

## 1 HOUSE BILL NO. 245

2 INTRODUCED BY L. BREWSTER

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ELECTRICITY SUPPLY RESOURCE APPROVAL;  
5 REQUIRING THE REPORTING OF EVIDENCE; AMENDING SECTION 69-8-421, MCA; AND PROVIDING AN  
6 IMMEDIATE EFFECTIVE DATE."

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

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10 **Section 1.** Section 69-8-421, MCA, is amended to read:

11 **"69-8-421. Approval of electricity supply resources.** (1) A public utility that removed its generation  
12 assets from its rate base pursuant to this chapter prior to October 1, 2007, may apply to the commission for  
13 approval of an electricity supply resource that:

14 (a) is not yet procured; and

15 (b) is subject to a competitive solicitation process when applicable in accordance with 69-3-1207.

16 (2) Within 45 days of the public utility's submission of an application for approval, the commission  
17 shall ~~determine~~ issue an order stating whether or not the application is adequate and in compliance with the  
18 commission's minimum filing requirements. If the commission determines that the application is ~~inadequate~~ not  
19 in compliance, it shall explain the deficiencies.

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

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

28 (b) If an air quality permit pursuant to Title 75, chapter 2, is required for a new electrical generation

1 resource or a modification to an existing resource, the commission shall hold the public meetings on the  
2 application for approval in accordance with 69-3-1205(2) at least 30 days after the issuance of the final air  
3 quality permit.

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

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

8 (5) To facilitate timely consideration of an application, the commission may initiate proceedings to  
9 evaluate planning and procurement activities related to a potential resource procurement, if necessary, in  
10 accordance with 69-3-1207 prior to the public utility's submission of an application for approval.

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

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

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

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

17 (ii) procurement of the electricity supply resource is consistent with the requirements and objectives in  
18 69-3-201, 69-3-1201 through 69-3-1209, and commission rules.

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

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

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

28 (g) A commission order that denies approval, in whole or in part, must describe why the findings

1 required in subsection (6)(c) could not be reached and must describe with particularity the evidence that  
2 overcomes the policy of the state that it is in the public interest to encourage utility ownership of electricity  
3 supply resources to provide stable rates, reduce reliance on market purchases, and promote the state's  
4 economic interests.

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

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

14 (9) Nothing limits the commission's ability to subsequently, in any future rate proceeding, inquire into  
15 the manner in which the public utility has managed, dispatched, operated, or maintained any resource or  
16 managed any power purchase agreement as part of its overall resource portfolio. The commission may  
17 subsequently disallow rate recovery for the costs that result from the failure of a public utility to reasonably  
18 manage, dispatch, operate, maintain, or administer electricity supply resources in a manner consistent with 69-  
19 3-201 and commission rules.

20 (10) The commission shall adopt rules prescribing minimum filing requirements for applications filed  
21 pursuant to this part."  
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23 NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

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