

HOUSE BILL NO. 597  
INTRODUCED BY K. KERNS

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A PUBLIC UTILITY TO MAINTAIN A TRADITIONAL AND A NONTRADITIONAL ELECTRIC PORTFOLIO; ALLOWING CUSTOMERS TO CHOOSE TO PURCHASE ELECTRICITY SUPPLY FROM A PORTFOLIO; REQUIRING A UTILITY TO SUPPLY A CUSTOMER WITH POWER FROM A SELECTED PORTFOLIO AT RATES ASSOCIATED WITH THAT PORTFOLIO; EXTENDING PUBLIC SERVICE COMMISSION RULEMAKING AUTHORITY; AMENDING SECTIONS 69-3-1204, 69-8-419, 69-8-420, AND 69-8-421, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 3] may be cited as the "Montana Ratepayer Protection and Choice Act".

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 3], unless the context requires otherwise, the following definitions apply:

(1) "Balancing authority" means a transmission system control operator who balances electricity supply and load at all times to meet transmission system operating criteria and to provide reliable electric service to customers.

(2) "Dispatch ability" means the ability of either the owner of a facility or a balancing authority to rapidly start, stop, increase, or decrease electricity production from a facility in order to respond to the balancing authority's needs to match supply resources to loads on the transmission system.

(3) "Geographic diversity" means the degree to which a facility is physically separated from other electric generating resources supplying electricity to a utility in order to reduce the likelihood that the electric generating resources will be similarly affected by climatic conditions, disruptions to the transmission system, or natural disaster.

(4) (a) "Nontraditional portfolio" means contracts for electric capacity and generation or generation assets owned by a public utility or provided by another facility either located in Montana or delivering electricity from another state into Montana, including:

(i) a qualifying small power production facility, pursuant to Title 69, chapter 3, part 6;

- (ii) an eligible renewable resource pursuant to Title 69, chapter 3, part 20;
- (iii) a customer-generator as defined in 69-8-103; and
- (iv) a peaking facility necessary to support a facility listed in this subsection (4)(a).

(b) The term also includes ancillary services as defined in 69-3-2003, cost recovery pursuant to 69-8-210, and the dispatch ability, seasonality, and geographic diversity of the facility.

(5) "Peaking facility" means a facility generally run only when there is high customer demand.

(6) "Portfolio" means an integrated plan of electricity supply resources, as defined in 69-8-103, for meeting the requirements of a utility's customers prepared by a utility pursuant to [section 3] and 69-8-419.

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

(8) "Seasonality" means the degree to which a facility is capable of producing electricity in each of the seasons of the year.

(9) "Traditional portfolio" means contracts for electric capacity and generation or generation assets owned by a public utility or provided by another facility either located in Montana or delivering electricity from another state into Montana, including:

- (a) a facility that is primarily fueled by coal and is not a qualifying small power production facility pursuant to Title 69, chapter 3, part 6;
- (b) a hydroelectric facility that has a nameplate capacity of greater than 10 megawatts; or
- (c) a natural gas facility, or that portion of a natural gas facility, that is not used as a peaking facility.

**NEW SECTION. Section 3. Public utility -- traditional and nontraditional portfolio requirements.**

(1) Before October 1, 2009, a public utility shall:

- (a) develop a traditional portfolio of electricity supply resources and a nontraditional portfolio of electricity supply resources;
- (b) develop a good faith estimate of the customer rates per megawatt hour under the traditional and nontraditional portfolios; and
- (c) provide customers with an option of purchasing electricity supply service from the traditional or nontraditional portfolio and paying the associated rates.

(2) Beginning January 1, 2010, customers shall for the next 12 months pay the rate or a modified rate based on changes in the market after the public utility provided a good faith estimate pursuant to subsection (1)(b).

(3) A public utility shall annually:

(a) revise its good faith estimates pursuant to subsection (1)(b); and

(b) provide customers with an option pursuant to subsection (1)(c).

(4) The portfolio and good faith estimates required by subsection (1) and any modification in rates pursuant to subsection (1)(c) must be reviewed by the commission.

