

SENATE BILL NO. 237

INTRODUCED BY D. KARY, T. MCGILLVRAY

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE COMMUNITY RENEWABLE ENERGY PROJECT REQUIREMENT FROM MONTANA'S RENEWABLE RESOURCE STANDARD; AMENDING SECTIONS 69-3-2003, 69-3-2004, 69-3-2005, 69-3-2006, AND 90-4-1202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

Section 1. Section 69-3-2003, MCA, is amended to read:

"69-3-2003. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Ancillary services" means services or tariff provisions related to generation and delivery of electric power other than simple generation, transmission, or distribution. Ancillary services related to transmission services include energy losses, energy imbalances, scheduling and dispatching, load following, system protection, spinning reserves and nonspinning reserves, and reactive power.

(2) "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.

~~(3) "Common ownership" means the same or substantially similar persons or entities that maintain a controlling interest in more than one community renewable energy project even if the ownership shares differ between two community renewable energy projects. Two community renewable energy projects may not be considered to be under common ownership simply because the same entity provided debt or equity or both debt and equity to both projects.~~

~~(4) "Community renewable energy project" means an eligible renewable resource that:~~

~~(a) is interconnected on the utility side of the meter in which local owners have a controlling interest and that is less than or equal to 25 megawatts in total calculated nameplate capacity; or~~

~~(b) is owned by a public utility and has less than or equal to 25 megawatts in total nameplate capacity.~~

~~(5)(3)~~ (a) "Competitive electricity supplier" means any person, corporation, or governmental entity that is selling electricity to small customers at retail rates in the state of Montana and that is not a public utility or cooperative.

(b) The term does not include governmental entities selling electricity produced only by facilities generating less than 250 kilowatts that were in operation prior to 1990.

~~(6)(4)~~ "Compliance year" means each calendar year beginning January 1 and ending December 31, starting in 2008, for which compliance with this part must be demonstrated.

~~(7)(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.

~~(8)(6)~~ "Dispatch ability" means the ability of either a balancing authority or the owner of an electric generating resource to rapidly start, stop, increase, or decrease electricity production from that generating resource in order to respond to the balancing authority's need to match supply resources to loads on the transmission system.

~~(9)(7)~~ "Electric generating resource" means any plant or equipment used to generate electricity by any means.

~~(10)(8)~~ "Eligible renewable resource" means a facility either located within Montana or delivering electricity from another state into Montana that commences commercial operation after January 1, 2005, or a hydroelectric project expansion referred to in subsection ~~(10)(d)(iii)~~ (8)(d)(iii), any of which produces electricity from one or more of the following sources:

(a) wind;

(b) solar;

(c) geothermal;

(d) water power, in the case of a hydroelectric project that:

(i) does not require a new appropriation, diversion, or impoundment of water and that has a nameplate rating of 10 megawatts or less;

1 (ii) is installed at an existing reservoir or on an existing irrigation system that does not have
2 hydroelectric generation as of April 16, 2009, and has a nameplate capacity of 15 megawatts or less; or
3 (iii) is an expansion of an existing hydroelectric project that commences construction and increases
4 existing generation capacity on or after October 1, 2013. Engineering estimates of the average incremental
5 generation from the increase in existing generation capacity must be submitted to the commission for review.
6 The commission shall determine an average annual incremental generation that will constitute the eligible
7 renewable resource from the capacity expansion, subject to further revision by the commission in the event of
8 significant changes in stream flow or dam operation.

9 (e) landfill or farm-based methane gas;

10 (f) gas produced during the treatment of wastewater;

11 (g) low-emission, nontoxic biomass based on dedicated energy crops, animal wastes, or solid organic
12 fuels from wood, forest, or field residues, including wood pieces that have been treated with chemical
13 preservatives, such as creosote, pentachlorophenol, or copper-chrome arsenic, and that are used at a facility
14 that has a nameplate capacity of 5 megawatts or less;

15 (h) hydrogen derived from any of the sources in this subsection ~~(10)~~ (8) for use in fuel cells; and

16 (i) the renewable energy fraction from:

17 (i) the sources identified in this subsection ~~(10)~~ (8) of electricity production from a multiple-fuel
18 process with fossil fuels;

19 (ii) flywheel storage as defined in 15-6-157(4)(d);

20 (iii) hydroelectric pumped storage as defined in 15-6-157(4)(e);

21 (iv) batteries; and

22 (v) compressed air derived from any of the sources in this subsection ~~(10)~~ (8) that is forced into an
23 underground storage reservoir and later released, heated, and passed through a turbine generator.

