

SENATE BILL NO. 188

INTRODUCED BY S. MALEK

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING UTILITY SYSTEM PLANNING AND

5 ELECTRICITY SUPPLY RESOURCE PROCUREMENT LAWS; REQUIRING A PUBLIC UTILITY TO ESTABLISH

6 AN ADVISORY COMMITTEE FOR UTILITY SYSTEM AND ELECTRICITY SUPPLY RESOURCE

7 PROCUREMENT PLANNING; ESTABLISHING CERTAIN MEMBERSHIP REQUIREMENTS; ESTABLISHING

8 A COMPETITIVE SOLICITATION PROCESS FOR PUBLIC UTILITIES SEEKING PREAPPROVAL; REQUIRING

9 A PUBLIC UTILITY SEEKING PREAPPROVAL TO ACQUIRE, CONSTRUCT, OR PURCHASE AN

10 ELECTRICITY SUPPLY RESOURCE TO CONDUCT A COMPETITIVE SOLICITATION PROCESS APPROVED

11 BY THE PUBLIC SERVICE COMMISSION; ESTABLISHING THE REQUIREMENTS OF A COMPETITIVE

12 SOLICITATION PROCESS; ESTABLISHING COMMISSION REQUIREMENTS FOR REVIEW AND APPROVAL

13 OR REJECTION OF A COMPETITIVE SOLICITATION PROCESS; REVISING PUBLIC HEARING

14 REQUIREMENTS; REVISING ELECTRICITY SUPPLY RESOURCE PREAPPROVAL CRITERIA AND

15 REQUIREMENTS; PROVIDING THE COMMISSION WITH RULEMAKING AUTHORITY; AMENDING

16 SECTIONS 69-1-114, 69-8-419, 69-8-420, AND 69-8-421, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE

17 DATE AND AN APPLICABILITY DATE."

18

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

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21 NEW SECTION. **Section 1. Utility system and electricity supply resource procurement planning**

22 **-- advisory committee.** (1) A public utility shall maintain a broad-based advisory committee to review, evaluate,

23 and make recommendations on technical, economic, environmental, and policy issues related to a utility's

24 electricity system. The committee shall advise the utility on transmission and distribution system planning,

25 demand-side management, portfolio planning, and management and procurement completed in accordance with

26 69-8-419 through 69-8-421.

27 (2) All advisory committee meetings are public. Agendas must be posted at least 3 days in advance of

28 meetings and must include time for public comment and participation.

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30 NEW SECTION. **Section 2. Competitive solicitation process required -- exception.** (1) (a) A public

1 utility that intends to seek approval by the commission pursuant to 69-8-421 for the acquisition, construction, or
2 purchase of an electricity supply resource as defined in 69-8-103 shall conduct a competitive solicitation process.

3 (b) A public utility may not prohibit a qualifying small power production facility as defined in 69-3-601 or
4 another utility or supplier that owns an electricity supply resource or intends to construct an electricity supply
5 resource from participating in a competitive solicitation process.

6 (c) A competitive solicitation process that is open to bids that would result in the ownership of an
7 electricity supply resource by the public utility issuing the solicitation must include the use of a third-party
8 administrator selected by the public utility to open, consider, and evaluate bids submitted pursuant to a
9 solicitation.

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

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

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

15 (c) any other information the commission requires.

16 (3) (a) If the commission receives information from a public utility pursuant to subsection (2), the
17 commission shall accept public comment on the information for at least 30 days. To allow for public comment,
18 the commission may hold a public hearing.

19 (b) The commission may select and retain a person or organization to act as an independent monitor
20 for a competitive solicitation process. If an independent monitor is retained, the commission shall charge a fee
21 to the public utility to pay for the costs of the independent monitor. These costs are recoverable in rates.

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

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

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

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

30 (iv) preparing a closing report regarding the consistency of the process, including selection and

1 notification of electricity supply resources taking part in the solicitation process based on industry standards and
2 commission criteria.

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

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

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

9 (iii) reject a proposed competitive solicitation process.

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

13 (5) In approving or denying a competitive solicitation process, the commission shall determine whether
14 the competitive solicitation process is in the public interest. The commission shall make the determination by
15 considering:

16 (a) the cost to Montana ratepayers;

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

18 (c) risk;

19 (d) reliability;

20 (e) environmental impacts;

21 (f) financial impacts on the public utility; and

22 (g) other factors determined by the commission to be relevant.