(5) In accordance with commission rules, a public utility shall make its best effort to sell power purchased under a contract and not included in portfolios selected by and sold to Montana customers on the open market with contracts not to exceed 5 years.

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

**"69-3-1204. Integrated least-cost plan.** (1) The commission may adopt rules requiring a public utility to prepare and file a plan for meeting the requirements of its customers in the most cost-effective manner and pursuant to [section 3] consistent with the public utility's obligation to serve. The rules may prescribe the content and the time for filing a plan.

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

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

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

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

**"69-8-419. Electricity supply resource planning and procurement -- duties of public utility -- objectives -- commission rules.** (1) ~~The~~ In accordance with [section 3], the public utility shall:

(a) plan for future electricity supply resource needs;

(b) manage a portfolio of electricity supply resources; and

- (c) procure new electricity supply resources when needed.
- (2) The public utility shall pursue the following objectives in fulfilling its duties pursuant to subsection (1):
  - (a) provide adequate and reliable electricity supply service at the lowest long-term total cost;
  - (b) conduct an efficient electricity 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 electricity supply service;
  - (d) use open, fair, and competitive procurement processes whenever possible; and
  - (e) provide electricity supply service and related services at just and reasonable rates.
- (3) ~~By March 31, 2008, the~~ By September 1, 2009, the commission shall adopt rules that guide the electricity supply resource planning and procurement processes used by the public utility and facilitate the achievement of the objectives in [section 3] and subsection (2) of this section by the public utility. The rules must establish:
  - (a) goals, objectives, and guidelines that are consistent with the objectives in subsection (2) for:
    - (i) planning for future electricity supply resource needs;
    - (ii) managing the portfolio of electricity supply resources; and
    - (iii) procuring new electricity supply resources;
  - (b) standards for the evaluation by the commission of the reasonableness of a power supply purchase agreement proposed by the public utility; and
  - (c) minimum filing requirements for an application by the public utility for approval of an electricity supply resource."

**Section 6.** Section 69-8-420, MCA, is amended to read:

**"69-8-420. Electricity supply resource procurement plans -- comment on plans.** (1) The public utility shall develop electricity supply resource procurement plans. The plans must be submitted to the commission at intervals determined in rules adopted by the commission and in accordance with rules developed pursuant to [section 3].

(2) An electricity supply resource procurement plan must demonstrate the public utility's achievement of the objectives provided in 69-8-419 and compliance with commission rules.

(3) The commission shall:

- (a) review the electricity supply resource procurement plan;

- (b) provide an opportunity to the public to comment on the plan; and
- (c) issue written comments that identify:
  - (i) any concerns of the commission regarding the public utility's compliance with commission rules; and
  - (ii) ways to remedy any concerns."

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

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

(2) Within 45 days of the public utility's submission of an application for 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 the deficiencies.

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

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

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

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

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

(5) To facilitate timely consideration of an application, the commission may initiate proceedings to evaluate planning and procurement activities related to a potential resource procurement prior to the public utility's submission of an application for approval.

(6) (a) The commission may approve or deny, in whole or in part, an application for approval of an

electricity supply resource.

(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 approval.

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

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

(ii) procurement of the electricity supply resource is consistent with the requirements in 69-3-201, the objectives in 69-8-419, and commission rules.

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

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

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

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

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

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

(9) Nothing limits the commission's ability to subsequently, in any future rate proceeding, inquire into the manner in which the public utility has managed, dispatched, operated, or maintained any resource or managed any power supply purchase agreement as part of its overall resource portfolio or management of its portfolio pursuant to [section 3]. The commission may subsequently disallow rate recovery for the costs that result from

the failure of a public utility to reasonably manage, dispatch, operate, maintain, or administer electricity supply resources in a manner consistent with 69-3-201, 69-8-419, and commission rules.

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

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

NEW SECTION. **Section 8. Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 69, chapter 8, and the provisions of Title 69, chapter 8, apply to [sections 1 through 3].

NEW SECTION. **Section 9. Effective date.** [This act] is effective on passage and approval.

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