

1 HOUSE BILL NO. 188

2 INTRODUCED BY REGIER, CUFFE, HAGAN, KEANE, KNUDSEN, MCCHESENEY, NOONAN, O'HARA,
3 LAVIN, SESSO

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE PUBLIC SERVICE COMMISSION TO APPROVE
6 RATE SCHEDULES FOR CERTAIN SMALL POWER PRODUCERS; PROHIBITING THE COMMISSION FROM
7 APPROVING RATE SCHEDULES FOR CERTAIN SMALL POWER PRODUCERS; ESTABLISHING CERTAIN
8 PARAMETERS FOR LONG-TERM CONTRACTS BETWEEN SMALL POWER PRODUCTION FACILITIES AND
9 UTILITIES; GRANTING THE COMMISSION RULEMAKING AUTHORITY; AMENDING SECTION 69-3-603, MCA;
10 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 **Section 1.** Section 69-3-603, MCA, is amended to read:

15 **"69-3-603. (Temporary) Required sale of electricity under rates and conditions prescribed by**
16 **commission.** (1) Except as provided in subsection (3), if a qualifying small power production facility and a utility
17 are unable to mutually agree to a contract for the sale of electricity or a price for the electricity to be purchased
18 by the utility, the commission shall require the utility to purchase the electricity under rates and conditions
19 established under the provisions of subsection (2).

20 (2) The commission shall determine the rates and conditions of the contract upon petition of a qualifying
21 small power production facility or a utility or during a rate proceeding involving the review of rates paid by a utility
22 for electricity purchased from a qualifying small power production facility. The commission shall render a decision
23 within 180 days of receipt of the petition or before the completion of the rate proceeding. The rates and conditions
24 of the determination must be made according to the standards prescribed in 69-3-604.

25 (3) (a) (i) If a qualifying small power production facility is eligible to sell electricity to a utility pursuant to
26 a rate schedule approved by the commission, neither the qualifying small power production facility nor the utility
27 may petition the commission in accordance with subsection (2) to authorize a rate or term different from that in
28 the rate schedule.

29 (ii) IF A QUALIFYING SMALL POWER PRODUCTION FACILITY IS NOT ELIGIBLE TO SELL ELECTRICITY TO A UTILITY
30 PURSUANT TO A RATE SCHEDULE APPROVED BY THE COMMISSION, THE QUALIFYING SMALL POWER PRODUCTION FACILITY

1 MAY ENTER INTO A LONG-TERM CONTRACT TO SELL ELECTRICITY ONLY IF IT IS SELECTED BY A PUBLIC UTILITY IN A
 2 COMPETITIVE SOLICITATION FOR LONG-TERM ELECTRICITY SUPPLY RESOURCES.

3 (b) (i) The FOR A PUBLIC UTILITY THAT HAS CONTRACTS WITH QUALIFYING SMALL POWER PRODUCTION
 4 FACILITIES WITH AN AGGREGATE TOTAL NAMEPLATE CAPACITY, EXCLUDING THE AGGREGATE TOTAL NAMEPLATE CAPACITY
 5 OF QUALIFYING SMALL POWER PRODUCTION FACILITIES USING A PRIMARY ENERGY SOURCE REFERRED TO IN ~~18 CFR~~
 6 ~~292.202(4), (5), (6), OR (8)~~ 18 CFR 292.202(B)(4), (5), (6), OR (8), THAT IS LESS THAN 15% OF THE PUBLIC UTILITY'S
 7 AVERAGE DAILY LOAD, THE COMMISSION SHALL APPROVE A RATE SCHEDULE FOR SALES OF ELECTRICITY TO A THE UTILITY FROM A
 8 QUALIFYING SMALL POWER PRODUCTION FACILITY WITH A DESIGN CAPACITY OF ~~400 KILOWATTS~~ 3 MEGAWATTS OR LESS.

9 (ii) The FOR A PUBLIC UTILITY THAT HAS CONTRACTS WITH QUALIFYING SMALL POWER PRODUCTION FACILITIES
 10 WITH AN AGGREGATE TOTAL NAMEPLATE CAPACITY, EXCLUDING THE AGGREGATE TOTAL NAMEPLATE CAPACITY OF
 11 QUALIFYING SMALL POWER PRODUCTION FACILITIES USING A PRIMARY ENERGY SOURCE REFERRED TO IN ~~18 CFR~~
 12 ~~292.202(4), (5), (6), OR (8)~~ 18 CFR 292.202(B)(4), (5), (6), OR (8), THAT IS LESS THAN 15% OF THE PUBLIC UTILITY'S
 13 AVERAGE DAILY LOAD, THE COMMISSION MAY NOT APPROVE A RATE SCHEDULE FOR SALES OF ELECTRICITY TO A THE UTILITY FROM
 14 A QUALIFYING SMALL POWER PRODUCTION FACILITY WITH A DESIGN CAPACITY OF MORE THAN ~~400 KILOWATTS~~ 3 MEGAWATTS.