24 ~~(11) "Local owners" means:~~

25 ~~(a) Montana residents;~~

26 ~~(b) general partnerships of which all partners are Montana residents;~~

27 ~~(c) business entities organized under the laws of Montana that:~~

28 ~~(i) have less than \$50 million of gross revenue;~~

1 ~~(ii) have less than \$100 million of assets; and~~
2 ~~(iii) have at least 50% of the equity interests, income interests, and voting interests owned by Montana~~
3 ~~residents;~~
4 ~~(d) Montana nonprofit organizations;~~
5 ~~(e) Montana-based tribal councils;~~
6 ~~(f) Montana political subdivisions or local governments;~~
7 ~~(g) Montana-based cooperatives other than cooperative utilities; or~~
8 ~~(h) any combination of the individuals or entities listed in subsections (11)(a) through (11)(g).~~
9 ~~(12)(9)~~ "Nonspinning reserve" means offline generation that can be ramped up to capacity and
10 synchronized to the grid within 10 minutes and that is needed to maintain system frequency stability during
11 emergency conditions, unforeseen load swings, and generation disruptions.
12 ~~(13)(10)~~ "Public utility" means any electric utility regulated by the commission pursuant to Title 69,
13 chapter 3, on January 1, 2005, including the public utility's successors or assignees.
14 ~~(14)(11)~~ "Renewable energy credit" means a tradable certificate of proof of 1 megawatt hour of
15 electricity generated by an eligible renewable resource that is tracked and verified by the commission and
16 includes all of the environmental attributes associated with that 1 megawatt-hour unit of electricity production.
17 ~~(15)(12)~~ "Renewable energy fraction" means the proportion of electricity output directly attributable to
18 electricity and associated renewable energy credits produced by one of the sources identified in subsection
19 (10).
20 ~~(16)(13)~~ "Seasonality" means the degree to which an electric generating resource is capable of
21 producing electricity in each of the seasons of the year.
22 ~~(17)(14)~~ "Small customer" means a retail customer that has an individual load with an average monthly
23 demand of less than 5,000 kilowatts.
24 ~~(18)(15)~~ "Spinning reserve" means the online reserve capacity that is synchronized to the grid system
25 and immediately responsive to frequency control and that is needed to maintain system frequency stability
26 during emergency conditions, unforeseen load swings, and generation disruptions.
27 ~~(19)(16)~~ "Total calculated nameplate capacity" means the calculation of total nameplate capacity of the
28 community renewable energy project and other eligible renewable resources that are:

- 1 (a) located within 5 miles of the project;
- 2 (b) constructed within the same 12-month period; and
- 3 (c) under common ownership."

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5 **Section 2.** Section 69-3-2004, MCA, is amended to read:

6 **"69-3-2004. Renewable resource standard -- administrative penalty -- waiver.** (1) Except as
7 provided in 69-3-2007 and subsections ~~(11) through (14)~~ (9) through (12) of this section, a graduated
8 renewable energy standard is established for public utilities and competitive electricity suppliers as provided in
9 subsections subsection (2) through (4) of this section.

