive solicitation process with industry standards  
16 and the commission's criteria;

17 (ii) monitoring and observing the competitive solicitation process, paying particular attention to the public  
18 utility's evaluation of electricity supply resources that will result in utility ownership of the resource, to ensure that  
19 the utility conducts a fair and proper process in accordance with industry standards and commission criteria;

20 (iii) notifying the utility on a timely basis of any discrepancies observed in the process and resolving any  
21 differences of opinion; and

22 (iv) preparing a closing report regarding the consistency of the process, including selection and  
23 notification of electricity supply resources taking part in the solicitation process based on industry standards and  
24 commission criteria.

25 (4) (a) Except as provided in subsection (4)(b), within 60 days of receiving the information required  
26 pursuant to subsection (2) the commission shall:

27 (i) approve a proposed competitive solicitation process that meets the requirements of subsections (2)  
28 and (5);

29 (ii) suggest modifications to a proposed competitive solicitation process in order to meet the requirements  
30 of subsections (2) and (5); or

1 (iii) reject a proposed competitive solicitation process.

2 (b) The commission may extend the time to a date that provides the commission with adequate time to  
3 analyze the information provided in accordance with subsection (2). The time may not be extended by longer than  
4 90 days.

5 (5) A competitive solicitation process may not be approved unless the commission determines that the  
6 competitive solicitation process is in the public interest. The commission shall make the determination by  
7 considering:

8 (a) whether the proposed competitive solicitation will result in the acquisition, production, and delivery  
9 of electricity at the lowest reasonable cost to a public utility's retail customers located in Montana;

10 (b) long-term and short-term impacts;

11 (c) risk;

12 (d) reliability;

13 (e) financial impacts on the public utility; and

14 (f) other factors determined by the commission to be relevant.

15 (6) This section does not apply to a request for proposals or purchase by a public utility intended solely  
16 to meet the short-term operational needs of the utility for a period of less than 12 months.

17

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

19 **"69-1-114. Fees.** (1) Each fee charged by the commission must be reasonable.

20 (2) Except for a fee assessed pursuant to 69-3-204(2), section 1(3)(b), 69-8-421(10), or 69-12-423(2),  
21 a fee set by the commission may not exceed \$500.

22 (3) All fees collected by the department under section 1(3)(b) and 69-8-421(10) must be deposited in  
23 an account in the special revenue fund. Funds in this account must be used as provided in section 1(3)(b) and  
24 69-8-421(10)."

25

26 **Section 3.** Section 69-3-601, MCA, is amended to read:

27 **"69-3-601. (Temporary) Definitions.** As used in this part, the following definitions apply:

28 (1) "Commission" means the Montana public service commission.

29 (2) "Electric cooperative" means a rural electric cooperative organized under the laws of Montana, or  
30 a foreign corporation admitted to do business in Montana.

1           (3) "Long-term contract" means a contract lasting 25 years or more.

2           ~~(3)~~(4) "Qualifying small power production facility" means a facility that:

3           (a) produces electricity by the use, as a primary energy source, of biomass, waste, water, wind, or other  
4 renewable resource, or any combination of those sources; or

5           (b) produces electricity and useful forms of thermal energy, such as heat or steam, used for industrial,  
6 commercial, heating, or cooling purposes through the sequential use of energy known as cogeneration; and

7           (c) has a power production capacity that together with any other facilities located at the same site is not  
8 greater than 80 megawatts; and

9           (d) is owned by a person not primarily engaged in the generation or sale of electricity other than electric  
10 power from a small power production facility.

11           ~~(4)~~(5) "Utility" means any public utility supplying electricity and regulated by the commission. (Repealed  
12 on occurrence of contingency--secs. 1, 3, Ch. 284, L. 2003--see part compiler's comment.)"

13

14           **Section 4.** Section 69-3-602, MCA, is amended to read:

15           **"69-3-602. (Temporary) Generation and sale of electricity by qualifying small power production**

16 **facility.** (1) A qualifying small power production facility may generate electricity from the sources described in  
17 ~~69-3-601(3)(a) and (3)(b)~~ 69-3-601(4)(a) and (4)(b) and may contract for the sale of that electricity with a utility.

