SENATE BILL NO. 5

INTRODUCED BY D. ZOLNIKOV

BY REQUEST OF THE ENERGY AND TECHNOLOGY INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: “AN ACT GENERALLY REVISING PUBLIC UTILITY ELECTRICITY SUPPLY SERVICE LAWS RELATING TO RETAIL CUSTOMERS WITH LOADS WITH AN AVERAGE MONTHLY UTILITY DEMAND OF GREATER THAN OR EQUAL TO 5,000 KILOWATTS; REVISING THE DEFINITION OF "COMPELLING PUBLIC INTEREST" TO INCLUDE PROTECTING OTHER CUSTOMERS OF A PUBLIC UTILITY FROM ADVERSE IMPACTS RESULTING FROM THE PUBLIC UTILITY'S PROVISION OF ELECTRICITY SUPPLY SERVICE TO LARGE LOAD RETAIL CUSTOMERS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 2-10-203, 69-3-332, AND 69-8-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.”

WHEREAS, Montana and the United States are experiencing rapid and unprecedented projected load growth from large load electricity customers, such as data centers, that presents challenges for public utilities, the electric grid, regulators, and other electricity customers; and

WHEREAS, the speed, intensity, and nature of certain large load customers is distinct from existing customers receiving electricity supply from public utilities in Montana; and

WHEREAS, absent necessary safeguards, the costs of serving large load customers could be shifted to a public utility's other customers, adversely impacting them through stranded generation and distribution infrastructure and increased electricity bills; and

WHEREAS, absent clear statutory and regulatory direction, a public utility's provision of electricity supply to large load customers, including data centers, poses an emerging threat to the stability of Montana's electric grid and consumers' electricity rates; and

WHEREAS, affordability is a growing concern for Montanans; and

WHEREAS, the state's management of load growth should advance affordable, clean, and reliable electrification; and

WHEREAS, Montana has a compelling state interest to protect the health, safety, and welfare of

Montanans, including ensuring affordable electric rates and a reliable electric grid.

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

Section 1. Section 2-10-203, MCA, is amended to read:

"**2-10-203. Definitions.** As used in this part, the following definitions apply:

(1) "Artificial intelligence system" means any machine learning-based system that, for any explicit or implicit objective, infers from the inputs the system receives how to generate outputs, including but not limited to content, decisions, predictions, and recommendations that can influence physical or virtual environments.

(2) "Compelling government interest" means a government interest of the highest order in protecting the public that cannot be achieved through less restrictive means. This includes but is not limited to:

(a) ensuring that a critical infrastructure facility controlled by an artificial intelligence system develops a risk management policy;

(b) addressing conduct that deceives or defrauds the public;

(c) protecting individuals, especially minors, from harm by a person who distributes deepfakes and other harmful synthetic content with actual knowledge of the nature of that material; ~~and~~

(d) taking actions that prevent or abate common law nuisances created by physical datacenter infrastructure~~.~~; and

(e) protecting other customers of a public utility from adverse impacts resulting from the public utility's provision of electricity supply service to large load retail customers with an individual load having an average monthly demand greater than or equal to 5,000 kilowatts.

(3) "Computational resources" means any tools, technologies, systems, or infrastructure, whether digital, analog, existing, or some other form, that facilitate any form of computation, data processing, storage, transmission, manipulation, control, creation, dissemination, or use of information and data. This includes but is not limited to hardware, software, algorithms, sensors, networks, protocols, platforms, services, systems, cryptography, machine learning, or quantum applications.

(4) (a) "Critical artificial intelligence" means an artificial intelligence system that is designed and

deployed to make, or is a substantial factor in making, a consequential decision.