23

24 **Section 3.** Section 69-1-114, MCA, is amended to read:

25 **"69-1-114. Fees.** (1) Each fee charged by the commission must be reasonable.

26 (2) Except for a fee assessed pursuant to 69-3-204(2), ~~69-8-421(10)~~ [section 2(3)(b)], 69-8-421(11), or
27 69-12-423(2), a fee set by the commission may not exceed \$500.

28 (3) All fees collected by the department under ~~69-8-421(10)~~ [section 2(3)(b)] and 69-8-421(11) must be
29 deposited in an account in the special revenue fund. Funds in this account must be used as provided in
30 ~~69-8-421(10)~~ [section 2(3)(b)] and 69-8-421(11)."

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

- 1 (v) conducting a competitive solicitation process in accordance with [section 2];
 2 (b) standards for the evaluation by the commission of the reasonableness of a power purchase
 3 agreement proposed by the public utility; and
 4 (c) minimum filing requirements for an application by the public utility for approval of an electricity supply
 5 resource."

6
 7 **Section 5.** Section 69-8-420, MCA, is amended to read:

8 **"69-8-420. ~~Electricity supply resource~~ Utility system and electricity supply resource procurement**
 9 **plans planning -- comment on plans.** (1) (a) The public utility shall develop ~~electricity supply resource~~ utility
 10 system and electricity supply resource procurement plans.

11 (b) The plans must be submitted to the commission at intervals determined in rules adopted by the
 12 commission.

13 (2) ~~An electricity supply resource~~ A utility system and electricity supply resource procurement plan must
 14 demonstrate the public utility's achievement of the objectives provided in 69-8-419 and compliance with [sections
 15 1 and 2] and additional commission rules.

16 (3) The commission shall:

17 (a) ~~review the electricity supply resource procurement plan;~~ publish a copy of the plan;

18 (b) allow for a minimum of 60 days for the public to comment on the plan;

19 (b)(c) ~~provide an opportunity to the public to comment on the plan~~ hold public meetings in accordance
 20 with subsection (4) (6); and

21 (e)(d) review the plan and issue written comments within 9 months after the plan is submitted to the
 22 commission.

23 (4) (a) The commission may provide comments on the plan in accordance with subsection (3)(d) and also
 24 ~~that~~ identify deficiencies in the plan, including:

25 (i) any concerns of the commission regarding the public utility's compliance with commission rules; and

26 (ii) ways to remedy any concerns.

27 (b) Upon request of the commission, a public utility shall provide underlying data, assumptions, and
 28 modeling necessary for the commission to review a plan in accordance with subsection (3).

29 (c) In accordance with 69-8-421(11), the commission may engage independent engineering, financial,
 30 and management consultants or advisory services to evaluate a public utility's plan.

1 ~~(4)(5)~~ The After a plan is submitted and prior to issuing comments on the plan in accordance with
 2 subsection (3)(d), the commission shall hold at least two public meetings in an area of the state encompassed
 3 by the plan the utility's Montana service territory.

4 (6) Notice of the meetings required in accordance with subsection (5) must be published once a week
 5 for 2 consecutive weeks in a newspaper of general circulation starting at least 30 days prior to each meeting."

6
 7 **Section 6.** Section 69-8-421, MCA, is amended to read:

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

11 (a) is not yet procured;
 12 (b) meets the requirements of subsection (2); and
 13 (c) is subject to a competitive solicitation process in accordance with [section 2].

14 (2) If the utility system and electricity supply resource procurement plan identified deficiencies in
 15 accordance with 69-8-420(4) and those deficiencies are directly applicable to the application made in accordance
 16 with subsection (1), the public utility shall provide:

17 (a) a complete and thorough explanation and justification of all changes to the utility's most recent utility
 18 system and electricity supply resource procurement plan, including how the utility responded to the applicable
 19 deficiencies; and

20 (b) testimony and supporting work papers describing the electricity supply resource and demonstrating
 21 that the acquisition is in the public interest and is consistent with the requirements and objectives in 69-3-201,
 22 69-8-419, and the utility's most recent utility system and electricity supply resource procurement plan.

