

HOUSE BILL NO. 55

INTRODUCED BY G. PARRY

BY REQUEST OF THE SELECT COMMITTEE ON ENERGY RESOURCE PLANNING AND ACQUISITION

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PUBLIC UTILITY RESOURCE PLANNING LAWS; PROVIDING TIMELINES; PROVIDING FOR AN INDEPENDENT EVALUATOR AND DUTIES; PROVIDING A DEFINITION; PROVIDING RULEMAKING AUTHORITY; PROVIDING FOR A SPECIAL REVENUE ACCOUNT; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 69-1-114, 69-3-1204, 69-3-1205, 69-3-1207, 69-3-1208, AND 69-8-421, MCA; PROVIDING FOR CONTINGENT VOIDNESS; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. Section 1. Independent evaluator contracting special revenue account. (1)

There is an independent evaluator contracting special revenue account within the state special revenue fund established in 17-2-102 to the credit of the department of environmental quality.

(2) There must be deposited into the account:

(a) fees collected pursuant to 69-3-1207(5)(a);

(b) any legislative appropriations made for the purposes of the account; and

(c) any interest or income earned on the account.

(3) The department of environmental quality shall use account funds to execute department duties in accordance with energy planning activities pursuant to 69-3-1205 and independent evaluator selection and representation pursuant to 69-3-1207.

Section 2. Section 69-1-114, MCA, is amended to read:**"69-1-114. Fees.** (1) Each fee charged by the commission must be reasonable.

(2) Except for a fee assessed pursuant to 69-3-204(2), 69-3-1204(6)(b), ~~69-3-1207(4)(b)~~ 69-3-1207(5)(a), 69-3-1612(4), or 69-12-423(2), a fee set by the commission may not exceed \$500.

(3) All fees collected by the department under 69-3-1204(6)(b) and ~~69-3-1207(4)(b)~~ 69-3-1207(5)(a) must be deposited in an account in the special revenue fund. Funds in this account must be used as provided in 69-3-1204(6)(b) and ~~69-3-1207(4)(b)~~ 69-3-1207(5)(a).

(4) All fees collected by the commission under 69-3-1612(4) must be treated as financing costs and used in accordance with a financing order issued in accordance with 69-3-1606."

Section 3. Section 69-3-1204, MCA, is amended to read:

"69-3-1204. Integrated least-cost plan. (1) (a) The commission shall adopt rules requiring a public utility to prepare and file a plan at least every 3 years for meeting the requirements of its customers in the most cost-effective manner consistent with the public utility's obligation to serve and in accordance with this part.

(b) The rules must prescribe the content and the time for filing a plan.

(2) (a) A plan must contain but is not limited to:

(i) an evaluation of the full range of cost-effective means for the public utility to meet the service requirements of its Montana customers, including conservation or similar improvements in the efficiency by which services are used and including demand-side management programs in accordance with 69-3-1209;

(ii) an annual electric demand and energy forecast developed pursuant to commission rules that includes energy and demand forecasts for each year within the planning period and historical data, as required by commission rule;

(iii) an assessment of planning reserve margins and contingency plans for the acquisition of additional resources developed pursuant to commission rules;

(iv) an assessment of the need for additional resources and the utility's plan for acquiring resources;

(v) the proposed process the utility intends to use to solicit bids for energy and capacity resources to be acquired through a competitive solicitation process in accordance with 69-3-1207; and

(vi) descriptions of at least two alternate scenarios that can be used to represent the costs and benefits from increasing amounts of renewable energy resources and demand-side management programs, based on rules developed by the commission.

(b) The utility shall fully explain, justify, and document the data, assumptions, methodologies,

models, determinants, and any other inputs on which it relied to develop information required in subsection (2)(a).

(3) (a) The commission may adopt rules providing guidelines to be used in preparing a plan and identifying the criteria to be used in determining cost-effectiveness.

(b) The criteria may include externalities associated with the acquisition of a resource by a public utility.