(b) The term does not include:

(i) an artificial intelligence system that is intended to:

(A) perform a narrow procedural task;

(B) improve the result of a previously completed human activity;

(C) perform a preparatory task to an assessment relevant to a consequential decision; or

(D) detect a decision-making pattern or a deviation from a preexisting decision-making pattern;

(ii) antifraud, antimalware, antivirus, calculator, cybersecurity, database, data storage, firewall, internet domain registration, internet-website loading, networking, robocall-filtering, spam-filtering, spell-checking, spreadsheet, web-caching, web-hosting, or search engine technologies or similar technologies; or

(iii) a technology that communicates in natural language for the purpose of providing users with information, makes referrals or recommendations, answers questions, or generates other content and that is subject to an acceptable use policy that prohibits the generation of unlawful content.

(5) "Critical infrastructure facility" has the same meaning as provided in 82-1-601.

(6) "Deployer" means an individual, company, or other organization that utilizes an artificial intelligence system.

(7) "Government actions" means any law, ordinance, regulation, rule, policy, condition, test, permit, or administrative practice enacted by a government entity that restricts the common or intended use of computational resources by its owner or invitees.

(8) "Government entity" means any unit of state government, including the state, counties, cities, towns, or political subdivisions, and any branch, department, division, office, or government entity of state or local government."

Section 2. Section 69-3-332, MCA, is amended to read:

"**69-3-332. Digital asset mining ratemaking.** (1) The commission may not establish a rate classification for digital asset mining, a digital asset mining ~~businesses~~ business, or home digital asset mining with an average monthly demand of less than 5,000 kilowatts that creates unduly discriminatory rates. Digital asset mining, a digital asset mining business, or home digital asset mining with an average monthly demand of

greater than or equal to 5,000 kilowatts is subject to [section 4] and 69-8-201.

(2) For the purposes of this section, the following definitions apply:

(a) "Data center" means a use involving a building or premises in which the majority of the use is occupied by computers, telecommunications, or related equipment, including supporting equipment, where information is processed, transferred, and stored.

(b) "Digital asset mining" means the use of electricity to power a computer for the purpose of securing a blockchain network.

(c) "Digital asset mining business" means a group of computers working at a single site that consume more than 1 megawatt of energy on an average annual basis for the purpose of generating digital assets by securing a blockchain network.

(d) "Discriminatory rates" means electricity rates substantially different from other industrial similar uses of electricity in similar geographic areas after accounting for the cost of service.

(e) "Home digital asset mining" means mining digital assets in areas zoned for residential use that consume less than 1 megawatt of energy on an average annual basis for the purpose of generating digital assets by securing a blockchain network."

Section 3. Section 69-8-201, MCA, is amended to read:

"**69-8-201. Public utility -- customer electricity supply service options and requirements -- exemption.** (1) (a) Except as provided in subsections (1)(b) and (1)(c), a retail customer, including the retail customer's successor in interest, that has an individual load with an average monthly demand of greater than or equal to 5,000 kilowatts and that ~~is~~ was not purchasing electricity supply service from a public utility on October 1, 2007, may not purchase electricity supply service from a public utility.

(b) A retail customer referred to in subsection (1)(a) and a new retail customer may request electricity supply service from the public utility, and the public utility shall provide electricity supply service if the public utility or retail customer demonstrates that the provision of electricity supply service to the retail customer will not adversely impact the public utility's other customers over the long term as determined by the commission pursuant to [section 4].

(c) If a public utility provides electricity supply service to a retail customer ~~as provided in~~

~~subsection (1)(b)~~ with an average monthly demand of greater than or equal to 5,000 kilowatts, that service is regulated by the commission and the retail customer may not, at a later date, purchase electricity supply service from another provider of electricity supply service without demonstration by the retail customer that purchasing service from another provider of electricity supply service will not adversely impact the public utility's other customers over the long term as determined by the commission pursuant to [section 4].

(2) (a) A retail customer that has an individual load with an average monthly demand of less than 5,000 kilowatts that ~~is~~ was not purchasing electricity from a public utility on October 1, 2007, may continue to purchase electricity from an electricity supplier. The retail customer may subsequently purchase electricity from a public utility subject to commission rule or order, but the retail customer may not, at a later date, choose to purchase electricity from another source.