10 ~~(2) In each compliance year beginning January 1, 2008, through December 31, 2009, each public~~
11 ~~utility and competitive electricity supplier shall procure a minimum of 5% of its retail sales of electrical energy in~~
12 ~~Montana from eligible renewable resources.~~

13 ~~(3) (a) In each compliance year beginning January 1, 2010, through December 31, 2014, each public~~
14 ~~utility and competitive electricity supplier, except as provided in subsections (13) and (14), shall procure a~~
15 ~~minimum of 10% of its retail sales of electrical energy in Montana from eligible renewable resources.~~

16 ~~(b) Beginning January 1, 2012, as part of their compliance with subsection (3)(a), public utilities shall~~
17 ~~purchase both the renewable energy credits and the electricity output from community renewable energy~~
18 ~~projects that total at least 50 megawatts in nameplate capacity.~~

19 ~~(c) Public utilities shall proportionately allocate the purchase required under subsection (3)(b) based~~
20 ~~on each public utility's retail sales of electrical energy in Montana in the calendar year 2011.~~

21 ~~(4)(2) (a) In the compliance year beginning January 1, 2015, and in each succeeding compliance~~
22 ~~year, each public utility and competitive electricity supplier, except as provided in subsections (13), (11) and (14)~~
23 ~~(12), shall procure a minimum of 15% of its retail sales of electrical energy in Montana from eligible renewable~~
24 ~~resources.~~

25 ~~(b) (i) As part of their compliance with subsection (4)(a), public utilities shall purchase both the~~
26 ~~renewable energy credits and the electricity output from community renewable energy projects that total at least~~
27 ~~75 megawatts in nameplate capacity.~~

28 ~~(ii) In meeting the standard in subsection (4)(b)(i), a public utility may include purchases made under~~

1 ~~subsection (3)(b).~~

2 ~~(c) Public utilities shall proportionately allocate the purchase required under subsection (4)(b) based~~
3 ~~on each public utility's proportion of the total retail sales of electrical energy by public utilities in Montana in the~~
4 ~~calendar year 2014.~~

5 ~~(5)(3)~~ (a) In complying with the standards required under ~~subsections~~ subsection (2) ~~through (4)~~, a
6 public utility or competitive electricity supplier shall, for any given compliance year, calculate its procurement
7 requirement based on the public utility's or competitive electricity supplier's previous year's sales of electrical
8 energy to retail customers in Montana.

9 (b) The standards in ~~subsections~~ subsection (2) ~~through (4)~~ must be calculated on a delivered-energy
10 basis after accounting for any line losses.

11 ~~(6)(4)~~ A public utility or competitive electricity supplier has until 3 months following the end of each
12 compliance year to purchase renewable energy credits for that compliance year.

13 ~~(7)(5)~~ (a) In order to meet the standards established in ~~subsections~~ subsection (2) ~~through (4)~~, a
14 public utility or competitive electricity supplier may only use:

15 (i) electricity from an eligible renewable resource in which the associated renewable energy credits
16 have not been sold separately;

17 (ii) renewable energy credits created by an eligible renewable resource purchased separately from the
18 associated electricity; or

19 (iii) any combination of subsections ~~(7)(a)(i)~~ (5)(a)(i) and ~~(7)(a)(ii)~~ (5)(a)(ii).

20 (b) A public utility or competitive electricity supplier may not resell renewable energy credits and count
21 those sold credits against the public utility's or the competitive electricity supplier's obligation to meet the
22 standards established in ~~subsections~~ subsection (2) ~~through (4)~~.

23 (c) Renewable energy credits sold through a voluntary service such as the one provided for in 69-8-
24 210(2) may not be applied against a public utility's or competitive electricity supplier's obligation to meet the
25 standards established in ~~subsections~~ subsection (2) ~~through (4)~~.

26 ~~(8)(6)~~ Nothing in this part limits a public utility or competitive electricity supplier from exceeding the
27 standards established in ~~subsections~~ subsection (2) ~~through (4)~~.

28 ~~(9)(7)~~ If a public utility or competitive electricity supplier exceeds a standard established in

subsections subsection (2) through (4) in any compliance year, the public utility or competitive electricity supplier may carry forward the amount by which the standard was exceeded to comply with the standard in either or both of the 2 subsequent compliance years. The carryforward may not be double-counted.