(c) The rules must establish the minimum filing requirements for acceptance of a plan by the commission for further review. If a plan does not meet the minimum filing requirements, it must be returned to the public utility with a list of ~~deficiencies~~ filing requirements not met. A corrected plan must be submitted within the time established by the commission.

(4) A plan filed with the commission by a utility, as defined in 75-20-104, must be provided to the department of environmental quality and the consumer counsel.

(5) ~~The~~ Within 120 days of receipt of a plan, the commission shall:

(a) shall review the plan;

(b) shall publish a copy of the plan;

(c) shall allow for a minimum of ~~60~~ 45 days for the public to comment on the plan; and

(d) may provide public meetings in accordance with 69-3-1205.

(6) (a) The commission may identify deficiencies in the plan, including:

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

(ii) ways to remedy the concerns.

(b) The commission may engage independent engineering, financial, and management consultants or advisory services to evaluate a public utility's plan. The consultants ~~must have demonstrated~~ shall demonstrate knowledge and experience with resource procurement and resource portfolio management, modeling, risk management, and engineering practices. The commission shall charge a fee to the public utility to pay for the costs of consultants or advisory services. These costs are recoverable in rates."

Section 4. Section 69-3-1205, MCA, is amended to read:

1 **"69-3-1205. Public comment -- public meetings.** (1) When developing a plan in accordance with
 2 this part and prior to submitting a plan to the commission, a public utility shall hold at least ~~two~~four public
 3 meetings in the utility's Montana service territory to ensure a plan best meets the diverse goals of shareholders,
 4 ratepayers, and society.

5 (2) A utility may petition the public service commission to forego up to two public meetings based
 6 on public participation in previous public meetings held in compliance with subsection (1). The public utility shall
 7 consider written and oral comments respecting the proposed plan received during public meetings or meetings
 8 of the resource planning advisory committee held pursuant to 69-3-1208. The public utility shall summarize and
 9 respond to substantive comments received and file those as part of the plan.

10 ~~(2)(3)~~ After a plan is submitted, the commission shall may conduct ~~two~~ public meetings for the
 11 purpose of receiving comment on a plan. The commission or the department of public service regulation may
 12 comment on the plan. A comment by the commission or the department may not be construed as preapproval
 13 by the commission of rate treatment for any proposed resource.

14 ~~(3)(4)~~ The department of environmental quality:

15 (a) shall review a plan submitted to the commission and comment on the need for new resources,
 16 the alternatives evaluated to meet the need, the environmental implications of the resource choices, and other
 17 related issues that it considers important. The department shall coordinate and deliver all comments from other
 18 executive branch agencies.

19 (b) may use a plan in the development of studies for a specific energy facility for which an
 20 application for a certificate of compliance is submitted under Title 75, chapter 20.

21 ~~(4)(5)~~ The consumer counsel shall review and may comment on a submitted plan."
 22

23 **Section 5.** Section 69-3-1207, MCA, is amended to read:

24 **"69-3-1207. Competitive solicitation process -- ~~Montana consumer counsel independent~~**
 25 **evaluator -- department of environmental quality role.** (1) (a) Except as provided in subsection ~~(5)~~ (6), a
 26 public utility that intends to seek approval by the commission pursuant to 69-8-421 for the acquisition,
 27 construction, or purchase of an electricity supply resource shall conduct a competitive solicitation process.

28 (b) A public utility may not prohibit a qualifying small power production facility as defined in 69-3-

601 or another utility or supplier that owns an electricity supply resource or intends to construct an electricity supply resource from participating in a competitive solicitation process.

(c) ~~A competitive solicitation process that is open to bids that would result in the ownership of an electricity supply resource by the public utility issuing the solicitation must include the use of a third-party administrator selected by the public utility to open, consider, and evaluate bids submitted.~~ An independent evaluator must be used to oversee a public utility's competitive solicitation. The department of environmental quality shall select the independent evaluator pursuant to a solicitation subsection (4).