(b) A retail customer that has an individual load with an average monthly demand of less than 5,000 kilowatts and that is currently purchasing electricity from a public utility may not choose to purchase electricity from another source after October 1, 2007.

(3) Nothing in this section affects a retail customer's rights and obligations with respect to net metering, cogeneration, self-generation, or ancillary sales of electricity related to deviations from scheduled energy deliveries from nonutility suppliers, as may be provided for in law, commission rule or order, or a tariff approved by the public service commission or the federal energy regulatory commission.

(4) (a) Except as provided in 69-5-101, 69-5-102, 69-5-104(2), 69-5-105 through 69-5-112, 69-8-402, 69-8-421, and subsection (4)(b) of this section, a public utility currently doing business in Montana as part of a single integrated multistate operation, no portion of which lies within the basin of the Columbia River, is exempt from the requirements of this chapter.

(b) To the extent that a public utility described in subsection (4)(a) becomes the successor in interest of another public utility that has restructured in accordance with this chapter before October 1, 2007, it is subject to the requirements of this chapter with respect to the service area of the acquired public utility."

NEW SECTION. **Section 4. Public utility electricity supply service -- responsibilities of commission.** (1) To determine whether the provision of electricity supply service to a retail customer will adversely impact the public utility's other customers over the long term pursuant to 69-8-201(1)(b), the

commission shall require the public utility to demonstrate that providing service to the retail customer will not:

(a) result in any increased or additional costs for the public utility's other customers;

(b) impact the public utility's ability to provide transmission, distribution, energy, capacity, or ancillary services to the public utility's other customers; or

(c) adversely impact the public utility's ability to maintain adequate facilities to serve its other customers with reliable and affordable electricity supply.

(2) If the public utility proposes to provide electricity supply service to one or more customers pursuant to 69-8-201(1)(b) whose electric demand is classified as a large load, the commission shall create a new classification of service for retail customers with an average monthly demand of greater than or equal to 5,000 kilowatts. For all subsequent new retail customers with an average monthly demand of greater than or equal to 5,000 kilowatts, the commission shall either assign the new retail customer to a new customer class or any existing large load customer class with similar characteristics of service and cost of service.

(3) Any new customer class must be separate and distinct from existing classifications of service for other commercial or industrial retail customers and have a tariff schedule. The tariff schedule adopted for the customer class with an average monthly demand of greater than or equal to 5,000 kilowatts must:

(a) require deposits and associated financial guarantees sufficient to compensate the public utility for any costs incurred and risks created by serving the new retail customer and to ensure the new retail customer can meet its obligations;

(b) designate when service is to commence, any applicable ramp periods or changes in service, and, if applicable, when service is anticipated to conclude;

(c) set rates and other terms of service regarding the provision of electricity supply service to the proposed retail customer that reflect all costs of serving the proposed retail customer, including, as applicable, the costs incurred by the public utility to provide transmission, distribution, energy, capacity, or ancillary services, fuel costs, and any related costs or risks associated with providing electricity supply service to the proposed retail customer;

(d) set rates and other terms of service that prevents the shifting of any costs to other customers, ensures other customers do not subsidize the cost of service for the new retail customer, and ensures that other customers are not obligated to pay additional costs as a result of the public utility's service to the new

retail customer;

(e) directly assign and allocate all costs associated with serving the new retail customer to that customer's class;

(f) specify the duration of the contract, the estimated start date of electricity supply service, and a guarantee by the new retail customer to take service for a sufficient period to ensure the public utility has a reasonable opportunity to recover the costs associated with serving the new retail customer;

(g) require the proposed retail customer to pay a minimum payment for costs, including revenue requirements, for infrastructure built, acquired, upgraded, or operated to serve the proposed retail customer's projected usage of the electricity supply service that the public utility is contracted to provide for the duration of the contract to ensure the public utility has a reasonable opportunity to recover its costs and revenue requirements for the duration of the contract even if the retail customer does not commence service when expected or stops taking service before expected; and

(h) provide for early termination or exit fees.