18           (2) A qualifying small power production facility may generate electricity from the sources described in  
19 ~~69-3-601(3)(a) and (3)(b)~~ 69-3-601(4)(a) and (4)(b) and may contract for the sale of that electricity with an electric  
20 cooperative under terms and conditions mutually agreed ~~upon~~ on between the parties and in compliance with the  
21 rates and regulations established by the Public Utility Regulatory Policies Act. (Repealed on occurrence of  
22 contingency--secs. 1, 3, Ch. 284, L. 2003--see part compiler's comment.)"

23

24           **Section 5.** Section 69-3-604, MCA, is amended to read:

25           **"69-3-604. (Temporary) Standards for determination of rates and conditions.** (1) The commission  
26 shall determine the rates and conditions of the contract for the sale of electricity by a qualifying small power  
27 production facility according to the standards in subsections (2) through (5).

28           (2) ~~(a) Long-term contracts~~ Except as provided in subsection (2)(b), the commission shall require a  
29 long-term contract for the purchase of electricity by the utility from a qualifying small power production facility ~~must~~  
30 ~~be encouraged in order~~ that has participated in a competitive solicitation process conducted pursuant to [section

1 1] to enhance the economic feasibility of qualifying small power production facilities.

2 (b) This subsection (2) does not prohibit a qualifying small power production facility and a utility from  
 3 mutually agreeing to a specific contract term, or the commission from requiring a contract for a time period shorter  
 4 than a long-term contract as specified in 69-3-601, if requested by a small power production facility.

5 (3) The rates to be paid by a utility for electricity purchased from a qualifying small power production  
 6 facility must be established with consideration of the availability and reliability of the electricity produced.

7 (4) The commission shall set these rates using the avoided cost over the term of the contract.

8 (5) The commission may adopt rules further defining the criteria for qualifying small power production  
 9 facilities, their cost-effectiveness, and other standards.

10 (6) Rates determined pursuant to subsections (2) through (5):

11 (a) are just and reasonable to a utility's customers;

12 (b) do not discriminate against qualifying small power production facilities; and

13 (c) are in the public interest. (Repealed on occurrence of contingency--secs. 1, 3, Ch. 284, L. 2003--see  
 14 part compiler's comment.)"

15

16 **Section 6.** Section 69-3-1202, MCA, is amended to read:

17 **"69-3-1202. Policy -- planning.** (1) It is the policy of the state of Montana to supervise, regulate, and  
 18 control public utilities. To the extent that it is consistent with the policy and in order to benefit society, the state  
 19 encourages efficient utility operations, efficient use of utility services, and efficient rates. It is further the policy of  
 20 the state to encourage utilities to acquire resources using a competitive solicitation process and in a manner that  
 21 will help ensure a clean, healthful, safe, and economically productive environment.

22 (2) The legislature finds that the commission may include in rates the costs that are associated with  
 23 acquiring the resources referred to in subsection (1) and that are consistent with this policy if the resources are  
 24 actually used and useful for the convenience of the public. To advance this policy, the commission may require  
 25 periodic long-range plans from utilities that provide electric and natural gas service in a form and manner  
 26 determined by the commission. The commission may receive comments on the plans.

27 (3) This part does not constrain or limit the commission's existing statutory duties or responsibilities."  
 28

29 **Section 7.** Section 69-3-1204, MCA, is amended to read:

30 **"69-3-1204. Integrated least-cost plan.** (1) The commission may adopt rules requiring a public utility

1 to prepare and file a plan for meeting the requirements of its customers in the most cost-effective manner  
2 consistent with the public utility's obligation to serve. The rules may prescribe the content and the time for filing  
3 a plan.

4 (2) (a) A plan must contain but is not limited to an evaluation of the full range of cost-effective means for  
5 the public utility to meet the service requirements of its Montana customers, including conservation or similar  
6 improvements in the efficiency by which services are used.