(d) An independent evaluator:

(i) shall monitor the evaluation of bids pursuant to a competitive solicitation;

(ii) shall provide oversight to ensure a fair and transparent competitive solicitation;

(iii) must be familiar with competitive bid and evaluation processes; and

(iv) shall evaluate and document the process used by the public utility to solicit and evaluate bids received during a competitive solicitation.

(e) A public utility may conduct a competitive solicitation in conjunction with the development of an integrated least-cost plan in accordance with 69-3-1204.

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

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

(b) a complete draft of the proposal soliciting electricity supply resources, citing the ~~need for~~ resources range in size and type of resource needs that may include all resource types.

(3) ~~The commission may accept public comment on the information shall:~~

(a) provide notice and accept public comment regarding information received in accordance with subsection (2); and

(b) notify the department of environmental quality when the commission receives a proposal to solicit electricity supply resources and share information collected under subsection (2) and public comment collected under this subsection (3).

(4) ~~(a) The Montana consumer counsel may request, select, and retain a person or organization to~~

1 ~~act as an independent monitor for a competitive solicitation process. Subject to public comments received~~
2 ~~pursuant to subsection (4)(b), the department of environmental quality shall:~~

3 ~~(i) solicit, evaluate, and maintain a list of independent evaluators for the competitive solicitation~~
4 ~~process;~~

5 ~~(ii) develop a process to disqualify and remove from the list those independent evaluators who do~~
6 ~~not comply with established qualifications;~~

7 ~~(iii) update the list at least every 3 years; and~~

8 ~~(iv) after information is submitted to the commission in accordance with subsection (2) and subject~~
9 ~~to rules adopted by the department pursuant to subsection (4)(c), select an independent evaluator from the list.~~

10 ~~(b) The department shall accept public comment when developing and updating the list.~~

11 ~~(c) On or before July 1, 2026, the department shall adopt rules for:~~

12 ~~(i) evaluating independent evaluators for inclusion on the list;~~

13 ~~(ii) selecting an independent evaluator in accordance with this section;~~

14 ~~(iii) implementing this subsection (4); and~~

15 ~~(iv) prescribing the scope of work for the independent evaluator pursuant to the duties in [section~~
16 ~~6].~~

17 ~~(d) Nothing in this section limits the department's ability to fulfill its duties in accordance with 69-3-~~
18 ~~1205.~~

19 ~~(b)(5) (a) The commission shall department of environmental quality may charge a fee to the public~~
20 ~~utility to pay for the costs of selecting and representing an independent monitor evaluator. This fee must be~~
21 ~~deposited in the independent evaluator contracting special revenue account pursuant to [section 1]. These~~
22 ~~costs are recoverable in rates. The department shall provide documentation of the costs to the commission for~~
23 ~~costs incurred pursuant to its duties in 69-2-1205 and this section.~~

24 ~~(c) The independent monitor may assist the Montana consumer counsel by:~~

25 ~~(i) providing comments on the consistency of the competitive solicitation process with industry~~
26 ~~standards;~~

27 ~~(ii) monitoring and observing the competitive solicitation process, paying particular attention to the~~
28 ~~public utility's evaluation of electricity supply resources that may result in utility ownership of the resource, to~~

1 ensure that the utility conducts a fair and proper process in accordance with industry standards;

2 (iii) — notifying the utility and the consumer counsel on a timely basis prior to the utility's selection of
3 the resources of any discrepancies observed in the process and resolving any differences of opinion; and

4 (iv) — preparing a closing report prior to the final selection of the resources regarding the consistency
5 of the process, including selection and notification of electricity supply resources taking part in the solicitation
6 process based on industry standards.

7 (b) After the department selects an independent evaluator in accordance with subsection (4), the
8 public utility shall execute a contract for service with the independent evaluator. The contract must include the
9 scope of work developed pursuant to subsection (4)(c)(iv) and the duties in [section 6].

10 (5)(6) This section does not apply to:

11 (a) a request for proposals or purchase by a public utility intended solely to meet the short-term
12 operational needs of the utility for a period of less than 12 months; or

13 (b) an application made to the commission by a public utility to acquire, construct, or purchase an
14 opportunity resource.