(4) Nothing in this section prohibits the commission from requiring additional protections to ensure that the public utility's other customers are not adversely impacted over the long term.

(5) For all other new retail customers taking service pursuant to 69-8-201(1)(b), the retail customer may not be included in any customer class, including other public utility customers not taking service pursuant to 69-8-201(1)(b), except following a rate case in which the commission can ensure that including new retail customers in a customer class with other customers does not create cross-subsidies or adverse impacts to the public utility's other customers.

(6) In each rate case after the public utility begins to serve a new retail customer pursuant to 69-8-201(1)(b), the public utility shall provide a complete evaluation of the public utility's cost allocation methods so that the commission can set rates to prevent new retail customers from being subsidized by other customers and ensure that other customers are not adversely impacted by the public utility's provision of electricity supply service to the new retail customer.

(7) If a retail customer receiving electricity supply service pursuant to 69-8-201(1)(b) fails to pay any amount owed to the public utility under the written contract required under subsection (1)(c), the public utility may not recover any of the unpaid amounts from the public utility's other customers.

(8) Nothing in this section prohibits the commission from sharing any benefits associated with new facilities constructed to serve large loads for the public utility's other customers.

(9) For the purposes of this section, "large load" means a retail customer with an individual load with an average monthly demand of greater than or equal to 5,000 kilowatts.

NEW SECTION. **Section 5. Cessation of electricity supply service.** (1) To determine whether the cessation of electricity supply service to a retail customer will not adversely impact the public utility's other customers over the long term pursuant to 69-8-201(1)(b) or (1)(c), the commission shall require the public utility or retail customer to demonstrate that ceasing to provide service to the retail customer will not:

(a) result in any increased or additional costs for the public utility's other customers;

(b) impact the public utility's ability to provide transmission, distribution, energy, capacity, or ancillary services to the public utility's other customers; or

(c) adversely impact the public utility's ability to maintain adequate facilities to serve its other customers with reliable and affordable electricity supply service.

(2) In making a determination pursuant to this section regarding the public utility ceasing to provide service to a retail customer, the commission shall:

(a) require reasonable deposits and associated financial guarantees sufficient to compensate the public utility and existing customers for any costs incurred and risks created by the cessation of electricity supply service to a retail customer;

(b) require the public utility and retail customer to designate when service is anticipated to conclude;

(c) set terms regarding the cessation of electricity supply service to the retail customer that reflect all costs previously incurred for providing service that have yet to be recovered and all costs of no longer serving the retail customer, including, as applicable, the costs incurred by the public utility to provide transmission, distribution, energy, capacity, or ancillary services, and any related costs or risks associated with ceasing to provide electricity supply service to the retail customer;

(d) set terms that prevent shifting costs to other customers, ensure other customers do not subsidize the cessation of the retail customer, and mitigate the risk that other customers pay unwarranted costs

because of the retail customer;

(e) directly assign and allocate all costs associated with no longer serving the retail customer to that customer; and

(f) establish early termination or exit fees.

(3) Nothing in this section prohibits the commission from requiring additional protections to ensure that the public utility's other customers are not adversely impacted over the short or long term.

(4) If a retail customer receiving electricity supply service pursuant to 69-8-201(1)(b) fails to pay any amount owed to the public utility under the written contract required under subsection (1)(c), the public utility may not recover any of the unpaid amounts from the public utility's other customers.

NEW SECTION. **Section 6. Rulemaking.** The commission shall adopt rules to implement [sections 4 and 5] and 69-8-201 in a manner that ensures that the provision of service or the cessation of service will not adversely impact the public utility's residential customers.

NEW SECTION. **Section 7. Codification instruction.** [Sections 4 and 5] 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 4 and 5].

NEW SECTION. **Section 8. 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 9. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 10. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to any rights and duties that matured or proceedings that began on or after January 1, 2025.

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