7 (b) A plan must demonstrate the public utility's use of a competitive solicitation process conducted in  
8 accordance with [section 1].

9 (3) The commission may adopt rules providing guidelines to be used in preparing a plan and identifying  
10 the criteria to be used in determining cost-effectiveness. The criteria may include externalities associated with  
11 the acquisition of a resource by a public utility. The rules must establish the minimum filing requirements for  
12 acceptance of a plan by the commission for further review. If a plan does not meet the minimum filing  
13 requirements, it must be returned to the public utility with a list of deficiencies. A corrected plan must be submitted  
14 within the time established by the commission.

15 (4) A plan filed with the commission by a utility, as defined in 75-20-104, must be provided to the  
16 department of environmental quality and the consumer counsel."  
17

18 **Section 8.** Section 69-3-1206, MCA, is amended to read:

19 **"69-3-1206. Rate treatment.** (1) The commission may include in a public utility's rates:

20 (a) the cost of resources acquired in accordance with a plan and, when applicable, a competitive  
21 solicitation process conducted in accordance with [section 1];

22 (b) the cost-effective expenditures for improving the efficiency with which the public utility provides and  
23 its customers use utility services; and

24 (c) the costs of complying with the planning requirements of this part and the costs of complying with a  
25 competitive solicitation process conducted in accordance with [section 1], including but not limited to:

26 (i) planning costs;

27 (ii) portfolio development costs; and

28 (iii) all or a portion of abandonment costs.

29 (2) The commission shall adopt rules establishing criteria governing the extent of recovery of  
30 abandonment costs."

- 1
- 2       **Section 9.** Section 69-8-419, MCA, is amended to read:
- 3       **"69-8-419. Electricity supply resource planning and procurement -- duties of public utility --**
- 4 **objectives -- commission rules.** (1) The public utility shall:
- 5       (a) plan for future electricity supply resource needs;
- 6       (b) manage a portfolio of electricity supply resources; and
- 7       (c) procure new electricity supply resources when needed and use a competitive solicitation process in
- 8 accordance with [section 1].
- 9       (2) The public utility shall pursue the following objectives in fulfilling its duties pursuant to subsection (1):
- 10      (a) provide adequate and reliable electricity supply service at the lowest long-term total cost;
- 11      (b) conduct an efficient electricity supply resource planning and procurement process that evaluates the
- 12 full range of cost-effective electricity supply and demand-side management options;
- 13      (c) identify and cost-effectively manage and mitigate risks related to its obligation to provide electricity
- 14 supply service;
- 15      (d) use open, fair, and competitive procurement and solicitation processes whenever possible; and
- 16      (e) provide electricity supply service and related services at just and reasonable rates.
- 17      (3) ~~By March 31, 2008, the~~ The commission shall adopt rules that guide the electricity supply resource
- 18 planning and procurement processes used by the public utility and facilitate the achievement of the objectives
- 19 in subsection (2) by the public utility. The rules must establish:
- 20      (a) goals, objectives, and guidelines that are consistent with the objectives in subsection (2) for:
- 21      (i) planning for future electricity supply resource needs;
- 22      (ii) managing the portfolio of electricity supply resources; ~~and~~
- 23      (iii) procuring new electricity supply resources; and
- 24      (iv) conducting a competitive solicitation process in accordance with [section 1];
- 25      (b) standards for the evaluation by the commission of the reasonableness of a power purchase
- 26 agreement proposed by the public utility; and
- 27      (c) minimum filing requirements for an application by the public utility for approval of an electricity supply
- 28 resource."
- 29
- 30       **Section 10.** Section 69-8-421, MCA, is amended to read:

1           **"69-8-421. Approval of electricity supply resources.** (1) A public utility that removed its generation  
2 assets from its rate base pursuant to this chapter prior to October 1, 2007, may apply to the commission in  
3 accordance with [section 1] for approval of an electricity supply resource that is not yet procured.

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

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

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

15           (b) If an air quality permit pursuant to Title 75, chapter 2, is required for a new electrical generation  
16 resource or a modification to an existing resource, the commission shall hold the public hearing on the application  
17 for approval at least 30 days after the issuance of the final air quality permit.