15 (iii) FOR A PUBLIC UTILITY THAT HAS CONTRACTS WITH QUALIFYING SMALL POWER PRODUCTION FACILITIES WITH
 16 AN AGGREGATE TOTAL NAMEPLATE CAPACITY, EXCLUDING THE AGGREGATE TOTAL NAMEPLATE CAPACITY OF QUALIFYING
 17 SMALL POWER PRODUCTION FACILITIES USING A PRIMARY ENERGY SOURCE REFERRED TO IN ~~18 CFR 292.202(4), (5), (6),~~
 18 ~~OR (8)~~ 18 CFR 292.202(B)(4), (5), (6), OR (8), THAT IS EQUAL TO OR GREATER THAN 15% OF THE PUBLIC UTILITY'S
 19 AVERAGE DAILY LOAD, THE COMMISSION SHALL APPROVE A RATE SCHEDULE FOR SALES OF ELECTRICITY TO THE PUBLIC
 20 UTILITY FROM A QUALIFYING SMALL POWER PRODUCTION FACILITY WITH A DESIGN CAPACITY OF 100 KILOWATTS OR LESS.

21 (iv) FOR A PUBLIC UTILITY THAT HAS CONTRACTS WITH QUALIFYING SMALL POWER PRODUCTION FACILITIES WITH
 22 AN AGGREGATE TOTAL NAMEPLATE CAPACITY, EXCLUDING THE AGGREGATE TOTAL NAMEPLATE CAPACITY OF QUALIFYING
 23 SMALL POWER PRODUCTION FACILITIES USING A PRIMARY ENERGY SOURCE REFERRED TO IN ~~18 CFR 292.202(4), (5), (6),~~
 24 ~~OR (8)~~ 18 CFR 292.202(B)(4), (5), (6), OR (8), THAT IS EQUAL TO OR GREATER THAN 15% OF THE PUBLIC UTILITY'S
 25 AVERAGE DAILY LOAD, THE COMMISSION MAY NOT APPROVE A RATE SCHEDULE FOR SALES OF ELECTRICITY TO THE PUBLIC
 26 UTILITY FROM A QUALIFYING SMALL POWER PRODUCTION FACILITY WITH A DESIGN CAPACITY OF MORE THAN 100
 27 KILOWATTS.

28 (v) THE COMMISSION SHALL LIMIT THE NEW CONTRACTS WITH STANDARD OFFER RATES FOR QUALIFYING SMALL
 29 POWER PRODUCTION FACILITIES WITH A DESIGN CAPACITY OF MORE THAN 100 KILOWATTS TO 6 MEGAWATTS OF TOTAL
 30 AGGREGATE DESIGN CAPACITY IN ANY CALENDAR YEAR.

1 **(b)(c)** A qualifying small power production facility may file a complaint pursuant to 69-3-321 if the facility
2 feels the rate schedule approved by the commission is unreasonable.

3 ~~(D) QUALIFYING SMALL POWER PRODUCTION FACILITIES THAT SHARE AN INTERCONNECTION TO A PUBLIC UTILITY~~
4 ~~ARE CONSIDERED ONE SMALL POWER PRODUCTION FACILITY FOR THE PURPOSES OF ELIGIBILITY FOR STANDARD OFFER~~
5 ~~RATES IN ACCORDANCE WITH SUBSECTION (3)(A) THROUGH (3)(C).~~

6 (4) WITHIN 90 DAYS OF [THE EFFECTIVE DATE OF THIS ACT], THE COMMISSION SHALL ADOPT RULES NECESSARY
7 TO IMPLEMENT SUBSECTIONS (3)(A) THROUGH (3)(D) (3)(C). (Repealed on occurrence of contingency--secs. 1, 3, Ch.
8 284, L. 2003--see part compiler's comment.)"

9
10 **NEW SECTION. SECTION 2. SAVING CLAUSE.** [THIS ACT] DOES NOT AFFECT RIGHTS AND DUTIES THAT
11 MATURED, PENALTIES THAT WERE INCURRED, OR PROCEEDINGS THAT WERE BEGUN BEFORE [THE EFFECTIVE DATE OF THIS
12 ACT].

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14 **NEW SECTION. SECTION 3. SEVERABILITY.** IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE
15 SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS
16 APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID
17 APPLICATIONS.

18
19 **NEW SECTION. SECTION 4. EFFECTIVE DATE.** [This act] is effective on passage and approval.

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21 **NEW SECTION. SECTION 5. APPLICABILITY -- RETROACTIVE APPLICABILITY.** (1) EXCEPT AS PROVIDED IN
22 SUBSECTION (2), [THIS ACT] APPLIES TO:

23 (A) QUALIFYING SMALL POWER PRODUCTION FACILITIES THAT COMMENCE COMMERCIAL OPERATION ON OR AFTER
24 [THE EFFECTIVE DATE OF THIS ACT]; OR

25 (B) CONTRACTS ENTERED INTO BETWEEN QUALIFYING SMALL POWER PRODUCTION FACILITIES AND PUBLIC
26 UTILITIES ON OR AFTER [THE EFFECTIVE DATE OF THIS ACT].

27 (2) [THIS ACT] DOES NOT APPLY TO THE RENEWAL OF A CONTRACT BETWEEN A QUALIFYING SMALL POWER
28 PRODUCTION FACILITY AND A PUBLIC UTILITY AFTER [THE EFFECTIVE DATE OF THIS ACT] IF THE QUALIFYING SMALL POWER
29 PRODUCTION FACILITY AND THE PUBLIC UTILITY ENTERED INTO THE ORIGINAL CONTRACT PRIOR TO [THE EFFECTIVE DATE
30 OF THIS ACT].