~~(10)(8)~~ Except as provided in subsections ~~(11) and (12)~~ (9) and (10), if a public utility or competitive electricity supplier is unable to meet the standards established in subsections subsection (2) through (4) in any compliance year, that public utility or competitive electricity supplier shall pay an administrative penalty, assessed by the commission, of \$10 for each megawatt hour of renewable energy credits that the public utility or competitive electricity supplier failed to procure. A public utility may not recover this penalty in electricity rates. Money generated from these penalties must be deposited in the universal low-income energy assistance fund established in 69-8-412(1)(b).

~~(11)(9)~~ A public utility or competitive electricity supplier may petition the commission for a short-term waiver from full compliance with the standards in subsections subsection (2) through (4) and the penalties levied under subsection ~~(10)~~ (8). The petition must demonstrate that the:

(a) public utility or competitive electricity supplier has undertaken all reasonable steps to procure renewable energy credits under long-term contract, but full compliance cannot be achieved either because renewable energy credits cannot be procured or for other legitimate reasons that are outside the control of the public utility or competitive electricity supplier; or

(b) integration of additional eligible renewable resources into the electrical grid will clearly and demonstrably jeopardize the reliability of the electrical system and that the public utility or competitive electricity supplier has undertaken all reasonable steps to mitigate the reliability concerns.

~~(12)(10)~~ (a) Retail sales made by a competitive electricity supplier according to prices, terms, and conditions of a written contract executed prior to April 25, 2007, are exempt from the standards in subsections subsection (2) through (4).

(b) The exemption provided for in subsection ~~(12)(a)~~ (10)(a) is terminated upon modification after April 25, 2007, of the prices, terms, or conditions in a written contract.

~~(13)(11)~~ A public utility that served 50 or fewer retail customers in Montana on December 31, 2012, is exempt from the requirements of subsections subsection (2) through (4).

~~(14)(12)~~ (a) A competitive electricity supplier with four or fewer small customers in Montana is exempt

1 from the requirements of ~~subsections~~ subsection (2) ~~through (4)~~.

2 (b) For the purposes of determining the number of small customers served by a competitive electricity
3 supplier, an entity that purchases electricity for commercial or industrial use and does not resell electricity to
4 others is one small customer regardless of the number of its metered locations."

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6 **Section 3.** Section 69-3-2005, MCA, is amended to read:

7 **"69-3-2005. Procurement -- cost recovery -- reporting.** (1) In meeting the requirements of this part,
8 a public utility shall:

9 (a) conduct renewable energy solicitations under which the public utility offers to purchase renewable
10 energy credits, either with or without the associated electricity, under contracts of at least 10 years in duration;

11 (b) consider the importance of geographically diverse rural economic development when procuring
12 renewable energy credits; and

13 (c) consider the importance of dispatch ability, seasonality, and other attributes of the eligible
14 renewable resource contained in the commission's supply procurement rules when considering the
15 procurement of renewable energy or renewable energy credits.

16 (2) A public utility that intends to enter into contracts of less than 10 years in duration shall
17 demonstrate to the commission that these contracts will provide a lower long-term cost of meeting the standard
18 established in 69-3-2004.

19 (3) (a) Contracts signed for projects located in Montana must require all contractors to give
20 preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of
21 the work on the projects if the Montana residents have substantially equal qualifications to those of
22 nonresidents.

23 (b) Contracts signed for projects located in Montana must require all contractors to pay the standard
24 prevailing rate of wages for heavy construction, as provided in 18-2-414, during the construction phase of the
25 project.

26 (4) All contracts signed by a public utility to meet the requirements of this part are eligible for
27 advanced approval under procedures established by the commission. Upon advanced approval by the
28 commission, these contracts are eligible for cost recovery from ratepayers, except that nothing in this part limits

1 the commission's ability to subsequently, in any future cost-recovery proceeding, inquire into the manner in
2 which the public utility has managed the contract and to disallow cost recovery if the contract was not
3 reasonably administered.