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

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

22           (5) To facilitate timely consideration of an application, the commission may initiate proceedings to  
23 evaluate planning and procurement activities related to a potential resource procurement prior to the public utility's  
24 submission of an application for approval. The commission may require a competitive solicitation process in  
25 accordance with [section 1].

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

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

30           (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 in 69-3-201, the  
3 objectives in 69-8-419, and commission rules.
- 4 (d) The commission order may include a provision for allowable generation assets cost of service when  
5 the utility has filed an application for the lease or acquisition of an equity interest in a plant or equipment used to  
6 generate electricity.
- 7 (e) When issuing an order for the acquisition of an equity interest or lease in a facility or equipment that  
8 is constructed after January 1, 2007, and that is used to generate electricity that is primarily fueled by natural or  
9 synthetic gas, the commission shall require the applicant to implement cost-effective carbon offsets. Expenditures  
10 required for cost-effective carbon offsets pursuant to this subsection (6)(e) are fully recoverable in rates. ~~By March~~  
11 ~~31, 2008, the~~ 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 (6)(c)  
14 could not be reached.
- 15 (7) Notwithstanding any provision of this chapter to the contrary, if the commission has issued an order  
16 containing the findings required under subsection (6)(c), the commission may not subsequently disallow the  
17 recovery of costs related to the approved electricity supply resource based on contrary findings.
- 18 (8) Until the state or federal government has adopted uniformly applicable statewide standards for the  
19 capture and sequestration of carbon dioxide, the commission may not approve an application for the acquisition  
20 of an equity interest or lease in a facility or equipment used to generate electricity that is primarily fueled by coal  
21 and that is constructed after January 1, 2007, unless the facility or equipment captures and sequesters a  
22 minimum of 50% of the carbon dioxide produced by the facility. Carbon dioxide captured by a facility or equipment  
23 may be sequestered offsite from the facility or equipment.
- 24 (9) Nothing limits the commission's ability to subsequently, in any future rate proceeding, inquire into the  
25 manner in which the public utility has managed, dispatched, operated, or maintained any resource or managed  
26 any power purchase agreement as part of its overall resource portfolio. The commission may subsequently  
27 disallow rate recovery for the costs that result from the failure of a public utility to reasonably manage, dispatch,  
28 operate, maintain, or administer electricity supply resources in a manner consistent with 69-3-201, 69-8-419, and  
29 commission rules.
- 30 (10) The commission may engage independent engineering, financial, and management consultants or

1 advisory services to evaluate a public utility's electricity supply resource procurement plans and proposed  
2 electricity supply resources. The consultants must have demonstrated knowledge and experience with electricity  
3 supply procurement and resource portfolio management, modeling, risk management, and engineering practices.  
4 The commission shall charge a fee to the public utility to pay for the costs of consultants or advisory services.  
5 These costs are recoverable in rates.

6 (11) ~~By March 31, 2008, the~~ The commission shall adopt rules prescribing minimum filing requirements  
7 for applications filed pursuant to this part."  
8

9 NEW SECTION. Section 11. Codification instruction. [Section 1] is intended to be codified as an  
10 integral part of Title 69, chapter 3, and the provisions of Title 69, chapter 3 apply to [section 1].  
11

12 NEW SECTION. Section 12. Severability. If a part of [this act] is invalid, all valid parts that are  
13 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
14 the part remains in effect in all valid applications that are severable from the invalid applications.  
15

16 NEW SECTION. Section 13. Saving clause. [This act] does not affect rights and duties that matured,  
17 penalties that were incurred, or proceedings that were begun before [the effective date of this act].  
18

19 NEW SECTION. Section 14. Effective date. [This act] is effective on passage and approval.  
20

21 NEW SECTION. Section 15. Applicability. [This act] applies to:

22 (1) petitions by qualifying small power production facilities or utilities received by the public service  
23 commission on or after [the effective date of this act]; and

24 (2) applications by a utility for approval of an electricity supply resource on or after [the effective date of  
25 this act].  
26

- END -