23 ~~(2)(3)~~ Within 45 days of the public utility's submission of an application for approval, the commission shall
 24 determine whether or not the application is adequate and in compliance with subsections (1) and (2) and the
 25 commission's minimum filing requirements. If the commission determines that the application is inadequate, it
 26 shall explain the deficiencies.

27 ~~(3)(4)~~ The commission shall issue an order within 180 days of receipt of an adequate application for
 28 approval of a power purchase agreement from an existing generating resource unless it determines that
 29 extraordinary circumstances require additional time.

30 ~~(4)(5)~~ (a) Except as provided in subsections ~~(4)(b)~~ (5)(b) through ~~(4)(d)~~ (5)(d), the commission shall issue

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

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

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

10 (d) The commission may extend the time limit for issuing an order for an additional 60 days following the
11 hearing pursuant to subsection ~~(4)(b)~~ (5)(b).

12 ~~(5)(6)~~ To facilitate timely consideration of an application, the commission may initiate proceedings to
13 evaluate planning and procurement activities related to a potential resource procurement, if necessary, in
14 accordance with [section 2] prior to the public utility's submission of an application for approval.

15 ~~(6)(7)~~ (a) The commission may approve or deny, in whole or in part, an application for approval of an
16 electricity supply resource.

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

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

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

21 (ii) procurement of the electricity supply resource is consistent with the requirements in 69-3-201, the
22 objectives and requirements in 69-8-419, 69-8-420, and [section 2], and commission rules.

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

26 (e) When issuing an order for the acquisition of an equity interest or lease in a facility or equipment that
27 is constructed after January 1, 2007, and that is used to generate electricity that is primarily fueled by natural or
28 synthetic gas, the commission shall require the applicant to implement cost-effective carbon offsets. Expenditures
29 required for cost-effective carbon offsets pursuant to this subsection ~~(6)(e)~~ (7)(e) are fully recoverable in rates.
30 By March 31, 2008, the commission shall adopt rules for the implementation of this subsection ~~(6)(e)~~ (7)(e).

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

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

4 ~~(7)(8)~~ Notwithstanding any provision of this chapter to the contrary, if the commission has issued an
5 order containing the findings required under subsection ~~(6)(c)~~ (7)(c), the commission may not subsequently
6 disallow the recovery of costs related to the approved electricity supply resource based on contrary findings.

7 ~~(8)(9)~~ Until the state or federal government has adopted uniformly applicable statewide standards for
8 the capture and sequestration of carbon dioxide, the commission may not approve an application for the
9 acquisition of an equity interest or lease in a facility or equipment used to generate electricity that is primarily
10 fueled by coal and that is constructed after January 1, 2007, unless the facility or equipment captures and
11 sequesters a minimum of 50% of the carbon dioxide produced by the facility. Carbon dioxide captured by a facility
12 or equipment may be sequestered offsite from the facility or equipment.

13 ~~(9)(10)~~ Nothing limits the commission's ability to subsequently, in any future rate proceeding, inquire into
14 the manner in which the public utility has managed, dispatched, operated, or maintained any resource or
15 managed any power purchase agreement as part of its overall resource portfolio. The commission may
16 subsequently disallow rate recovery for the costs that result from the failure of a public utility to reasonably
17 manage, dispatch, operate, maintain, or administer electricity supply resources in a manner consistent with
18 69-3-201, 69-8-419, 69-8-420, and commission rules.

19 ~~(10)(11)~~ The commission may engage independent engineering, financial, and management consultants
20 or advisory services to evaluate a public utility's electricity supply resource procurement plans and proposed
21 electricity supply resources. The consultants must have demonstrated knowledge and experience with electricity
22 supply procurement and resource portfolio management, modeling, risk management, and engineering practices.
23 The commission shall charge a fee to the public utility to pay for the costs of consultants or advisory services.
24 These costs are recoverable in rates.

25 ~~(11)(12)~~ ~~By March 31, 2008, the~~ The commission shall adopt rules prescribing minimum filing
26 requirements for applications filed pursuant to this part."
27

28 NEW SECTION. Section 7. Codification instruction. [Sections 1 and 2] are intended to be codified
29 as an integral part of Title 69, chapter 8, part 4, and the provisions of Title 69, chapter 8, part 4, apply to [sections
30 1 and 2].