4 (5) A public utility or competitive electricity supplier shall submit renewable energy procurement plans
5 to the commission in accordance with rules adopted by the commission. The plans must be submitted to the
6 commission on or before:

7 ~~(a) June 1, 2013, for the standard required in 69-3-2004(4); and~~

8 ~~(b) any additional future dates as required by the commission.~~

9 (6) A public utility or competitive electricity supplier shall submit annual reports, in a format to be
10 determined by the commission, demonstrating compliance with this part for each compliance year. The reports
11 must be filed by March 1 of the year following the compliance year.

12 (7) For the purpose of implementing this part, the commission has regulatory authority over
13 competitive electricity suppliers."
14

15 **Section 4.** Section 69-3-2006, MCA, is amended to read:

16 **"69-3-2006. Commission authority -- rulemaking authority.** (1) The commission has the authority
17 to generally implement and enforce the provisions of this part.

18 (2) The commission shall adopt rules before June 1, 2006, to:

19 (a) select a renewable energy credit tracking system to verify compliance with this part;

20 (b) establish a system by which renewable resources become certified as eligible renewable
21 resources;

22 (c) define the process by which waivers from full compliance with this part may be granted;

23 (d) establish procedures under which contracts for eligible renewable resources and renewable
24 energy credits may receive advanced approval;

25 (e) define the requirements governing renewable energy procurement plans and annual reports; and

26 (f) generally implement and enforce the provisions of this part.

27 (3) The commission may adopt rules to ensure that the calculation of energy generation and the
28 renewable energy credits for eligible renewable resources under 69-3-2003(10)(d)(iii)(8)(d)(iii) reflects the

1 actual electrical production from the expansion as typically reduced by seasonal water conditions."

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3 **Section 5.** Section 90-4-1202, MCA, is amended to read:

4 **"90-4-1202. Definitions.** Unless the context requires otherwise, in this part, the following definitions
5 apply:

6 (1) "Ancillary services" has the meaning provided in 69-3-2003.

7 (2) "Bond" means bond, note, or other obligation.

8 (3) "Clean renewable energy bonds" means one or more bonds issued by a governmental body
9 pursuant to section 54 of the Internal Revenue Code, 26 U.S.C. 54, and this part.

10 (4) "Commission" means the public service commission provided for in 69-1-102.

11 (5) "Governing authority" means a council, board, or other body governing the affairs of the
12 governmental body.

13 (6) "Governmental body" means a city, town, county, school district, consolidated city-county, Indian
14 tribal government, or any other political subdivision of the state, however organized.

15 (7) "Intermittent generation resource" means a generator that operates on a limited and irregular basis
16 due to the inconsistent nature of its fuel supply, which is primarily wind or solar power.

17 (8) "Internal Revenue Code" has the meaning provided in 15-30-2101.

18 (9) "Project" means:

19 (a) a facility qualifying as a "qualified project" within the meaning of section 54(d)(2) of the Internal
20 Revenue Code, 26 U.S.C. 54(d)(2); or

21 (b) ~~a community renewable energy project as defined in 69-3-2003(4)(a); or~~

22 ~~(c)—an alternative renewable energy source as defined in 15-6-225."~~

23

24 NEW SECTION. SECTION 6. EXISTING PROJECTS AND CONTRACTS -- GRANDFATHER CLAUSE. [THIS ACT]

25 DOES NOT AFFECT A PUBLIC UTILITY'S CONTINUED RECOVERY OF COSTS, OR RATE BASE TREATMENT OF INVESTMENT,

26 ASSOCIATED WITH ANY EXISTING COMMUNITY RENEWABLE ENERGY PROJECT AND MAY NOT BE CONSTRUED TO ALTER,

27 AMEND, DIMINISH, OR INVALIDATE RIGHTS OR DUTIES GOVERNED BY A CONTRACT, AGREEMENT, OR LEASE ENTERED INTO

28 PRIOR TO [THE EFFECTIVE DATE OF THIS ACT].

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NEW SECTION. **Section 7. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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

NEW SECTION. **Section 9. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to any application pending or commenced before the public service commission prior to [the effective date of this act].

- END -