15 (6)(7) For the purposes of this section, "opportunity resource" means an electricity supply resource
16 necessary to meet a need demonstrated in a plan in accordance with 69-3-1204(2)(a)(iv) that is either new or
17 existing and that remains unknown as to its availability for purchase until an opportunity to purchase arises."

18
19 **NEW SECTION. Section 6. Independent evaluator role.** (1) The independent evaluator shall
20 oversee the competitive solicitation conducted by the public utility to protect the public interest and advance the
21 policies in 69-3-1202.

22 (2) The independent evaluator shall:

23 (a) provide comments to the public utility and the commission on the fairness, transparency, and
24 consistency of a competitive solicitation process with industry standards;

25 (b) monitor, evaluate, and observe the competitive solicitation process, paying particular attention
26 to the public utility's evaluation of electric supply resources that may result in utility ownership of the resource to
27 ensure that the utility conducts a fair and proper process in accordance with industry standards;

28 (c) notify the utility and the commission on a timely basis prior to the utility selection of the

resources of any discrepancies observed in the process and resolve any differences of opinion; and

(d) prepare a closing report prior to the final selection of the resources regarding the fairness, transparency, and consistency of the process, including selection and notification of electricity supply resources taking part in the solicitation process based on industry standards. Public utilities shall include the closing report in applications for future cost-recovery dockets.

(3) The commission shall grant the independent evaluator the right of intervention in future cost-recovery proceedings for the purpose of entering the closing report into the evidentiary record and representing the independent evaluator during discovery and hearings.

NEW SECTION. Section 7. Integrated resource planning and acquisition program. There is an integrated resource planning and acquisition program within the public service commission composed of:

(1) two regulatory analysts; and

(2) necessary additional staff to administer the program.

Section 8. Section 69-3-1208, MCA, is amended to read:

"69-3-1208. Resource planning -- advisory committee. (1) A public utility shall maintain a broad-based advisory committee to review, evaluate, and make recommendations on technical, economic, and policy issues related to a utility's electricity system.

(2) The committee may advise the utility on demand-side management, portfolio planning, and management and procurement completed in accordance with this part."

(3) The utility shall publish the committee membership.

(4) A committee meeting must be open to the public when a majority of the committee members vote to hold a public meeting."

Section 9. Section 69-8-421, MCA, is amended to read:

"69-8-421. Approval of electricity supply resources. (1) A public utility may apply to the commission for approval of an electricity supply resource that:

(a) is not yet procured; and

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

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

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

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

(b) If an air quality permit pursuant to Title 75, chapter 2, is required for a new electrical generation resource or a modification to an existing resource, the commission shall hold the public meetings on the application for approval in accordance with ~~69-3-1205(2)~~ 69-3-1205(3) at least 30 days after the issuance of the final air quality permit.

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

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

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

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

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

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

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

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

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

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

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

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

17 (h) The commission order must approve or deny an initial cost finding, in whole or in part. Any
18 additional costs in excess of the commission approved amount must be approved or denied, in whole or in part,
19 in a subsequent proceeding.

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

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

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

(10) The commission shall adopt rules prescribing minimum filing requirements for applications filed pursuant to this part."

NEW SECTION. Section 10. Appropriation. (1) There is appropriated \$75,000 from the general fund to the department of environmental quality for the biennium beginning July 1, 2025, to meet the requirements of [this act].

(2) There is appropriated \$200,000 from the general fund to the public service commission for the biennium beginning July 1, 2025, to the meet the requirements of [this act].

NEW SECTION. Section 11. Codification instruction. [Sections 1, 6, 7, and 8] are intended to be codified as an integral part of Title 69, chapter 3, part 12, and the provisions of Title 69, chapter 3, part 12, apply to [sections 1, 6, 7, and 8].

NEW SECTION. Section 12. Contingent voidness. If [this act] does not include the appropriation pursuant to [section 10(2)], then [section 3(5)] and [section 8] are void.

NEW SECTION. Section 13. Effective date. [This act] is effective July 1, 2025.

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